IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Sanderson v. Bennett,*
2025 BCSC 118

Date: 20250127
Docket: S176271
Registry: Vancouver

Between:

Paul Sanderson

Plaintiff

And

Robin Bennett

Defendant

Before: The Honourable Justice Douglas

Reasons for Judgment

Counsel for the Plaintiff:	D.F.Y. Young G. Green
Counsel for the Defendant:	J.V. Payne
Place and Dates of Trial:	Vancouver, B.C. August 12–16, 19–23 and 26, 2024
Place and Date of Judgment:	Vancouver, B.C. January 27, 2025

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I. OVERVIEW

[1] Each of the parties in this defamation action once had an ownership interest in vacation rental units at the Coast, a strata-owned hotel in Whistler, BC. The defendant, Robin Bennett, purchased a unit with his wife in 2011. The plaintiff, Paul Sanderson, acquired his ownership interest in 2013, through ResortQuest Whistler Property Management Inc. ("ResortQuest"), a property management company of which he was then a part-owner.

[2] The parties first locked horns in 2013 in connection with a planned renovation project at the Coast. In Mr. Bennett's view, Mr. Sanderson stonewalled his efforts to obtain the information he requested regarding the business case for this cost.

[3] While Mr. Bennett's initial focus was the renovation project at the Coast, it soon shifted to the rental management agreements ("RMAs"), which he concluded were not sufficiently lucrative for owners. Mr. Bennett quickly came to view Mr. Sanderson as the primary obstacle in his path towards implementing a collective bargaining process between Coast unit owners and hotel management in order to renegotiate the RMAs. Mr. Bennett promptly mobilized his efforts: he became involved in the Coast renovation advisory committee; he was elected to strata council; he formed an interim owners' council, followed by an incorporated owners' association, with a view to implementing this kind of collective bargaining process, an approach Mr. Sanderson did not support.

[4] Mr. Sanderson alleges that Mr. Bennett defamed him on two occasions: 1) in an oral statement he made following a strata council meeting on June 6, 2015; and 2) in an email he sent on June 4, 2017. Mr. Sanderson denies the truth of these statements and says that Mr. Bennett acted in a malicious, oppressive, and high-handed manner and caused irreparable damage to his reputation. He seeks general, special, aggravated, and punitive damages.

[5] Mr. Bennett denies making the alleged oral statement but concedes that he sent the impugned email and that it was defamatory. He relies primarily on the

defence of qualified privilege and denies Mr. Sanderson has established causation, proved any loss beyond presumed nominal damages, or mitigated his loss.

[6] For the reasons that follow, I conclude that Mr. Sanderson has established a claim in defamation and that the defence of qualified privilege is not available to Mr. Bennett. However, I also conclude that Mr. Sanderson's damages are substantially more modest than he claims.

II. FACTUAL BACKGROUND

A. The Parties

[7] Both parties are self-described businessmen who were born in the UK.

[8] Mr. Sanderson has a bachelor's degree in economics from Bristol University and some post-degree diplomas from the UK Institute of Marketing. He worked for many years as a senior account executive in the UK beverage industry before relocating to Canada for about 12 years with his wife and family in 1989. He returned to BC from the UK in 2002. Mr. Sanderson said he had visited Whistler, BC in the early 1990s, fallen in love with the place, and investigated the possibility of investing in a vacation property there. By 1999, he owned two Whistler vacation properties.

[9] Mr. Bennett has a Master's degree in Business Science and works as a business consultant. He currently resides in Germany.

B. ResortQuest

[10] In the early 2000s, Mr. Sanderson met and became friends with Rob and John O'Neill, who owned and operated O'Neill Hotels and Resorts Ltd. In about 2002, he met Marten Sprenkels; they became friends and business partners. Mr. Sprenkels was a managing broker with his own company, Lanark Holdings Ltd., operating as Century 21, a full-service real estate company that provided strata management services to strata corporations and rental management services to investor owners. Mr. Sprenkels also owned and operated Whistler Property Maintenance Ltd., a company that provided maintenance services to strata corporations.

[11] In 2007, Mr. Sanderson and the O'Neill brothers purchased ResortQuest. Until July 1, 2015, Mr. Sanderson was a 49% shareholder in ResortQuest through his holding company, Sanderson Hotels and Resorts Inc.; the O'Neill brothers held the remaining 51% of shares in ResortQuest. By 2010, Mr. Sanderson was also an investor in two of Mr. Sprenkels' other companies: Lanark Holdings Ltd., doing business as Century 21, and Whistler Property Maintenance Ltd.; Mr. Sprenkels ran the daily operations of both companies.

C. The Coast

[12] The Coast is a Phase 2 strata hotel in Whistler, BC. As such, it is subject to a restrictive covenant which provides that owners may make personal use of their units for a maximum of 28 days in the summer and 28 days in the winter. Owners must otherwise place their units in an approved rental pool for the remaining 309 days of the year. This restrictive covenant also prohibits Airbnb rentals.

[13] In 2013, ResortQuest purchased a rental unit at the Coast from another owner, Bruce Evans-Atkinson. The same year, ResortQuest partnered with O'Neill Hotels and Resorts Ltd. and assumed the role of rental property manager for the Coast. Thereafter, ResortQuest managed the day-to-day affairs of the business and the common areas at the Coast, while taking instructions from a strata council, which represented individual unit owners.

D. The RMAs

[14] All 186 residential unit owners at the Coast had individual RMAs with O'Neill Hotels and Resorts Ltd. Each of these RMAs had a ten-year term which expired in 2019. Unless owners provided notice to the contrary, 180 days before the expiry of this term, the RMAs were automatically renewed for another ten-year term. The RMAs entitled O'Neill Hotels and Resorts Ltd. to a 42% management fee on all revenue generated from the rental of units at the Coast.

E. The Renovation Project

[15] On July 21, 2014, ResortQuest sent a letter to all Coast owners proposing a refurbishment project for the interiors of strata units. Mr. Bennett and his wife owned a relatively large unit and their expected share of this project was about $40,000.

[16] Within 48 hours of receiving this letter from ResortQuest, Mr. Bennett contacted Mr. Sanderson to inquire about the business metrics and strategy to justify this cost. Mr. Sanderson refused Mr. Bennett's request for information on the grounds of confidentiality. Mr. Bennett was dissatisfied with this response and thought that Mr. Sanderson had effectively stonewalled him.

