

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Pacific Granite Manufacturing Ltd. v. Lee*,
2024 BCSC 1790

Date: 20240927
Docket: S222886
Registry: Vancouver

Between:

Pacific Granite Manufacturing Ltd., Nader Tabrizi and Alireza Beittoei
Plaintiffs

And

Hyungdong Lee
Defendant

Before: The Honourable Justice Mayer

Reasons for Judgment

Counsel for the Plaintiffs: R. King

No other appearances

Place and Dates of Trial: Vancouver, B.C.
August 19-20, 2024

Place and Date of Judgment: Vancouver, B.C.
September 27, 2024

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Introduction

[1] In this defamation action the plaintiffs Pacific Granite Manufacturing Ltd., Nader Tabrizi and Alireza Beittoei seek general, aggravated and punitive damages against the defendant Hyungdong Lee. The plaintiffs' claim arises from three publications made by Mr. Lee, in October 2021 and March 2022, in the form of negative reviews posted on Pacific Granite's Google.com webpage. Mr. Lee posted the reviews after a vehicle owned by one of Pacific Granite's employees, a white Impala, collided with Mr. Lee's parked vehicle and, according to Mr. Lee, fled the scene.

[2] In addition to an award of damages the plaintiffs seek an injunction prohibiting Mr. Lee from posting further comments online about the alleged collision or this litigation.

[3] Mr. Tabrizi and Mr. Beittoei testified on their own behalf and on behalf of Pacific Granite at trial as did an employee, Colby Sutherland.

[4] Although Mr. Lee filed a response to the plaintiffs' claim he did not otherwise participate in this litigation. He failed to respond to a notice to admit delivered by the plaintiffs in August 2022, which failure results in the deemed admission of the facts set out in the notice to admit. Further, despite receiving notice, Mr. Lee did not appear at trial to defend the claims made against him.

Background

[5] Pacific Granite is a British Columbia company based in Coquitlam, British Columbia and is in the business of manufacturing, supplying and installing granite, marble and stone countertops for both high-rise and single-family residential projects. The company has approximately 22 employees and performs work in British Columbia, Alberta and the United States and purchases product from suppliers from all over the world.

[6] Mr. Tabrizi and Mr. Beittoei are the owners, directors and senior managers of Pacific Granite. Mr. Beittoei is responsible for fabrication and installation and Mr. Tabrizi is responsible for administration and marketing.

[7] Mr. Tabrizi testified that the stone countertop business is very competitive. He says that for a typical large high-rise project, Pacific Granite competes with approximately twenty other countertop suppliers for such work.

[8] Mr. Lee resides in the Vancouver Lower Mainland and worked at a business operating close to Pacific Granite's location in Coquitlam.

[9] Mr. Tabrizi testified that he met with Mr. Lee at Pacific Granite's offices in September 2021 and had a discussion with him concerning the collision between the white Impala and Mr. Lee's vehicle. He testified that he told Mr. Lee that the white Impala belonged to a Pacific Granite employee, Mr. Kennedy, but was not used for business purposes. He testified that he told Mr. Lee the collision had nothing to do with Pacific Granite and suggested that Mr. Lee come back at the end of the day if he wished to speak with Mr. Kennedy. Finally, he testified that he suggested Mr. Lee contact ICBC and that Mr. Lee was very angry.

[10] In his response to civil claim Mr. Lee pleaded that on September 24, 2021, an employee of Pacific Granite damaged his vehicle and fled the scene. He pleaded that after reporting a hit and run to the RCMP, he met with a representative of Pacific Granite who denied that one of their employees was involved in a collision with his vehicle. He admitted that he wrote and posted the Google Review which he pleaded had been seen by "a lot of people" including employees of the company where he worked.

[11] The deemed admissions, which concern the publications made by Mr. Lee and the plaintiffs' requests that they be removed, are as follows:

1. In October 2021 Mr. Lee posted a review about Pacific Granite on the website Google.com which read as follows:

Pacific Granite Manufacturing Ltd. 915 Tupper Ave, Coquitlam, BC

...

HYUNGDONG LEE

...

Please never do business with this place. I work for a company one block up from here. It's a shame that people and employees like you work close to our company. You will remember my face because I visited the store to check the CCTV. This company has employees who own the Chevrolet Impala (White). September 24th at 10:06AM. Who works for this company hit and ran my car. at Sherwood Ave. Fortunately, an employee at a concrete company told me the plate number, the vehicle, and where the car was often parked in front of the company. I got a lot of CCTV with the help of people working at Automind Collision and NRG Electric. Thanks to you, we have successfully completed the report to RCMP and ICBC. But the boss and the staff here lied to the end.

(the "Google Review")

2. Along with the Google Review Mr. Lee uploaded three photographs including a photograph of an RCMP vehicle parked on the street outside his work premises, a photograph of the rear of the white Chevrolet vehicle which Mr. Lee claimed collided with his vehicle and a photograph of the premises of Pacific Granite.
3. On March 11, 2022 legal counsel for the plaintiffs wrote to Mr. Lee and demanded that he remove the Google Review and replace it with an apology.
4. On or about March 16, 2022 Mr. Lee removed the Google Review, which he replaced with the words "It's a shame that people and employees like you work close to our company" but left the three photographs he posted in October 2021 (the "Revised Google Review").
5. On or about March 16, 2022 Mr. Lee received a letter from legal counsel for the plaintiffs dated March 15, 2022 acknowledging that he had removed the Google Review but demanding that he remove the photographs and post an apology.
6. On or about March 17, 2022 Mr. Lee removed the Revised Google Review but left the photographs and published the following under the section "Questions and Answers":

Pacific Granite Manufacturing Ltd. 915 Tupper Ave, Coquitlam, BC

← All questions

HYUNGDONG LEE

I will be sued by this company

An employee working at Pedron Contracting witnessed for the first time that white Impala damaged my car and ran away.

