



IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CIVIL DIVISION

CAUSE NO: 212 of 2019

BETWEEN:

JOHN FELDER

PLAINTIFF

AND

SANDRA HILL

DEFENDANT

IN CHAMBERS AS OPEN COURT

Appearances: Mr. David Lewis-Hall of Priestleys for the Plaintiff  
Ms. Sandra Hill in person, unrepresented.

Before: Hon. Mrs. Justice Marlene I. Carter, Actg.

Heard: 16 April 2021

Judgment Delivered: 14 September 2021

HEADNOTE

*Defamation - Default Judgment – Assessment of Damages – Extent of Award*

JUDGMENT

1. The Writ of Summons in this matter was issued on the 27<sup>th</sup> of December 2019. The Plaintiff claimed the following relief:

*“1) Damages for libel, in respect of an article which the Defendant first published or caused to be published on the 16<sup>th</sup> December 2019 on the website [www.caymanmarlroad.com](http://www.caymanmarlroad.com) (“Website”) which can be found at the URL <https://caymanmarlroad.com/john-felder-fired-from-automotive/> entitled “John Felder fired from Cayman Automotive” (“Defamatory Article”).*

*2) Damages for libel, in respect of the Defamatory Article which the Defendant published or caused to be published on Facebook at <https://www.facebook.com/CaymanMarlRoad/> and any further Social Media accounts associated with the Defendant on which the Defamatory Article has been shared or repeated (“Social Media Accounts”).*



- 3) *A permanent injunction to restrain the Defendant, whether by herself, her servants or agents or otherwise, from continuing to publish, further publishing or causing to be published the Defamatory Article or the same or any similar defamatory or malicious falsehoods concerning the Plaintiff on the Website or Facebook or via the Social Media Accounts.*
- 4) *Interest pursuant to s.34 of the **Judicature Law** (2017 Revision) at such a rate and for such a period as the Court shall see fit; and*
- 5) *Costs.”*

2. The Writ was served on the Defendant and on the 14<sup>th</sup> of January 2020 the Defendant filed an acknowledgment of service stating an intention to contest the proceedings. A Statement of Claim was filed on the 29<sup>th</sup> of January 2020. The Statement of Claim was served on the Defendant, however, the Defendant failed to file a Defence to the claim within the time fixed by GCR O.18 r. 1(2). The Plaintiff applied by summons dated 30<sup>th</sup> April 2020 for judgment in default of Defence pursuant to GCR O.19 r.7.

3. On 29<sup>th</sup> of July 2020, the presiding Judge, McMillan J., found that the Plaintiff was entitled to judgment in default of Defence. The Judge ordered that the Defendant was liable for damages to be assessed, together with statutory interest thereon for the libel detailed in the Statement of Claim in respect of three articles (hereinafter collectively “the Defamatory Articles”) which the Defendant had published or caused to be published in December 2019 and January 2021. The Court further ordered that:

*“The Defendant whether by herself, her servants or agents or otherwise be restrained and an injunction is hereby granted restraining her from continuing to publish, further publishing or causing to be published the Defamatory Article, the Second Article and the Third Article or the same or any similar defamatory or malicious falsehoods concerning the Plaintiff on the Website or Facebook or via the Social Media Accounts.”*

#### **Application to set aside Default Judgment**

4. The Defendant filed a summons to set aside the default judgment entered by McMillan J. on the 19<sup>th</sup> of March 2021. The hearing of that application took place before McMillan J on the 12<sup>th</sup> of August 2021. After hearing the Defendant and Counsel for the Plaintiff the Learned Judge declined to exercise the Court’s discretion to set aside the Default Judgment. The primary reasons for the Court’s decision set out in the judgment of McMillan J. of 2nd September 2021, have some bearing on this assessment. These reasons were as follows:



- “23. First, in the instant case a Default Judgment has been properly obtained. Although the Defendant was not represented by counsel, she represented herself and in person. There is no respect in which the Default Judgment could be described as irregularly obtained.
24. Secondly, the Defendant has subsequently put forward in her Affidavit and argues in oral arguments as well two inconsistent and tenuous Defences. She has asserted that the publication was the responsibility of a Cayman Islands connected entity, Cayman Marl Road Ltd and not herself. The Defendant orally corrected that to state that the entity was a Delaware corporation, Cayman Marl Road LLC, after it had become clear that the offending publication had taken place before Cayman Marl Road Ltd had come into evidence on 2<sup>nd</sup> February 2021. This last date is not in dispute between the parties.
25. The alternate line of the Defence was that the Defendant had witnesses who had supplied enough information to enable her to successfully defend the Plaintiff’s claim of defamation. However, at no point has any evidence of this matter been properly brought to the Court’s attention. The Defendant claims that given extra time she could produce it, but given that she has so far produced absolutely nothing by this late stage the Court has no confidence in her doing so if she is permitted to delay these proceedings even more.
26. Accordingly, in relation to the issue as to whether the proposed Defence carries any degree of a conviction the Court is completely satisfied that it carries no conviction at all.
27. Thirdly, in light of this conclusion the Court must decline to set aside the Default Judgment because there would be no purpose served in doing so.
28. Fourthly, the Court is required to take into account the circumstances in which the Defendant found herself bound by a Judgment regularly obtained. The Defendant finds herself in this situation due to circumstances of her own making and with no manifested possibility of a serious Defence materializing. In deciding that the Defendant has not shown any reasonable prospect of success, the Court takes into account how the Defendant arrived at this position. There is no prospect of success and the Defendant’s conduct has made her situation worse rather than better.”