[17] Mr. Bennett promptly became actively involved in organizing owners at the Coast. On July 30, 2014, he wrote to owners to alert them to the fact that, if they did not reject the proposed renovation project within 30 days, they would be deemed to have accepted it. He provided owners with a form letter for their signature, rejecting the proposed refurbishment project. He joined the renovation advisory committee; on his evidence, its purpose was to involve more owners in making decisions about the nature and scope of the planned renovation project at the Coast and the associated tender process.

[18] While the renovation project was Mr. Bennett's initial focus, he said that he subsequently uncovered other issues of concern, including, in particular, with the RMAs. Between July and November 2014, Mr. Bennett and Guy Sawchuk, another owner at the Coast, formed an informal interim council of owners to address issues regarding the proposed renovations, the RMAs, and the general operation of the Coast. According to Mr. Bennett, the goal was to persuade owners to allow the owners' council to represent their collective interests and to engage in discussions with O'Neill Hotels and Resorts regarding the planned refurbishment project and the RMAs. Mr. Bennett quickly came to view Mr. Sanderson as an obstacle in his path.

F. The October 7, 2014 AGM

[19] Mr. Sanderson became aware in about October 2014 that some owners at the Coast had taken steps to organize themselves; he understood they had done so in order to collectively renegotiate the RMAs with O'Neill Hotels and Resorts, and that John O'Neill had agreed in principle to form a negotiating committee with a representative of all owners.

[20] Mr. Sanderson thinks that he first met Mr. Bennett in person in late 2014 at the Coast strata AGM. There is conflicting evidence about what transpired at this meeting. According to Mr. Sanderson, it was a noisy meeting and he necessarily projected his voice in order to be heard. He denied shouting, becoming angry, or invading anyone's personal space. He denied having any recollection of saying he would permit an owners' association at the Coast over his dead body, contrary to the evidence of Mr. Bennett and Deborah Crozier, another strata council member.

[21] Ms. Crozier testified that the 2014 AGM was characterized by a lot of yelling and that it was like no other meeting she could recall. She remembers Mr. Sanderson being loud, disruptive, and threatening in his tone and demeanour, during both the strata meeting and the informal discussion that followed. She described him as red-faced, agitated, and confrontational. She recalled Mr. Sanderson cutting Mr. Bennett off when he was speaking, a few owners telling Mr. Sanderson to "shut up", and the parties' verbal exchange becoming quite heated. She also said that Mr. Sanderson tried to block Mr. Bennett and Mr. Sawchuk (who had just listed his unit for sale) from putting their names forward to serve on strata council, and that she recalled Mr. Sanderson "begging" Ralph Newbigan, another owner, not to resign his seat on strata council in order to prevent the election of owners who supported the owners' council. Mr. Sanderson disputes that evidence.

[22] Like Ms. Crozier, Mr. Bennett said that Mr. Sanderson was loud, angry, and agitated at this AGM; he described the meeting as a shouting exercise. Mr. Bennett recalled that Mr. Sanderson was clearly opposed to any form of collective bargaining

with owners and that he expressed significant concern that the interim owners' council had written to owners.

[23] Both parties admitted they raised their voices at this AGM in order to be heard but denied they were shouting. Mr. Bennett conceded that neither of them behaved in the most gentlemanly manner possible. In his view, Mr. Sanderson encroached on his personal space, accused him of doing something that was contrary to the owners' interests, and attempted to intimidate him; by his own admission, Mr. Bennett was not inclined to back off.

[24] Mr. Bennett and Mr. Sawchuk were both elected to strata council at the 2014 AGM. Mr. Bennett viewed the strata council as the only recognized body that could represent owners' interests at the time. He remained on strata council until he sold his unit in 2017.

G. The Owners' Association

[25] On November 28, 2014, Mr. Bennett, along with Mr. Sawchuk and three other owners, formally incorporated the Strata Plan LMS2364 owners' association as a society pursuant to the laws of BC. It was subsequently registered with the CRA; Mr. Bennett was a founding member. According to Mr. Bennett, the purpose of forming the owners' association was to level the playing field, engage in collective bargaining with O'Neill Hotels and Resorts, and renegotiate the RMAs. It is unclear how many owners at the Coast supported the interim owners' council or the owners' association. Mr. Bennett did not obtain the owners' unanimous support. In Mr. Bennett's view, Mr. Sanderson was the primary driver of opposition to the owners' association.

[26] Mr. Bennett admitted the owners' association succeeded in stalling the planned renovation project at the Coast; his goal was to use this project as leverage in an effort to renegotiate more lucrative RMAs for unit owners.

[27] On February 18, 2015, John O'Neill, President of O'Neill Hotels and Resorts, wrote to all owners at the Coast about the planned building renovations and the new

owners' council. He explained that O'Neill Hotels and Resorts had acquired the day-to-day management of the Coast in October of 1995. In addition to acquiring the building's hotel management business, it had purchased the two commercial strata lots at the Coast (comprising the hotel front desk, meeting rooms, back offices, storage rooms, and the breakfast hearth room in the lobby). Mr. O'Neill confirmed that O'Neill Hotels and Resorts, together with ResortQuest, was then operating the rental program at the Coast, in co-operation with all 186 owners. He noted that O'Neill Hotels and Resorts had teamed up with Mr. Sanderson in 2013, and turned over the day-to-day management of the Coast to ResortQuest.

[28] Mr. O'Neill identified two main issues then facing the Coast:

1. The proposed hotel renovations; and

2. The formation of an effective, unified body to represent all owners regarding the rental management of owners' units.

[29] Mr. O'Neill stated that the strata council at the Coast, under the direction of its Chair, Mr. Evans-Atkinson, was tasked with operational matters for the strata corporation only, and had no direct responsibility for matters relating to individual units or rental management. He referenced useful recent discussions with the new owners' association but noted that it did not represent all 186 owners at the Coast. He stated that O'Neill Hotels and Resorts had agreed to form a homeowners' negotiating committee to represent all owners on matters related to a review of the rental management relationship; he confirmed it was not intended to replace the elected strata council. Mr. O'Neill concluded his letter by stating that management and owners shared the same goals: namely, to maximize revenues, to increase the value of their real estate investment, and to make any visit to the Coast a first-class experience.

