

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Kovach-Durham v. Ampong*,
2025 BCSC 2013

Date: 20251015
Docket: S251036
Registry: New Westminster

Between:

James Owen Kovach-Durham

Plaintiff

And

Daniel Kofi Ampong and Amin, 1171619 BC Ltd.

Defendants

Before: The Honourable Justice Dion

Reasons for Judgment

Appearing on his own behalf:	J.O. Kovach-Durham
Appearing for the Defendants:	D.A. Ampong
Place and Dates of Hearing:	New Westminster, B.C. September 2 and 3, 2025
Place and Date of Judgment:	New Westminster, B.C. October 15, 2025

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Introduction

[1] Plaintiff James Kovach-Durham claims against Defendants Daniel Kofi Ampong and Amin Hair & Beauty Studio and Barbershop [the “Salon” or “Amin”], 1171619 BC Ltd, for damages he says he suffered from an incident in front of Amin, on October 29, 2022, in New Westminster, British Columbia. The Plaintiff also brings a claim in defamation against Mr. Ampong for a response he made to the Plaintiff’s social media posts about the incident.

[2] Mr. Ampong denies every claim by the Plaintiff. He also filed a counterclaim which he abandoned at trial.

Pleadings

[3] Pleadings are governed by the *Supreme Court Civil Rules*, Reg. 165/2024 [Rules]. A notice of civil claim must comply with Rule 3-7 and provide basic information (Rule 3-1(2)): (a) a concise statement of the material facts giving rise to the claim; (b) the relief sought by the Plaintiff against each named defendant; (c) a concise summary of the legal basis for the relief sought, among others.

[4] The “material facts” are those facts that are essential to forming a complete cause of action or defence, as the case may be (*Young v. Borzoni*, 2007 BCCA 16 at para. 20). The evidence that tends to prove those facts should not be pleaded (Rule 3-7(1)).

[5] More specifically, a Plaintiff must set out the relief sought against each named defendant (Rule 3-1(2)(b)). The notice of civil claim must contain “a concise summary of the legal basis for relief sought” (Rule 3-1(2)(c)).

[6] In this case, the parties are self-represented. All parties, including self-represented parties are not exempt from the law and the *Rules of Court*, as Justice Charbonneau of the Court of Appeal of Yukon, noted in *Murphy v. Szulinszky*, 2016 YKCA 16, at para. 16.

[16] Even though Mr. Szulinszky is a self represented litigant, that does not mean that he is exempt from the law, the rules of evidence or the rules of procedure. Self-represented litigants must, of course, be treated fairly. At the same time, courts have a duty to ensure that fairness is extended to all parties: *Ferstay v. Dywidag Systems International. USA Inc.* 2009 BCSC 833 at para. 21.

[7] That said, our Court has acknowledged that “courts must be vigilant to ensure fairness to self-represented litigants, which includes a margin of lenience, though this does not relieve self-represented litigants of the obligation to comply with the Rules”: see *Rai v. Meta Platforms, Inc.*, 2024 BCSC 1408 at para. 16. See also *Besler v. What The Fungus*, 2023 BCSC 2590 at para. 37: while “pleadings should be read generously, particularly where a Plaintiff is self-represented, to allow for inadequacies due to drafting deficiencies...it would be unfair to grant indulgences to a self-represented party that would interfere with another party’s right to know the case to be met.”

[8] In *Turkson v. TD Direct Investing, A Division of TD Waterhouse Canada Inc.*, 2016 BCSC 732, Fitzpatrick J. was faced with the issue of a self-represented litigant raising unpleaded claims in argument. Justice Fitzpatrick allowed the self-represented Plaintiff to raise the unpleaded argument over the objection of the defendant (who was represented by counsel), preferring to decide the case “on the merits rather than based on defective pleadings”: see *Turkson* at para. 182.

[9] In this case, the Plaintiff frames his legal basis as:

- 1) The laws on libel – *Criminal Code*, R.S.C., 1985 c. C-46 (Section 298)
- 2) The court case that relief claim amount is based on: *Seafarer’ International Union of Canada. v. Mitchelitis*, 2023 ONSC 2456
- 3) The laws on lying to an investigating officer – R.S.C. 1985, c. C-46 (Section 129)
- 4) Common law definitions of assault and battery.

