

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No HBC 258 of 2021

BETWEEN : **ALFAAZ MALLAM** of 153 Nailuva Road, Suva in the
Republic of Fiji, Businessman

PLAINTIFF

AND : **KRISHNEEL KRISHAN KUMAR** of Sariver Place, Makoi,
Nasinu, in the Republic of Fiji, Businessman

DEFENDANT

Coram : **Banuve, J**

Date of Hearing : 30 July 2024

Date of Judgment : 4 September 2025

Counsels : KS Law for the Plaintiff
Nambiar Lawyers for the Defendant

JUDGMENT

A. INTRODUCTION

1. A Writ of Summons with a Statement of Claim attached was filed on 3 December 2021 by the Plaintiff alleging;
 - (i) that the Defendant had made several defamatory statements directed directly to the Plaintiff to different individuals as follows;
 - a. The Plaintiff stole a 40 FT container from the Defendant.
 - b. The container does not belong to the Plaintiff's business (All Freight Logistics) and was stolen from the Defendant
 - c. That the Plaintiff stole the container from EFS/Ocean Star Logistics yard and sold it to another party
 - d. That the above named container was obtained and sold to another party by fraud.
 - e. Cause of Action-Defamation
 - (ii) That the statements of the Defendants were circulated to other businessman, businesses and to the Plaintiff's clients.
 - (iii) That the feedback of the other businessman, business and Plaintiff's clients upon hearing the Defendant's statement/claims was of disappointment in the Plaintiff's actions.
 - (iv) That the Plaintiff's clients began to question hearing the Plaintiff's actions upon hearing the Defendant's statement/claims and the Plaintiff's business also suffered

Particulars of Libel

- a. The Defendants stated to several mentioned individuals that the Plaintiff stole a 40FT container from him and the container was stolen from another company's yard and then sold to another party.

- b. The statements of the Defendant suggest and depicts that the Plaintiff has committed theft/fraud.
 - c. The statements of the Defendant also suggest and depicts that the Plaintiff does practice dishonestly and unethically.
- (v) The Plaintiff denies the Defendant's claims on the basis that they are false and untrue and, it rather has tarnished the Plaintiff's good reputation, amongst other businessmen, peers and to clients.
 - (vi) That the Plaintiff had on 18 August 2021 wrote to the Defendant demanding an explanation as to the defamatory statement, however the Defendant is yet to provide and explanation or a response to the request.
 - (vii) The Plaintiff is concerned as to the intention or manner or portrayal the Defendant had in making statements as he is not as successful as the Plaintiff, therefore is attempting to harm the reputation of the Plaintiff for his own business gain.
 - (viii) That as a result the Plaintiff has suffered serious damage to his credibility and reputation amongst the business community and clients, both current and future, suffered embarrassment, distress and fears that his character and name would be subject to ridicule and scandal amongst the business community, clients and peers.
 - (ix) That the libelous statement by the Defendant has resulted in the Plaintiff suffering loss and damage to his reputation and character resulting in his limiting communication with other business and clients as when he does people start questioning him about his actions and the claims of the Defendant.
 - (x) The Plaintiff seeks the following relief;
 - a. An Injunction stopping the Defendant from making any further defamatory statement against the Plaintiff.
 - b. A Public Apology by the Defendant

- c. Aggravated Damages for Libel
 - d. Exemplary Damages in the sum of \$100,000 (One Hundred Thousand Dollars)
 - e. General Damages
 - f. Costs
2. A Statement of Defence and Counter-Claim was filed by the Defendant on 30 December 2021. No specific defences are pleaded.¹ Rather, the Defendant denies the allegations of defamation generally and places the Plaintiff on strict proof of each allegation.
3. The Defendant rather alleges in further defence and counter-claims, as follows;
- (i) That he has all the supporting documentation in relation to the container that is the subject of dispute which has also been shown to the Plaintiff and his solicitors
 - (ii) That the Defendant was made aware earlier this year that his container was stolen from the warehouse in which the container was meant to be stored as a result of which the Defendant filed a police complaint in relation to the container.
 - (iii) That the Defendant was interviewed after which the Police began investigation.
 - (iv) That after the complaint was made the Defendant and his solicitors have made numerous attempts to follow up on the status of the complaint and recovery of the container, and has been advised that this is in process.