### **Assessment of Damages**

5. On the 25<sup>th</sup> of February 2021, the first hearing date set for the assessment of damages, the hearing was adjourned due to the failure of the Defendant to file an affidavit and to allow the Defendant time to file such affidavit in support of her position on the assessment. The Court’s order was that the Defendant’s affidavit was to be filed on or before the 19<sup>th</sup> of March 2021. At the date of the instant hearing the Defendant had not filed an affidavit on the assessment of



damages. The court proceeded to the assessment. This court's judgment on the assessment of damages awaited the conclusion of the hearing of the application to set aside the default judgment.

6. This is the assessment of the damages due to the Plaintiff pursuant to GCR O.37 r.1

***“Assessment of damages by a Judge (O.37, r.1)***

*1. (1) Where judgment is given in the Court for damages to be assessed and no provision is made in the judgment as to how they are to be assessed, the damages shall be assessed by a Judge, and the party entitled to the benefit of the judgment may, after obtaining the necessary appointment from the Judge, and at least 7 days before the date of the appointment, serving (sic) notice of the appointment on the party against whom the judgment is given, proceed accordingly.”*

**The Parties**

7. The Plaintiff is a local businessman. From 2004 he was a car dealer involved in the selling and leasing of vehicles, especially of electric vehicles, in the Cayman Islands. The Statement of Claim details that the Plaintiff has a good reputation in the community in the Cayman Islands. He was a member of the Rotary Club of the Cayman Islands since 2005 and was voted Rotarian of the Year 2015 in recognition of his charitable efforts. The Plaintiff founded Cayman Automotive Leasing Ltd (hereinafter “CAL”) in 2004 and was a director of the company up to 2019. The Plaintiff at present operates a business called Premier Automotive Export Ltd, (hereinafter “PAE”) a company engaged in the export of electric and other vehicles from the United States to the Cayman Islands and to Cuba.
8. The Defendant is the proprietor and/or publisher of the Website and the Social Media accounts. The Plaintiff submitted that the Defendant is the editor of the content on the Website and the Social Media account and/or is the author of the content of the Website and the Social Media accounts to which this action relates.

**The Defamatory Articles**

9. The Defamatory Articles relate to the circumstances surrounding the Plaintiff leaving his employment with CAL. The First Defamatory Article contained the following statements which are set out at paragraph 9 of the Statement of Claim.

a) *“John Felder fired from Cayman Automotive.”*



- b) *“Felder still selling cars via EcayTrade!”*
- c) *“Alleged fraudster John Felder.”*
- d) *“... was removed from the post in July 2019 according to exclusive sources due to gross financial malpractice and serious ethical and legal improprieties.”*
- e) *“Well-placed sources inform us that Felder has returned to his hometown of Maryland, USA but continues to do business in the Cayman Islands via EcayTrade advertisements.”*

10. The Pleaded Meaning Statement in the First Defamatory Article were set out as follows:

*“18. Further and without prejudice to the generality of the foregoing, it is averred that in their natural and ordinary meaning each of the Defamatory Statements meant and were understood to mean the following:*

PARTICULARS OF DEFAMATORY MEANING

- a) *Statement at paragraph 9(a) – that the Plaintiff was fired from CAL and that, by implication, this was for good cause and he was guilty of some form of misconduct.*
- b) *Statement at paragraph 9(b) - that in continuing to sell cars the Plaintiff is in some way acting dishonestly and/or inappropriately.*
- c) *Statement at paragraph 9(c) - that the Plaintiff is an alleged fraudster.*
- d) *Statement at paragraph 9(d) – that the Plaintiff is alleged to have been guilty of the matters set out.*
- e) *Statement at paragraph 9(e) – that the Plaintiff has somehow fled the jurisdiction and that by implication there is good reason for him to have done so. Further or alternatively, that the Plaintiff in continuing to carry on business from the USA is in some way acting dishonestly or inappropriately.*
- f) *Statement at paragraph 9(f) – that the actions of the Plaintiff, described, are in some way dishonest or inappropriate.*
- g) *Statement at paragraph 9(g) – that the actions of the Plaintiff, described are in some way dishonest or inappropriate and that*



*therefore the public should not do business with him. Further or alternatively, that there is reason to believe that the Plaintiff may be in breach of relevant regulatory requirements and/or that he is the type of person who would breach such requirements.*

