

IN THE COUNTY COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
DEFAMATION LIST

Revised
Not Restricted
Suitable for Publication

Case No. CI-18-03034

SAMY GAYED

Plaintiff

v

ROBIN ABDELMALEK

Defendant

JUDGE: HIS HONOUR JUDGE SMITH
WHERE HELD: Melbourne
DATE OF HEARING: 14 and 15 October 2020
DATE OF JUDGMENT: 30 November 2020
CASE MAY BE CITED AS: Gayed v Abdelmalek
MEDIUM NEUTRAL CITATION: [2020] VCC 1814

REASONS FOR JUDGMENT

Subject: DEFAMATION
Catchwords: Assessment of damages – Facebook publications – Quantum of damages
Legislation Cited: *Defamation Act 2005*
Cases Cited: *Carson v John Fairfax & Sons Limited* (1993) 178 CLR 44; *Wilson v Bauer Media Pty Ltd & Anor* [2017] VSC 521; *Uren v John Fairfax & Sons Pty Ltd* (1966) 117 CLR 118
Judgment: Judgment for the plaintiff. Damages assessed at \$120,000.

<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
For the Plaintiff	Mr G Mukherji	NOH Legal
For the Defendant	Mr J D Catlin	Rosendorff Lawyers

HIS HONOUR:

- 1 This is a proceeding involving the assessment of damages where the plaintiff was defamed in a series of six posts published by the defendant on the Facebook account of his wife in early 2018.
- 2 The plaintiff's Writ and Statement of Claim was issued on 18 July 2018. In the Defence initially filed by the defendant and dated 21 January 2019, he admitted that he had published, or caused to be published, each of the Facebook posts but alleged a number of defences, including justification and honest opinion.
- 3 On or about 29 January 2020, the defendant conceded liability and abandoned his defences. The only matter now in dispute is the quantum of damages to be awarded to the plaintiff.
- 4 Of the six publications the subject of the claim, the First, Second, Third, Fourth and Sixth Publications were posted in the English language. The Fifth Publication was in Arabic and was a translation of the Fourth Publication.

The Publications

- 5 The **First** Publication, published on 17 January 2018, contained the following words:

“Dear friends,

WARNING

An elderly Coptic man from st Mina's Church is asking our entire congregation to borrow money. He will cry. He will appeal to your pity. Do NOT be fooled. This man has deceived many people, including me. Tens of thousands of dollars have been loaned to him and he disappears and moves onto the next victim. We would never expect this from one of our congregation to treat fellow Copts in this way, but he has. His name is Samy Gayed. BEWARE please. Robin.”

6 The **Second** Publication, published on 17 January 2018, was a response by the defendant to a message from the plaintiff's son-in-law, Amgad Gergis. It contained the following words:

“... You need to focus your energy on helping your father in law, Samy Gayed, return the money taken from the Coptic families at Church. Abouna knows all about these families.

Robin.”

7 The **Third** Publication, published on 17 January 2018, contained the following words:

“Anyway, thank you for admitting on Facebook that you and your family are thieves that the court needs to deal with.”

8 The **Fourth** Publication, published on 17 January 2018, contained the following words:

“When someone signs a contract, especially in our Coptic community, we expect it to be honoured. We never suspect scammers or thieves to be among us. I am lucky. Because I have signed a contract in writing. Many people do not have anything to show.

After my post, many people have reached out. The running total so far is \$70,000 owing to several Coptic families. This is separate to the people he has deceived before.

Mr Samy Gayed, God forgive you for what you have done to these families. You are a disgrace. And your children and family should assist you in helping repay your debts instead of trying to hide your wrongdoing.

His business is now closed and he is selling his house for \$90,000 more than what it is worth because he owes everyone money.

Over the years, I have helped many families in our community. Our youth. Our homeless. Buying cars for people to use. Giving people deposits on houses. Giving people cash. Paying for our Christmas parties at Church. After this experience with this scammer, I will be withdrawing all financial help in the Coptic Church and its members. Please no one ask me for help again. Be very careful from scammers within our Coptic community. Beginning with Samy Gayed.