[10] It is readily apparent that the Plaintiff has not complied with the requirements of the *Rules*. Not only has Mr. Kovach-Durham plead evidence that tends to prove material facts, but he has also not properly set out the legal basis for the relief sought.

[11] In his oral submissions and argument, Mr. Kovach-Durham argued vicarious liability, although his pleadings make no mention of vicarious liability. Notwithstanding this defect, I will, in effort to deal with the merits rather than base it on defective pleadings and address that claim since it appears his assault claims is connected to the issue of vicarious liability.

[12] With respect to Mr. Kovach-Durham's claim of lying to the police, there is no tort - that is, a wrong in a civil context - of lying to a police officer. Therefore, no cause of action lies here from a civil law perspective. Section 129 of the *Criminal Code*, R.S.C., 1985., c. C-46 relates to obstruction of a police officer. The Plaintiff alleges that Mr. Ampong lied to the police officer who attended the scene on October 29, 2024. The claim before the Court is a civil notice of claim not a criminal proceeding.

The Evidence

[13] On October 29, 2022, the Plaintiff was standing at a bus stop in front of Amin. He was carrying a large bass in an instrument case weighing 21 pounds. The events were captured on CCTV. There is no audio recording.

A. Owen Kovach-Durham

[14] Mr. Kovach-Durham is 39 years old. He has physical and mental disabilities including being diagnosed as bipolar. He sometimes uses a cane or a knee brace. On October 29, 2022, he was wearing a knee brace.

[15] He supplements his disability income with income he generates through his company, Plus 1 Productions which rents out table top board games. He also offers live role playing. I believe his evidence was that prior to October 2022, he had three clients. One has since moved away, one was a corporate client but due to a change in their policies, he no longer provides any service to them. He has a third client he still sees. When he has income from this service, he says it is

approximately \$80.00 per month. He says he will not seek new clients until the litigation is resolved.

[16] The Plaintiff plays the bass. On October 29, 2022, he was coming from a friend's home where they played music. He was standing in front of Amin, adjusting his clothing, including his long outer cape. The bass fell into the window of the Salon.

[17] He said people from inside the Salon looked out at him so he waved to them. Then Mr. Ampong came out, and according to the Plaintiff, he said with a mean look on his face, "what the hell", then he pointed at the window and he asked the Plaintiff what was he doing. The Plaintiff explained his bass fell into the window and he apologized.

[18] According to Mr. Kovach-Durham, Mr. Ampong accused him of breaking the window and in an effort to show the window was not broken, the Plaintiff tapped window with his knuckle. This exchange lasted approximately one to one and half minutes. Someone who Mr. Kovach-Durham assumed was employee came out fast, and Mr. Ampong stepped in the way. Then others came out of the Salon.

[19] According to Mr. Kovach-Durham, Junior – his assailant, came out and rushed at him. The Plaintiff froze and told Junior to "fuck off". Mr. Ampong held Junior back. The verbal exchange between the Plaintiff and Junior escalated in tone but with Mr. Ampong, the conversation was civil.

[20] Then Junior swung at the Plaintiff. The Plaintiff believed he was trying to grab his scarf, the Plaintiff took a step back. Mr. Ampong intervened between the Plaintiff and Junior again. Others came out of the shop to calm the situation. A few people tried to keep Junior away from the Plaintiff. A man and women try to calm the Plaintiff down, placing their hands on him, trying to comfort him.

[21] Junior continued to circle the Plaintiff and threatening that he would follow him. After Junior went back into the salon, Mr. Kovach-Durham said he was irate, he wanted a business card to contact the owner; he did not know at that time, Mr. Ampong was the owner.

[22] Because Mr. Ampong refused to provide information about who owned the shop, Mr. Kovach-Durham said he tried to enter the shop a few times but was

stopped at the door by Mr. Ampong. The melee lasted approximately 10 minutes, according to the Plaintiff.

[23] Mr. Kovach-Durham called 911 because Junior threatened to follow him. A police car was driving by, so the parties waved the police car over. The police car parked in front of the Salon.

[24] Mr. Kovach-Durham wanted to press charges against Junior for attacking and threatening him. The police spoke to the Plaintiff and Mr. Ampong. The police told the Plaintiff that he was safe to go, so he left and went home to Surrey.

[25] Mr. Kovach-Durham said most of the people that came out of the Salon were “amazing”, they tried to de-escalate the situation. Mr. Kovach-Durham has had no contact with Junior since; he does not know who he is.