- h) Statement at paragraph 9h – that the actions of the Plaintiff described are in some way dishonest or inappropriate.*
- i) Statement at paragraph 9(i) – that the actions of the Plaintiff amount to fraud. Further or alternatively, that the actions of the Plaintiff are in some way dishonest or inappropriate. Further, or alternatively, that the Plaintiff has somehow fled the jurisdiction and that there were grounds upon which he could have been forced by the relevant authorities to remain within the jurisdiction. Further or alternatively, that he is continuing in the alleged fraudulent/dishonest/inappropriate activities in the USA and is acting fraudulently/dishonestly/inappropriately in selling cars via online classified advertisements in the Cayman Islands.*
- j) Statement at paragraph 9 (j) – that the Plaintiff is a con-artist and/or fraudster and/or that he has committed several serious criminal offences.*
- k) Statement at paragraph 9(k) – that the Plaintiff is a con-artist and/or fraudster and/or that he has committed several serious criminal offences.*
- l) Statement at paragraph 9(l) – that the actions of the Plaintiff as described are in some way dishonest or inappropriate and/or were carried out as part of the alleged fraudulent activity and/or are linked to the allegations that he is a con-artist.”*

11. The Second Defamatory Article was published on the 27<sup>th</sup> of December 2019. The Second Article was entitled “*Felder sues CMR claiming Defamation*”. Much of the First Defamatory Article was reproduced therein.
12. The Third Defamatory Article was published on the 19<sup>th</sup> of January 2020. The Third Defamatory Article contained the following statements:



- a) *“He claims that he left suddenly because of a family medical emergency; despite CMR having evidence to the contrary.”*
- b) *“It turns out the addresses he has used are not actually a proper business address at all but belong to other companies.”*
- c) *“Despite having no local business license he continues to share that he will be continuing to serve the people of the Cayman Islands under his new business venture.”*
- d) *“A keen eye will also observe that his Cuban address is attached to a Miami phone number.”*
- e) *“His Miami address is actually the address of Malvar Shipping company. His Cuba address appears to be the Embassy address for Guatemala.”*
- f) *“Despite all of these glaring irregularities Felder is suing CMR claiming that we have defamed him. Since the publication of that story numerous person have come forward and provided information on Felder including email correspondence claiming that he is, in fact, a con artist.”*

13. The Pleaded Meaning of the defamatory statements in the Third Defamatory Article are set out at paragraph 23 of the Statement of Claim.

“23. *Further and without prejudice to the generality of the foregoing, it is averred that each of the Further Defamatory Statements conveys the following defamatory meanings.*

PARTICULARS OF DEFAMATORY MEANING

- a) *Statement at paragraph 15(a) – that the Plaintiff is being dishonest when he states that he left the Cayman Islands suddenly because of a family medical emergency.*
- b) *Statement at paragraph 15(b) – that the Plaintiff is using addresses for his businesses that are not correct and that by implication the Defendant is acting dishonestly.*
- c) *Statement at paragraph 15(c) – that the Plaintiff is acting or is attempting to act in breach of relevant business licensing laws and by implication that the Plaintiff is acting dishonestly.*
- d) *Statement at paragraph 15(d) – that the Plaintiff is by implication acting dishonestly or in an underhand way.*



- e) *Statement at paragraph 15(e) – that the Plaintiff is using false addresses for his businesses and that by implication he is acting dishonestly or in an underhand way.*
- f) *Statement at paragraph 15(f) – that the Plaintiff is in fact dishonest and/or a fraudster and/or a con-artist as stated in the Defamatory Article. Further, that the Defendant has information tending to prove that the Plaintiff is in fact dishonest and/or a fraudster and/or a con-artist and that by implication these things are true.”*

14. The Plaintiff averred in the Statement of Claim that the Defamatory Articles referred to and were understood to refer to the Plaintiff and were intended to convey a defamatory meaning that “*the Plaintiff is a con-artist, is a fraudster and that the public at large should therefore not carry out any business with him*”, and further or alternatively that the Defamatory statements meant, or were understood to mean, when taken as a whole “*that the Plaintiff was a fraudster and/or dishonest and/or was in some way acting inappropriately*”. The Plaintiff further averred in the Statement of Claim that the Defamatory statements appearing in the Defamatory Articles “*are false, both in the sense of the general meaning being conveyed ...and specifically in reference to each of the defamatory meanings*” conveyed by such statements.
15. In *Gillick v Brook Advisory Centres*<sup>1</sup> Lord Phillips adopted the following as an 'impeccable synthesis' of the authorities on the point of how a court should determine the meaning of the words complained of, whether they bear the pleaded meaning:

*"The court should give the article the natural and ordinary meaning which it would have conveyed to the ordinary reasonable reader reading the article once. Hypothetical reasonable readers should not be treated as either naïve or unduly suspicious. They should be treated as being capable of reading between the lines and engaging in some loose thinking, but not as being avid for scandal. The court should avoid an over-elaborate analysis of the article, because an ordinary reader would not analyse the article as a lawyer or accountant would analyse documents or accounts. Judges should have regard to the impression the article has made upon themselves in considering what impact it would have made on the hypothetical reasonable reader. The court should certainly not take a too literal approach to its task."*

16. Considering the approach above, I am satisfied that the articles bear the meanings pleaded in the Particulars of Defamatory Meaning at paragraphs 18 and 23 of the Statement of Claim.