¹ Part Two –GATLEY ON LIBEL AND SLANDER (12th Ed), paragraph 10.1-19.27

- (v) That the Defendant states that he has all legal documentation to affirm that the container rightfully should be in his possession and without his knowledge or consent had been taken by the Plaintiff
- (vi) That the Defendant has lost a total amount of \$24,000.00 (Twenty Four Thousand Dollars) due to the container being lost and lost earnings of \$25,000.00 since March 2021 as he was not able to sublease the container
- (vii) Costs of \$25,000.00
- (viii) Claims a total of \$75,000.00 from the Plaintiff for the financial loss that he had suffered as the rightful owner of the container that was stolen
- (ix) Further, costs on an indemnity basis.

4. Both parties have filed written submissions which the Court has found helpful in understanding their respective positions.

B. THE LAW²

5. In order to establish the ingredients of a cause of action in defamation, (includes libel or slander),³ it is necessary for the claimant to prove:

- (a) That the statement complained of referred to the claimant;
- (b) That the statement was defamatory of the claimant;
- (c) That the statement was published by the defendant or in circumstances in which the defendant is responsible for publication.

6. Identification – An Objective Test

- i. In every case where identification is an issue, the question is would reasonable people reasonably understand the statement to refer to the claimant? If reasonable people would so understand the statement, the defendant will not escape liability though, they may have tried to disguise the

² **Duncan and Neill on DEFAMATION and other media and telecommunication claims** (5th ed) Lexis and Nexis (2020)

³ Section 2 *Defamation Act* [Cap 34]

reference to the claimant by some subterfuge-*Simon v Lyder* [2019] UKPC 38, [2020] AC 650 at [23]⁴

As stated in '*Gatley on Libel and Slander*' 12th ed at paragraph 31.27;

"It is generally immaterial except in relation to damages and in the context of the offer of amends procedure whether a defendant intended to refer to the claimant; what matters is whether reasonable persons would have understood the words complained of to refer to him. For that reason the plaintiff was not entitled to interrogate the defendant as to whether he intended to refer to the claimant, unless the interrogatory could be justified as going to malice or damages"

- ii. Although the issue of identification is to be decided upon the objective test – whether reasonable people would reasonably understand the statement to refer to the claimant – the claimant is entitled to call witnesses to prove that they in fact understood the statement to refer to them. Witnesses can be called by the claimant to give evidence that they knew the relevant facts and understood the publication to refer to the claimant.⁵

7. Is it Defamatory?⁶

- i. The word defamatory was defined by the English Court of Appeal in *Berkoff v Burchill* [1996] 4 All ER 1008 at 1018;

"A statement should be taken to be defamatory if it would tend to lower the claimant in the estimation of right thinking members of society generally., or be likely to affect a person adversely in the estimation of reasonable people generally"

⁴ **"23. Lord Denning's intention based reason for distinguishing the *Grapelli* case has not stood the test of time. It was doubted by Eady J in *Chase v News Group Newspapers Ltd* [2002] EWHC 2209 (QB) and by the Irish Supreme Court in *Bradley v Independent Star Newspapers Ltd* [2011] IESC 17. The leading text books note that it is contrary to established authority to the effect that a defendant's subjective intention is relevant to defamation only upon an issue of malice; see for example *Gatley on Libel and Slander* 12th ed (2013) para 31.27, and the earlier decision of the House of Lords in *E. Hutton & Co v Jones* [1910] SC 20, 24 PER Lord Loreburn LC"**

⁵ It is advanced by the claimant on the basis that the Court is invited to accept the evidence as a reliable indicator that the hypothetical ordinary reasonable reader would have understood the words to refer to the claimant – ***Monir v Wood*** [2018] EWHC 3525 (QB)

⁶ **Duncan and Neill on DEFAMATION and other media and telecommunication claims-** Chapter 4, paragraph [4.02]

Whether a statement was defamatory thus depended on the determination of what 'meaning' it conveyed about the claimant and whether, in that meaning, it had an inherent tendency to damage their reputation.