[26] That evening, the Plaintiff made posts on Facebook about what he says happened outside of the Salon. According to Mr. Kovach-Durham, Mr. Ampong responded to his posts in an untruthful way so he sent Mr. Ampong a cease-and-desist letter by registered mail to take down his post. Mr. Kovach-Durham says he has not taken his two posts down because they are the truth and no one has asked him to take them down. Mr. Ampong did not accept the registered mail containing the cease-and-desist letter, so on May 2, 2023, the Plaintiff posted the cease-and-desist letter on Facebook for Mr. Ampong to see but he has not responded.

[27] Mr. Kovach-Durham said he made the posts to let go of his anxiety, to shake off the incident otherwise he would end up obsessing about it. When he saw Mr. Ampong’s response it fueled Mr. Kovach-Durham’s feelings. He went into dissociative state for two months; he could not function.

[28] Mr. Kovach-Durham says that as a result of the “attack” on him, he had constant visions that he could not control. While the scenes with Junior play over again and again in his head, he has not been on any medication because they make him manic. He said he had been referred to a 15-step behavioural therapy program, which while helping him, he was unable to finish it. He started the program in 2015 and remained in it for about six months. His social anxiety and being a group situation meant that he could not continue. Mr. Kovach-Durham said he is ok now. He continues to do music, but at home.

[29] Under cross examination, Ms. Kovach-Durham said that Mr. Ampong started assaulting him as soon as he came out of the salon. He later said Mr. Ampong did not attack him or punch him. He denied that he continued to knock on the window for minutes, saying it was only for a minute to a minute and half.

[30] Mr. Kovach-Durham denied that the reason Junior lunged at him was because the Plaintiff was insulting him, though he admitted he told him to “fuck off” and called him a “goof”. He denied saying to Junior that he was a “boy”, that he needed to “get his ass back” into the Salon.

[31] Mr. Kovach-Durham confirmed that he provided no medical evidence to support any of his medical claims. He also agreed that he took a video of the entire incident with his cell phone outside of the Salon but said he no longer had it because he lost it when he reset his phone.

B. Constable K. Chadha

[32] Constable K. Chadha was called by the Plaintiff. Unusually, legal counsel for the constable attended prior to him being called to provide his evidence. The concern raised by counsel was that the Plaintiff had sent the constable the questions he anticipated asking in direct examination. Among the questions were what the Plaintiff alleges to be charter violations, duty of care owed by the officer and allegations of an inadequate investigation by the officer.

[33] Counsel rightly pointed out that not only does Mr. Kovach-Durham not plead charter issues or negligence claims, but that Constable Chadha is not a defendant. Mr. Kovach-Durham has filed and is apparently pursuing a claim against the officer in a police complaints process. I therefore directed that the Plaintiff not to ask, in these proceedings, the constable any questions related to his complaints against the officer in the other proceeding.

[34] According to Constable Chadha, he was driving by the Salon at approximately 5:40 p.m., when he was hailed by the Plaintiff and defendant over a dispute they were having about a window. Others from the Salon had also come out. Mr. Ampong told the officer that he made physical contact with the Plaintiff, touching him to calm him down. The officer did not see any bruises on anyone.

[35] Constable Chadha said he was satisfied that he met his duty by separating the parties. The Plaintiff wanted criminal charges laid against Junior which Constable Chadha followed up on. He spoke to his supervisors. He also reviewed the CCTV footage with Crown counsel, who determined that the charge approval standard had not been met. It was determined that no further police resources would be allocated to the file.

C. Mr. Ampong's Evidence

[36] Mr. Ampong said the video speaks for itself. When Mr. Ampong went outside to investigate whether the window was broken, Mr. Kovach-Durham immediately began insulting him, saying "fuck you, dip-shit", and as he continued knocking the window, he was repeating the words, "is it broken, is it broken". There was no physical contact made with the Plaintiff, other than when people from the Salon were trying to calm him down. Mr. Ampong asked the Plaintiff to step away from the window, to leave them alone but he refused.

[37] Mr. Ampong said that they are a small 20-year-old small business. They offer a service to the community, some of their clients are children. He has never experienced a situation such as he faced with the Plaintiff. Mr. Ampong said that he had to respond to the Plaintiff's Facebook posts.

[38] He said that while Mr. Kovach-Durham's insults toward the people from the Salon were very bad, his insults toward Junior were especially offensive in words and in tone.