He said saw white Impala around the company every day on his way to work.

With the help of NRG Electric and AutoMind employees, we received CCTV and confirmed that the licence number of the white Impala he told us 100% matched.

And after walking around the company I found white Impala in front of Pacific Granite.

And I met the Pacific Granite owner and talked to him.

He said my employee's car was right and However the employee has been working for a long time, and he said there is no reason to go where your car was because he worked Around here for a long time.

*Because there was no exit where my car was parked,

And he wouldn't let me meet him and talk to him.

(the "Further Revised Google Review")

[12] Colby Sutherland, a project manager for Pacific Granite, testified that he saw the Google Review in early March 2022 when he made a Google search for Pacific Granite.

[13] Mr. Tabrizi first became aware of the Google Review after he was told about the publication by Mr. Sutherland. After approaching Mr. Lee at his workplace in March 2022 to ask him to remove the post, and being rudely rebuffed, Mr. Tabrizi instructed his legal counsel to take steps to force Mr. Lee to do so and ultimately, to commence this litigation.

[14] At trial Mr. Tabrizi submitted evidence in the form of Google reports for the period from March 2022 until December 2023 showing the number of views of Pacific Granite's Google.com webpage. These records show that there was an average of 357 views per month during this period. The plaintiffs were unable to obtain Google reports showing the number of views of Pacific Granite's Google.com page for the period between October 2021, when the Google Review was published and March 2022, when it was withdrawn. Mr. Tabrizi suggested in his testimony that it is likely that a similar number of people visited Pacific Granite's Google.com page prior to March 2022.

Summary of the Plaintiffs' Defamation Claims

[15] The plaintiffs contend that when considered individually or collectively the publication of the words in the Google Review, the Revised Review and the Further Revised Review and the photographs posted along with these words (collectively the "Publications") have defamed each of them. In particular, they contend that the Publications meant or implied that Pacific Granite and its management and employees could not be trusted and conducted their business in a shameful, dishonourable, dishonest, unlawful and criminal manner. They also contend that the Publications can only be understood to be a warning to readers not to do business with Pacific Granite because their management is shameful, dishonourable and could not be trusted. Finally, they contend that the Publications meant or implied to other review writers that Pacific Granite would sue them if they posted a factually true complaint on Pacific Granite's Google.com page.

[16] In addition, the plaintiffs say that the Publications clearly refer to Pacific Granite, given that they were posted on the company's Google.com page. Further, they contend that the Google Review inferentially refer to Mr. Tabrizi and Mr. Beittoei who would have been known by readers, with knowledge of Pacific Granite, to be its "bosses".

[17] The plaintiffs seek general, aggravated and punitive damages totalling \$105,000. I will outline the plaintiffs' basis for these claims later in these reasons, along with addressing the plaintiffs' application for an injunction.

Defamation - Legal Framework

[18] As set out in *Grant v. Torstar Corp.*, 2009 SCC 61 at para. 28, a plaintiff in a defamation action must prove three things on a balance of probabilities:

- (1) that the impugned words were defamatory, in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person;
- (2) that the words in fact referred to the plaintiff; and (3) that the words were published, meaning that they were communicated to at least one person other than the plaintiff.

[19] A defamatory meaning can be conveyed in the following circumstances: where the literal meaning of the words complained of are defamatory; if the words complained of are not defamatory in their natural and ordinary meaning, but their meaning based upon extrinsic circumstances unique to certain readers (the “legal” or “true” innuendo meaning) is defamatory; or, if the inferential meaning or impression left by the words complained of is defamatory (the “false” or “popular” innuendo meaning): *Lawson v. Baines*, 2012 BCCA 117 at para. 13.

[20] In this case the first and third circumstances apply – being whether the literal meaning of the words complained of is defamatory and whether a defamatory meaning can be inferred.

[21] Where a claim is based on the inferential meaning of words, the question becomes: what would the ordinary person infer from the words in the context in which they were used? *Weaver v. Corcoran*, 2017 BCCA 160 at para. 72, [*Weaver*].

[22] A helpful summary of the test for what constitutes a defamatory statement was set out in *Holden v. Hanlon*, 2019 BCSC 622 at para. 182:

[182] ...a defamatory statement is one which has a tendency to injure the reputation of the person to whom it refers and to lower him or her in the estimation of right-thinking members of society generally. An ordinary, right-thinking member of society is someone “who is reasonably thoughtful and informed, rather than someone with an overly fragile sensibility”: *Bou Malhab v. Diffusion Métromédia CMR inc.*, 2011 SCC 9 at para. 36. A degree of common sense must be attributed to readers.

[183] With respect to meaning, the court's role is to objectively determine what a reasonable and right-thinking reader would have understood from the words that were published. The determination of the meanings anchors the analysis because it frames what must be proven under the various pleaded defences.

