

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION



G 13 of 2021

BETWEEN

JOANNE MERCILLE

Plaintiff

AND

THE AISLES LTD T/A STEEL DREAMS DEVELOPMENT

Defendant

OPEN COURT

Appearances: Ms Joanne Mercille, Plaintiff in person
Mr Philip Boni Attorney for the Defendant Company

Before: Hon. Mme Justice Margaret Ramsay-Hale

Heard: 11 October 2021, 18 November 2021, 9 December 2021, 28 February
2022, 30 March 2022, 2 May 2022 and 19 May 2022

Judgment Delivered: 16 December 2022

HEADNOTE

Contract - Termination of Contract - Claim for restitution of monies paid under contract - Counterclaim for 'economic loss' arising from breach of contract and defamation - elements of claim for slander

JUDGMENT

Introduction

1. The Plaintiff, Ms Joanne Mercille, and her husband, Wayne Ross, elected to construct a container home on property owned by Ms Mercille and, to that end, they engaged the Defendant, The Aisles Ltd. trading as Steel Dreams Development (the "Developer" to provide services relating to the management, planning, financing, and development of the construction project (the "Project").
2. On 13 May 2019, Ms Mercille executed a Residential Design and Property Development Agreement which was prepared and executed on behalf of the Developer by Ms Megan Ritch who was a Director and the Project Manager of the Developer at the relevant time ("the Agreement").



3. The Agreement included a proposed payment schedule based upon the projected total costs of the project and upon certain stages of construction being completed. As of 18 March 2020, Ms Mercille had advanced a total of \$81,566.05 to the Developer. Consequent upon certain changes to the original design plan, Ms Ritch updated the construction costs estimate, revising the total estimated costs upwards by an additional \$57,575.55. She subsequently made demand for a further sum to be paid pursuant to the provision in the Agreement for staged payments.
4. Ms Mercille refused to pay any further sums on the ground that the Developer had sufficient funds on account to pay for the works, whether completed or anticipated, at the Project's then stage of development.
5. By Notice by email dated 7 September 2020, the Developer terminated the Agreement on the grounds that Ms Mercille's refusal to pay the additional sums was a repudiatory breach of the Agreement. In the same email, Ms Ritch gave the following undertaking with respect to the monies paid under the Agreement:

"I will attend to all balances and provide a final accounting in relation to your project by the end of this week and this will be my full focus in order to wrap things up, any balances [remaining] will be paid over to the contractor and your escrow account closed."
6. Ms Ritch did not, however, provide Ms Mercille with a final accounting for the project as promised and no money was ever repaid.
7. A letter before action was sent by Ms Mercille to the Developer on 21 December 2020. The letter was met by promises to address the matter of the outstanding balances which were never fulfilled and on 22 January 2021. Ms Mercille commenced these proceedings to recover the sum of \$43,099.50 which, by her account, is the sum due to her remaining in the Developer's hands.

The Agreement

The Claim

8. The total sum claimed by Ms Mercille is CI\$ 43,099.50 being expressed in the claim as:
 - (i) The sum of \$24,050.50 being the difference between the funds advanced of \$81,566.05 and the estimated costs of \$57,515.55 as of 13 March 2020; and
 - (ii) The unspent funds of \$19,049.00 between some of the estimated costs as of 13 March 2020, and the amounts actually paid to contractors by the Developer as of 31 December 2020.
9. In a document marked Appendix 5 filed on 11 June 2021 and served on the Developer on 15 June 2021, Ms Mercille sets out the way in which she arrived at the sum of \$19,049:



<i>UNSPENT FUNDS RELATED TO ESTIMATED COSTS</i>	<i>CI\$</i>
<i>Total of foundation /cistern funds for labour held by SDD as of March 18,2020</i>	<i>19,000</i>
<i>Less Payments made to Dec 31, 20202</i>	
<i>E&C Construction</i>	<i>(5,000)</i>
<i>E &C Construction</i>	<i><u>(640)</u></i>
<i>Balance of unspent foundation and/cistern funds for labour due from SDD</i>	<i><u>13,360</u></i>
<i>Total of foundation /cistern funds for materials held by SDD as of March, 18, 2002</i>	<i>5,000</i>
<i>Less payments made to Dec, 31,2020</i>	
<i>KP Aggregates</i>	<i><u>(1,861)</u></i>
<i>Balance of unspent funds for foundation/cistern funds for materials due from SDD</i>	<i><u>3,139</u></i>
<i>Plus unspent contingency funds held by SDD</i>	<i>2,100</i>
<i>Plus unspent HVAC & Electrical funds from SDD</i>	<i>450</i>
<i>Total Balance of unspent funds due from SDD to JM</i>	 <u><u>19,049</u></u>