- ii. Subsequent authority suggest that whether a statement is defamatory, at common law, depends upon whether its tendency, in its natural and ordinary or innuendo meaning , is to affect the claimant adversely, by substantially lowering them in the estimation of right thinking members of society generally or substantially affecting the attitude of other people towards them-*Thornton v Telegraph Media Group Ltd* [2010] EWHC 1414 (QB), [2011] 1WLR 1985.

8. Publication ⁷

- i. No action can be maintained for libel or slander unless there is a publication, *that is, a communication of the statement complained of to some person other than the claimant*. Moreover, in order to bring an action against a particular defendant it is necessary to prove that the defendant published the statement or, though the defendant was not themselves the publisher, that, in the circumstances, they were responsible for the publication.
- ii. The burden of proving that the statement complained of was published to a third party rests on the claimant. Publication takes place at the point where the statement complained of is heard or read by the recipient.
- iii. Every person who knowingly takes part in the publication of defamatory matter is *prima facie* liable in respect of the publication. It is not necessary that the person be, or ought to have been, aware of the specific defamatory content.-*Bunt v Tilley* [1937] 1 KB 818.

C. DISCUSSION

9. The Plaintiff, Alfaaz Mallam, a businessman, and Director of All Freight Logistics Ltd (AFL), is in the business of customs clearance, freight forwarding and cargo

⁷ Duncan and Neill , Chapter 8

broking in the shipping industry ,(import and export),one of the top 10 companies in Fiji and has been in operation since 2010. Sometimes in July or August 2021 the Plaintiff received a call from the Director of Bargain Box, Rohil Roy and Mohammed Sadiq, a Director of GMH Auto whereby questions were raised in relation to a container which the Plaintiff had acquired from a company based in Australia, Logistic Pacific Services Pte Ltd. During the conversation with Mr Rohil Roy and Mohammed Shahid questions were asked by the Defendant whether Bargain Box or Alfaaz Mallam stole the container owned by the Defendant. The Plaintiff alleges that the Defendant has defamed him by alleging that the Plaintiff had stolen the container, tarnishing his reputation as a major business in Fiji.

Ownership of the Container No: DIGU 8252747.

10. The issue central to this dispute is the ownership in Container No. DIGU 8252747. The Court is of the view that a resolution of the issue of ownership will have a bearing on the outcome of the suit for defamation. Both the Plaintiff and the Defendant assert rights of ownership over the container, with the Plaintiff, and his company All Freight Logistics (AFL) asserting ownership as a '*purchaser*,' from its previous owner an Australian shipper/exporter company Pacific Logistic Services Pty Ltd, (PLS) and its Director, Mahendra Prasad, whilst, the Defendant through his company Capital Go Max Freight Pte Ltd (CGM) asserts the right of ownership over the container as the '*consignee*' of the container and its cargo. The container in issue (1x 40 GP SOC Container) was sent by PLS as Shipper/Exporter based in Kingsgrove, New South Wales to the consignee in Fiji, CGM based at Garden City Complex, Suva.⁸
11. The Plaintiff's claim to ownership over the container is premised on the fact that he purchased the Container designated as a "Shipper's Own Container" (SOC) from its owner, Pacific Logistic Services Pty Ltd.⁹ The empty container was in Fiji pursuant to an agency arrangement between PLS and CGM for the shipment/freight of mixed packages (FAK)¹⁰. The Plaintiff was not a party to this shipping arrangement. Discussions between the Plaintiff and Mahendra Prasad of

⁸ Exhibit P1- Waybill Non Negotiable

⁹ These export documentation was divulged to the Plaintiff by Mahendra Prasad of Pacific Logistics Services Ltd after the Defendant made allegations that Container No. DIGU 8252747 owned by him as its consignee had been stolen by the Plaintiff and reported the matter to the Police for investigation.