Issues

[23] Given Mr. Lee’s deemed admissions and his pleading, there can be no dispute, and I find, that the Publications were all authored and published by him. As well the evidence at trial establishes that the Google Review was communicated to at least one person, Mr. Sutherland. Mr. Tabrizi’s evidence with respect to the profile

views of Pacific Granite’s Google.com page supports an inference, which I make, that each of the Publications were read by at least one other person between the time of their publication and removal.

[24] As a result, what is left is for this Court to decide whether the remaining elements of the tort of defamation have been proven in this case, including:

- a) Whether the impugned words and images in each of the three relevant publications carried a defamatory meaning such that they lowered the plaintiffs’ reputations in the eyes of a reasonable person; and
- b) Whether the impugned words and images in fact referred to each of the plaintiffs.

[25] In addition, this Court must determine whether an injunction prohibiting further publications by Mr. Lee on any of Pacific Granite’s social media webpages is necessary.

Analysis - Defamation

Should the Publications be Evaluated Collectively or Individually?

[26] I first address, as a threshold issue, the question of whether a defamatory meaning should be determined separately for each of the publications, or whether the publications should be read together to determine whether the words used are defamatory – the former being the primary position of the plaintiffs and the latter being their alternative position.

[27] In *Wilson v. Switlo*, 2011 BCSC 1287 at para. 139, Justice Punnnett, as he then was, reasoned that multiple statements on a related issue should be read together to determine whether the words used are defamatory. The defamatory publications at issue included a number of oral statements and written publications concerning a dispute between hereditary leaders and elected representatives of the Haisla Nation regarding an LNG project in Kitimat. I do not find the circumstances in this case to be similar.

[28] In this case the Google Review, Revised Review and Further Revised Review do not refer to each other. The Revised Review includes only one sentence, which was also included in the Google Review, being: “it’s a shame that people and employees like you work close to our company”. The Further Revised Review set out Mr. Lee’s comment “I will be sued by this company” and set out information concerning his attempt to locate and speak with the owner of the white Impala which struck his vehicle.

[29] In addition, the Google Review, Revised Review and Further Revised Review were not available to readers at the same time. The Google Review was published in or about October 2021 and remained online until it was removed on or about March 15, 2022, with the exception of photographs and the sentence “it’s a shame...”. The Revised Review was published the same day and remained online until it was removed on March 17, 2022. The Further Revised Review was published on March 17, 2022. The only direct evidence before the Court is that the Mr. Sutherland read the Google Review.

[30] I do not find that the Publications constitute multiple statements on a related issue. There is no evidence before the court that anyone read more than one of these publications and therefore would likely have evaluated them collectively. As a result, I conclude that each of the publications should be analysed for defamatory meaning independently.

Is the Google Review Defamatory?

[31] As was set out in *Pan v. Gao*, 2020 BCCA 58 at paras. 101 and 102, it is generally defamatory to suggest that someone has lied because this word tends to bring the person named into hatred, contempt or ridicule.

[32] I find the publication of the words “[b]ut the boss and the staff here lied to the end” to be literally defamatory. They accuse the management and staff of Pacific Granite, on whose Google.com page the review was posted, of being liars. As well, in the context of the Google Review, which concerned the alleged hit and run of Mr. Lee’s vehicle, a reasonable reader may infer that management and staff of

Pacific Granite lied about this incident. I find that both the literal and inferential meanings I have found would tend to lower the plaintiffs' reputations in the eyes of a reasonable person.

[33] In addition to being called liars, the plaintiffs contend that when read in its entirety, the Google Review along with the photograph of the RCMP vehicle, also infer, in summary, the following defamatory meanings about them:

- a) that the plaintiffs are shameful, disgraceful or contemptible or dishonourable or immoral, or unethical, or disreputable, or without principles of integrity such that no one should want to do business with them;
- b) that the plaintiffs conduct their business shamefully, or disgracefully, or contemptibly, or dishonourably, or immorally, or unethically or disreputably, or dishonestly, or deceitfully, or without principles or integrity such that no one would want to do business with them;
- c) that the plaintiffs are not worthy of any member of the public doing business with them;
- d) that the plaintiffs are not worthy of trust;
- e) that Pacific Granite is responsible and liable for its employee hitting Mr. Lee's vehicle, and failed to accept responsibility for this act; and
- f) that the plaintiffs engaged in unlawful, illegal or criminal activity that resulted in the necessity for the RCMP to attend.

[34] In support of this contention the plaintiffs refer to the words "[i]t's a shame that people and employees like you work close to our company" (emphasis added). The plaintiffs contend that the use of the words "it's a shame" are equivalent to an accusation of general shameful conduct on their part. I disagree.

[35] In the *Concise Oxford English Dictionary*, 11th ed (New York: Oxford University Press, 2006) at 1322, the word “shame” is alternatively defined as: (1) “a feeling of humiliation or distress caused by the consciousness of wrong or foolish behaviour”; (2) “dishonour”; or (3) “a regrettable or unfortunate thing”. In my view, the word “shame” in the Google Review is most reasonably interpreted as “a regrettable or unfortunate thing”. Therefore, the words “it’s a shame” would be interpreted by the reasonable reader to mean “it’s too bad” or “it is unfortunate”. I do not find that a reasonable and right-thinking reader would have understood from these words the various meanings proposed by the plaintiffs as I summarized in the above paragraphs – with the exception of a lack of trustworthiness on their parts.