The Defence

10. In its Amended Defence to the claim, the Developer admits a debt due to Ms Mercille but disputes the sum claimed, asserting that the balance due to is \$29,699.92.
11. With respect to the unspent funds, the Developer avers as follows:

*“12. The Defendant agrees that there are sums due to the Plaintiff would be unused sums of money from the draw-downs paid to the Defendant by the Plaintiff, however, the Defendant herein submits evidence that the sums claimed by the Plaintiff omit expenses related to the Project which are detailed would are expenses noted within **APPENDIX C**, being the original Project Estimate. The amounts shown were paid and/or incurred by the Defendant in relation to the Project and should be deducted from the draw-down payments made to the Defendant by the Plaintiff under the category Excavation/Foundation - Material and Labour, AND Paragraph 3 of the Agreement as further outlined below and supported by documents shown in **APPENDIX D**:*

<i>a. 1 Ton #4 ½ in Rebar Grade 60</i>	<i>CI\$ 770.00</i>
<i>b. #5 5/8 inch Rebar Grade 60</i>	<i>CI\$1,540.00</i>
<i>c. Generator usage x 2 weeks including gas</i>	<i>CI\$ 500.00</i>
<i>d. Various Tools Usage</i>	<i>CI\$ 950.00</i>
<i>e. Lumber for Foundation Site Preparation</i>	<i>CI\$ 1,760.58</i>



f. KP's Aggregate	CI\$ 2,067.00
g. Debris Removal - February 2020	CI\$ 350.00
h. Foundation & Site Preparation - Labour Feb 2020	CI\$ 5,000.00
i. Foundation & Site Preparation - Labour Sep 2020	CI\$ 640.00
j. Beacon Trucking - delivery of two (2) 40 foot shipping containers from George Town to Project site in North Side	CI\$ 320.00
k. Project Management Hours - Basement Addition Time Spent by Megan Ritch 20 hrs @ \$75 ph	<u>CI\$ 1,500.00</u> <u>CI \$15,397.58"</u>

The Issue on the Claim

12. The only issue arising for resolution on the claim is the amount due to Ms Mercille.

The Relevant Provisions of the Agreement

13. The following clauses of the Agreement relevant to this issue of what reimbursable costs remain payable to the Developer:

1. ENGAGEMENT OF DEVELOPER

Property Owners hereby engage Developer and authorize Developer...to provide services relating to the management, planning, financing and development of the Project set forth in Appendix B

2. DEFINITIONS

...
"Hard Costs for Construction of the Project" shall mean all of the costs incurred in the construction of the Project, other than professional fees...governmental, permit and utility related fees...Hard Costs for Construction of the Project include but are not limited to, all sums and contractor fees paid for materials, labor (sic) equipment and services furnished in connection with the Project and other direct costs of construction in connection with the Project.

8. BOOKS AND RECORDS

As set forth in Appendix B, it is contemplated that Developer will, as part of the Services, review and approve or disapprove of all invoices submitted by architects, engineers, contractors, tradesmen, service providers and suppliers. Developer will maintain good records of all such invoices together with all other financial records that Developer receives in connection with the Project. Developer shall make available all such records to Property Owners, upon Property Owners' request within five (5) business days of such request..."

APPENDIX B



SERVICES

The specific services to be performed by Developer with respect to the project shall include the following:

...

3. *Administering the preparation of plans, specifications, construction documents and shop drawing for the Project and consulting with property Owners and the contractor/tradesmen with respect to Project design and development;*

...