¹⁰ FAK (Freight All Kind)

PLS on the purchase of the empty container took place some time after the freight contained in it had been taken out in a custom bonded warehouse. It is necessary to set out the discussions as narrated by the Plaintiff, in examination-in-chief and recorded in the Transcript of Evidence;

Mr Singh: How or what conversation did you and Mahen have in relation to the container or the request of your company purchasing the container?

Mr Mahen: He called me from Australia and said his got a 40ft container at a yard in Suva that he wants to sell and he owns the container. He asked me if I was wanting to buy and I said yes, I am willing to buy. So he gave me a price which was \$6,000 FJD and that's where the process started and I asked him to provide with evidence that he owns the container so he sent me the weigh bill and also told me that he has paid his agent here at the time which is CGM the charges to the local authorities which is FIRCA for that container.

Mr Singh: You've said that Mr Mahen sent you evidence. What evidence was this again?

Mr Mallam: Copy of the Waybill and also the Customs Entry for that container and the receipt.

Mr Singh: If the copy of the document are shown to you would you be able to identify the document?

Mr Mallam: Yes, my Lord.

Mr Singh: Can I refer you to page 1 of the documents. Can you identify the document Mr Mallam?

Mr Mallam: Yes this is the Waybill sent to me.

Mr Singh: In this particular Waybill who is the shipper?

Mr Mallam: Logistic Pacific.

.....

Mr Singh: Who is the consignee?

Mr Malam: CGM Freight.

Mr Singh: *Where does that name come?*

Mr Mallam: *As the consignee.*

Mr Singh: *That just could be below where you pointed. You stated that a Waybill would have the owner's name or it would state who owns the container?*

Mr Mallam: *Yes*

Mr Singh: *Where in the Waybill does it state who the owner of the container is ?*

Mr Mallam: *To my understanding being part of this industry this is the shipper's own container which is stipulated on the bill of lading and the shipper of the container is Logistics Pacific, they are the owners.*

12. Further, the Plaintiff gave evidence that he had been sent an Invoice by Logistics Pacific Services Pty Ltd ¹¹, owners of the container, for its purchase which he then had paid by having HFC Bank, remit the relevant amount FJD\$6000 from its bank account, in Suva, to Logistics Pacific Services Pty Ltd, at its ANZ Account in Queensland,¹² on or about 18 March 2021.
13. In summary, the Plaintiff's claims of ownership of the subject container, as a 'Shipper Owned Container' (SOC). is affirmed by purchase from the Shipper/Owner, as supported by documentary evidence. In the Plaintiff's narration the Defendant (and CGM), as consignee, were the *agents* of the Shipper/Exporter (PLS), and were never in the context of the transaction for which the container was used, the *owner* of it.
14. In contrast, the Defendant states that as 'consignee; he was the owner of the container and he relies on the same documentary evidence discussed earlier in relation to the Plaintiff's Claim the '**Waybill Non Negotiable**'.¹³The following discussion derived from the Transcript of Evidence clarifies this;

Mr Nambiar: *I refer you to item number 2 on the defendant bundle on page 3 and 4. Looking at page 3, on the top right hand corner of this document, it is*

¹¹ Exhibit P4(a)

¹² Exhibit P4(b)

¹³ Exhibit P1

written "Waybill Non Negotiable." Can you please explain to this court what does Waybill Non Negotiable mean in your industry?

Mr Kumar: In our industry, when a waybill is not negotiable it means the shipper has surrendered the ownership to the consignee therefore it doesn't require an OBL.

Mr Nambiar: What is OBL?

Mr Kumar: OBL is used when the bill of lading is an original copy.

.....

Mr Nambiar: What does Waybill Non Negotiable mean?

Mr Kumar: It means the original bill of lading has been surrendered in Sydney by the shipper which clearly shows the consignee has the full right of the container in Fiji.

- 15.** In summary, the claim of ownership asserted by the Defendant is premised on the assertion that CGM is not a normal customs agent of the Shipper/ Exporter, from Australia (PLS) but rather a 'co-agent' acting on a mutual understanding and therefore the shipment of the container as covered under the 'Waybill Non Negotiable' meant that on shipment the container belonged to the Defendant. This assertion of ownership is directly contradicted by the Shipper/Exporter (PLS) invoicing the Defendant for an amount of AUD\$3,200.00 to purchase SOC , as evident from the Transcript of Evidence¹⁴ when the Defendant was cross-examined on a particular document (Exhibit D11);

Mr Singh: In this document D11, Logistic Pacific is telling you to pay \$3,200 AUD, correct?