If anyone wants any clarification or justification about what I'm writing is real, please ask abouna Abanoub about the extent of Mr Samy Gayed's reach in asking for money. Robin Abdelmalek.”

9 The **Fifth** Publication, published on 17 January 2018, was in the Arabic language and is a translation of the Fourth Publication.

10 The **Sixth** Publication, published on 16 March 2018, contained the following words:

“I [Robin] have previously written and warned our entire Coptic congregation about Samy Gayed. I have warned all our friends that he is a scammer and a thief. Now I can add that Mr Samy Gayed is a liar too.

He has removed his house off the market. It is no longer for sale. He has told his family that he does NOT intend to repay any of the families he has taken money from. So I have a file for court hearing coming up on 26/3. But to show the judge and delay his payment, he has deliberately put his house back on the market for show only. To show his effort. But no intention of selling.

Abouna Abanoub is such a lovely priest. He tried to intervene and help the families scammed by Samy Gayed.

Several properties sold recently within 200m of Samy Gayed’s house. Most only being a few days on the market.

Since when have Coptic Christians gone to court against each other? Since when do Coptics lie, cheat and scam each other?

If anyone else is owed money by Samy Gayed, unfortunately you need to commence legal action in order to recover your money. This family is known for being stingy with money, so don’t expect your money to be forthcoming by honest people.

My father was the first Coptic Egyptian pioneer in Melbourne in 1961. We have never seen this low-level of disgrace in all the history of Coptics in Melbourne.

Please beware.”

11 The imputations pleaded as arising from the publications are taken to be admitted in this proceeding. That is, that the natural and ordinary meaning that a fair minded ordinary reasonable reader would give to the words are that the plaintiff:

- (a) is a thief;
- (b) is dishonest and a liar;
- (c) is a scammer and has scammed many families;
- (d) is a disgrace to the Coptic community;
- (e) is not a trusted member of the Coptic community;

- (f) does not repay his debts;
- (g) does not have regard to his legal obligations pursuant to a written and oral agreement;
- (h) has deceived many families in the past;
- (i) has stolen from many families in the past;
- (j) is a low-level of disgrace in all the history of Coptics in Melbourne;
- (k) has deceived many people;
- (l) has been loaned tens of thousands of dollars and has disappeared with the money and moved on to the next victim.

Relevant legal principles

12 I take into account the provisions of the *Defamation Act* 2005 (“the Act”) and s8, s34, s35, s36 and s39, which I shall not repeat here.

13 I shall ignore the defences originally pleaded by the defendant and which are now withdrawn.

14 There are three purposes for awarding damages in a defamation trial. They are:

- (a) Consolation for the personal distress and hurt caused to the plaintiff by the publications;
- (b) Reparation for the harm done to the plaintiff's personal and (if relevant) business reputation; and
- (c) Vindication of the plaintiff's reputation – the amount awarded is the minimum necessary to signal that vindication to the public.¹

¹ *Carson v John Fairfax & Sons Limited* (1993) 178 CLR 44 at 60-1

15 Insofar as they are relevant to this proceeding, the principles relating to assessment of damages in defamation proceedings were conveniently set out by Dixon J in *Wilson v Bauer Media Pty Ltd & Anor.*²

- (a) Damages should provide consolation for hurt to feelings, damage to reputation, and vindication of the plaintiff's reputation;
- (b) Damages ought to reflect the high value which the law places upon reputation;
- (c) The gravity of the libel and the social standing of the parties are relevant to assessing the quantum of damages necessary to vindicate the plaintiff. The award must be sufficient to convince a bystander of the baselessness of the charge;
- (d) There must be an appropriate and rational relationship between the harm sustained by the plaintiff and the amount of damages awarded (Section 34 of the Act);
- (e) The extent of publication and the seriousness of the defamatory sting are pertinent considerations;
- (f) In determining the damage done to a plaintiff's reputation, the Court should also take into account the "grapevine" effect arising from the publication – a realistic recognition by the law that, by ordinary function of human nature, the dissemination of defamatory material is rarely confined to those to whom the matter is immediately published;
- (g) It is well accepted that injury to feelings may constitute a significant part of the harm sustained by a plaintiff;

² [2017] VSC 521 at paragraph [59]. Although his Honour's assessment of damages was overturned on appeal, the Court of Appeal did not disagree with these principles. See also *Carson v John Fairfax & Sons Limited* (*ibid*)

- (h) No award may be made for exemplary or punitive damages (by reason of s37 of the Act);
- (i) Section 38 of the Act makes provision with respect to a number of factors giving rise to mitigation of damages including where the defendant has made an apology to the plaintiff about the publication of the defamatory matter.