7. *Reviewing, and approving, or disapproving all invoices submitted by all architects, engineers, contractors /tradesmen, and suppliers and, submitted to Property Owners all such approved invoices together with other information as may be required in order to submit a payment requisition to Property owners for approval..."*

Discussion and Decision

14. With respect to the para 12 (a) and (b) claim for the sum of \$770 for the #4 (½") rebar and \$1540 for the #5 (⅝") rebar, it was accepted by Ms Mercille that the \$2000 invoiced for lumber was not paid and should be deducted from the sums claimed but not the \$310 extra which the Developer claimed. The Developer's case was that the sums reflected the actual price that *would have been* payable by Ms Mercille had she not had the benefit of the Developer's 'contractor discount'. In the circumstances where Ms Mercille had breached the Agreement, the Developer contended that it was entitled to the "cost plus" price of \$770 and \$1540 for the materials provided to Ms Mercille's project.
15. The Agreement, however, makes no provision for the addition of a percentage of costs for the Developer on any item purchased for the Project. It provides only for the Developer to review all invoices, approve or disapprove them, and then present them to Ms Mercille with a request for payment. It follows that only the invoiced amount is for Ms Mercille's account.
16. The para 12(c) costs for Generator usage including gas of \$500 and the 12(d) costs for "various Tools Usage" of \$950 are likewise not payable to the Developer under the Agreement. The Developer avers that these costs reflect standard industry costs which would be expected for the use of contractor provided tools and generator power during the project. Its pleaded case is that,

"...it is industry practice to mark up the costs of tools, equipment, labour, sub-contracted services and any other such materials and/or services obtained and utilized for the furtherance of a project. This is one of the primary areas where a property developer makes its profit, therefore, the Defendant seeks recovery of these amounts to reduce its economic loss."



17. There is, however, no provision in the Agreement for the Developer to be paid a percentage on any costs incurred by any contractor in the course of any work done on the Project. The additional costs sought by the Developer are disallowed.
18. With respect to the para 12(e) costs in the sum of \$1,760.58, it is Ms Ritch's evidence that lumber was purchased for the Project site. She has exhibited the Invoices from AL Thompson. I accept her evidence that the lumber that was purchased was for the Project.
19. The para 12(f) cost of aggregate in the sum of \$2,067 is agreed. Ms Mercille's evidence is that she had estimated the costs of aggregate at \$1,861 and taken it into account in arriving at her claim for \$19,049. I adjust her claim by the difference which is \$206.
20. The para 12 (g) cost for removal of debris from the Project site in February 2020 in the sum of \$350 was challenged by Ms Mercille on the basis that no debris related to the Project was removed from the Project site, no invoice was provided, and the cost for debris removal was, in any event, inflated. Mr. Ross's evidence was that the cost for a 20-yard truck for debris removal is \$100. It was proposed that \$50 was a reasonable sum for the pick-up truck the Developer had organized for the debris removal. I allow half the sum as being reasonable.
21. Ms Ritch's evidence is that debris from the Project was removed at the request of Ms Mercille and that the pickup truck she hired to do the job had to make two trips. In the absence of any invoice, I discount the sum due to Ms Mercille by \$200 as a reasonable amount for truck and labour.
22. With respect to the costs of labour at para 12(h) and (i) in the sums of \$5,000 and \$640, it was accepted and agreed during the course of the evidence that these sums were already credited by Ms Mercille in arriving at the sum she says is due to her.
23. The para 12 (j) costs for trucking the containers to Ms Mercille's property in North Side in the sum of \$320 are allowed: there is no issue that the containers were delivered to Ms Mercille's property and the invoices were exhibited by the Developer.
24. With respect to the para 12(k) costs for "*Project Management Hours - Basement Addition*" in the sum of \$1500, the Agreement provides for a fixed sum of \$5000 to be paid to the Developer for services provided. In the circumstances, a claim for payment under a *quantum meruit* for time spent working with Ms Mercille on basement designs for the Project does not lie.
25. Ms Mercille's claim includes the return of sum the of \$450 as being unspent funds for HVAC and Electrical. Although it was not included in her Amended Defence, Ms Ritch asserted in cross-examination that the Developer had settled an invoice in the sum of \$735 for electrical drawings and undertook to submit the relevant invoice the following day. The invoice which was subsequently submitted was issued by Xpress Rendering in the sum of \$875.