[36] The plaintiffs also submit that by including a photograph of an RCMP vehicle along with the Google Review, Mr. Lee implied that an employee of Pacific Granite lied to cover up its role in a car accident resulting in a criminal investigation of the plaintiffs. In my view, this is not a conclusion a reasonable and right-thinking reader would make. The Google Review clearly states that a person who worked for Pacific Granite hit Mr. Lee’s car and ran away. A reasonable person might conclude that the RCMP were somehow involved after this incident occurred in determining the identity of the driver but, it is an extreme stretch to conclude that a reasonable person would conclude that the RCMP were investigating unlawful conduct by the plaintiffs.

Is the Revised Google Review Defamatory?

[37] The Revised Google Review consisted of only the words “it’s a shame that people and employees like you work close to our company”. As I have already found the words “it’s a shame” do not suggest shamefulness or other nefarious conduct. I do not find that these words, even in combination with the words “like you”, tend to injure the reputation of the plaintiffs, when viewed through the lens of a right-thinking member of society generally. Although there is little doubt that these words express Mr. Lee’s dislike of the employees of Pacific Granite, expressing dislike is not in and of itself defamatory. In my view, a reasonable person would likely be uncertain what meaning the words used in the Revised Google Review were intended to convey.

[38] The fact that the photograph of the RCMP vehicle remained posted by Mr. Lee along with the Revised Google Review does not in my view lead to the inevitable inference that any of the plaintiffs were involved in criminal activity – as is suggested by the plaintiffs. At most, the posting of the photograph of the RCMP vehicle along with the Revised Google Review might suggest that the RCMP were investigating something to do with employees of Pacific Granite. This is not equivalent to suggesting that Pacific Granite or its employees were engaged in criminal conduct. As was stated in *Catalyst Capital Group Inc. v. West Face Capital Inc.*, 2021 ONSC 7957 at para. 138, reporting a police investigation into possible criminal conduct, which is not as a matter of law capable of lowering the reputation of a party in the eyes of an ordinary person, is not the same as accusing a person of engaging in criminal activity, which may be defamatory.

Is the Further Revised Google Review Defamatory?

[39] The plaintiffs contend that the Further Revised Google Review, along with the photograph of the RCMP vehicle, infers, in summary, the following defamatory meanings about them:

- a) That Pacific Granite owned the white Impala vehicle that damaged Mr. Lee’s vehicle, and the damage occurred in the course of Pacific Granite’s business making them liable;
- b) That the driver of this vehicle ran away to shield Pacific Granite from liability;
- c) That Pacific Granite sought to shield its employee from liability for damaging Mr. Lee’s vehicle;
- d) That Pacific Granite resorted to this lawsuit to avoid taking liability for damaging Mr. Lee’s vehicle;

- e) That Pacific Granite conducts its business without integrity, honesty, honour or principles and is otherwise not worthy of doing business with; and
- f) That the plaintiffs engaged in unlawful, illegal or criminal activity.

[40] The Further Revised Review Google Review starts with Mr. Lee's comment "I will be sued by this company" and follows with Mr. Lee's description of his investigation leading to his conclusion that the owner of the white Impala which hit his vehicle worked at Pacific Granite. In this post Mr. Lee also refers to an "owner" of Pacific Granite and says that "he wouldn't let me meet him and talk to him". In addition to these words the photograph of the RCMP vehicle was left on Pacific Granite's Google.com page.

[41] In my view, none of the words used by Mr. Lee in the Further Revised Google Review literally or inferentially have any of the defamatory meanings proposed by the plaintiffs. The words concerning Mr. Lee's investigation into the ownership of the white Impala that struck his vehicle are not defamatory. As well I do not find that the words "I will be sued by this company" tend to injure the reputation of the plaintiffs by suggesting they use litigation as a weapon – but simply indicate Mr. Lee's belief that he was going to be sued. In my view, it is possible that a right-thinking reader would not know what to make of this comment. Finally, the words suggesting that an owner of Pacific Granite would not let Mr. Lee meet with the owner of the white Impala, by themselves or in combination with any of the other words in this posting, are not suggestive of any dishonest or other nefarious conduct on the part of the plaintiffs.

[42] For the reasons set out earlier, the continued posting of an image of an RCMP vehicle along with the Further Revised Google Review does not on its own have a defamatory meaning and does not give the words used in this post a defamatory meaning.

Do the Publications Refer to Each of the Plaintiffs?

[43] Given my findings above it is only necessary to consider whether the Google Review referred to each of the plaintiffs.

[44] Once defamatory meaning is established a plaintiff must prove factually that the words in question referred to them. Further, where a plaintiff is not specifically named the question becomes whether a reader who knew the plaintiff would, in light of the surrounding circumstances, reasonably believe that the publication at issue referred to the plaintiff: *Malak v. Hanna*, 2019 BCCA 106 at para. 77 referring to *Weaver* at para. 84.

[45] I have little trouble concluding that the defamatory meanings contained within the Google Review referred to Pacific Granite, given that the review was posted on the company’s Google.com page. Further, given the evidence establishing that Mr. Tabrizi and Mr. Beittoei were the owners and senior managers of Pacific Granite, I infer that a person familiar with their role with the company would interpret the words “...the boss and the staff here lied to the end” as a reference to them.

Summary of Findings on Defamation

[46] Of the three publications at issue in this case, I find that only the Google Review contained words which have a defamatory meaning. Use of the word “lied” with reference to Pacific Granite’s bosses literally means the bosses, Mr. Tabrizi and Mr. Beittoei, were liars. As well, use of the words “[b]ut the boss and the staff here lied to the end” in the context of the remaining words in the Google Review infers that Pacific Granite’s bosses, Mr. Tabrizi and Mr. Beittoei, lied about the involvement of their employee in the collision between Mr. Kennedy’s white Impala and Mr. Lee’s vehicle.