---

<sup>1</sup> [2002] EWCA Civ 1263



### **Falsity**

17. At paragraph 14 of his judgment of the 2<sup>nd</sup> of September 2021, McMillan J. observed that:

*“14. It is unnecessary for this Court to set out in detail the full extent of the accusations. They were numerous, repetitive and inevitably harmful if in fact untrue and unjustified.”*

18. The Learned Judge further observed that in the instant case:

*“Although an Acknowledgment of Service was filed, the Defendant failed to file a Defence. In addition as far as this Court can see at no material time did the Defendant provide to the public or to the Court any indications as to the nature and scope of the evidence that could support such serious allegations.”<sup>2</sup>*

19. In a similar vein, the Defendant, allowed the opportunity by this Court to file an affidavit on the assessment of damages, has failed to do so.

20. I am mindful of the observation of McMillan J. at paragraph 24 of his judgment:

*“24. The alternate line of the Defence was that the Defendant had witnesses who had supplied enough information to enable her to successfully defend the Plaintiff’s claim of defamation. However, at no point has any evidence of this matter been properly brought to the Court’s attention.”*

21. The Plaintiff in the Statement of Claim and in his affirmation on the Assessment of Damages refutes the allegations made by the Defendant. There is no evidence before this court to show that the allegations made by the Defendant and complained of in this action, are either true or justified.

### **Extent and impact of publication**

22. The Plaintiff submitted at paragraph 5 of the Statement of Claim that the Website and the Social Media Accounts have a substantial readership within the Cayman Islands. That statement has not been refuted.

---

<sup>2</sup> See Paragraph 15 of the Judgment of 2<sup>nd</sup> September 2021.



23. The Defamatory Articles remained on the website and social media channels from the date of publication of the 1st Defamatory Article on the 19<sup>th</sup> of December 2019 up and until an injunction was granted to restrain the Defendant on the 29<sup>th</sup> July 2020, on the terms referred to in paragraph 5 above. The Defamatory Articles remained live for approximately 8 months before the pages were taken down in August 2020. The Plaintiff states:

“21. As a result of the Defendant’s failure to cooperate with the request made in the Letter before Action, these proceedings were then issued on 27 December 2020. Despite being placed on express notice in the Letter Before Action of the serious harm that was being caused to my reputation, the Defendant chose to publish the Second Article on 27 December 2019 and the Third Article on 16 January 2020. This had the effect of drawing more attention to the Defamatory Article and introducing further untrue defamatory statements about me. I found it astonishing that the Defendant would act in this manner when, by this time, these proceedings had been served on her.

22. It is also notable that the Defamatory Article, the Second Article and the Third Article were each published with an unnecessary large eye-catching photograph of me underneath the headline. This would ensure that the articles were drawn to the eye of anyone who knows me browsing the Website or Social Media Accounts.”

### The Plaintiff’s Submissions

#### PRESUMPTION OF LOSS OR DAMAGE

24. Counsel for the Plaintiff submitted that a successful plaintiff in a libel action, is entitled to a presumption of loss or damage by which the Court can award substantial damages for injury to reputation even where no evidence is produced of such injury. The Court, counsel submitted, should therefore find and take as its starting point that the Plaintiff **“is already entitled to a significant award given the serious nature of the defamatory statements.”**
25. The Plaintiff submits that he is entitled to compensatory damages to remedy his distress and any loss flowing from the libel, as well as to vindicate his reputation.

#### EFFECT OF THE DEFAMATORY STATEMENTS

##### *i) Damage to reputation*

26. In the Statement of Claim, at Paragraph 26, the Plaintiff stated the effect of the defamatory statements on his reputation and the hurt, distress and embarrassment that he had suffered as a result.



- a) *The Plaintiff's personal reputation has been damaged both within the Cayman Islands and internationally.*
- b) *The Plaintiff's business reputation has been damaged both within the Cayman Islands and internationally;*
- c) *The Plaintiff has been contacted by numerous professional and personal contacts in relation to the Article causing the Plaintiff significant personal embarrassment.*
- d) *As a result of the Defamatory Article, the Second Article and the Third Article, the Plaintiff has been made subject to distressing comments posted below the Article where it is shared on the Social Media Accounts;*
- e) *The Plaintiff is a god-fearing man and has been deeply offended by the Defamatory Statements and the Further Defamatory Statements;*
- f) *The Plaintiff's family have seen the Defamatory Article, the Second Article and the Third Article which has caused the Plaintiff considerable hurt and distress."*

27. In the instant case, the Plaintiff submits that there is evidence of significant injury to reputation. Counsel for the Plaintiff raised the following in support of this submission:

- a. The Plaintiff *"has received 'countless calls' from people in the Cayman community regarding the articles ... and they have been read by members of his church, the Rotary Club, his associates in the business community, members of the Cayman Islands Government and by many of his friends in Grand Cayman."*
- b. The damage to his reputation was likely aggravated by what the Plaintiff described as an *"unnecessarily large photograph"* of the Plaintiff used to head each of the articles on the Website and Social Media Channels. Counsel submitted that this was a deliberate action on the part of the Defendant so that the articles would be noticed and read by anyone who would recognize the Plaintiff and thereby further impact his reputation.
- c. Counsel went further to submit that the damage to the Plaintiff's reputation would also have been aggravated by the repetition in the Second and Third Articles and that this action, *"combined with the flat refusal to take down the offending material, effectively resulted in ensuring that the maximum audience possible in the Cayman Islands became aware of the defamatory statements"* thereby causing significant damage to Plaintiff's reputation.