26. In her closing submissions, Ms Mercille argued that the invoice from Xpress Renderings should not be set off against the sums held by the Developer on the grounds that the drawings produced by Xpress Renderings were, in summary, of no value to the Project, that the invoice had not been presented to her for approval as expressly provided for by the Agreement and that the invoice was submitted at the close of trial.
27. The Agreement provides for the Developer to 'administrate' the preparation of plans, drawings and other documents. As the costs were incurred *bona fide* for obtaining drawings then, it seems to me, Ms Mercille is obliged to pay those costs. The fact that a payment requisition for that invoice was not made to Ms Mercille for approval does not disentitle the Developer from recovering those costs, particularly where, as Ms Mercille says in her closing argument, that clause was never complied with. Nor does it matter, in my judgment, that the invoice was not produced earlier in the proceedings. The costs were incurred and the invoice paid, and I deduct the sum of \$875 from the amount Ms Mercille claims is due to her.
28. In addition to the \$19,049 set out in the Writ, Ms Mercille claims the further sum of \$2,500. It is her case that the Developer budgeted \$5000 for insulation materials for the containers, of which only \$2,500 leaving a balance of unspent funds in the sum of \$2,500 in the Developer's hands. Eighteen (18) boxes of insulation materials were purchased from a company known as *InsoFast* by the Developer for which she was not invoiced but Ms Mercille was able to estimate the value of those 18 boxes using the values in the she received from *Insofast* when she purchased the balance of the insulation materials required for the project.
29. Although this sum was not included in the claim endorsed on the Writ, the Developer had notice that Ms Mercille was also claiming the return to her of these funds as she set it in Appendix 5 of the bundle of documents filed on 11 June 2021 and served on the Developer on 15 June 2021.
30. In her evidence under cross-examination, Ms Ritch accepted that \$5,000 had not been spent on insulation materials but asserted that "*Insofast was a particular insulation for container homes and was a 'trade secret' about which Ms Mercille would not have known but for the Developer's work on their project and the Developer had the right to the \$5000 as compensation.*"
31. That proposition is untenable. All the Developer's rights are expressed in the Agreement. The Developer has no entitlement to the funds it holds for Ms Mercille except in respect of any unaccounted-for invoices for work done on the Project. In the absence of any invoice, I accept Ms Mercille's estimate of the value of the insulation which was supplied by the Developer and add the sum of \$2,500 to her claim for unspent funds.
32. I credit the sum of **\$5,336.58** to the Developer against the **\$19, 049** claimed by Ms Mercille, being satisfied that the costs were incurred in the Project as set out above. To the resulting total of



\$13,712.42, I add the sum of **\$2,500** as and for unspent funds against the projected costs of insulation material for the Project, for a total of **\$16,212.42**.

33. I enter judgment for Ms Mercille on the claim in the sum of sum of **\$40,262.92** (\$24,050.50 + \$16,212.42) with costs.

The Counterclaim

34. The Developer counterclaims for economic loss consequent upon what the Developer alleges was Ms Mercille's repudiatory breach of contract as well as losses it alleges it has suffered as a result of slander and seeks to set off any sums found due against the balance owed to Ms Mercille.

Damages for Breach of Contract

35. The pleaded claim for economic loss arising from the breach of contract is formulated in this way:

"(2) Economic Loss due to the Plaintiff's breach of contract which lead to the Defendant's termination of the Agreement, in the sum of CI\$31,367.99, being 15% of the total construction costs as defined in the final Project Estimate provided to the Plaintiff by email on 25 August 2020 in relation to the Project with the addition of a basement space. This percentage is calculated on industry practices in relation to provisioning for Developer Profits and is the total amount which the Defendant could have expected to receive should the Project have progressed without the Plaintiff's interference. The typical such profit margin for the developer is 15% to 25% within the industry."

The Defamation Claim

36. The defamation claim is set out as follows:

"(3) Defamation by the Plaintiff by way of slander which has caused economic loss to the Defendant due to its relationships with service providers having been strained and/or broken down completely due to the Plaintiff's defamation of the Company. The Plaintiff has accused the Defendant and/or its Director Megan Ritch of, but not limited to, forgery and has made such accusations to third parties. The Plaintiff's defamation has also caused the Defendant to lose its established arrangements with its previous contractor E & C Construction. This has left the Defendant unable to service new projects at the competitively negotiated terms and fees the Defendant had received from E & C; the Defendant has also been unable to receive such a competitively negotiated agreement for its current project. This has resulted in economic loss by the Defendant in the estimated amount of CI\$18,432.42 being half of the 15% of the total construction costs estimated for the active project for which E&C would have provided services for if the Defendant had not been faced with defamation by the Plaintiff. The Defendant has estimated its loss with the current project to be half of the profit it would have realized if it had the relationship it previously had with its contractor."



