

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 57 of 2020

BETWEEN: **ANAND KRISHNA GOUNDAR** of 14 Dokonaisuva Rd, Tacirua Heights, Real Estate Agent.

PLAINTIFF

AND: **REGINALD JOKHAN** of 104-106 Brown Street, Suva, Real Estate Agent.

DEFENDANT

Counsel: Mr. Nimbavulu P for the Plaintiff
 Mr. Nandan S and Mr. Rolovo I for the Defendant

Date of Judgment: 27.11.2025

JUDGMENT

INTRODUCTION

- [1] This is an action for defamation brought by the Plaintiff, a licensed real estate agent and then President of the Fiji Real Estate Agents' Association, against the Defendant, also a licensed real estate agent. The claim arises from statements published by the Defendant on a Facebook page titled "Land for Sale Fiji" on 2 .10. 2019 (the "Facebook Post") and in an email sent to the Fiji Real Estate Association (FREA) and the Real Estate Agents Licensing Board (REALB) on 29 .11. 2019 (the "Email").
- [2] The Plaintiff alleges that the publications are defamatory, lowering his reputation in the eyes of reasonable persons by portraying him as dishonest, fraudulent, unlicensed, greedy, and a criminal. He seeks general damages, aggravated damages, exemplary damages,
- [3] The Defendant admits publication on Facebook Post and also the Email but relies on the defenses of fair comment, justification, and qualified privilege. He denies malice and submits that the statements were honest opinions based on facts, made in the public interest or on privileged occasions.

- [4] The matter proceeded to trial. The Plaintiff tendered exhibits P1 to P26, including qualifications, licenses, the Facebook Post screenshots, property transfer documents, and correspondence. The Defendant tendered evidence including prior listings of the properties at lower prices, a media article on the Plaintiff's parliamentary submission, and an alleged internet-sourced document alleging criminal convictions against the Plaintiff in the USA. Both parties gave oral evidence and were cross-examined. Closing submissions were filed by both sides.
- [5] Publication is not in dispute, as confirmed in the Pre-Trial Conference Minutes and by the Defendant's counsel. The Facebook Post was accessible to at least 4,726 members of the group at the time (now over 11,000), primarily potential buyers and real estate agents. The Email was sent to the FREA Secretary and REALB officers but was expected to circulate among members.

FACTS

- [6] On 2 .10. 2019, Loreen Acraman (the Plaintiff's wife and salesperson at IROK Realtors) posted an advertisement on the "Land for Sale Fiji" Facebook page for nine freehold lots in Pacific Harbour, Deuba. The advertisement listed prices ranging from \$95,625 to \$140,938, along with contact details for IROK Realtors.
- [7] The Defendant responded with the following comments (the Facebook Posts):
"Stop increasing the price and charging 3% and fooling the buyers. We have evidence lots were sold at lot lower than what you have advertised"

"Time for Anand Krishna Goundar to accept that he is fooling the People of Fiji and not licensed Real Estate Agents"
"He says that he only charges 3% but little do the people realize that he is the one increasing the prices"
"If buyers want to see the true face of the sellers' agent, then contact us. This is all liars as evidence is in front of you. Who is greedy here. Anand Krishna Goundar time to tell the public what your company is actually doing."
- [8] On 29 .11 2019, the Defendant sent the Email to the FREA and REALB:

"It's time that Anand stops his behavior of his as he thinks that he owns the association. He is the one increasing the property prices and saying I only charge 3%. I exposed his liars. Did he disclose what I found out

about him to you all. Criminal convictions in USA. He has been given 14 days to respond. Actually, he has breached the membership code of ethics."

[9] The Plaintiff is the Managing Director of IROK Realtors, a registered company holding Real Estate License No. 0152. Evidence (Exhibits P10 and P11) confirms his valid salesperson license and qualifications. The properties were listed under an Exclusive Agency Agreement (Exhibit P13) with the seller, where reserve prices were set by the seller (ranging from \$83,142.20 to \$124,173.30), not the Plaintiff.

[10] Advertised prices were higher to allow negotiation, a common practice. Most lots sold below reserve (e.g., \$70,850 to \$118,000), as per transfer documents (Exhibits P14–P22). The agreed commission was 3% (VAT exclusive).