Background

16 The matters set out below reflect my findings based on the evidence put before me.

17 The plaintiff is aged seventy-three. He migrated with his family to Australia from Egypt in 1995.

18 The plaintiff and his family are followers of the Christian Coptic Orthodox religion. After arriving in Australia, the plaintiff continued to practise his faith and joined the local Christian Coptic Church in Bulleen. In 2002, he and his family joined the St Mina and St Marina Coptic Church in Hallam (“the Church”). The Church has between 800 and 1000 community members.

19 From about 2002, the plaintiff and his family attended Sunday service each week at the Church. They would sometimes assist with Church events. The plaintiff often assisted with the making of holy bread in preparation for Mass on Sundays. This involved him attending the Church at about 2.00am and preparing the holy bread until about 6.00am.

20 For some sixteen years prior to the publications the subject of this proceeding, the plaintiff had strong links with many members of the Church community. Many of them visited the plaintiff and his family at his home in Narre Warren over those years. On occasions, he would help members of the Church community – for example if they were moving to a new home or if they needed to be taken to doctors’ appointments and had no means of transport.

21 I accept that the plaintiff was a respected member of the Church and the Church community.

22 After his arrival in Australia, the plaintiff worked on a full-time basis at a Caltex service station in Ringwood for approximately ten years.

23 In about 2014, the plaintiff's son, George Gayed, purchased a café business in Templestowe. The café was a franchise and was purchased and operated by a company, G&S Enterprises Pty Ltd. The shares in the company were owned by George Gayed. The plaintiff, at least for some time, was a director of the company. He participated in several aspects of the operation of the business, including manning the cash register, attending to accounts, and payment of wages. The name "G&S" stood for "George and Samy".

24 Although the plaintiff was not a shareholder of the company, he agreed that the café was, in effect, a family business. Customers included a number of members of the Church community.

25 The café business did not do well financially. By 2017, the business owed several debts to its bank and other parties.

26 In late 2017, the business ceased to operate, and the company was placed in liquidation. I accept that as at September 2019, the company had debts in excess of \$400,000.

27 The defendant also is, and has been for about ten years, a member of the Church congregation. Notwithstanding, the plaintiff and defendant agreed that they had never met before July 2017. Given the large number of those persons constituting the Church community, I do not consider it to be surprising that some members of the Church had not met each other.

28 Much of the cross-examination of the plaintiff and the evidence of the defendant was devoted to whether the plaintiff had been a member of the Church congregation at all. The defendant maintained that the plaintiff had

never been a member. I do not accept that evidence. Firstly, I see no reason to reject the evidence of the plaintiff and his son George on the point. Secondly, the posts the subject of the proceeding, published by the defendant, expressly refer to the plaintiff as being:

- An elderly Coptic man from St Mina's Church
- One of our congregation
- One of our Coptic community
- A scammer from within our Coptic community; and
- Known to the priest at the Church, Abouna Abanoub.

[my emphases]

29 I am satisfied that the plaintiff was an active member of the Church and its community over many years leading up to 2018.

30 In about July 2017, the plaintiff was advised by his nephew that the defendant was a person who might be prepared to lend money to the plaintiff. The plaintiff telephoned the defendant and arranged to meet him at his pharmacy. I accept that the defendant enjoyed a reputation in the Church community as being a person who from time to time would provide financial assistance to those in need. They met, and the plaintiff told him of the financial problems associated with the café business. Following discussion, the defendant agreed to lend the plaintiff the sum of \$30,000. A written loan agreement was drawn up by the defendant and signed by both parties. It provided, in substance, that the plaintiff would repay the loan no later than 24 December 2017 with agreed interest.