[47] The law is clear that defamation targeting those in control of a company may be actionable by the company itself: *Malak v. Hanna*, 2019 BCCA 106 at para. 78. I find that the defamatory words in the Google Review referred to all of the plaintiffs.

[48] I conclude that the defamatory meaning in the Google Review would tend to lower the plaintiffs' reputations in the eyes of a reasonable person.

Analysis - Damages

[49] As I outlined earlier the plaintiffs seek general, aggravated and punitive damages from Mr. Lee totalling \$105,000. I will deal with each of these heads of damage separately.

General Damages

[50] In *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130 at para. 164, 1995 CanLII 59 [*Hill*], Justice Cory stated that "general damages in defamation cases are presumed from the very publication of the false statement and are awarded at large".

[51] The expression "at large" is explained in *Cassell & Co. Ltd. v. Broome*, [1972] 1 All E.R. 801 at 824, [1972] W.L.R. 645 (H.L.), where Lord Hailsham stated, *inter alia*, that actions for defamation:

... may put the plaintiff in a purely financial sense in a much stronger position than he was before the wrong. Not merely can he recover the estimated sum of his past and future losses, but, in case the libel, driven underground, emerges from its lurking place at some future date, he must be able to point to a sum awarded by a jury sufficient to convince a bystander of the baselessness of the charge ...

... Quite obviously, the award must include factors for injury to feelings, the anxiety and uncertainty undergone in the litigation, the absence of apology, or the reaffirmation of the truth of the matter complained of, or the malice of the defendant.

[52] In *Mann v. International Association of Machinists and Aerospace Workers*, 2012 BCSC 181 at paras. 131–132, citing *Hill* at paras. 168, 182, Justice Masuhara stated that there is no cap placed on general damages for defamation and listed the following factors that may be relevant in assessing such damages: the plaintiff's conduct, position and standing; the nature of the defamation; the mode and extent of publication; the absence or refusal of any retraction or

apology; and the whole of the defendant's conduct from the time of publication to the end of trial.

[53] I will consider each of these factors in light of the facts of this case.

The Nature and Seriousness of the Defamation

[54] I find the defamatory statement included by Mr. Lee in the Google Review to be serious because it impugned the reputation of the management of Pacific Granite by calling them liars.

[55] Although calling someone a liar is serious, this is not a situation in which Mr. Lee's comments were directed at the truthfulness of the way that Mr. Tabrizi or Mr. Beittoei conducted the business of Pacific Granite. Read in context, this publication makes a general allegation that the one of the bosses of Pacific Granite had lied concerning the circumstances of the collision between Mr. Kennedy's white Impala and Mr. Lee's vehicle. In my view this somewhat reduces the impact of the defamatory sting on Pacific Granite.

[56] In addition, because Mr. Lee did not specifically mention Mr. Tabrizi or Mr. Beittoei in the Google Review it is possible that some people reading the review would not know that they were one of Pacific Granite's bosses. As a result, the defamatory sting to them is somewhat lessened.

Conduct, Position and Standing

[57] There is no evidence establishing that Mr. Tabrizi or Mr. Beittoei's conduct in any way justified the defamatory comments in the Google Review published by Mr. Lee that they "lied to the end". Mr. Lee chose not to testify at trial and I accept Mr. Tabrizi's evidence concerning his interaction with Mr. Lee after the alleged accident. Mr. Tabrizi testified that he told Mr. Lee that his employee, Matthew Kennedy, was the owner of the white Impala, that he did not use his car for business purposes and suggested that Mr. Lee come back at the end of the workday if he wished to speak to him.

[58] The evidence at trial establishes that Mr. Tabrizi and Mr. Beittoei have been in the stone installation business for most of their lives and have operated Pacific Granite since its creation in 1995. The plaintiffs' prominence in this business is established by the evidence that Pacific Granite has completed a large number of small and large-scale stone installation projects, including significant projects in British Columbia. As such, I am satisfied that the plaintiffs have a high status in the stone installation business.

The Mode and Extent of Publication

[59] In this case the Google Review was posted by Mr. Lee to Pacific Granite's Google.com page for a period of approximately five months before it was removed by Mr. Lee. During this period the Google Review would have been potentially visible to any person who searched for Pacific Granite's website using Google.

[60] It is not entirely clear how many of Pacific Granite's individual customers or suppliers would have had occasion to search for Pacific Granite's website and seen the Google Review after it was posted in October 2021. Although I am satisfied that at least one employee did so, Mr. Sutherland, I note that Mr. Tabrizi himself did not become aware of this publication until Mr. Sutherland brought it to his attention in March 2022. This does not lead to a conclusion that a large number of people doing business with Pacific Granite read this publication. I am aware of Mr. Lee's pleading that this publication was seen by a "lot of people" that he worked with – but there is no evidence of the impact on any of the plaintiffs' reputations.

[61] This is not a situation in which Mr. Lee made a number of defamatory publications on a variety of internet platforms. It appears that the single Google Review was published after Mr. Lee became frustrated in his attempts to locate the person who struck his vehicle and ran away.