ii) *Injury to feelings*

28. Counsel for the Plaintiff submitted that, given the serious nature of the defamatory statements made against the Plaintiff, there was a high degree of injury to feelings. He went further to state that in the instant case the defamatory statements have *in fact* caused significant hurt and suffering to the Plaintiff and his family. The Plaintiff states at paragraph 15 of his Statement of Claim:

*“15. The impact of the articles on my family has greatly aggravated the emotional pain and distress that has been caused to me. My wife in particular was seriously impacted by the attack on my character and this placed significant strain on our relationship. My daughters were all impacted deeply by the articles, with this impact hitting the family at what was already a very difficult time due to the poor health and significant care needs of my grandson, Zion.”*

29. The Plaintiff related that it was particularly “hurtful” when his motives for leaving the island for a family emergency were called into question. The Plaintiff stated at paragraph 14 of his Statement of Claim:

*“14. A particularly hurtful untruth published by the Defendant in the Third Article was the implication that I was being dishonest when I had stated that I had left the Cayman Islands suddenly because of a family medical emergency. As I have already explained, my grandson Zion was critically ill from birth and suffered throughout his short life until his tragic death on 2 August 2020. My daughter kept a blog on line at <https://www.fearfullyandwonderfullyzion.home.blog> to share the story of Zion’s short life and to seek solace in the prayers sent by others. As I have explained, I left the Cayman Islands as I felt compelled to be by the side of my daughter and her family to support them and to support Zion as best as I could. I find it deeply offensive and it has hurt me and my family greatly that the Defendant has suggested that I have somehow invented a family medical emergency or that I somehow fled the Islands.”*

iii) *Vindication of reputation*

30. Counsel for the Plaintiff invited the court to make an award of damages of such a level that it provides ‘vindication’ which would “*allow the Plaintiff to point to the award of damages in a sufficient sum to convince a bystander of the baselessness of the charge.*” Counsel submitted



that this ‘vindication’ element to the damages award is of particular importance in the Cayman Islands given the relatively close-knit community of the Cayman Islands and the ‘grapevine’ effect of the defamatory statements.

31. Counsel for the Plaintiff emphasized that the element of vindication in the award of damages was also particularly significant where, as in the instant case, the Plaintiff desires to rebuild his reputation in the community. Counsel referred the court to the following cases in support of his submissions regarding this element of the award. The cases referred to in this regard were: *The Gleaner Co Ltd & Another v Abrahams*<sup>3</sup>; *Metropolitan International Schools Ltd v Designtecnica Corp*<sup>4</sup>; *Al-Amoudi v Kifle*<sup>5</sup>; *Harrath v Stand for Peace Ltd*<sup>6</sup>, all of which I have carefully considered in coming to the appropriate award of damages in this case.

*iv) Special damages*

32. Apart from general damages Counsel for the Plaintiff submitted that the Plaintiff has also suffered special damages because of the defamation. Counsel pointed to the difficulty in estimating the full extent of the defamatory articles on the Plaintiff’s business evidenced by a loss of sales or of their impact on major projects. However, he related the following to illustrate his actual losses.
33. The Plaintiff related that when he initially left CAL during 2019, he was able to generate a gross profit of approximately US\$34,000 from sales of motor vehicles although the Plaintiff accepted that despite this gross profit on the sale of motor vehicles, his new company PAE was suffering a small loss across all its endeavours. He related that after the publication of the Defamatory Article in December 2019, there were no new sales of cars made by his company between January 2020 and August 2020.
34. He related that, although he had no way of knowing how many potential customers read the articles and thereafter avoided purchasing vehicles from him: “*I do know that even long-standing customers have expressed to me that they are incredibly hesitant in making any future orders for vehicles with me as a result of the articles.*” The Plaintiff estimated that between December 2019 - August 2020 he may have lost approximately US\$28,000 from loss of personal profits from the sale of cars.

---

<sup>3</sup> PC 14<sup>th</sup> July 2003 (*Punitive Defamation Damages Order Sustained*)

<sup>4</sup> [2010] EWHC 2411 (QB)

<sup>5</sup> [2011] EWHC 2037 (QB)

<sup>6</sup> [2017] EWHC 653 (QB)



35. He related that he had suffered significant impact on his international business interests. The Plaintiff stated that as the distributor with exclusive distribution rights for the Lithium Ion Battery packs for the Nissan Leaf Electric vehicles to a number of Caribbean Islands he would expect to make US\$1200 gross profit on each battery pack sold. He related: *“Following the publishing of the Defamatory Article the steady stream of orders for battery packs for Nissan Leafs went silent. I am aware that the company with whom I had previously done business in Barbados was aware of the Defamatory Article and shared this with their contacts on other Caribbean Islands.”*
36. The Defendant produced an email from one of his customers in Barbados,  
*“Our loss of confidence is due to the time that has elapsed since our payment and order was placed and the non-delivery of these batteries to date.  
Further, our loss of confidence is compounded by several online articles and news information, ...”*

Two links from Cayman Marl Road and one from the Facebook page of Cayman Marl Road, which named the Plaintiff, were thereafter referenced.