[39] After Constable Chadha had the Plaintiff leave, Mr. Ampong thought that was the end of the situation. It was not. Mr. Kovach-Durham attempted to pursue criminal charges against Junior. Mr. Ampong said Junior was a contractor. He left the Salon about six months after this incident.

[40] The Plaintiff also commenced this action. According to Mr. Ampong, the Plaintiff attended at the Salon five to ten times related to the service of court documents. Mr. Ampong also came across the Plaintiff near his salon one morning prior to their first court date. Mr. Kovach-Durham was standing on the corner of 4th Street and Columbia, where the salon is located, and he said to Mr. Ampong, "Hey, Danny, it is not over, I am coming to get you".

[41] Mr. Ampong was running for New Westminster city council in 2022 and he as a candidate in the provincial election in 2024. Mr. Ampong tendered social media posts written by the Plaintiff alleging, among other things, that Mr. Ampong was a “piece of human garbage”, that he was “corrupt” and that he was being sued by the Plaintiff. The language used in the posts was particularly egregious and shocking.

D. Nancy Wheeler

[42] Ms. Wheeler has been the office manager at Amin since 2006. She has known Mr. Ampong for a very long-time, he is a family friend. She was working with a client on October 29, 2022. She saw the Plaintiff standing in front of the Salon window. She turned to her client then she and others in the Salon heard a loud bang against the window. They thought the window was broken.

[43] Mr. Ampong went out to check on the window. Ms. Wheeler heard him ask the Plaintiff to step away from the window because he almost broke it. The Plaintiff then began to repeatedly bang on the window and saying the window was not broken.

[44] The commotion was such that others from the Salon came out. One of the men from the Salon asked him to leave. Junior was one of the people who exited the Salon. He told Mr. Kovach-Durham that he was disrupting clients inside the Salon. The Plaintiff told Junior to mind his own business, to shut the fuck up, that he was just a boy, not a man, that he was a goof and to back inside the Salon. Ms. Wheeler said that there are historical connotations with calling a Black man “boy”, it is considered a very disparaging insult. After the Plaintiff made the two Facebook posts, the salon was “flooded” with calls from patrons concerned about what they had read in those posts.

[45] Ms. Wheeler confirmed in cross-examination that she heard Mr. Ampong asking Mr. Kovach-Durham to stop hitting the window, he replied, “Does it look like it is fucking broken?”. And he continued to be rude and everyone inside the Salon could hear him. It was upsetting patrons, she said.

[46] Ms. Wheeler and Steve tried to calm things down particularly when the Plaintiff was trying to push his way through into the Salon insistent on obtaining a business card. She said that the Plaintiff was angry when Mr. Ampong was asking

him to stop hitting the window. The Plaintiff was calling the people of the Salon savages. Ms. Wheeler said at no time was Mr. Ampong vulgar or belligerent to the Plaintiff. He just wanted to calm things down and for the Plaintiff to leave.

Civil Standard of Proof

[47] There is only one standard of proof in Canada in civil matters which is on a balance of probabilities. That means the Plaintiff must prove, on a balance of probabilities, what he alleges is more likely than not to have happened: *F.H. v. McDougall*, 2008 SCC 53 at para. 49. This is Mr. Durham-Kovach's burden.

Credibility and Reliability

[48] Before turning to my analysis, I will address the issue of the credibility and reliability of the evidence.

[49] Credibility concerns the honesty or truthfulness of a witness; reliability relates to the accuracy of the testimony: *Ford v. Lin*, 2022 BCCA 179 at para. 104.

[50] Credibility involves an assessment of the trustworthiness of a witness' testimony based on the veracity or sincerity of a witness and the accuracy of the evidence they provide: *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, aff'd 2012 BCCA 296, leave to appeal to SCC ref'd, 35006 (7 March 2013). As the Court explained in *Bradshaw*, that assessment involves the assessment of various factors, such as:

- a. the ability and opportunity to observe events;
- b. the firmness of his or her memory;
- c. the ability to resist the influence of interest to modify his recollection;
- d. whether the witness' evidence harmonizes with independent evidence that has been accepted;
- e. whether the witness changes his or her testimony during direct and cross-examination;
- f. whether the witness' testimony seems unreasonable, impossible, or unlikely; and

g. whether a witness has a motive to lie.