31 By 24 December 2017, the loan had not been repaid.

32 I accept that the defendant was angry and disappointed with the non-repayment of the loan. On 17 January 2018, he published the First, Second, Third, Fourth and Fifth Publications on Facebook via his wife's account. He did not have a Facebook account of his own. He and his wife, Rana Mik, had separated in November 2017 but worked together as pharmacists in a pharmacy business conducted by the defendant.

33 The Sixth Publication was published about two months later, on 16 March 2018.

Issues

34 It is not in dispute that each of the publications was defamatory of the plaintiff. Nor is it in dispute that the imputations pleaded by the plaintiff and set out earlier in these Reasons are capable of arising from the publications.

35 The principal issues are:

- (a) For how long each of the publications remained on the Facebook page before being withdrawn; and
- (b) The extent to which the plaintiff's reputation has been harmed by the publications; and
- (c) The quantum of an appropriate award of damages.

36 The defendant's evidence was that, in respect of each of the publications:

- (a) he gave his wife instructions as to the words to be published on her Facebook page;
- (b) she did publish them;
- (c) at various times, he had later instructed his wife to delete the posts and that he believed that she had done so.

37 The defendant's evidence was that the Second Publication was in response to a publication on Facebook by the plaintiff's son-in-law, Amgad Gergis, who had posted some critical comments regarding the defendant's pharmacy business which were, in the defendant's opinion, unfounded. In his affidavit sworn on 12 February 2020, the defendant said that the Second and Third Publications were in response to the post by Mr Gergis. The defendant deposed that he caused to be posted the Fourth Publication as he was still angry and upset at the way he had been treated by the plaintiff. He deposed that the Fourth Publication had been made in or around late January 2018. This would have included the Fifth Publication, being part of the same post.

38 The defendant deposed that by late March 2018, he had become frustrated and angry at the plaintiff's failure to repay the loan and the cost of legal proceedings. In his affidavit, he deposed that on 20 March 2018, he had caused to be posted on his wife's Facebook page the post referred to as the Sixth Publication.³

39 Notwithstanding the defendant's evidence of his anger and frustration, s36 of the Act provides that the Court is to disregard the state of mind of the defendant at the time of publication of the defamatory matter to which the proceedings relate. Accordingly, I shall not take into account the defendant's state of mind – his anger and frustration.

The time over which the posts were up

40 The defendant deposed that each of the publications had been removed from his wife's Facebook page at his request a short time after they were posted.

41 I was far from convinced that the defendant had any clear memory of when he arranged for the six publications to be posted and when he requested his wife to remove them from her Facebook page.

³ Paragraphs 38-39 of the defendant's affidavit sworn on 12 February 2020 – Court Book ("CB") 155. The Sixth Publication was referred to as the "Fifth" Publication in this affidavit. This is because the Fourth and Fifth Publications were of the same words and thus referred to as a single publication in his affidavit.

42 Initially, the defendant had deposed in his affidavit sworn on 12 February 2020, that he had caused to be posted the First Publication on or about 25 January 2018 and that, on or about 26 January 2018, he had requested her to remove the First, Second and Third Publications.⁴

43 On the second day of the trial, the defendant amended these dates to publication of the First Publication some time “on or about 17 January” and removal of the First, Second, and Third Publications some time on or about 18 January 2018.⁵

44 The defendant deposed that he had asked his wife to remove the First, Second and Third Publications and that his belief was that she had done so. At trial, he stated that his belief was that the First, Second and Third Publications were posted on his wife’s Facebook page for approximately one to two days. In contrast, in his affidavit, he deposed that they were up for approximately one day.