37. The Plaintiff therefore asks this court to regard the value of the orders lost as approximately US\$10,000 per month over a 9-month period, with a personal loss of approximately US\$15,000.00. Apart from these the Plaintiff estimates that the long-term effect on sales could continue for up to three years with a loss of approximately US\$10,000 per year. This gives a total claim for damages for impact on sales of US\$73,000.00.
38. Regarding major projects that may have been impacted by the defamation the Plaintiff related that he had worked for over 4 years with the Cuban Government to convert and retrofit approximately 5000 vintage taxis in Cuba from gas/diesel to electric. It was projected that the value of the project was in the region of US\$40 million over a three-year period. The Plaintiff states that he stood to gain millions of dollars from this project. The Plaintiff states that the Cuba project was put on hold by the Cuban Government as a direct result of the false statements made about him in the Defamatory Article.
39. The Plaintiff also pointed to a 10-year project for the introduction of a Micro-Grid Solution for the Cuban Government to replace their current grid system. He related that: *“This project alone was anticipated to be worth many hundreds of millions of dollars, which would have likely generated hundreds of thousands of dollars of personal income for me.”* However, he stated that in June 2020, one of his business associates involved in the project raised the contents of



the Articles with him and “*despite my best efforts, the impact of Dr. Joshi reading the articles meant that he was not prepared to progress any further with doing business with me in relation to the Cuba projects.*”

40. The Plaintiff stated as follows:

*“35. I fully appreciate that there is a speculative element to these major projects and that there is no guarantee that they would in fact have come to fruition. However, the Defendant’s actions have caused me to suffer the loss of the chance of these incredibly lucrative projects taking off. Given that the potential profit to myself from all of these projects could easily have reached into the millions of dollars, I humbly and conservatively ask that this Honourable Court assess the value of the loss of a chance of US\$100,000.”*

41. Counsel for the Plaintiff admitted that “*due to the nature of the impact of libel on business interests it may be difficult to properly demonstrate a specific pecuniary loss and that this is particularly the case here as regards the impact on P[laintiff]’s speculative major projects.*” He therefore invited the Court to consider whether in its assessment it could take an alternative approach and simply take these matters into account as part of a broad-brush assessment of the general damages to be awarded.

42. Counsel submitted that such an approach had been referred to in *Cambridge v Makin*<sup>7</sup> where the Sir Michael Tugendhat commented that it was rare in libel claims for the claimant to be able to prove pecuniary loss and went on to say that:

*“... where a libel is likely to cause significant loss of earnings, that can be taken into account in the assessment of general damages.”*<sup>8</sup>

43. This was the approach noted by the Privy Council in *The Gleaner Co Ltd and Another v Abrahams*<sup>9</sup> (per Lord Hoffman):

*“In defamation cases, on the other hand, it is usually difficult to prove a direct causal link between the libel and loss of any particular earnings or any particular expenses. Nevertheless it is clear law that the jury are entitled to*

---

<sup>7</sup> [2011] EWHC 12 (QB)

<sup>8</sup> At page 229 of the report.

<sup>9</sup> *Supra*



*take these matters into account in the award of general damages. The strict requirements of proving causation are relaxed in return for moderation in the overall figure awarded.”<sup>10</sup>*

v) *Aggravated Damages*

44. Apart from the above, Counsel for the Plaintiff submitted that the court could consider whether this was a proper case to award aggravated damages. He pointed to the Defendant’s conduct before publication of the Articles in failing to reach out to the Plaintiff for comment or to attempt to verify the defamatory statements and also the Defendant’s refusal to take down the defamatory First Article despite the request made on the Plaintiff’s behalf in a letter before action on 23 December 2019 [78] (“LBA”). Counsel stated that the Defendant ignored the clear statement in the letter before action that: “*The Article has caused and is likely to cause Our Client serious harm and damage, both to his personal reputation and to his business. This will likely include serious financial harm due to the nature of the false statements made about Our Client... ”.*
45. The Defendant proceeded to publish the Second Defamatory Article, which the Plaintiff urges drew further attention to the 1<sup>st</sup> Defamatory Article, and thereafter the Third Defamatory Article making further defamatory statements.
46. The Defendant has never attempted to mitigate the damage caused to the Plaintiff by way of an offer of apology.
47. Counsel for the Plaintiff submitted that in a case of this nature that the deterrent element<sup>11</sup> has particular relevance and should be taken into account in the final award of damages.
48. The Plaintiff invited the Court to assess damages in the sum of CI\$291,860 on the following basis:

“(a)	<i>General Damages</i>	<i>CI\$125,000</i>
(b)	<i>Aggravated Damages</i>	<i>CI\$25,000</i>
(c)	<i>Special Damages</i>	<i>US\$173,000 (CI\$141,860)</i>
	<b><u>Total</u></b>	<b><u>CI\$291,860”</u></b>

<sup>10</sup> At page 56 of the report

<sup>11</sup> *The Gleaner Co Ltd v Abrahams*, Lord Hoffmann remarked that defamation actions, unlike those for personal injury, “often serve not only as compensation but also as an effective and necessary deterrent” See page 53 of the Report.