Retraction or Apology

[62] Mr. Lee plead that after he posted the Google Review he essentially forgot about it "for a long time". Within one or two days of receiving correspondence from

legal counsel for the plaintiffs asking that he remove the publication and issue an apology - which I find likely occurred on March 15, 2022, Mr. Lee removed the Google Review.

Conduct of Mr. Lee

[63] Although Mr. Lee did eventually remove the Google Review when he received a letter from the plaintiffs' legal counsel, he had rudely rebuffed Mr. Tabrizi's request to do so, made a few days earlier. In addition, although I do not find that the Revised Google Review and Further Revised Google Review are defamatory, I also consider these publications in evaluating his conduct after publishing the Google Review and before trial. It does not appear that Mr. Lee had any insight into the harmful impact of the defamatory comments included within the Google Review.

Assessment of General Damages

[64] Pacific Granite and Mr. Tabrizi seek general damages of \$30,000 each and Mr. Beittoi seeks general damages of \$10,000. To support these claims the plaintiffs rely primarily on three decisions.

[65] In the first, *D'Alessio v. Chowdhury*, 2023 ONSC 6075, the defendant posted a google review claiming their legal counsel in a person injury case was highly negligent, highly unprofessional, disorganized and not trustworthy. The court found that the words used by the defendant harmed the plaintiffs' legal and business abilities and reputation and awarded damages of \$20,000, in total, to the law firm and two lawyers. The impugned publication remained public for just under three months and the defendant refused to apologize or take down the review.

[66] In the second case relied upon by the plaintiffs, *Houseman v. Harrison*, 2020 SKQB 36, the defendants, dismissed employees, had posted nine reviews on the website Rate MDs about the plaintiff, a dentist. The defendants' anonymous postings were framed as coming from disgruntled clients and included comments alluding to deficient dental work and a lack of professionalism. The plaintiff was awarded \$50,000 in general damages.

[67] In the third case relied upon by the plaintiffs, *Peterson v. Deck*, 2021 BCSC 1670 [*“Peterson”*], the defendant posted two negative Google reviews after receiving plastic surgery from the plaintiff. In particular, the defendant posted that the plaintiff made mistakes during her surgery and took a “couldn’t care less” approach to concerns after surgery. The plaintiff was awarded general damages of \$30,000.

[68] The common thread in each of the cases relied upon by the plaintiffs is that the defamatory comments impugned the competence of plaintiffs’ professional abilities. These cases are therefore not directly analogous to the case at bar.

[69] The objectives of a general damages award are threefold: to act as consolation for the distress suffered as a result of the defamation; to repair damage to reputation and to vindicate the plaintiff or their business reputation: *Peterson* at para. 105, referring to *Turco v. Dunlop*, [1998] B.C.J. No. 2711 at para. 75 (S.C.), and *Rutman v. Rabinowitz*, 2016 ONSC 5864 at paras. 214-215.

[70] When a corporate plaintiff is defamed, the objective of damages is “to compensate for the harm to the corporation’s goodwill and business reputation. It may be difficult to quantify the damages, but that does not mean that a corporate plaintiff is not entitled to general damages for defamation”: *Malak v. Hanna*, 2023 BCSC 1337 at para. 182, citing *Dover Investments Limited v. Transpacific Petroleum Corp.*, 2009 BCSC 1620 at paras. 19, 22.

[71] In *Best v. Weatherall*, 2010 BCCA 202, Justice Frankel discussed the difficult process of arriving at a proper damage award following a finding of defamation:

[46] There are many different statements intended to capture the difficulty of assessing the quantum of damages in defamation cases. It has been said that the calculation of damages for defamation is speculative and an inexact science, that there is no objective measure, and that damages need not be calculated mathematically. Further, although damages for defamation are difficult to assess, courts should sensibly and rationally attempt to arrive at a monetary sum that will compensate the plaintiff appropriately, i.e., *achieve restitutio in integrum*. Such an award should provide “solatium, vindication and compensation”: see Brown, *The Law of Defamation*, vol. 3 at 25-7 - 25-11.

[72] While damages are presumed in defamation, there is no minimum floor for damage awards and no presumption that “damages must be substantial”: *Chase v. Anfinson*, 2018 BCSC 856 at para. 140, citing *Boehmke v. Grant et al*, 2010 BCSC 682 at para. 158 and *Spence v. Hamlyn*, 2010 NLCA 24 at para. 48.

[73] In *Port Alberni Shelter Society v Literacy Alberni Society*, 2021 BCSC 1754 at para. 103, citing *Hudson v Myong*, 2020 BCSC 517 at para. 160, Justice Matthews stated that the presence of the following factors leads to a high general damage award:

- i. Allegations of criminal conduct: *John v. Kim*, 2007 BCSC 1224 at para. 100;
- ii. Extensive circulation of the defamatory statements within the particular chosen audience: *John* at para. 99;
- iii. Reporting of defamatory allegations made by third parties with no investigation as to the truth of the underlying allegations: *John* at para. 100;
- iv. Continuing to make defamatory statements after receiving a cease and desist letter warning that previous statements were false and defamatory: *Taubenfligel v. Mansfield*, 2008 BCSC 1553 at para. 8;
- v. The credence given to the defamatory statements by those who heard or read it: Raymond E. Brown, *The Law of Defamation*, 2nd ed. (Toronto: Carswell, 1994) at 1491;
- vi. The repetition of defamatory statements during the trial: Brown at para. 86;
- vii. The pleading and maintaining of ultimately unsuccessful defences of justification and fair comment: *Elkow v. Sana*, 2018 ABQB 1001 at para. 25; *John* at para. 98;
- viii. A plea of justification which the defendant knew was bound to fail: *Hill* at para. 191;
- ix. The nature and motive of the defendant’s defamatory statements: *Focus Graphite Inc. v. Douglas*, 2015 ONSC 1104 at para. 54;
- x. Conduct calculated to deter the plaintiff from proceeding with a libel action: *Hill* at para. 191;
- xi. The presence of malice: *Focus Graphite* at para. 54;
- xii. The speed, scope and pervasiveness of internet-based publication: *Barrick Gold Corp. v. Lopehandia* (2004), 2004 CanLII 12938 (ON CA), 71 O.R. (3d) 416 (C.A.) at paras. 30–34; and
- xiii. The absence of an apology: *Hill* at para. 182.

[74] In my view the only factor set out by Justice Matthews in *Port Alberni Shelter Society* justifying a large general damages award in this case is the absence of an apology. I do not find this sufficient to justify a large award under this head of damages.

[75] In *Acumen Law Corporation v Nguyen*, 2018 BCSC 961, Justice Murray stated that: “Evidence of the harm effected by a defamatory statement is required to support a substantial award of damages. If a plaintiff cannot present evidence to substantiate the alleged harm caused by a defamatory statement, an award of nominal damages may be appropriate”: at para. 23; see also *Pan v Gao*, 2018 BCSC 2137 at para. 437, rev’d on other grounds 2020 BCCA 58.

[76] In this case there is no evidence establishing that the Google Review resulted in any significant or ongoing distress to either Mr. Tabrizi or Mr. Beittoei. As well there is no evidence establishing a negative impact on the business reputations of any of the plaintiffs. Evidence was not called from customers, suppliers or staff with respect to the impact of the defamatory comment on their business reputations. Accordingly, in this case a general damages award is more in the nature of a prophylactic than compensatory remedy. The primary goal is to deter Mr. Lee and others who might make similar posts in the future from doing so.

[77] Although he declined to provide an apology Mr. Lee’s expeditious removal of the Google Review mitigates what I describe as his moral blameworthiness arising this publication and distinguishes the case at bar from those relied upon by the plaintiffs.

[78] No explanation was provided by the plaintiffs’ for its submission that Pacific Granite and Mr. Tabrizi receive an award of \$30,000 each for general damages, while Mr. Beittoei receive \$10,000. I assume that the plaintiffs are suggesting that the reputational impact of the Google Review was more significant for Pacific Granite and Mr. Tabrizi than it was for Mr. Beittoei.

[79] In my view, the defamatory sting was most seriously felt by Mr. Tabrizi and to a lesser extent by Mr. Beittoei. I find this to be the case based on the evidence at trial that Mr. Tabrizi was the public face of the company. As well, the thrust of the Google Review impugned the reputation of Pacific Granite’s principles and only indirectly the company itself. As a result I find that the defamatory sting was also lower for Pacific Granite.

[80] I award general damages of \$2,000 to Mr. Tabrizi and \$1,000 to each of Mr. Beittoei and Pacific Granite.

Aggravated Damages

[81] Pacific Granite and Mr. Tabrizi seek aggravated damages of \$10,000 each and Mr. Beittoei seeks aggravated damages of \$5,000.

[82] Aggravated damages are available to an individual plaintiff when a defendant’s conduct has been particularly high-handed, spiteful, malicious or oppressive and results in the plaintiff experiencing increased mental distress, humiliation, indignation, anxiety, grief or fear: *Malak v. Hanna*, 2023 BCSC 1337 at para. 241, referring to *Hill* at paras. 188–189.

[83] An award of aggravated damages to an individual plaintiff requires proof of a causal link between a defamatory publication and physical or psychological impacts, at times referred to in the authorities as hurt feelings. Mr. Tabrizi and Mr. Beittoei called no evidence with respect to hurt feelings and during closing argument conceded that they were not advancing an argument that they suffered such impacts as a result of the Google Review. Accordingly, aggravated damages are not available to these parties.

[84] With respect to Pacific Granite’s claim for such damages, the plaintiffs acknowledge the complete absence of any decision in British Columbia awarding aggravated damages to a corporation in a defamation case. They submit that the law should be expanded in this case and such an award be granted to it.

[85] In *Premier Finance Ltd. v. Ginther*, 2022 BCSC 1461, Justice Iyer, as she then was, expressed the view that it is doubtful that an award of aggravated damages is available to a corporate plaintiff: at para. 61, referring to *Northwest Organics Limited Partnership v. Fandrich*, 2019 BCCA 309.

[86] In *Northwest Organics* the British Columbia Court of Appeal stated that “it is an open question whether an award for aggravated damages is available to a corporate plaintiff”: at para. 126. The court referred to the decision in *Pinewood Recording Studios Ltd. v. City Tower Development Corp.* (1998), 61, B.C.L.R. (3d) 110 (C.A.), in which an aggravated damages award to a corporation was set aside. The Court stated at paras. 126-128, as was contemplated in *Hill*, that there may be an alternative basis for an award of aggravated damages to a corporation (other than hurt feelings) – which was not foreclosed in *Pinewood*.