45 With regard to the Fourth Publication, the defendant deposed in his affidavit that he had asked his wife to post it in “late January” and that he had asked her to remove it about two hours later.⁶ In contrast, later correspondence with the Court from the parties appeared to contradict this. An email from the defendant’s counsel dated 4 November 2020 agreed with the dates of publication provided by the plaintiff’s solicitor in an email dated 2 November 2020. In the email from the plaintiff’s solicitor, the date of the Fourth and Fifth Publications was given as 17 January 2018. However, the information provided to the Court was ultimately confusing, in that the defendant’s solicitor responded to a query from his Honour in regards to the dates of publication of the various posts in an email dated 6 November 2020, saying it was the defendant’s evidence that the Fourth and Fifth Publications were posted in late January and removed within a few hours. I do not accept that the

⁴ Paragraphs 21-5 of the defendant’s affidavit sworn on 12 February 2020 – CB 152

⁵ Paragraphs 21 and 25 of the defendant’s affidavit sworn on 12 February 2020 – CB 152

⁶ Paragraphs 31-33 of the defendant’s affidavit sworn on 12 February 2020 – CB 153-154

defendant had any clear memory as to when the various publications were posted or removed.

46 I note that the defendant went to the trouble of posting the Fifth Publication, which was a separate translation of the Fourth Publication into Arabic. I find that the additional publication in the Arabic language was a deliberate attempt to enable the post to be read by a wider range of recipients – namely, those who could not read the English language but only Arabic.

47 With regard to the Sixth Publication, posted on or about 16 March 2018, the defendant deposed that, after viewing the post and reconsidering his actions, he realised that he had acted rashly. As a result, approximately two hours after the Sixth Publication was published, he asked his wife to remove the post, and believes that she did so.

48 It follows that the defendant's evidence was that his belief was that the First, Second and Third Publications had remained on his wife's Facebook page for approximately one to two days, that both of the Fourth and Fifth Publications were up for two hours in January 2018, and the Sixth Publication was up for approximately two hours in March 2018.

49 The plaintiff first became aware of the earlier defamatory posts on about 25 January 2018, at which time they were brought to his attention by his daughter and son-in-law. They showed him the posts. The plaintiff instructed his daughter and son-in-law to take screenshots of the posts and to print them for him. The screenshots are annexed to the plaintiff's Statement of Claim and to the later Further Amended Statement of Claim.

50 Those screenshots do not disclose the date the publications were posted. For obvious reasons, the screenshots do not disclose the dates upon which the posts were taken down. The screenshots were merely photographs.

51 In his affidavit sworn on 13 February 2020, the plaintiff deposed that these
January posts continued to be published on the defendant's wife's Facebook
profile until about 16 March 2018.

52 The defendant's evidence in Court was that he had asked his wife to take
each of the posts down at various times, and that he was sure that she had
done so soon after his requests. He did not call his wife to give evidence on
his behalf. He said that in relation to five of the six publications, she had told
him that the posts had been taken down. In relation to one of the publications,
he said that he was looking over her shoulder at his pharmacy and observed
her removing the post.⁷ This evidence, potentially of some importance in my
view, was not referred to at all in the defendant's affidavits. I am not satisfied
that he did observe his wife removing any of the posts.

53 I found the defendant's evidence was unimpressive as to why he arranged for
successive posts to be published on 17 January 2018, and for each to be
taken down shortly after – the First, Second and Third Publications, about one
to two days after and, with regard to the Fourth and Fifth Publications, about
two hours after.

54 I preferred the evidence of George Gayed, whose evidence was that the
January posts had first come to his attention around the date of their
publication on 17 January 2018, when his cousin, Remon Habib, telephoned
him and advised him to have a look at the posts. As a consequence of those
posts, he actively checked the Facebook page of the defendant's wife from
time to time. At the time of observing the Sixth Publication in mid March 2018,
George Gayed's evidence was that the January 2018 posts remained on the
Facebook page of the defendant's wife. I accept that evidence.

⁷ Transcript 223-4

55 I accept the evidence of George Gayed that the Sixth Publication, posted on
16 March 2018, was removed about a day or two later.⁸

56 Further, George Gayed deposed that the Facebook profile viewing settings on
her profile were set to “public”. The use of the term “public” is in contrast to
“friends only” posts, which can only be viewed by those permitted by the
person posting the publication. George Gayed deposed that he was able to
gain access to the posts even though the defendant’s wife is not a “friend” of
his on Facebook.