## The Defendant's submissions

49. At the assessment of damages the Defendant raised a number of points for the Court's consideration. The Defendant asked the court to consider that a factor in the spread of the Defamatory Articles was not so much the subject matter but that the Defendant was so well known in Cayman. She asked the court to note that it was being presented with only a one-sided picture of the Plaintiff's reputation. She pointed to some of the exhibits referred to by the Plaintiff in his affirmation, asking the court to be cautious in accepting them at face value as they do not appear to give further information. (I take this to mean more detailed information as to the parties and the actual sale represented by each invoice.) The Defendant argued further that the court should consider what evidence it was being presented to support the assertion that sales resumed after the offending Articles were taken down in August 2020. She queried whether the change in sales noted by the Plaintiff could have been a coincidence or whether there could have been some other explanation for the fall off during the preceding period.
50. The Defendant argued that the Plaintiff's evidence in support of special damages was speculative. There was no evidence of the Plaintiff having secured any "*million dollar, highly lucrative contracts*" before the articles were published and therefore it could only be speculative of future prospects. She stated that there was no history shown that he has done business on that scale.
51. The Defendant stated that there had been attempts at mitigating damage that may have been caused by publication of the offending articles. She stated that attempts had been made to contact the Plaintiff to have his side of the story so that it could have also been published.
52. The Defendant invited the Court to consider local awards for similar cases. The Defendant also submitted to the court that the articles may have had considerably less impact than the Plaintiff has presented to the court. Would removal of the offending articles have a significant impact on the Plaintiff's reputation when there were other articles which were not deemed offensive which remain on the website and relate to the instant litigation and loans and other aspects of the Defendant's business dealings, she queried. The Defendant further submitted: "*Argument of substantial damages was not sufficiently supported given the fact of other articles on the website which still remain.*"



## Court's analysis

53. In *Metropolitan International Schools Ltd.*<sup>12</sup>, Sir Michael Tugendhat stated as follows:

*“...under the laws of England if a claimant proves that defamatory words have been published about him, he does not have to prove that he has suffered actual damage in order to obtain a judgment in his favour. Nor does he have to prove that the defamatory words are false. These two matters are presumed in his favour. But claimants are not obliged to rely on these presumptions of law, and in practice claimants only rely upon these two presumptions to a limited extent.”*

54. The question of whether a jury is entitled to award damages without some evidence by which they might be guided in fixing the amount was addressed in *Tripp v Thomas*.<sup>13</sup> Abbott C.J. stated:

*“The defendant by suffering judgment by default admitted the speaking of the words as alleged in the declaration. It was, therefore, unnecessary to give evidence to that effect.”*

55. The Plaintiff in the instant case has sought to show that it is not only the presumption of falsity and damage upon which he relies but that there was actual damage caused to himself and to his reputation.

56. In the case of *Al-Amoudi v Kifle*, HHJ Richard Parkes Q.C. stated:

*“An award of general damages for libel serves three functions: first, to act as a consolation to the claimant for the distress and embarrassment which he has suffered from the publication of defamatory words, secondly, to compensate for the injury to his reputation; and thirdly, to act as vindication for his reputation.”*<sup>14</sup>

57. The factors affecting the award were further elucidated in the case of *John v MGN*<sup>15</sup>, by Sir Thomas Bingham MR:

*“The successful plaintiff in a defamation action is entitled to recover, as general 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. In assessing the appropriate damages for injury to reputation the most important factor is the gravity of the libel; the more closely it touches the plaintiff's personal integrity, professional reputation, honour, courage, loyalty and the core*

---

<sup>12</sup> *Supra*

<sup>13</sup> (1824) 3 B.&C. 427

<sup>14</sup> [2011] EWHC 2037 (QB),

<sup>15</sup> [1997] QB 586 at 607 paragraph 39



*attributes of his personality, the more serious it is likely to be. The extent of publication is also very relevant: a libel published to millions has a greater potential to cause damage than a libel published to a handful of people. A successful plaintiff may properly look to an award of damages to vindicate his reputation: but the significance of this is much greater in a case where the defendant asserts the truth of the libel and refuses any retraction or apology than in a case where the defendant acknowledges the falsity of what was published and publicly expresses regret that the libellous publication took place. It is well established that compensatory damages may and should compensate for additional injury caused to the plaintiff's feelings by the defendant's conduct of the action, as when he persists in an unfounded assertion that the publication was true, or refuses to apologise, or cross-examines the plaintiff in a wounding or insulting way."*