Mr Kumar: Yes

Mr Singh: And this is for the container, correct?

Mr Kumar: Yes.

¹⁴ Page 12 of 72-Transcript of Evidence

Mr Singh: By this document, it is certain that the container belongs to Logistics Pacific Ltd and they raising an invoice whereby you're purchasing this container for the sum of AUD\$3,200, correct?

Mr Kumar: Yes

Mr Singh: Did you send this money to Mahen?

Mr Kumar: No

- 16.** It is necessary for completion, to cite what the Police witness, Corporal 3592 Joseph Rounds, (called by the Defendant), in cross-examination, stated was the justification given by the Defendant to the Police as his proof of ownership over the container, (by purchase of the container from its owner PCL the Australian company), as recorded in the Transcript of Evidence¹⁵;

Mr Singh: Did you ask for ownership of the container before you took the complaint?

Mr Rounds: I did ask the ownership of the container.

Mr Singh: What was his reply?

Mr Rounds: As per his statement, we were assuming that he is the owner since he provided the bill of lading and all the customs entry and all the fees consigned under CGM.

Mr Singh: Only with those documents you prove that the container was his?

Mr Rounds: Yes, my Lord.

Mr Singh: Have you ever seen an ANZ TT Form?

Mr Rounds: Yes, my Lord.

Mr Singh: At page 13¹⁶, who gave you that document?

Mr Rounds: It was provided by the complainant – Mr Krishneel.

.....

¹⁵ Pages 161-163 Transcript of Evidence

¹⁶ Exhibit 12(b)

Mr Singh: Mr Krishneel provided you this document when he did so he said; I have sent money to Mahen \$6,000 for this container, correct?

Mr Rounds: Yes, my Lord.

Mr Singh: When you check with ANZ it was revealed that this is not for money going out to Australia but coming into Fiji, correct?

Mr Rounds: Yes, my Lord.

Mr Singh: Does it not mean that Mr Krishneel lied to you with this document?

Mr Rounds: Yes, my Lord.

Mr Singh: Thank you. Did you ask Mr Mahen for him to provide documentation for ownership or proof of ownership.

Mr Rounds: Yes, my Lord.

Mr Singh: Did Mr Alfaaz provide you with ownership documents? You questioned Mr Alfaaz Mallam in regards to this matter, correct?

Mr Rounds: Yes

Mr Singh: Did he provide you with an invoice from Mr Mahen?

Mr Rounds: Mr Alfaaz Mallam has the same document with the same serial number as the document provided by Mr Krishneel.

Mr Singh: In the email from Mr Mahen, did he confirm he sold the container to Mr Alfaaz Mallam?

Mr Rounds: Yes, my Lord

.....

Mr Singh: So it would appear that Mr Alfaaz Mallam at all times was telling the truth

Mr Rounds: Yes, My Lord.

- 17.** After a careful examination of the evidence, both oral and documentary, including that provided by the Defendant directly, and through his witnesses, the Court finds that the Plaintiff has established to its satisfaction, that it is the legal 'owner' of Container No: DIGU 8252747, by virtue of purchase from Logistic Pacific Services Ltd. The Defendant, on the other hand, as 'consignee' had a limited

interest, at all times, as the 'customs/clearance agent' of the Shipper/Exporter/owner of the SOC container, and no cogent evidence whatsoever, was provided by the Defendant to rebut the finding that it had a stronger beneficial/controlling interest, or power of disposal over the container,¹⁷ then either Logistics Pacific Services Pty Ltd, or the Plaintiff. The Court, also finds that the evidence of 'ownership' proffered by the Defendant was designed to obfuscate investigation on the issue of ownership as evident in the unnecessarily prolonged Police investigation, which hopefully will see closure now that Police have taken a position on the criminal investigation.