The Defence

37. Ms Mercille - a litigant in person - did not file a Defence to Counterclaim but, in her original Reply to the Defendant, she defended the claim for reputational damages, as it then was, on the ground that there was no properly pleaded claim or particulars before the Court.
38. In her Reply to the Amended Defence and Counterclaim, Ms Mercille denied that she had breached the contract or had defamed the Developer or Ms Ritch or caused the Developer to suffer any loss.

Claim for compensation for repudiatory breach

39. Taking the defamation case first, I do not consider it necessary to resolve the issue of whether Ms Mercille breached the contract when she refused to pay the additional sums requested by the Developer when the cost of the Project was estimated upwards, as I consider that the damages sought by the Developer would be unavailable in any event.
40. The Developer's claim for economic loss proceeds on the basis that, had the Project been completed, the Developer would have made 15% of the total construction costs, being the sum of \$31,367.99 which it asserts it would have received if the Project had been completed. No evidence was led to support the "industry practices in relation to provisioning for Developer profits" allowing them a profit margin of 15 to 25% of the total construction costs.
41. In any event, the "Developer's Profit" for which the Developer contends is usually earned by a Developer who undertakes the risk of a development and would hardly arise in the circumstances where the land to be developed was owned by the client, the Developer outlaid no funds in the construction of the Project and took no risk.
42. The Agreement expressly limits the Developer's role to providing the array of services set out therein for which it is to be paid a fixed fee of \$5000:

"In consideration of Developer's Services, Property Owners shall pay to the Developer five thousand Cayman Islands Dollars (CI\$5000) as outlined with the design and construction estimate for the Project" (the "Developer's Fee").
43. This fee was paid in full by Ms Mercille.

Claim for damages for defamation

The Law

44. The law of slander is set out in Halsbury's Laws of England, Volume 32 [Defamation] where it is stated at para 511:

"Actionable slander.



A slander for which a claim will lie is a defamatory statement, made or conveyed by spoken words, sounds, looks, signs, gestures or in some other non-permanent form, published of and concerning the claimant, to a person other than the claimant, by which the claimant has suffered actual damage, often referred to as special damage, which he must allege and prove, or which is actionable per se at common law or where the words are calculated to disparage the claimant in any office, profession, calling, trade or business carried on by him at the time of publication."

45. The more apposite statement of the law in light of the pleaded case, appears in Chap 517:

"Slander Actionable per se

An oral defamatory statement is actionable per se, that is without proof of special damage, if:

- (1) it is calculated to disparage the claimant in any office, profession, calling, trade or business held or carried on by him at the time of the publication;*
- ...*
- (3) it imputes that the person of whom the words are published has committed a crime punishable by imprisonment."*

46. The matters which are required by the Order 18 to be pleaded include the precise words used and the names of the persons to whom they were uttered: see *White Book*, note 18/12/42

Discussion and Decision

47. In her Reply to the Developer's Counterclaim as originally pleaded, Ms Mercille asserted that the Developer's claim for 'reputational damages' claim was not sufficiently particularized. Notwithstanding this criticism, the Developer did not condescend to pleading any further particulars of its reformulated claim for defamation in its Amended Defence.
48. The only particularised allegation of slander is that Ms Mercille accused the Developer and/or Ms Ritch of forgery. With respect to communication to a person other than the Plaintiff, the pleadings go no further than asserting that Ms Mercille repeated the allegation "*to third parties.*" The counterclaim in slander thus falls to be struck out on the ground that it discloses no reasonable cause of action.
49. The want of particularity in the pleaded case was not augmented by the evidence on which the Developer relies. The complaint that Ms Mercille slandered the Developer and/or Ms Ritch has its genesis in an email written by Ms Mercille which states as follows:

"On Mon, 4 Jan 2021, 10.14 am Joanne Mercille wrote:



Megan & John

Kindly honour your debt as outlined within the Agreement that governs this relationship as we continue to do! We also would "Passionately" like to settle this account since Steel Dreams has not delivered any goods or services in the past 9 months.

AMR - Roof had to be reworked

HVAC, Electrical/plumbing - Forged documents or non-existent

Architectural - Had to be redone to code.

BCU - Never submitted plans, lied to Omar about having the red card.

We trust that you would build our "Dream home" and funded up this project from the start.

Agreed terms are in the contract that you broke and continue to break with added cost without invoices outside this agreement.