Bradshaw at para. 186; citing *Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont. H.C.); *Faryna v. Chorny*, 1951 CanLII 252 (B.C.C.A.), [1952] 2 D.L.R. 354; *R. v. S.(R.D.)*, 1997 CanLII 324 (S.C.C.), [1997] 3 S.C.R. 484 at para.128.

[51] Ultimately, the focus is on whether the evidence of the witness is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time: *Bradshaw* at para. 186; citing *Faryna* at 356.

[52] A trier of fact may believe all, part or none of a witness's evidence, and may attach different weight to different parts of a witness's evidence: *R. v. R.(D.)*, 1996 CanLII 207 (S.C.C.), [1996] 2 S.C.R. 291, at para. 93.

[53] I do not find Mr. Durham Kovach to be a credible or reliable witness. The CCTV footage clearly shows what occurred on October 29, 2022. In his *viva voce* evidence, he overstated what he said happened to him. He claimed that Junior grabbed him. That did not happen.

[54] He claims that he had not returned to New Westminster since the incident because he was scared for his life. Yet, he returned to Amin up to 10 times for service-related issues. He also tried to goad Mr. Ampong when he stood outside near the Salon and said he was not done; he was coming to get Mr. Ampong. The Plaintiff said that he had been too afraid to go back to New Westminster since the incident occurred. However, that is clearly not true.

[55] I found Mr. Ampong and Ms. Wheeler to be credible and reliable witnesses. Their evidence is entirely supported by the CCTV footage. They did not overstate, embellish or give evidence that contradicted the CCTV footage. I accept both their evidence. Where their evidence conflicts with that of the Plaintiff, I prefer their evidence over his.

Analysis

A. Assault and Battery

[56] The Plaintiff alleges assault and battery. He says he was assaulted by Junior when he attacked, grabbed and threatened him. I have already rejected the Plaintiff's claim that Junior made any contact whatsoever with him.

[57] I accept that Junior lunged toward the Plaintiff but only after the Plaintiff referred to him in a derogatory and insulting manner and swearing and belittling him. Where anyone else, including Mr. Ampong, Ms. Wheeler or Steve put their hands on the Plaintiff, it was to calm him down, to comfort him. There was no assault by any of them on the Plaintiff.

[58] In *Thatcher v. Lowe*, 2021 BCSC 590, Marchand J. (as the then was), considered the civil tort of assault and battery in the context of related criminal proceedings. His summary of these torts is helpful, and is as follows:

[47] Assault is the intentional creation of the apprehension of imminent harmful or offensive contact, even if contact never actually occurs: *Khan v. School District No. 39*, 2021 BCSC 49 at para. 17. This tort is established, at minimum, by the named defendants surrounding Mr. Thatcher's car in a menacing fashion.

[48] Battery involves the infliction of unlawful force on another person. In finding non-negligent battery, the court must conclude that the defendant intended to, and did in fact, make physical contact, and that this contact was harmful or offensive: *Khan* at para. 18. This tort is established by one of the named defendants slapping Mr. Thatcher's cell phone out his hand and at least one member of the named defendants punching him.

[59] While Junior lunging at the Plaintiff could be found to be an assault, Junior is not a defendant in these proceedings. I have already rejected the Plaintiff's claim that Junior made any contact with him. It is plain and obvious in the video that no contact was made whatsoever by Junior. Therefore, I find there was no battery in this case by Junior.

B. Vicarious Liability

[60] Vicarious liability imposes strict liability on a party. It holds one person responsible for the misconduct of another because of the relationship between them: *671122 Ontario Ltd. v. Sagaz Industries Canada Inc.*, 2001 SCC 59 at para. 25. It is settled law that unlike an employer-employee relationship, "the relationship of employer to independent contractor does not generally give rise to vicarious liability": *K.L.B. v. British Columbia*, 2003 SCC 51 at para. 20.

[61] I find that if an assault can be made out, it can only be made out against Junior and not against the named defendants including Mr. Ampong. Notwithstanding his defective pleadings, Mr. Kovach-Durham raises vicarious

liability, arguing that Mr. Ampong should be held responsible for Junior's tortious conduct as his employer.

[62] The evidence that I accept is that Junior was an independent contractor. He is no longer contracting at Amin. There is also no evidence about what Junior's last name is, where he currently resides or where he may work.