The Defamatory Statement

18. The Court notes that the Defendant advances bare denials in the Statement of Defence and Counter-Claim filed on 30 December 2021. Given the Court's finding, as set out in the preceding paragraph, that it considers the Plaintiff as the rightful owner of the container, the Counter-Claim cannot succeed and is peremptorily dismissed.
19. It is plain from the Defence and the Agreed Facts in the Minutes of the Pre-Trial Conference that the Defendant blames the Plaintiff for the loss of the container and was the source of the complaint against the Plaintiff which led to the prolonged Police investigation which the Plaintiff was subjected to. The Police have now affirmed, at trial, that they, more or less, have concluded, on the material provided by the Defendant, that there is no basis for further investigation against the Plaintiff. What is remarkable about the position taken by the Defendant is his resolve in solely targeting the Plaintiff for the "alleged" loss of the container when, as an experienced customs agent, he could have blamed Logistics Pacific Services Pty Ltd and its owner, instead, for wrongly claiming ownership, for example. The Defendant's own witness Corporal Joseph Rounds affirmed in Court that there was no basis in the claim of ownership over the container asserted by the Defendant. The Defendant must be taken to have known well beforehand what evidence this witness would provide, yet did not bother to review or reconsider his position before or during trial.
20. In relation to the issue of proof of the ingredients of the cause of action on defamation, earlier discussed the Court finds the evidence provided by the

¹⁷ See definition of "owner" in the *Customs Act [Cap 196]*

Plaintiff, through a witness Roheel Roy , the Director (Operations) of Bargain Box Ltd, who had bought the subject container from the Plaintiff, helpful, as recorded in the Transcript of Evidence.¹⁸

Mr Singh: Was there any issues encountered regarding the acquisition of the container afterwards?

Mr Roy: After I bought it from Alfaaz?

Mr Singh: Yes

Mr Roy: I sold it to my customer and then after that I got a call from Krishneel.

Mr Singh: What did Mr Krishneel say?

Mr Roy: First of all he was talking in a very abusive/rude manner and he said that Alfaaz and I have stolen his container and dropped it off here and sold it ...this and that. So I said. Look! We are from a reputable business, you can call Alfaaz and sort it out with him. Like he said that we stole the container and I told him we haven't stole it. I've got an invoice that I purchased from him. So I said whatever it is you can call him and clear your doubts with him rather than you going to my office and going to the customer's yard and accusing us of stealing the container and selling it.

.....

Mr Singh: What opinion did you have of Alfaaz?

Mr Roy: First of all I was in doubt if Alfaaz made a mistake but then the thing is I've got an invoice from him, its all documented in black and white so I call Alfaaz and told him what happened and he said he is looking into it and will solve it.

.....

Mr Singh: Now after you had spoken to Krishneel did you have any other issues in relation to the container.

¹⁸ Pages 81-82 of 172

Mr Roy: *No, I already sold it off so there were no issues but the customer did call me back and asked me if it was true what Krishneel was accusing because Krishneel went and met him directly as well.*

Mr Singh: *So a customer called you up and what did you express thereafter?*

Mr Roy: *He said, who is this guy Krishneel that's coming to our warehouse at Samabula GMH and is accusing that Alfaaz and you have stolen his container and sold it to me and place it there. He said he is already doing his work on the container and cannot return it back. So I said, yes, don't have to because I've got the invoice and if there's any issue, Alfaaz will solve it directly with...*

21. The Court accepts from its review of the evidence that this discussion by telephone, on which the allegation of theft by the Plaintiff was conveyed by the Defendant to Rohil Roy, separately, took place, on or around, the period when the same complaints were also narrated in the letter from Rohil Roy of Bargain Box Ltd to the Plaintiff on 29 July 2021.¹⁹ The Court accepts these discussion as establishing that the Defendant made the defamatory statements set out in paragraph 4 of his Statement of Claim;

- (a) That the Plaintiff stole a 40FT container from the Defendant;*
- (b) The container does not belong to the Plaintiff's business (All Freight Logistics) and was stolen from the Defendant;*
- (c) That the Plaintiff stole the container from EFS/Ocean Star Logistics yard and sold it to another party;*
- (d) That the container was obtained and sold to another party by fraud.*