[87] In this case the plaintiffs submit that the alternate basis supporting an aggravated damages award to Pacific Granite are efforts by Mr. Lee to “spread further afield” damage to Pacific Granite’s reputation. Assuming for arguments sake that it is open to this Court to award a corporation aggravated damages for this reason, I do not find that the evidence at trial establishes that Mr. Lee made efforts to do so. For example, there is no evidence that the Google Review once published was spread further afield by him. Rather, the review was published in October 2021 and forgotten until Mr. Lee deleted it in March 2022.

[88] I decline to award aggravated damages to Pacific Granite.

[89] Given these determinations, it is not necessary to consider the question of whether Mr. Lee published the Google Review maliciously.

Punitive Damages

[90] Pacific Granite and Mr. Tabrizi and seek punitive damages of \$7,500 each and Mr. Beittoei seeks punitive damages of \$5,000.

[91] Punitive damages are not compensatory in nature but rather intend to punish a wrongdoing party. They are awarded in situation where the defendant's misconduct is so malicious, oppressive and high-handed that it offends the court's sense of decency. Such damages are not at large but must serve a rational purpose – such as acting as a deterrent from further defamatory conduct: *Malak* (BCSC) at para. 298.

[92] The considerations in determining an award for punitive damages, as set out in *Whiten v. Pilot Insurance Co.*, 2002 SCC 18 at para. 94, include the following:

- a) Punitive damages are the exception rather than the rule, imposed only if there has been high-handed, malicious, arbitrary, or highly reprehensible misconduct that departs to a marked degree from ordinary standards of decent behaviour;
- b) Punitive damages are generally awarded only where the misconduct would otherwise be unpunished or where other penalties are unlikely to achieve the objectives of retribution, deterrence, and denunciation;
- c) Punitive damages are awarded only if compensatory damages (which to some extent are punitive in nature) are insufficient to accomplish these objectives, and the amount awarded is no greater than necessary to rationally accomplish their purpose;
- d) The purpose of punitive damages is not to compensate the plaintiff, but to give a defendant his or her just desert (retribution), to deter the defendant and others from similar misconduct in the future (deterrence), and to mark the community's collective condemnation (denunciation) of what has happened;
- e) Punitive damages should be assessed in an amount reasonably proportionate to the harm caused, the degree of the misconduct, the plaintiff's relative vulnerability, and any advantage or profit gained by the

defendant, having regard to any other fines or penalties suffered by the defendant; and

- f) Moderate awards of punitive damages, which inevitably carry a stigma in the broader community, are generally sufficient.

[93] The plaintiffs submit that the misconduct of Mr. Lee, being in their submission an attempt to injure Pacific Granite's business and its reputation and that of Mr. Tabrizi and Mr. Beittoei, was sufficient outrageous that an award of punitive damages is necessary to send a clear message of deterrence to the community. I disagree.

[94] As set out above an award of punitive damages in a defamation case is rare. At the heart of Mr. Lee's publication of the Google Review are the words suggesting that the management of Pacific Granite lied about the circumstances of the collision between Mr. Kennedy's white Impala and Mr. Lee's vehicle. In my view, in order to find Mr. Lee liable for punitive damages this Court must be able to conclude, through direct evidence or inference, that he knowingly or recklessly published a falsehood that the management of Pacific Granite lied about the collision, in order to damage the plaintiffs' reputations.

[95] There is no documentary or other direct evidence on which I can conclude that Mr. Lee acted with such intention. Mr. Lee did not testify at trial nor was his testimony compelled by subpoena. I do not wish to reward Mr. Lee's failure to attend at trial but given the absence of any evidence about Mr. Lee's intentions I am simply unable to determine whether his conduct was intentional or reckless, such that it can be described as high-handed, malicious, arbitrary or highly reprehensible misconduct.

[96] In any case, I consider that Mr. Lee's misconduct in publishing the Google Review has been sufficient punished by the award of general damages in favour of the plaintiffs' sufficient to achieve the objectives of retribution, deterrence, and

denunciation. As I have already indicated, the object of the general damages award I have made is to deter further defamatory publications.

[97] I decline to award any amount for punitive damages.

Injunction Application

[98] The plaintiffs seek a broad injunction prohibiting Mr. Lee from posting any comments, review, question, or any other such words on any of the websites or social media platforms of Pacific Granite that are in connection with or directly or indirectly refer to the collision between his vehicle and Mr. Kennedy’s white Impala in September 2021. In addition, the plaintiffs seek an injunction prohibiting Mr. Lee from posting any comments that are in connection with, or that directly or indirectly refer, to this litigation.

[99] In *Hill*, the defamation against the plaintiff persisted even after the trial. In granting an injunction to enjoin the Church of Scientology from publishing further defamatory statements, the chambers judge had found that “no amount awarded on account of punitive damages would have prevented or will prevent the Church of Scientology from publishing defamatory statements about the plaintiff”: *Hill* at para. 201.

[100] Unlike the circumstances in *Hill*, there is no indication in this case that Mr. Lee has published anything, let alone defamatory comments, concerning the plaintiffs since at the latest, March of 2022. Nor is there any indication that he will do so after this judgment is released. No basis for an injunction is made out in this case.

[101] The plaintiffs’ application for an injunction is denied.

Conclusion

[102] As set out above, Mr. Lee defamed each of the plaintiffs when he published the Google Review in October 2021. I award general damages of \$2,000 to Mr. Tabrizi and \$1,000 to each of Mr. Beittoei and Pacific Granite.

[103] The plaintiffs' claims for aggravated and punitive damages, and application for an injunction are dismissed.

"Mayer J."