[30] On February 25, 2015, Mr. Bennett followed-up by letter to owners regarding the proposed negotiating committee to address the RMAs. He noted that the planned renovation project at the Coast had brought two matters to the attention of

most owners: 1) their lack of positive financial returns over the past several years; and 2) significantly decreased real estate values for the hotel units. He stated that the path to financial success and value for owners could only come from increased revenue and strict cost control, and that an "incentivized" RMA (i.e., one partially linked to financial returns for owners) would provide the best foundation for owners to align their interests with those of O'Neill Hotels and Resorts and ResortQuest. Mr. Bennett submitted that the owners' association was the best way to ensure ongoing democratic representation for owners.

H. The June 6, 2015 Strata Council Meeting

[31] The Coast strata council held a meeting on June 6, 2015. Mr. Sanderson was not present but he alleges that Mr. Bennett made oral defamatory statements about him at this meeting. In addition to five strata council members (including Mr. Bennett, Mr. Evans-Atkinson, and Ms. Crozier), Mr. Sprenkels (representing Lanark Holdings Ltd. dba Century 21 Performance Realty & Management) and Elissa McLennan (a representative of ResortQuest) attended this meeting. Four of these seven individuals testified at trial.

[32] Mr. Sanderson said he learned from Mr. Evans-Atkinson, strata council Chair, that Mr. Bennett had made defamatory oral statements about him on June 6, 2015. These comments are not reflected in the strata council meeting minutes. Mr. Bennett said that he has no recollection of making the impugned statements; he denies Mr. Sanderson has proved on a balance of probabilities that he did so.

I. The Sale of ResortQuest

[33] On July 1, 2015, Wyndham Vacation Rentals North America, a subsidiary of Wyndham Worldwide Corporation, an international hotel chain, purchased ResortQuest. According to Mr. Sanderson, ResortQuest's negotiations with Wyndham regarding this sale began in early 2015. Following its purchase of ResortQuest, Wyndham replaced O'Neill Hotels and Resorts on the RMAs with the owners at the Coast.

[34] After the sale of ResortQuest in 2015, Mary Lynn Clark, former President of Wyndham Vacation Rentals North America, entered into a consulting agreement with Mr. Sanderson's holding company, Gaitor Solutions Inc., which provided that Mr. Sanderson would provide services to ResortQuest for one year, from July 1, 2015 to June 30, 2016. Ms. Clark testified that it was common in her industry, after the purchase of a new company, to retain a previous owner to assist with the transition. Ms. Clark said she required someone to mentor Steve Seattle, the new General Manager at the Coast, and that she then had business needs for Mr. Sanderson's services.

[35] Following Wyndham's purchase of ResortQuest, Mr. Seattle took over Mr. Sanderson's previous role in the day-to-day management of the Coast and Mr. Sanderson reported directly to Ms. Clark. Mr. Sanderson understood that his new role would involve the provision of consulting services to Wyndham for one year while ResortQuest transitioned from a privately-owned company to a global public company. The consulting agreement with Wyndham provided that Mr. Sanderson would receive a fee of $150,000 per year, payable on a monthly basis, and a one-time incentive payment in the amount of $100,000, payable on the first anniversary of the agreement. This initial consulting agreement was subsequently renewed from July 1, 2016 to December 31, 2016, through a series of contracts of variable duration. On January 1, 2017, Gaitor renewed its consulting services agreement with ResortQuest for a further one-year term ending December 31, 2017. All of these consulting agreements included a 30-day termination clause.

[36] Mr. Sanderson and his wife, Jean Sanderson, are the only two shareholders of Gaitor; Mr. Sanderson holds two-thirds of the shares in Gaitor; his wife holds one-third of the shares.

[37] Mr. Bennett had no clear understanding of Mr. Sanderson's role after Wyndham purchased ResortQuest. Mr. Bennett remained unhappy with the return on his investment at the Coast: on his evidence, owners were making almost no money and the Coast was underperforming relative to comparable properties. In

2015, Mr. Bennett learned that Mr. Sanderson had retained a consulting role with Wyndham, ResortQuest's new owner. While Mr. Bennett admitted Mr. Sanderson appeared resistant to changing the existing RMAs, he denied any personal animus towards Mr. Sanderson.

[38] Ms. Clark agreed she was aware that Mr. Bennett and a handful of other owners wanted to be able to make decisions for all owners regarding the RMAs. She advised Mr. Bennett that she would recognise the owners' association if it obtained the signatures of all 186 owners at the Coast. That never occurred.

J. Subsequent Correspondence

[39] In October 2015, Mr. Sanderson sent a letter to all Coast owners, using the owners' contact information in ResortQuest's database. He said his purpose in doing so was to clarify for owners the process for electing individuals to serve on strata council at the upcoming AGM. His letter stated, in part, as follows:

> However, I would like to raise a number of concerns that many owners should be aware of. Over the last 18 months, there has been a small owner group that has adopted a strategy to challenge the current structure of how the hotel is managed. I have heard some of their issues raised and that they have tried to initiate an owners' society, but it appears that the majority of owners have not engaged in this society, albeit a number of recruiting efforts have been made. They have also placed two individuals that started the group on two key committees, one being the owners' Strata Council and the other being the owners' Refresh Advisory Committee.
>
> Over the past year, both these individuals have been implementing a strategy that is counterintuitive to both partnership and harmony. They have taken an adversarial position against hotel management, strata corporation representatives and long term Strata Council members. Their actions have created animosity and frustration. […]
>
> […]
>
> Finally, I would like to ask every owner to support the current Chairman of the Strata Council, Bruce Evans-Atkinson by sending in your proxy to [particulars provided], naming [him] as your representative to enable the hotel the opportunity to return to partnership and harmony.

[40] According to Mr. Sanderson, Wyndham's legal counsel approved this letter before he sent it. On Mr. Sanderson's evidence, he was merely expressing his own opinion as a representative of ResortQuest about concerns related to the owners'

association. He denies he intended to block Mr. Bennett from serving on strata council, noting that Mr. Bennett had been elected in 2014 to serve a two-year term.