22. In relation to the issue of identification the Court would hold on the objective test accepted, at law, that a reasonable person would have understood the words uttered about the theft of the container, as referring to the Plaintiff, Alfaaz Mallam. To reiterate **Gatley on Libel and Slander** 12th ed at paragraph 31.27;

“ ..what matters is whether reasonable persons would have understood the words complained of to refer to him. For that reason the plaintiff was not entitled to

¹⁹ Exhibit P20

interrogate the defendant as to whether he intended to refer to the claimant, unless the interrogatory could be justified as going to malice or damages”

23. Whilst the Court is satisfied on the objective test that the statements conveyed by the Defendant to Rohil Roy referred to the Plaintiff, the latter nevertheless called Rohil Roy to give evidence about the circumstance surrounding the purchase of the container and to affirm that the complaint was levelled against.²⁰
24. As defined by the English Court of Appeal in *Berloff v Burchill* [1995] 4 All ER 1008 at 1018, cited earlier, the determination whether a statement was defamatory depended on the determination of what meaning it conveyed about the claimant and in that meaning it had an inherent tendency to damage their reputation, in that it would affect the claimant adversely by substantially lowering him in the estimation of right thinking members of society generally or substantially affecting the attitude of other people towards then-*Thornton v Telegraph Media Group Ltd* [2010] EWHC 1414.
25. The Court is satisfied, on the balance of probabilities, that the statement made by the Defendant to Rohil Roy about the theft by the Plaintiff of the container was defamatory, as defined at common law and amounted to slander as described in section 10 of the *Defamation Act* [Cap 34], and calculated to disparage the Plaintiff, a rival competitor in the customs clearance/freight business.
26. The Court is also on the balance of probabilities that the requirement of publication was met in that the slander ‘that the container owned by the Defendant was stolen by the Plaintiff was communicated to Rohil Roy, as discussed and as confirmed by Rohil Roy, himself in evidence. The Court accepts the testimony of the Plaintiff on this issue as given during examination in chief as recorded in the Transcript Evidence, as going some way to proving the damage caused to his reputation (and bearing in mind, the baselessness of the complaint made by the Defendant)²¹

Mr Singh: What reputation do you have outside the business community and personally?

²⁰ See footnote 5

²¹ Page 39 of 172 – Transcript of Evidence

Mr Mallam: In terms of business – I am known to most of the corporates in Fiji and because of my association with NGO's and charity organizations. I am also known to those channels and it just does not look right that, on one hand, I am seen as doing a charity and on the other I am being accused of stealing a 2nd hand container for which the value is so low that I wouldn't even think about it and then to be accused and treated like a criminal being locked up not just that, but locked up with another naked person that they had arrested on that day, he was stripped naked right in front of me and also my lawyer. Degrading as it is for that person, it is humiliating for us to be sitting there with no proper facility and watching these happen. And then being treated like a criminal by the CID officers to the point that they had agreed to lock me up. So if I did not contact my lawyer, they would have locked me up and I was released in the evening on the same day because to be honest, we have not been through this and what a petty thing to go and face humiliation for somebody who has nothing to do with it – like I bought the container and I provided all the legal documents for it. If the person would have contacted me first, came and spoke to me, he could have a better understanding that I actually paid for everything. He chose to speak outside to everybody else then later contact us and threatening me still not realizing that it really is just a matter of \$6,000 which is really insignificant considering what we turn over as a business and what we do for charity.