57 George Gayed deposed that after the publication of the March 2018 post, he
had reported each of the posts to Facebook as being inappropriate, by means
of Facebook’s internal complaints process. He deposed that Facebook had
responded to his report, advising that it would investigate his complaint and
that the posts were later removed, or at least were no longer visible to him.

58 It is my view that an important witness with regard to the issue as to how long
the posts had remained visible on her Facebook page was the defendant’s
wife. It was her Facebook page. It was she who posted each of the posts at
the request of the defendant and, on the defendant’s evidence, she who
removed them. The defendant gave evidence that she was in good health
and residing and working in Melbourne. Although they had separated in
November 2019, they had continued to work together up to the date of the trial
as pharmacists. There was no evidence that she was unavailable for any
reason to give evidence. I regard her as being in the defendant’s camp and a
person whom the Court would have expected to be called by the defendant in
relation to the various dates the posts were put up and removed, a matter
plainly in issue. Accordingly, I am able to draw an inference that her evidence
would not have assisted the defendant’s case.

⁸ Paragraph 13 of George Gayed’s affidavit sworn on 13 February 2020 – CB 121

59 On the balance of probabilities, I am satisfied that the January 2018 posts remained up as public posts for approximately two months. With regard to the March 2018 post (the Sixth Publication), I accept the evidence of George Gayed that it remained up for one to two days.

By whom were the posts seen

60 A matter to be considered in assessment of damages is the number of persons likely to have read or become aware of the publications in question.

61 I reject the defendant's evidence that the posts were limited to a small number of friends of his wife, of whom a number resided overseas. The nature of the posts, on their face, indicates that they were intentionally directed to the Church congregation here in Melbourne. Most of the posts are worded so as to constitute a clear warning to those members to beware of the plaintiff.

62 It is rarely possible for a plaintiff in a defamation proceeding to prove how many persons saw a defamatory publication. Some indication of the number might, in some cases, be gained from evidence of persons who had read the publication, or from evidence of likes or dislikes in relation to online publications such as Facebook. But these would only constitute a rough guide as to some persons who had read it but by no means all.

63 Screenshots of some of the publications showed that they had attracted attention by other users of Facebook. The First Publication appears to have gathered up to at least 20 reactions, including likes and other "emoticons". There appear to have been at least eight comments on this publication. Two of them were from Rana Mik herself, and two were from a Mimi Saleeh Galli. The rest were from other people. This publication was marked public. In his affidavit dated 13 February 2020, the plaintiff deposed that on "one post", there were twenty likes, eight comments and at least two shares. It can be accepted it was also shared twice, which would lead to a wider circulation.

64 From the screenshots tendered, the Second Publication does not appear to have garnered any reactions or comments; however, the publication was marked as public and was likely to have been observed by many persons. It may or may not have gathered reactions and comments after the screenshots were taken.

65 The Third Publication is a comment in response to a post on the page of Amgad Sergis, the plaintiff's son-in-law. The defendant gave evidence that the post by Amgad Sergis was in response to the First Publication regarding the plaintiff. After the First Publication, Amgad Sergis shared an unfavourable Google review concerning an unflattering comment concerning the defendant's pharmacy. It was on this post that the Third Publication appeared as a comment. From the screenshots provided, the comment does not appear to have garnered any reactions or comments itself; however, a response immediately beneath a comment, received at least one "like". The dispute in the comments section continued, and a later comment of Mr Gergis gained at least three likes. Thus, it can be inferred that the Third Publication would have been read by a number of people following the dispute on the Facebook page of Mr Gergis.

66 The Fourth and Fifth Publications were of the same words, in English and in Arabic. The Fourth Publication appeared immediately below the Arabic text of the Fifth Publication. The posts containing both publications were public, and received at least two likes, as can be seen from the screenshots provided. Who these people were cannot be gleaned. In all likelihood the post would have been seen by a number of people.

67 From the screenshots tendered, it cannot be gleaned whether the Sixth Publication was "friends only" or public; however, it does appear to have garnered at least one like reaction and one comment.

68 It is unclear from the evidence just how many friends were following Rana Mik's Facebook page at the time of the publications.