[41] On January 11, 2016, Mr. Bennett and others wrote to Ms. Clark, purportedly in good faith and on behalf of 60+ owners at the Coast, to express their continued frustration and disappointment with the management provided by its newly-acquired subsidiary, ResortQuest. This group advised that Mr. Sanderson had consistently stonewalled their numerous requests for financial, sales, and marketing information. They requested a meeting with Wyndham's executive to discuss how to resolve current issues, re-establish the Coast as a quality hotel, and meet their common goals. According to Mr. Bennett, he was looking for common ground.

[42] In January 2017, Wyndham renewed its consulting agreement with Gaitor, Mr. Sanderson's holding company. Ms. Clark admitted she enjoyed a good working relationship with Mr. Sanderson and that she had ongoing business needs for his services.

[43] On May 25, 2017, Mr. Bennett sent an email to Ms. Clark, copied to several other owners, expressing a variety of concerns. He stated, in part, that he had hoped they would then be "on a better path". He asked Ms. Clark if she agreed that the RMAs misled owners by allowing them "to assume the manager [was] trying to generate revenues for them in return for a 42% revenue share". He said he did not share her view that an owner representation group could only be recognized if <u>all</u> owners were members, and suggested that a significant unspecified number of owners had provided the owners' association with a legally binding mandate to negotiate on their behalf. He recommended that Ms. Clark consider commencing meaningful negotiations towards more balanced RMAs.

[44] Mr. Bennett admitted the focal point of his communication was the negotiation of new RMAs. According to him, he saw Wyndham as a partner and thought he had a duty to work with Wyndham in good faith and to advise Wyndham about any matters of concern. He admitted he was trying to revive with Ms. Clark the kind of discussions he had previously had with John O'Neill.

[45] By letter dated June 2, 2017, Ms. Clark wrote to owners at the Coast to advise that she was “delighted” to announce her appointment of Mr. Sanderson as her representative at the Coast. Mr. Bennett did not welcome this news. He did not know whether Ms. Clark was unaware of owners’ past experiences with Mr. Sanderson, or whether she intended her letter as a provocation.

[46] Ms. Clark testified that she sent her June 2, 2017 email because she wanted owners to know that Wyndham was taking their concerns seriously, and that she planned to work with them collectively to find solutions. She acknowledged that some owners were not delighted to be working with Mr. Sanderson but noted that she had also received positive feedback about him and that she had to balance the good and the bad and take it all with a grain of salt. She was confident she could accomplish her goal of finding a “win/win” solution for Wyndham and unit owners. She denied any of the complaints she had received from owners prompted her to question her decision to place Mr. Sanderson in a consulting role. On her evidence, she did what she had to do for the business and she, not Mr. Sanderson, was the ultimate decision-maker.

[47] Mr. Bennett described “intense dialogue” between Ms. Clark and some owners in the weeks before she sent her email of June 2, 2017; he admitted this group of owners was then in constant contact with Ms. Clark. On Mr. Bennett’s evidence, this owners’ group was surprised, disappointed, and displeased with Ms. Clark’s decision to reintroduce Mr. Sanderson as her representative at the Coast. Mr. Bennett admitted he did not think there was a path forward while Mr. Sanderson, who categorically objected to any changes to the existing RMAs, remained in place.

K. The June 4, 2017 Email

[48] On June 4, 2017, Mr. Bennett emailed Ms. Clark; he admits this email was defamatory. Mr. Bennett copied his email to 14 individuals, in addition to Ms. Clark. Among other things, Mr. Bennett stated in his email that Mr. Sanderson had a reputation for taking kickbacks. According to Mr. Bennett, he sent this email because he was uncertain whether Ms. Clark was aware of some owners’ past experiences

with Mr. Sanderson when she appointed him as her representative at the Coast. In his view, she needed to know that there were other perspectives on the matter and that Mr. Sanderson was neither a suitable mediator nor someone who would be able to find common ground between owners and Wyndham. He hoped Ms. Clark would find another person within Wyndham's organisation to assume Mr. Sanderson's role.

[49] Mr. Bennett's June 4, 2017 email stated, in part, as follows:

> In fact, the experiences owners have made with Mr. Sanderson include: him shouting at AGM meetings, unlawfully using the hotel management's owner database to promote individual owners for the election to strata council (owners with who he had personal business dealings including a real estate transaction at the property), his unwillingness to leave a Strata Council meeting when strata requested an "in [camera]" portion of the meeting, his operating as strata manager without a license and charging of strata management services in violation of the BC Strata Property Services Act, withholding owner contact information when requested by owners (a violation of the Strata Property Act), his reputation in Whistler for kickbacks from contract partners and proletarian physical posturing in personal interactions with many owners in summary make him "uniquely unqualified" to take on any role with reference to the Blackcomb Suites.

[50] Mr. Bennett sent this email from his personal email account; in closing, he referenced his own name and unit number. The same day, he wrote to other owners at the Coast to suggest that they too voice their concerns about Mr. Sanderson so that Ms. Clark would not get the impression that Mr. Bennett was the only one with concerns. Some owners did so and expressed their disappointment with Ms. Clark's decision to reintroduce Mr. Sanderson as her representative. Mr. Bennett denies these emails comprised a coordinated effort.

[51] On Ms. Clark's evidence, she was struck by reference in Mr. Bennett's June 4, 2017 email to Mr. Sanderson having a reputation for taking kickbacks, something she described as a "deadly sin" from Wyndham's perspective. She confirmed that Wyndham was a publicly-traded company and that it had a process in place to address this kind of serious allegation. That process would have involved immediately suspending Mr. Sanderson pending a comprehensive investigation and reporting the matter to Wyndham's Board of Directors. Ms. Clark immediately put Wyndham's legal counsel on notice of Mr. Bennett's kickback allegation.

[52] At the time, Ms. Clark was engaged in a corporate "spin" to separate Wyndham into two different publicly-traded companies. After consultation with her legal team, she opted to terminate Gaitor's consulting agreement based on its 30-day termination clause. She admitted she took this "easy out" option rather than undertaking a comprehensive investigation of Mr. Bennett's allegations at a time when Wyndham's resources were otherwise engaged. She testified that Wyndham did not complete a full investigation of Mr. Bennett's kickback allegation. She denied Wyndham had comparable concerns about any of the other allegations in Mr. Bennett's email, or that they would have triggered the same kind of investigation; rather, she said they might have involved Wyndham's HR team.