27. In summary, the Court finds that the Plaintiff has proven and established on the balance of probabilities, a cause of action in defamation against the Defendant, as pleaded in the Statement of Claim filed on 3 December 2021.
28. Prior to dealing with the issue of damages and costs, consequential on its finding of liability, against the Defendant the Court finds it apposite to comment on the stance taken by the Defendant in this matter. It is premised on a general denial of all allegations which would somehow obfuscate matters sufficiently to disprove liability. There was no attempt to plead or rely on the standard defences²² available in the tort of defamation. This approach was misplaced when dealing with this tort, whose ingredients for example on the issue of identification, is based on a wholly objective test. Another troubling issue related to the Defendant's propensity to ascribe to himself positions not supported by evidence such as

²² Truth, Privilege, Honest Opinion, Offer to make amends (Chapter 11- Ducan and Neill)

claiming full rights of ownership based on ordinary customs usage, such as reliance on a 'Waybill Non Negotiable' as confirmatory of full ownership when no other witnesses from the profession, supported this singular interpretation. These witnesses were the Plaintiff, and a witness called by the Defendant himself, Trevor Nainoca, the General Manager (Shipping) from Neptune Shipping who said that a 'Waybill Non Negotiable' in the industry simply meant that the 'cargo could be released without the original bill.²³ Further, the Court notes that there has been no attempt by the Defendant before or during the trial to apologize to the Plaintiff for any negative consequences that he had been sustained from his defamatory comment.

D. RELIEF

29. The Court sees no reason why it ought not grant the relief sought for an injunction stopping the Defendant from making any further defamatory statements and to issue a public apology from the Defendant acknowledging the falseness of his statements.
30. The Plaintiff seeks Aggravated Damages and Exemplary Damages. The Court of Appeal in *John v MGN Ltd* [1997] QB 586 set out the essential elements of general compensatory damages in a defamation case as follows;

"The successful plaintiff [claimant] in a defamation case is entitled to recover as general or compensatory damages such sum as will compensate him for the wrong he has suffered. That sum must compensate him for the damage to his reputation; vindicate his good name; and take account of the distress, hurt and humiliation which the defamatory publication has caused"

31. The Defendant seeks Aggravated Damages of \$70,000.00. In determining the appropriate amount of damages it is necessary to have regard to all relevant facts and circumstances including any aggravating factors. These factors may include the conduct of the Defendant. Aggravated damages is defined as 'additional damages which the court may award as compensation for the Defendant's objectionable behavior. Some of the aggravating factors which the Court has

²³ Transcript of Evidence p 140 of 172

identified is the Defendant's resolve to target the Plaintiff clearly with defamatory statements, when the evidence from a customs clearance industry perspective clearly absolved the Plaintiff from the allegation of theft. Another aggravating factor is the refusal to apologize²⁴. In short, a case has been made out for Aggravated Damages.

32. The Plaintiff also seeks Exemplary Damages of \$100,000. The principles governing the award of exemplary damages in civil actions were set out by Lord Devlin in *Rookes v Barnard* [1964] AC 1129, [1964] 1 All ER 367. In this instance, the Court is only interested in the second category described by Lord Devlin;

“ Where a defendant with a cynical disregard for a claimant's right has calculated that the money to be made out of his wrongdoing will probably exceed the damages at risk, it is necessary for the law to show that it cannot be broken with impunity”

33. The Plaintiff has established an entitlement to exemplary damages on the facts. The Defendant's singular resolve to not detract his allegations of theft against the Plaintiff or, ameliorate it in anyway, nor be dissuaded by the lack of follow up by the Police in charging the Plaintiff, is sufficient to satisfy the requirement for exemplary damages.

ORDERS

- 1. Judgment is entered in favor of the Plaintiff.**
- 2. The Counter –Claim filed by the Defendant is dismissed**
- 3. Injunction granted against the Defendant from making any further defamatory statements.**
- 4. A public apology by the Defendant acknowledging the falseness of his statements.**
- 5. Defendant to pay \$70,000 as General and Aggravated Damages to the Plaintiff.**

²⁴ *Rantzen v Mirror Group Newspapers (1986) Ltd* [1994] QB 670

6. Defendant to pay \$100,000 as Exemplary Damages to the Plaintiff.
7. Plaintiff is entitled to 6% simple interest from the date of filing of the Writ (3 December 2021) to the date of judgment. (Pre Judgment interest)
8. Plaintiff is entitled to 4% simple interest from the date of judgment until payment is made in full.
9. Costs to the Plaintiff summarily assessed at \$3,000.



Savenaca Banuve
Savenaca Banuve
Judge

Dated at Suva, this 04th day of September, 2025.