[11] The Defendant had previously listed the same properties years earlier at lower prices but admitted he was unaware of the Agency Agreement's terms. He claimed the Facebook Posts were in response to the Plaintiff's alleged blame of agents for price increases in a parliamentary submission, but that submission occurred on or around 9 .10 2019 after the Post. The Defendant's evidence of USA criminal convictions relied on an unreliable internet document (admitting potential inaccuracies), which the Plaintiff denied, noting discrepancies in dates and addresses. The Plaintiff was in Fiji during the alleged conviction periods and provided no counter-evidence from USA authorities, though the burden lies on the Defendant for justification.

[12] The Plaintiff testified to reputational harm, financial losses (struggling sales, some lots unsold), marital strain (temporary separation), and emotional distress. No apology was issued by the Defendant, who repeated accusations in meetings and emails.

[13] Defendant in his evidence relied previous listing at lower price and also alleged data base where similar name to Plaintiff indicating criminal charges.

ISSUES

[14] The key issues are:

- a. Whether the publications are defamatory of the Plaintiff.
- b. Whether the words referred to the Plaintiff and were published to third parties.
- c. Whether the defenses of fair comment, justification, and/or qualified privilege apply.
- d. If defamation is established, whether malice defeats any defenses, and what remedies are appropriate.

THE LAW

[15] Defamation in Fiji is governed by the Defamation Act 1971 and common law principles. Plaintiff must prove: (1) the words are defamatory (tending to lower reputation in reasonable eyes); (2) they refer to the plaintiff; and (3) they were published to at least one third party. Falsity and damage are presumed if established on balance of probabilities.

[16] Section 16 of Defamation Act 1971 states

“[DEF 16] Fair comment

16 In an action for defamation in respect of words consisting partly of allegation of fact and partly of expression of opinion, a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if the expression of opinion is fair comment having regard to such of the facts alleged or referred to in the words complained of as are proved.”

[17] Court of Appeal in Ali v Thompson [2012] FJCA 12; ABU0029.2010 (16.3.2012) discussed the defence of fair comment as follows;

“Defence of Fair Comment

11. Learned High Court Judge in his judgment has referred to many authorities in connection with the defence of fair comment. In that judgment, he, having quoted number of passages which run into 9 pages from the decision in Albert Cheng v Tsey Wai Chun Paul, [2000 HKCFA 35]; [2000 (3) HKLRD 418] has basically, depended upon the law discussed therein. Counsel for both parties also have referred to the law discussed therein. There is no doubt that this decision in Albert Cheng helps to a greater extent in deciding the issue at hand.

12. In addition to the lengthy references made by the learned Judge as to the requisites that are necessary to establish the defence of fair comment, learned Counsel for the appellant too has reproduced those 5 requisites mentioned in the case of Albert Cheng in his submissions. Those are namely:

1. The comment must be on a matter of public interest;

2. The comment must be recognizable as comment as distinct from an imputation of fact
3. The comment must be based on facts which are true or protected by privilege.
4. The comment must be explicitly indicated at least in general terms, what are the facts of which the comments are being made.
5. The comment must be one which could have been made by an honest person, however prejudiced he might be, and however exaggerated or obstinate his views. It must be germane to the subject matter criticized.

13. I would like to refer to a few other authorities as well which may help to have a clear understanding of the law relating to the defence of fair comment.

In Telnikoff v Matusevitch [1992] UKHL 2; [1992] 2 A C 343 at 351, it is stated:

"the question whether words are facts or comment, is in the first instance for the judge: if he is satisfied that they must fall into one of the categories he should rule. If a defamatory allegation is to be defended as fair comment it must be recognizable by the ordinary, reasonable reader as comment and the key to this is whether it is supported by facts, stated or indicated, upon which, as comment, it may be based."