[53] On June 8, 2017, Ms. Clark sent an email to Coast owners to advise that she would be replacing Mr. Sanderson with another person from Wyndham. On or about June 9, 2017, Wyndham's legal counsel contacted Mr. Bennett regarding the allegations in his June 4, 2017 email. Mr. Bennett said he did not expect Wyndham to terminate Mr. Sanderson's consulting contract but that he instead thought Wyndham might simply reassign Mr. Sanderson to one of its other divisions.

L. The Demand Letter

[54] On June 16, 2017, Mr. Sanderson's former lawyer sent Mr. Bennett a demand letter, seeking a full and unequivocal retraction and apology for the statements in his June 4, 2017 email.

M. The Termination

[55] On June 19, 2017, Wyndham terminated ResortQuest's 2017 consulting agreement with Gaitor on 30 days' notice, effective July 21, 2017. Based on his telephone discussions with Ms. Clark, Mr. Sanderson understood that Ms. Clark had based her decision on "serious allegations" which had been made about him. Ms. Clark shared with him Mr. Bennett's June 4, 2017 email. Mr. Sanderson concluded that Wyndham had been forced into this decision and he did not contest the termination.

N. The Partial Apology and Retraction

[56] On July 4, 2017, Mr. Bennett replied to Mr. Sanderson's former lawyer by email; he copied Ms. Clark and others. He retracted and apologised for his statement that Mr. Sanderson had a reputation for taking kickbacks but stood behind all of his other statements, as set out in his email of June 4, 2017.

[57] By the time Ms. Clark received Mr. Bennett's partial retraction and apology, she had already terminated Wyndham's consulting agreement with Gaitor. From her perspective, Mr. Bennett's partial retraction changed nothing and did not eliminate Wyndham's need to undertake a comprehensive investigation of Mr. Bennett's kickback allegation, even if it was based only on hearsay. She said Mr. Bennett had effectively opened a pandora's box by making this serious allegation.

O. Subsequent Events

[58] Mr. Bennett and his wife sold their unit at the Coast in the fall of 2017, and relocated to Germany. Mr. Sanderson and his wife now reside primarily in Nanoose Bay, BC. They have two grown children and grandchildren in the UK and Dubai. Mr. Sanderson is now 68 years old.

III. DEFAMATION

A. Legal Principles

[59] A defamatory publication is one that tends to lower a person in the estimation of right-thinking members of society, or to expose a person to hatred, contempt, or ridicule: *Botiuk v. Toronto Free Press Publications Ltd.*, [1995] 3 S.C.R. 3, 1995 CanLII 60 at para. 62; *Crookes v. Newton*, 2011 SCC 47 at para. 39. Words may convey a defamatory meaning literally, inferentially, or by legal innuendo: *Weaver v. Corcoran*, 2017 BCCA 160 at para. 71. A court must assess the alleged defamatory words from the perspective of a person who is reasonably thoughtful and informed but not excessively sensitive or fragile: *Weaver* at paras. 68–69. Generally speaking, words which merely injure a person's feelings, insult their pride, or cause annoyance

or embarrassment are not actionable: *567893 B.C. Ltd. v. Aasen*, 2007 BCSC 663 at para. 24.

[60] The plaintiff has the onus of proving the three elements of a defamation claim on a balance of probabilities: 1) the impugned words were defamatory; 2) they referred to the plaintiff; and 3) they were published to at least one other person: *Grant v. Torstar Corp*., 2009 SCC 61 at para. 28. If the plaintiff is successful in meeting this onus, the falsity of the impugned statements is presumed, and the onus shifts to the defendant to establish any applicable affirmative defences to avoid liability: *Weaver* at para. 103; *Grant* at para. 29.

[61] A defamatory publication is characterized as libel when made in writing, and slander when made orally; libel is actionable *per se* and damages are presumed, whereas slander requires proof of special damages unless the impugned words are alone actionable, such as when they impute a crime to the plaintiff: *Lalli v. Athwal*, 2017 BCSC 1931 at para. 131. Defamation is a strict liability tort and the plaintiff need not prove that the defendant intended to cause harm or was otherwise careless: *Weaver* at para. 70; *Grant* at para. 28.

B. June 6, 2015 Oral Statement

1. Did Mr. Bennett make the alleged statement?

[62] Mr. Sanderson pleads that Mr. Bennett made two oral defamatory statements on June 6, 2015, at a strata council meeting at the Coast, when he said that Mr. Sanderson: 1) takes kickbacks; and 2) was acting as a strata manager without the license required under the *Strata Property Act,* S.B.C. 1998, c. 43 [*SPA*].

[63] Mr. Sanderson narrowed this claim at trial. He now relies on only one of these two alleged statements which, on the trial evidence, was not made during the strata council meeting on June 6, 2015, but rather in the context of an informal discussion that followed this meeting. Mr. Sanderson now alleges that Mr. Bennett defamed him on this occasion by stating that he has a reputation for taking kickbacks. Defence counsel conceded in closing that the law makes no distinction between statements

that someone actually engaged in bad behaviour and statements that someone has a reputation for doing so. I find there is no material distinction between the meaning of a statement that Mr. Sanderson takes kickbacks, and a statement that he has a reputation for doing so. Mr. Bennett admits, and I accept, that the meaning of both is defamatory: *Rooney v. Galloway*, 2024 BCCA 8 at paras. 368 and 403.

[64] The impugned oral statement is not reflected in the minutes of the June 6, 2015 strata meeting. Mr. Sanderson was not present during the discussion that followed this meeting. He relies on the evidence of former strata Chair, Mr. Evans-Atkinson, to prove that Mr. Bennett made the impugned oral statement. The parties agree that Mr. Sprenkels and Ms. Crozier were present at the June 6, 2015 strata council meeting. According to Mr. Evans-Atkinson, Mr. Sprenkels left before Mr. Bennett made the impugned oral statement; Ms. Crozier was not asked about it at trial. Mr. Bennett denies Mr. Sanderson has proved that he made the impugned oral statement on June 6, 2015. Accordingly, I begin by reviewing the evidence on this factual issue.