[63] Even if I were to find Junior was an employee rather than a contractor, which I have not, vicarious liability will not automatically attach. Particularly as we are dealing here with an intentional tort, the "fundamental question is whether the wrongful act is sufficiently related to conduct authorized by the employer to justify the imposition of vicarious liability. Vicarious liability is generally appropriate where there is a significant connection between the creation or enhancement of a risk and the wrong that accrues therefrom, even if unrelated to the employer's desires": see *Bazley v. Curry*, [1999] 2 S.C.R. 534 at para. 41, 1999 CanLII 692 (emphasis in original).

[64] In other words, the Plaintiff would have to establish both (1) that the relationship between Mr. Ampong and Junior was sufficiently close to justify imposing vicarious liability—most likely by demonstrating that an employment relationship subsisted—and (2) that Junior's conduct in committing the tort of assault was sufficiently related to his assigned tasks at Amin: see *K.L.B.* at para. 19. I would not make those findings.

[65] I do not find that vicarious liability attaches to any of the named defendants on account of any action by Junior, given his capacity as an independent contractor. Even if it did, Junior is not a named defendant in these proceedings.

C. Defamation

[66] The Plaintiff claims that Mr. Ampong defamed him when Mr. Ampong replied to the Plaintiff's public Facebook post made on October 29, 2022. Mr. Kovach-Durham first post was,

***Violent owners in New Westminster, please share**

Hey folks, I normally don't ask for these kind of posts, but today while I was on the way home I was accosted by this guy, and threatened by his employees, with one named junior even taking a swing at me, and saying he would follow me when I leave. It started when my base case accidentally topping his window, and his coming out and causing issues. I

apologize and he refused to just drop it. He would not say his name or give me a card. I had to flag down police, as two separate employees wanted to escalate to violence, in more than one spewing insults in order to escalate. This is not acceptable, on any level if you think a business has an obligation to be decent, and that it is wrong for employees (or people) To threaten people over in misunderstanding, then share this, and let people know not to support violent people and businesses that support this. These people are a problem, account imagine what would happen if an elder or child came and was in my situation. It could turn deadly.

Please do not do business with Amim Hair and Beauty studio

[67] Then below the post, the Plaintiff posted two clear frontal photographs of Mr. Ampong taken by the Plaintiff in front of his shop during the incident.

[68] The Plaintiff then made a second Facebook post, this time tagging Amin Hair & Beauty Salon,

***operators are violent and dangerous**

These people here are unprofessional and dangerous. After a small misunderstanding their owner came out to cause issues, four male employees also came out, with one taking a swing at me. Violent, and dangerous, I would not bring kids or elders here as, with the exception of the one gentlemen and one woman who tried to deescalate, the entire crew came across as aggressive , with the owner refusing to simply drop it, two Resulting to personal insults, and one attempting to assault me.

AVOID AT ALL COSTS

Unfriendly atmosphere Painful Experience Dirty Salon

[69] Mr. Ampong replied to that message the same day:

You were banging on the window and we told you to stop but you refused. So you can go to write this. Today you tried to cause problems with us thinking someone is going to touch you so you can go online to write about AMINHAIR but it didn't work. I was so happy the new Westminster police came to get you out of in front of the salon. The police knows that this (sic) what you do every time. Owen I think you need find something better to do with yourself instead of causing problems with good people

Thanks to the New West police

[70] After the posts were made, the evidence that I accept is that the following day, the Salon received several calls from concerned community members about the posts.

[71] *Grant v. Torstar Corp.*, 2009 SCC 61 at para. 28 [*Torstar*] sets out what a Plaintiff must prove in a defamation claim:

[28] A Plaintiff in a defamation action is required to prove three things to obtain judgment and an award of damages: (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...

[72] I find that the Plaintiff's reputation was not lowered by the words used by Mr. Among. First of all, there is no evidence that Mr. Kovach-Durham has a reputation including in New Westminster. He lives in Surrey. While he plays musical instruments, it is a hobby; he makes no viable income from that or any other business-related source. Mr. Among did refer to the Plaintiff by name, but was only in reply to the posts made by the Plaintiff. I accept that Mr. Among's reply was communicated publicly, beyond that of just the Plaintiff.

[73] Even if I were to find that the Plaintiff's reputation was lowered by Mr. Among's words, which I have not, I would find that Mr. Among has a viable defence of justification; namely, that his statements were true: *Torstar* at para. 33. It was not Mr. Among who started or escalated the melee. It was the Plaintiff and he refused to leave when he was asked to do so. This is clear in the CCTV footage.