In Hasselblad (G.B.) v Orbinson [1985] Q B 475, an observation had been made to state;

"Where an inquiry is made of a person with a view to the detection of a criminal offence, **it is his duty in the sense here used to give such information as he may possess, and such information, if given bona fide and without malice, will be privileged.**" I cannot doubt, said Parke B. in Kine v Sewell, that is a perfectly privileged communication, if a party who is interested in discovering a wrongdoer, comes, and makes inquiries, and a person in answer makes a discovery, or a bona fide communication, which he knows, or believes, to be true, although it may possibly affect the character of a third person"

However, answers to inquiries by the police may now be protected by absolute privilege even though no proceedings have been started". (emphasis added)

14. In the textbook of "Gatley on Libel and Slander" It is stated:

"To succeed in the defence of fair comment, defendant must show that the words are comment and not a statement of fact. [*Campbell v Spottiswoode* (1863) 3 B 7 S 769; *Minister of Justice v S. A. Associated Newspapers*, 1979 (3) S.A. 466. However, an **inference of fact from other facts referred to, may amount to a comment.** [*Kemsley v Foot* (1952) A.C.345; *Jeyaratnam v Goh Chok Tong* (1989) 1 W.L.R. 1109; *London Artists v Littler* 91968) 1 W.L.R. 607; He must also show **that there is a basis for the comment, contained in the matter complained of.** Finally, he must show that the comment is on a matter of **public interest or is otherwise a matter with which the public has a legitimate concern.**" [page 288 in Chapter 12]

15. As stated by Gatley, to succeed in the defence of fair comment, it is necessary to establish that the **words are written for the purpose of comment** only and **not to state facts at a given situation.** This is the law found in all the authorities including in Albert Cheng, referred to by the learned Trial Judge as well as both the Counsel

[18] In this action Plaintiff is being accused of 'fooling' public or in other words a crook or not a person who act honestly or a person who lies to public. This cannot be considered as a comment but stating a fact or allegation direly at Plaintiff.

[19] Similarly, the increase in prices by Plaintiff was also unfounded as this was under an agreement such prices were fixed by Plaintiff.

[20] The basis of the allegation is also not well founded as Defendant was aware that clients also determine the sale price through agreements. So, if a property was listed for a lower price earlier that cannot necessarily mean that Plaintiff had increased the price and by doing that, he was fooling Public.

[21] As regards email communication, allegations were not proved correct and in fact they were false.

[22] Court of Appeal in Narayan v Khan [2023] FJCA 22; ABU113.2019 (24 February 2023) stated,

“[14] If the words did amount to defamation the learned Judge considered the defence of qualified privilege that would be available to the Defendant. Having quoted Lord Esher MR in Pullman v Hill & Co (11) [1811] 1 QB at 528 that, “*an occasion is privileged when the person who makes the communication has a moral duty to make it to the person whom he does make it, and the person who receives it has an interest in hearing it. Both these conditions must exist in order the occasion may be privileged.*” The learned Judge held that the Defendant an employer notifies his business decision by way of the notice to his staff that have an interest in hearing and obeying the business decision taken by their employer. This satisfies the two conditions as stated in the above case in order to claim the occasion to be privileged. The learned Judge held that on the evidence the notice was affixed in a privileged occasion.”

[23] When it is proved that Defendants allegations are wrong there is no issue of privilege. There cannot be moral duty to state falsehood or unverified facts when such opportunity was available as colleagues in the same field and Plaintiff being the President of its Association.

[24] Halsbury’s Laws of England States,¹ Volume 32 (2023) states,

“Defence of Absolute Privilege

(i) Nature of Defence of Absolute Privilege

592. The doctrine of privilege.

The doctrine of privilege in the law of defamation must be distinguished from evidential privilege.

In defamation, privilege constitutes a defence. Its rationale is that, unless the general principle of strict liability for the publication of defamatory material is relaxed in relation to certain occasions, the public interest and the common convenience and welfare of society will suffer because persons will be deterred by the fear of suit from expressing themselves freely on matters of importance, and the public will be denied information about

¹ Laws of England Defamation (Volume 32 (2023))2. Defences(2) Defence of Absolute Privilege(i) Nature of Defence of Absolute Privilege

parliamentary and court proceedings. Even when the defence of absolute privilege does not apply, public policy may in exceptional cases preclude the bringing of a claim. (footnotes deleted)

[25] Analysis of evidence show that Defendant's posts in public platforms such as Facebook are not a privileged occasion. There was no such public policy and in fact the public policy is very much against such publications .(See Online Safety Act 2018 ²). Defendant being an Agent of Real Estate must aware of the reach of Facebook to masses and its impact. This is the reason that this medium is now used for commercial purposes including Real Estate Agents. It is important to act responsibly in such medium relating to colleagues.

[26] Harming reputation colleagues such as Plaintiff from facts without verifying them should not be done.