[65] Mr. Evans-Atkinson recalls that he remained in attendance until the end of the June 6, 2015 strata council meeting. On his uncontroverted evidence, owners often discussed a variety of matters informally after strata meetings concluded. I find that this is what occurred on June 6, 2015.

[66] Mr. Evans-Atkinson testified that he recalls Mr. Bennett speaking at this informal gathering of owners and directing a statement to those present that “Paul is known for getting kickbacks from strata contracts”. He said Mr. Bennett’s statement shocked him and that it was significant to him at the time. Shortly thereafter, Mr. Evans-Atkinsons told Mr. Sanderson about what Mr. Bennett had said, either verbally or by email.

[67] At trial, plaintiff’s counsel produced a statement that Mr. Evans-Atkinson signed on October 5, 2017, more than two years after the June 6, 2015 strata council meeting. Plaintiff’s counsel claimed privilege over this statement until he decided to call Mr. Evans-Atkinson as a witness at trial. Mr. Evans-Atkinson adopted

this written statement as his own, verified his signature on it, and confirmed its accuracy. He admitted Mr. Sanderson's lawyer was likely involved in finalizing his statement but was certain he had initiated this process and prepared the initial draft.

[68] Mr. Evans-Atkinson's signed statement is consistent with his trial evidence. It states, in part, that after the strata council meeting had adjourned on June 6, 2015, and Mr. Sprenkels and two other individuals had left, Mr. Bennett made the impugned oral statement. Mr. Evans-Atkinson understood that it referred to Mr. Sanderson but admitted Mr. Bennett might not have used his last name. At trial, Mr. Evans-Atkinson conceded that he did not recall:

a) Any other topics that might have been canvassed during the informal discussion that followed the strata council meeting on June 6, 2015;

b) Whether he made any notes about Mr. Bennett's defamatory oral statement in the first year after he heard it; or

c) The precise mechanics of how his written statement was finalized.

[69] A highlighted and annotated draft of this statement, emailed by Jonathan Van Netten, Mr. Sanderson's former lawyer, to Mr. Evans-Atkinson on October 3, 2017, is also in evidence. In this draft, Mr. Van Netten posed a few questions and sought some clarification and additional information from Mr. Evans-Atkinson. In my view, there is nothing surprising about this process. Mr. Evans-Atkinson advised Mr. Van Netten the same day that he would like to reflect further on the details of what occurred; in response, Mr. Van Netten invited him to take as much time as he needed. On October 10, 2017, Mr. Evans-Atkinson signed and returned his finalized statement to Mr. Van Netten.

[70] Mr. Bennett said he does not recall making the impugned oral statement; he did not expressly deny doing so, something his lawyer argued is impossible, absent a memory. Notably, Mr. Bennett did deny ever saying that Mr. Sanderson takes kickbacks; on his evidence, he always qualified such statements and placed them in context by saying that: 1) Grant Kim, another owner at the Coast, had provided him

with this information in early 2015; and 2) Mr. Kim's information was, in turn, based on information he had obtained during his business dealings with Intrawest. Mr. Bennett's June 4, 2017 email repeated his allegation about Mr. Sanderson having a reputation for taking kickbacks, without providing this context (i.e., without stating that this information was based on double hearsay obtained from others).

[71] It was open to Mr. Bennett to testify, if he could do so truthfully, that, despite having no memory, the impugned oral statement is not one he has ever made about Mr. Sanderson, nor one that he ever would make. Mr. Bennett did not give that evidence.

[72] Having regard to the evidence as a whole, I find that Mr. Bennett probably said, in the presence of others, after the June 6, 2015 strata council meeting, that Paul [Sanderson] had a reputation for taking kickbacks. I conclude on the trial evidence that there is no doubt this statement referred to Mr. Sanderson. In my view, this is the kind of statement that Mr. Evans-Atkinson would be likely to recall. I do not find it surprising that Mr. Evans-Atkinson no longer remembers the more mundane details of this discussion, or the precise mechanics of how his written statement was finalized. In my view, his willingness to admit those gaps in his memory enhances, rather than undermines, his credibility. Mr. Evans-Atkinson never wavered in his certainty that Mr. Bennett made the impugned oral statement. I accept his evidence on this point and find that Mr. Bennett likely did so.

2. Was the statement defamatory?

[73] Mr. Bennett concedes that if I find (as I have) that he made the impugned oral statement: 1) it was defamatory; 2) it referred to Mr. Sanderson; and 3) it was published to at least one other person.

C. June 4, 2017 Email

[74] Mr. Bennett admits he sent the impugned email on June 4, 2017.

[75] Mr. Sanderson pleads that the natural and ordinary meaning of these statements was, and was understood to be, that he:

a) Is a bully;

b) Uses physical intimidation in his personal interactions;

c) Is engaged in unethical, unlawful, and/or criminal activities;

d) Has committed violations of the *SPA*;

e) Takes kickbacks; and

f) Is "uniquely unqualified".

[76] Mr. Sanderson further narrowed his claim at trial. He now concedes that reference in this email to "proletarian physical posturing in personal interactions with many owners" is not defamatory. He admits the defamatory statements in this email largely relate to Mr. Bennett's allegation regarding kickbacks.

[77] Mr. Bennett admits this email refers to Mr. Sanderson, was copied to 14 other individuals and therefore published, and is defamatory. Having found that Mr. Sanderson has established the impugned oral and written statements are defamatory, I turn next to the defences on which Mr. Bennett relies.

IV. DEFENCES

A. Qualified Privilege

1. Legal Principles

[78] Mr. Bennett submits that qualified privilege affords him a complete defence to this claim. He argues that his defamatory statements were all made on occasions of qualified privilege, when he communicated criticisms about Mr. Sanderson to a small number of people who comprised his: (1) contract partners; (2) fellow strata owners; and/or (3) fellow owners who shared an interest in the performance of ResortQuest and O'Neill Hotels and Resorts pursuant to the RMAs and the potential renegotiation of the RMAs. Mr. Bennett relies on the Ontario Court of Appeal's summary of qualified privilege in *RTC Engineering Consultants Ltd. v. Ontario (Solicitor General)*, 58 O.R. (3d) 726, 2002 CanLII 14179 (C.A.) at para. 16:

> At the heart of the defence of qualified privilege is the notion of reciprocity or mutuality. A defendant must have some interest in making the statement and those to whom the statement is made must have some interest in receiving it. "Interest", however, should not be viewed technically or narrowly. The interest sought to be served may be personal, social, business, financial, or legal. The context is important. The nature of the statement, the circumstances under which it was made, and by whom and to whom it was made are all relevant in determining whether the defence of qualified privilege applies.