58. In the Privy Council case of *The Gleaner Co Ltd and another v Abrahams*<sup>16</sup> the Appellant Company was the owner of two daily newspapers in Jamaica each of which published defamatory articles about the Respondent, who was a former Minister for tourism for Jamaica. After a trial on the issue of damages only, the jury awarded 80.7 million Jamaican dollars (approximately £1.2 million). The Court of Appeal of Jamaica reduced the award to 35 million Jamaican dollars (approximately £533,000). The Appellant appealed to the Privy Council.
59. Among the issues raised before the Privy Council was whether the award made by the Court of Appeal was still too large. This issue failed. The Privy Council concluded that it was not and indicated that the court was right to include punitive and deterrent elements in the award.
60. The Privy Council confirmed that the test in *Rantzen v Mirror Group Newspapers Ltd*<sup>17</sup>, namely “*whether a reasonable jury could have thought that the award was necessary to compensate the claimant and re-establish his reputation,*” was correctly applied by the Court of Appeal.
61. The Privy Council also stated that exemplary damages are appropriate in some cases and may be awarded, where the sum that a jury have in mind to award as compensation,
- “... is inadequate to punish him [a defendant] for his outrageous conduct, to mark their disapproval of such conduct and to deter him from repeating it, then it can award some larger sum.”*
62. The Privy Council went further to state, regarding exemplary and compensatory damages:
- “Most judges have accepted that in many cases the two purposes are inextricably mixed. The monetary value which a society places upon*

---

<sup>16</sup> *Supra*

<sup>17</sup> [1994] QB 670



*reputation and freedom from unjustified shame and humiliation is bound to be a conventional figure. The higher it is set, the greater the deterrence.”*

63. The Privy Council addressed the question of how a court was to arrive at an appropriate figure for compensation, what would count as a proper explanation. Paragraph 69 of the Judgment, reads:

*“Their Lordships think that the court of appeal were perfectly justified in simply saying that they thought that 35m was the amount necessary to compensate Mr. Abrahams. Whether this was the right figure they were in the best position to say. As the highest court sitting in Jamaica they would have had a knowledge that their Lordships do not share of among many relevant matters, the standing in society of the Daily Gleaner and the Star, the sensitivity of the local community to corruption and the links between the political social and business life of the community which amplified the effect of the libel on the plaintiff.”*

64. On vindication, Lord Hoffmann stated that at paragraph 55 of the judgment:

*“...the damages must be sufficient to demonstrate to the public that the plaintiff's reputation has been vindicated. Particularly if the defendant has not apologised and withdrawn the defamatory allegations, the award must show that they have been publicly proclaimed to have inflicted a serious injury.”*

65. Applying the principles set out above, in my judgment, the allegations against the Plaintiff of, amongst other matters, fraudulent conduct in his business affairs which may be viewed as having connotations of criminal conduct, is a serious libel touching the Plaintiff's personal integrity and professional reputation. I accept that the allegations have caused harm to the Plaintiff's business and to his business reputation. Damages must compensate the Plaintiff and take account of the fact that he must now seek to re-establish his reputation as a businessman in the Cayman Islands. The Defamatory Articles were in circulation and able to be accessed by the public within the Cayman Islands and elsewhere for approximately 8 months. The Plaintiff has presented evidence that the Defamatory Articles were accessed as far as Barbados by one of his business contacts. I accept that the publication of these Defamatory Articles has caused the Plaintiff enormous distress and that this distress has also extended to his family members.
66. I am mindful of the conduct of the Defendant. The Defendant has never apologised for her actions in publishing the Defamatory Articles. The Defendant stated before this court that the Plaintiff was “piercing together” a story about his reputation. However, despite the Defendant



having been given every opportunity to produce evidence in her defence, she has repeatedly failed to do so. The findings of McMillan J. on the application to set aside the default judgment referred to earlier in this judgment are especially relevant on this point. Her undefended and unjustified allegations bear witness to the basis of an action for defamation. One cannot make baseless, unsupported allegations against others which damage reputations and cause hurt, humiliation and distress.

67. I bear in mind that although there may be no direct causal link between the libel and the loss of any particular earnings or expenses on the Plaintiff's behalf, that I am entitled to take the matters set out by the Plaintiff, here as special damages, into account in the award of general damages. I am mindful that this accommodation should be reflected in a moderation in the overall figure awarded.
68. I am satisfied that in determining what is *necessary to compensate the claimant and re-establish his reputation* that comparisons with awards by other courts in other defamation cases would not be worthwhile or helpful because the circumstances of this case, as with many other cases of libel, are individual in nature and in the effect of the libel on the Plaintiff
69. This Court will award a single figure that is proportionate to the damage suffered by the Plaintiff because of the Defamatory Articles. I find that the appropriate figure to do so, to vindicate the damage done and to demonstrate that the allegations complained of have neither been proven to be true or to be justified is the sum of CI\$105,000.00.
70. Pursuant to the default judgment of 29 July 2020, the Defendant is adjudged to be liable to pay interest pursuant to s.34 of the **Judicature Law** (2017 Revision).
71. The Plaintiff is entitled to his costs on the assessment of damages, to be taxed if not agreed.

**Madam Justice Marlene I. Carter**  
**Judge of the Grand Court (Acting)**