[27] Online Safety Act 2018 had even made online postings as criminal liability, under Section 24 which reads

“[ONL 24] Causing harm by posting electronic communication

24 (1) A person who-

- a) Posts an electronic communication with the intention to cause harm to an individual;
- b) Posts an electronic communication where posting the electronic communication would cause harm to an ordinary reasonable individual in the position of the individual; and
- c) Posts an electronic communication where posting the electronic communication causes harm to the individual, commits an offence.”

[28] So even when a post on electronic communication where it '*causes harm to an individual*' is made a statutory offence. So, the Public Policy is to control the online behavior of people when posting on electronic communications such as posts on Facebook. Facebook has potential to become viral and hence the harm is exponential , hence must be very careful in what you state or behave on such medium. It is important not to defame others only because it is easy or fun to do so. (see England and Wales Court of Appeal (Civil Division) Decisions of Riley v Murray [2022] EWCA Civ 1146 (11 August 2022)

² Came in to operation on 1.1.2019

- [29] Plaintiff had not pleaded content of email communication to the Real Estate Agents Association and the licensing authority REALB were also false hence and because of that he was humiliated. This was an aggravating factor.
- [30] Plaintiff and Defendant were both Real Estate Agents and they should respect each other in the same profession, and they should also not harm each other's reputation. So, the posting as well as email communication shows Defendant had some ulterior motive to harm Plaintiff and his reputation, then public interest. By using such words like "he (plaintiff) thinks that he owns the association..." Clearly shows that Defendant's intention. This shows Defendant had some animosity towards Plaintiff rather than honest comment or opinion.
- [31] If Defendant was interested about making a comment in public interest he could have easily asked from Plaintiff before publishing such damaging information on Facebook which is freely accessible to the world at large. As Plaintiff was the President of the Association , he should be accessible to members including Defendant.
- [32] Defendant in submissions state that he had done some research about Plaintiff and found the allegations relating to criminal acts. First the source of such research leaves a question mark and next again if he was genuine, he could have informed Plaintiff and sought an explanation before communicating to RELAB, from an unreliable database allegedly maintained by unreliable source. These are again aggregated factors.
- [33] For internet libel, substantial publication must be proven (*Al Amoudi v Brisard* [2007] 1 WLR 113; *Fiji Fashion Week Ltd v Radrodro* [2017] FJHC 9). The test for defamatory meaning is whether reasonable persons would understand it in a libelous sense (*Capital & Counties Bank v Henty* [1882] 7 App Cas 741).
- [34] Aggravated/exemplary damages consider the defendant's conduct, including lack of apology and or repetition of the posts as well as repetitive nature of posting on Facebook each time a person accesses it. The natural and ordinary meaning of the Facebook Post imputes that the Plaintiff is , fooling buyers by inflating prices while charging 3%, unlicensed, and deceptive. These words, in context, would lower the Plaintiff's reputation as a professional real estate agent in reasonable eyes.
- [35] Facebook has global reach and has potential for viral effect of its posts. Facebook posts and most electronic communications are of that nature when they are made on social media platforms . These are freely accessed by people

and also commented which amplifies the allegation and are also liable for defamation, though not made parties to this action.(see England and Wales Court of Appeal (Civil Division) Decisions of Riley v Murray [2022] EWCA Civ 1146 (11 August 2022)

[36] The Plaintiff suffered reputational harm, financial strain (delayed/unsold lots), emotional distress, and marital issues. No special damages pleaded, but general damages presumed. Aggravating factors: repetition, no remorse, public forum. Exemplary damages warranted for deterrence on online communications which has global reach and instant publication that is continuous unlike one off publication in a print medium .These are all aggravating factors. The Plaintiff is awarded \$40,000 as general damages from the dilatory Facebook comments of Defendant and he is also awarded aggravated or exemplary damage of \$10,000 . Cost of this action is summarily assessed at \$3,500 to be paid within 21 days.

FINAL ORDERS:

- i. Judgment for the Plaintiff.
- ii. The Defendant shall pay Plaintiff a total damage of \$50,000(General damages: \$40,000 + Aggravated damages: \$10,000).
- iii. Costs to the Plaintiff, summarily assessed at \$3,500 to be paid in 21 days.



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Deepthi Amaratunga
Judge

At Suva this 27th day of November, 2025.

Solicitors

Oceanica IP

Reddy and Nandan