[74] If anyone has a claim in defamation, it is Mr. Among against Mr. Kovach-Durham for the posts he made against Mr. Among, his salon and his employees. The impugned words were defamatory, in so far as they would have tended to lower Mr. Among's reputation in the eyes of a reasonable person; he is a long-time business owner and public facing individual in the New Westminster community. I also find that the words in fact referred to Mr. Among. The words were published publicly, so they were communicated to at least one person other than the Defendant.

[75] The posts that the Plaintiff made when Mr. Among was seeking elected office are also defamatory. They were vicious and shocking. However, even though I am satisfied that the posts were about Mr. Among, and the Plaintiff did not deny he made the posts, the Plaintiff did not name Mr. Among personally. So, while I am unable to make a finding that they are defamatory, they are highly insulting, prejudicial and uncalled for.

Counterclaim

[76] Mr. Ampong *viva voce* evidence is that he has owned his hair salon for 20 years. The incident involving the Plaintiff was the first time he has ever dealt with this sort of situation. He said that the entire ordeal has been very difficult on him as small business owner, a family man with four small children to raise. He said that reputationally, he and the Salon have been harmed by the police presence at his salon. As a Black business owner, police attendance accentuates stereotypes about the Black population; it doesn't help to have them attend at his business.

[77] In his counterclaim, among the relief sought by Mr. Ampong is: "1. \$50,000 for the reputation damage on my business name, myself and employees due to Mr. Kovach-Durham's inaccurate social media post about his interaction with us."

[78] Mr. Ampong made it clear at the hearing that he does not want any monetary damages from the Plaintiff. If he had wished to pursue the monetary damages, I would have had no difficulty in considering monetary damages against the Plaintiff. All Mr. Ampong wants is for this matter to be put entirely behind him once and for all. It is his hope that the Plaintiff will also do the same.

[79] Part of putting this incident behind the parties is the removal of the two Facebook posts by Mr. Kovach-Durham, the reply by Mr. Ampong, and the cease-and-desist letter posted by Mr. Kovach-Durham.

[80] As Justice Thompson noted in *Nanaimo (City) v. Propp*, 2024 BCSC 2465, at para. 16, the law of defamation limits freedom of expression and freedom of speech. No person has the freedom to defame others without legal justification.

[81] In *Nanaimo*, Thompson J. issued the injunction that was being sought. Mr. Ampong has not sought an injunction but I am satisfied that it is necessary that an order be made that the Plaintiff remove all posts related to the October 29, 2022, incident. I am also of the view, relying on the inherent jurisdiction of this Court, that the posts made by Mr. Kovach-Durham in relation to Mr. Ampong's election campaigns for his two runs for elected office must be taken down as well.

[82] All of the posts must be taken down 15 days after the date of the reasons. There is no ambiguity about what must be done by Mr. Kovach-Durham. Mr. Ampong must also remove his reply posts to Mr. Kovach-Durham. If either party

fails to delete the posts as ordered, the other party is at liberty to set down a hearing before me so that I may address the non-compliance, including by way of the possibility of the imposition of costs.

Costs

[83] Among other things, the Plaintiff seeks costs for this hearing and for past hearings. Given the outcome, the Plaintiff has been substantially unsuccessful. I make no order of costs in favour of the Plaintiff.

[84] Given Mr. Ampong has been substantially successful in defending the claims made against him, I would have awarded costs against the Plaintiff if Mr. Ampong sought them. He did not, therefore, I make no cost order against the Plaintiff.

Conclusion

[85] While the CCTV footage shows Junior lunged at the Plaintiff on October 29, 2022, he only did so after the Plaintiff insulted, swore and goaded him. But for the Plaintiff's own menacing and arrogant conduct, no one, including Junior, would have had to exit the Salon on account of the commotion. From the outset of the Plaintiffs' interactions with Mr. Ampong, the Plaintiff was the aggressor; he needlessly escalated the situation. He was untruthful and he exaggerated his evidence. There is no evidence that the incident caused him any damage. I find no basis to award the Plaintiff any damages.

[86] There is no vicarious liability against Mr. Ampong or any defendant in relation to Junior. Mr. Ampong did not defame Mr. Kovach-Durham but I find Mr. Kovach-Durham defamed Mr. Ampong.

“Dion J.”