69 Overall, the precise number of people who viewed the publications cannot be ascertained. However, judging by the screenshots taken of the First Publication, it could not be described as insignificant. It appears Rana Mik had a not insignificant number of friends who were engaged with her posts and engaged to the point of taking the time to comment.

70 A publication alleging that one of the members of the Church congregation was a thief, a scammer, was dishonest, and could not be trusted was likely to have been viewed as allegations of scandalous conduct on the part of the member. I am satisfied that, by the very nature of the posts, members of the community would have been interested in their content and very likely to have discussed them with other members of the congregation. I can infer that members of a Church community would be likely to place a high value on traits of honesty, trust, reliability and the like. Allegations of the sort made concerning the plaintiff in the posts were likely to have been viewed by members of the community as extremely serious.

71 I accept the evidence of George Gayed and Mokbell Gendy as to the number of persons who had spoken to him regarding the posts.⁹

72 I am satisfied that in a relatively tight religious and cultural community such as the Egyptian Coptic community of Melbourne, the "grapevine" effect arising from the publications would have been substantial. Members of the community who had read the posts or had them brought to their attention were highly likely to discuss them or bring them to the attention of other members. The content of the posts and the inclusion of the word "warning" encouraged them to do so.

⁹ Paragraph 15 of the affidavit of George Gayed sworn on 13 February 2020 – CB 122; paragraph 13 of Mokbell Gendy's affidavit sworn on 13 February 2020 – CB 143-144

73 Further, I consider that the express reference in a number of the posts to Abouna Abanoub, the priest at the Church, provided what appeared to be some authority to, or corroboration of, the defamatory allegations. I accept that all members of Church community would have been aware of the identity of the priest and his position of authority in the Church.

Loss of reputation

74 I accept that the congregation of St Mina and St Marina was in the vicinity of 800 to 1000 persons at the relevant time.¹⁰ It was a close community with strong religious and cultural ties. Most, but probably not all, came from an Egyptian background and all followed the Coptic orthodox religion. I accept that many of the congregation mixed socially and had ties, such as membership of the Egyptian Christian Association which was separate from the Church.

75 The defamatory sting of the post was plainly serious.

76 Much of the defendant's evidence concerned allegations that the plaintiff was, in fact, a person of low morals. I reject that is the case. It may be correct that he owes money to the defendant and possibly, to others. But that is not to say that he is a thief or dishonest. Many people, for a variety of reasons, encounter hard times financially; many companies are wound up for a variety of reasons; many persons are unable to pay debts when due; many require financial assistance from time to time. These are concepts which are not indicative of dishonesty. It should be remembered that, whilst the defendant originally pleaded defences of justification and honest opinion, these were abandoned in January 2020. Whilst evidence that the plaintiff enjoyed a poor reputation in the community regarding financial matters might have been relevant to quantum of damages, there was no evidence to that effect that I

¹⁰ Paragraph 9 of the plaintiff's affidavit sworn 13 February 2020 – CB 76; the affidavit of George Gayed sworn on 13 February 2020 at paragraph 9

should take into account here. To the contrary, it is to be assumed that the plaintiff was a person of good repute as at the dates of the publications.

77 I accept the plaintiff's evidence of the injury to his feelings caused by the publications. He felt he could no longer attend Church services or attend community meetings and did not do so for about one year after the publication of the posts. His family has also limited their involvement with Church and community events.

78 The plaintiff learned that his grandson had been approached by members of the community asking what was wrong with his grandfather.¹¹ I accept that this would have been hurtful and embarrassing for the plaintiff.

79 I accept that on becoming aware of the posts, the plaintiff was upset, angry and anxious. His anxiety became severe and he consulted a psychologist on a number of occasions for management of that condition. He still feels anxious leaving home. People who had been visitors to his home have stopped visiting. Some people have ceased to speak with him.

80 He believes that his reputation in the Egyptian Coptic community is likely to have been all but ruined by the publications.