[79] Qualified privilege arises when a person making a communication has an interest in or legal, social, or moral duty to make the statement, and the person to whom it is made has a corresponding interest or duty to receive it: *Hill v. Church of Scientology of Toronto*, [1995] 2 SCR 1130, 1995 CanLII 59 at para. 143; *Bent v. Platnick*, 2020 SCC 23 at para. 121. The privilege attaches to an occasion upon which the communication is made, rather than to the words themselves: *Bent* at para. 121, citing *Hill* at para. 143. The type of duties and interests protected by qualified privilege are definable with some precision and involve a genuine reciprocity: *Grant* at para. 93. The threshold for establishing qualified privilege is high: *Grant* at para. 37.

[80] Qualified privilege is grounded in the social utility of protecting particular communicative occasions from civil liability rather than values associated with freedom of expression: *Bent* at para. 124, citing *Grant* at para. 94. The protection of qualified privilege is justified on the basis of public policy: *Hall v. Razutis*, 2018 BCSC 841 at para. 53. It is in the general interest and to the general advantage of society that a person, on limited occasions, should be free to speak openly and honestly without fear of retribution, even though others may be defamed: Raymond E. Brown, Erika Chamberlain and Karen Eltis, *Law of Defamation (Canada, United Kingdom, Australia, New Zealand, United States)*, 2nd ed (Toronto: Thomson Reuters, 1994) (loose-leaf updated 2024, release 4), at 13.4. Once an occasion is found to be privileged, the defendant can publish even defamatory or untrue remarks, provided they believe them to be true, although the privilege is not absolute: *Botiuk* at para. 79; *Hill* at para. 144.

[81] In essence, qualified privilege protects statements made on an occasion where there was a legitimate need to communicate the information in question, and a legitimate interest in receiving the communication: *Pineau v. KMI Publishing and Events Ltd.*, 2021 BCSC 1268 at para. 70. The relevant factors in determining whether a statement was made on an occasion of qualified privilege are summarized in *Pineau* at para. 71, citing *Olds College v. Huxley*, 2019 BCSC 2111 at para. 44, and include:

a) The impugned words;

b) The person who published the words;

c) The reasons the words were published;

d) The audience of the publication;

e) The circumstances under which it was published;

f) The duty or interest the defendant claims to safeguard;

g) The urgency of the occasion;

h) Whether the information was offered officiously; and

i) Whether the words published were germane and reasonably appropriate to the occasion.

[82] Qualified privilege can be defeated if the dominant motive for publishing the statement was actual or express malice or the limits of the duty or interest are exceeded: *Hill* at paras. 144 and 146.

2. Parties' Positions

[83] Mr. Sanderson denies qualified privilege has any application here.

[84] Defence counsel accepts that occasions of qualified privilege are determined on an objective basis: *Qiao v. Owners, Strata Plan LMS 3863*, 2020 BCSC 818 at para. 157. He submits that several different overlapping relationships were in play when Mr. Bennett made the defamatory statements, and that any one of them

satisfies the mutuality of interest required to establish an occasion of qualified privilege. Mr. Bennett argues that he was at all material times:

(a) A part-owner of real property at the Coast;

(b) An owner of a strata unit at the Coast;

(c) An owner pursuant to an RMA with O'Neill Hotels and Resorts;

(d) A beneficiary of ResortQuest's agreement with O'Neill Hotels and Resorts to provide manager services pursuant to his RMA;

(e) An elected member of the strata council at the Coast; and

(f) A member and director of the owners' association.

[85] Mr. Bennett submits that as a strata council member and director of the owners' association, he owed other strata owners and owners' association members a wide range of duties. He says the very purpose of the strata council and the owners' association required him to interact with ResortQuest and O'Neill Hotels and Resorts regarding the RMAs and other matters of interest to all owners and members of the strata corporation, strata council, and owners' association.

[86] Mr. Bennett argues that as an owner of a residential unit at the Coast and a party to an RMA, he had a direct personal and financial interest in:

a) All matters relating to the renovation project at the Coast and his share of this cost;

b) The renegotiation or renewal of the RMAs;

c) Coast management, including the person who performed the obligations of ResortQuest and O'Neill Hotels and Resorts under the RMAs; and

d) Any other matter that affected his wide range of interests at the Coast.

[87] Mr. Bennett underscores the admissions of Ms. Clark and Mr. Evans-Atkinson that ResortQuest, O'Neill Hotels and Resorts, Wyndham, and the Coast strata council would either want or need to know if an employee or contractor was engaged in unlawful, unethical, or inappropriate conduct. He submits that the evidence easily establishes the required mutuality of interest between him and: (1) any strata council member who was part of the discussion when the defamatory oral statement was made; and (2) his fellow owners, owners' association members, strata council members, and contract partners who received the defamatory email statements.

[88] Defence counsel asserts that there are compelling policy reasons to grant Mr. Bennett the full protection of qualified privilege. He questions how a strata or other corporation, partnership, or contracting parties could function if the common law prohibited expressions of concern about the behaviour or performance of a key person in the context of any one of those relationships. He suggests that an organization could neither receive nor investigate complaints of corruption, bullying, harassment, physical intimidation, racism, sexism, or criminality if the individuals who obtain this information, even if it turns out to be false, are forbidden or deterred by the common law from repeating such negative statements. He suggests that depriving Mr. Bennett of the protection of qualified privilege could have far-reaching implications regarding the application of qualified privilege to a wide-range of interests and relationships.

3. Analysis and Conclusions

[89] I address Mr. Bennett's oral and written defamatory statements in turn.

a) June 6, 2015 Oral Statement

[90] I have found that Mr. Bennett did not make his oral defamatory statement during a strata council meeting. He did not do so in response to any particular incident or complaint that was brought to either his attention (in his capacity as a member of the strata council or the owners' association), or to the attention of strata council. As noted, I accept Mr. Evans-Atkinson's uncontroverted evidence that Mr.