Joanne"

50. In her witness statement, Ms Ritch stated that Ms Mercille made criminal allegations against her in that email:

"38. Within this email ... received on 4 January 2021 the Plaintiff proceeded to make criminal accusations of me as Project Director of the Company as well as to make it appear that the engineers had made some structural errors:

'AMR - Roof had to be reworked

HVAC, Electrical/plumbing, - forged documents or non-existent

Architectural – Had to be redone to code..

BCU – Never submitted plans, lied to Omar about having the red card.'

*39. The Plaintiff **accuses me of forging documents** within the above claims made within the said email and it has become apparent that the claims relate to the electrical drawings which she herself was copied on the email as I directed the Florida-based architects to assist with the electrical layout. The Florida Architects, using the plans which had been designed years before for my personal home by George Manderson Jr as a guide of our expectations in the usual fashion also used the sheet layout of our personal home plans and although they removed most of the sheet layout's content they omitted to remove Mr Manderson's initials which is an amendment I had already noted with intention to address as it was not the first time we had received another architectural company's name or detail within a plan done by the Florida company. I sent these drafts over to the Plaintiff by email on 19 August 2020 for her feedback on the layout, explaining within that email that I had noted a few things myself and was still reviewing the plans.*



45. *Due to the Plaintiff's outrageous behaviour, claims, actions and accusations, it became evident that the Plaintiff was going far beyond the realm of professional and business communication and actions to purportedly 'receive funds due to her', I advised that it was not possible to simply make a payment to her without proper settlement agreement in place; my primary concern was to ensure that the settlement included provision for derogatory comments and/or claims by the Plaintiff thereafter as she had displayed the ability and mentality to be a very damaging individual. At one point my Partner witnessed her husband suspiciously in our neighborhood in front of my family's home in his vehicle; I found it necessary to address this and their other conduct in my email on 4 January 2021 as there are only three home on our private drive.*
46. *The morning of 26 January 2021 I proceeded to email the Plaintiff an update to let her know I had managed to get the settlement agreement together and apologized for the delay. I briefly explained I had been in and out of hospital as I had suffered two miscarriages between September 2020 and January 2021. It appears that my email was in transit at the same time as the Plaintiff's process server, as on 26 January 2021 the company was served with a Writ of Summons, I emailed the Plaintiff on 26 January 2021 confirming I was in receipt of the Summons and would have to contest the Claim and expressed agreement that this situation would be better overseen by a third party such as the Court as I was mentally and emotional drained from dealing with the Plaintiff's unexplainable and outrageous actions. I filed the Acknowledgment of Service, filed a Defence attended court and have since further reflected on all the events of the previous year and have determined that the Plaintiff is indebted to the Company for hours of out-of-scope work which I performed and was never given the opportunity to be compensated for as the Plaintiff launched her series of attacks. On reflection, it was perhaps unwise of me to do all that I could to accommodate the Plaintiff's changes but instead of receiving her gratitude she became more demanding and when I finally began to gain clarity on exactly what was taking place and push-back on these requests (such as the Treehouse, the temporary power pole, and at one point she also insisted that we install a pre-made roof on her shed which was rotting to bits, and the Company and Contractor repeatedly refused to do so as the Contractor feared getting injured by it and also knew it was a compromised structure not worth of reuse). Sadly the relationship degenerated into the Plaintiff making unwarranted accusations and to publishing those accusations to our subcontractors and other professionals with whom we do business."*

51. I make the following observations with respect to this evidence:



- (i) The allegation of forgery, such as it is, would be a libel as it was in writing;
- (ii) The email was not, on any of the evidence given by Ms Ritch, published to third parties;
- (iii) There was no evidence to show that the allegation of forgery, made in that email, was uttered to any third party.
- (iv) Ms Ritch, in her evidence, says the allegation was made against her as Project Manager, not Director, in which event, she would be the proper plaintiff and not the Developer.
- (v) none of the "*unwarranted accusations*" of which Ms Ritch complains in paragraph 46 of her witness statement are particularised nor are the persons, to whom those accusations were allegedly repeated, identified.

52. The claim for defamation is hopeless and is dismissed, with costs.

ORDER

53. The sum of \$40,262.92 is to be paid to by the Developer to Ms Mercille forthwith with costs to be assessed and paid forthwith.

DATED THE 16th DECEMBER 2022.

A handwritten signature in blue ink, appearing to read "A. Hale", written over a horizontal line.

Hon Margaret Ramsay-Hale
Chief Justice