Concerns Notice

81 A Concerns Notice pursuant to s36 of the Act dated 28 March 2018 was served upon the defendant on or about that date.¹²

82 In response to the Concerns Notice, the defendant emailed the plaintiff's solicitors, stating:

"So a defamation case will need to be lodged at Supreme Court, a case I would fight aggressively."¹³

[sic]

¹¹ Paragraph 42 of the plaintiff's affidavit sworn on 13 February 2020 – CB 82

¹² Exhibit D: Copy of Concerns Notice dated 28 March 2018 – CB 246

¹³ Exhibit SG38 to the plaintiff's affidavit sworn on 13 February 2020 – CB 112

Defendant's apology

83 On 11 December 2019, nearly two years after the publications, the defendant arranged, through his wife, for an apology to be posted on her Facebook page.¹⁴

84 I accept that the apology was initially published on a “friends only” as opposed to a “public” basis. It was therefore limited to a relatively small number of persons. It was not made publicly accessible until 28 December 2019.¹⁵

85 On the direction of the defendant, the apology was removed from his wife's Facebook page on 13 February 2020, about six weeks later.

86 I accept that each of the defamatory posts had been posted as a public post. I accept that it was intended that the apology, initially being to friends only, would have a much smaller circulation. I accept that this, at least initially, reduced the effect of such apology.

87 In any event, I consider that the wording of the apology hardly amounts to a full and wholesome apology or that it demonstrated remorse on the defendant's part. In his written submissions, Counsel for the plaintiff described it as “lip service only”. I agree. In fact, the apology again contained the allegation that the plaintiff was not a person to be trusted.

88 I am entitled to ask whether the apology was a genuine attempt on the part of the defendant to right a grave wrong or merely an attempt to escape from the consequences of his wrongdoing?¹⁶

89 It was not a full and unqualified withdrawal of the defamatory comments.

90 Although s38 of the Act provides that an apology is admissible evidence in relation to mitigation of damages, the extent of any mitigation will depend upon the extent of the apology and all the circumstances of the case. I do not

¹⁴ Exhibit RA-7 of the affidavit of the defendant sworn on 12 February 2020 – CB 185-187

¹⁵ Transcript 237

¹⁶ *Uren v John Fairfax & Sons Pty Ltd* (1966) 117 CLR 118 at 141 per Menzies J

consider that the apology is one that would or should result in any significant mitigation of damages.

Damages

91 Both parties referred me to a number of judgments concerning assessments of damages made by various courts in defamation matters. Unsurprisingly, each was distinguishable from this case. Each case, of course, will depend on its own facts and circumstances. It should not be surprising that the number of and nature of the defamatory imputations, the number of persons who were likely to have become aware of the publications, and the effect on the person defamed of the publications, would differ substantially from case to case. Awards made some years ago would be expected to be of a lesser amount than current awards as a consequence of inflation in the interim.

92 I take into account each of the principles nominated by Dixon J in *Wilson*¹⁷ and referred to above.

93 I am satisfied that there has been significant personal distress and hurt caused to the plaintiff as a consequence of the publications.

94 I consider that the gravity of the posts and the plaintiff's social standing in his Church and community require a substantial award of damages in order to convince bystanders of the baselessness of the allegations against the plaintiff. I accept the plaintiff's submission that vindication is important in this case.

95 Although the extent of the publications was relatively small compared with some publications in other cases, I am satisfied that the publications were directed to a particular group – namely the Egyptian Coptic Christian community – which, although forming a relatively small part of the population of Melbourne, formed a significant part of the community in which the plaintiff lived and socialised.

¹⁷ *Supra*

96 I am satisfied the posts were up for a considerably longer time than the defendant gave evidence of. They were up for a time which was more than adequate for the community to learn of the allegations against the plaintiff, especially after taking into account the likely grapevine effect.

97 Taking all the circumstances into account, I consider that an award of damages in the sum of \$120,000 in favour of the plaintiff, is appropriate. I note that no claim for aggravated damages was made by the plaintiff.

98 On 27 November 2020, the parties advised that they were in agreement that there should also be damages in the nature of interest in the sum of \$8,473.35 – a total judgment sum of \$128,473.35 – and that the defendant should pay the plaintiff's costs fixed in the sum of \$85,000.00. I shall make those Orders accordingly.