Bennett made his defamatory oral statement during an informal discussion with a small group of owners, after the June 6, 2015 strata council meeting had concluded.

[91] There is no evidence that anyone in this group had complained to the strata corporation, strata council, owners' association, or Wyndham about Mr. Sanderson's conduct. Neither the strata council nor the owners' association took any action in response to Mr. Bennett's oral statements. I do not agree that Mr. Bennett was communicating in any official capacity on this occasion. Adopting the language in *Pineau*, I am not persuaded that Mr. Bennett had any need to communicate his oral defamatory statement, or that any of the individuals present had a corresponding interest in receiving it.

[92] I do not agree that Mr. Bennett's oral statement attaches to any clearly defined occasion of qualified privilege that was characterized by a reciprocal interest or duty in communicating and receiving the information in question. I also find that Mr. Bennett made this oral statement recklessly, with no personal knowledge or factual foundation for believing it to be true. In my view, he chose to communicate serious unsubstantiated allegations about Mr. Sanderson, the person he perceived to be the main obstacle in his path towards implementing a form of collective bargaining at the Coast and renegotiating more lucrative RMAs.

[93] A communication exceeds an occasion of qualified privilege when it is not reasonably appropriate to the legitimate purposes of the occasion: *Botiuk* at para. 80. In my view, the evidence does not support the conclusion that Mr. Bennett's defamatory oral statement was germane to the occasion. There is no suggestion that anyone present took any steps in response to the information he provided. Mr. Bennett himself did nothing for approximately two years until June 4, 2017, when he sent his defamatory email to Ms. Clark. I conclude that Mr. Bennett's defamatory oral statement is not protected by an occasion of qualified privilege.

b) June 4, 2017 Email Statements

[94] Mr. Bennett relies on Mr. Sanderson's evidence that owners, ResortQuest, and O'Neill Hotels and Resorts were all engaged in the enterprise of the Coast as a

"partnership". He references Mr. Sanderson's admission that ResortQuest had an interest in hearing about anything that might affect this "partnership" including, for example, poor service by ResortQuest staff. Mr. Bennett asserts that owners' concerns about Mr. Sanderson were, by inference, matters of interest to both ResortQuest and O'Neill Hotels and Resorts that ought to be communicated to them.

[95] Mr. Bennett sent his June 4, 2017 email to Ms. Clark from his personal email account. He said nothing in his email about having written it in his capacity as either a member of the Coast strata council or the owners' association. In his evidence given on discovery, read in as part of the plaintiff's case, Mr. Bennett admitted the strata council neither reviewed nor approved a draft of his email before he sent it.

[96] Mr. Bennett initially testified that once he was elected to the Coast strata council, he had this mandate in mind whenever he sent emails, even if he did so from his personal email address. He later said that it was the content of his emails that distinguished his personal from his business communications; he conceded that he did not explain this distinction to the recipients of his emails.

[97] On Mr. Bennett's evidence, it was unnecessary for him to state in his June 4, 2017 email that he was writing on behalf of the owners' association because this is clear from his email. I disagree. Mr. Bennett's evidence on this point evolved at trial. He initially said it is clear in hindsight that the strata council and owners' association approved of his email. When challenged on this point, he admitted he did not prepare this email in consultation with others. He subsequently suggested that his "sense" (from having received emails from other owners) was that they agreed with him. In the transcript of his evidence given on discovery, read in as part of the plaintiff's case, Mr. Bennett testified that "in [his] mind", he "had the feeling" that he was writing on behalf of all the individuals he copied with his email. This evolution in Mr. Bennett's evidence undermined his credibility.

[98] I conclude that Mr. Bennett sent his email in his personal capacity, for strategic reasons, with the intention of advancing goals that he perceived to be in his personal best interests. By his own admission, he perceived Mr. Sanderson to be

strictly opposed to making any changes to the RMAs, and to any form of collective bargaining with owners in order to renegotiate them. In my view, the preponderance of evidence supports the finding that Mr. Bennett sent his June 4, 2017 email to Ms. Clark in an attempt to persuade her to replace Mr. Sanderson with someone who would be more amenable to collective bargaining, and with whom Mr. Bennett would be more likely to realize his goal of renegotiating the RMAs.

[99] I am not persuaded that Mr. Bennett sent his email because he thought that Ms. Clark, on behalf of Wyndham, had any reciprocal interest in receiving the information it contained. This conclusion is reinforced by Mr. Bennett's own evidence that he did not expect Ms. Clark to terminate Ms. Sanderson's consulting agreement as a consequence of the information he provided. In my view, if Mr. Bennett had believed that his statements were true (including, in particular, his allegation that Mr. Sanderson had a reputation for engaging in unlawful activity, including taking kickbacks), he ought reasonably to have expected that Wyndham would take them seriously and act on them. I do not agree that simply reassigning Mr. Sanderson to a different division of Wyndham (as Mr. Bennett suggested he thought might occur) would address Mr. Bennett's serious allegation that Mr. Sanderson had a reputation for taking kickbacks, something which implied criminal activity. Mr. Bennett conceded at his examination for discovery that his kickback allegation was both a "strong claim to make" and a serious allegation. He admitted Wyndham and Ms. Clark appeared to take it very seriously.

[100] Even if it is assumed that Mr. Bennett did send his email to Ms. Clark as a member of the owners' association, Mr. Sanderson denies the necessary reciprocity existed between Mr. Bennett, as a member of that association, and Ms. Clark, who did not recognize this association's authority. On Ms. Clark's unequivocal evidence, she was only prepared to engage with the owners' association if its members comprised all owners at the Coast. Mr. Bennett never realized that goal. Ms. Clark never solicited input from Mr. Bennett about her decision to appoint Mr. Sanderson as her liaison at the Coast. In the result, Mr. Sanderson denies the necessary reciprocity to establish a defence of qualified privilege is present. I agree.

[101] If Mr. Bennett had made his defamatory email statements in response to a particular incident or complaint, with a view to having Wyndham investigate Mr. Sanderson's conduct, I accept that they might have been protected by an occasion of qualified privilege. I do not agree that is why Mr. Bennett sent his June 4, 2017 email.

[102] Mr. Bennett did not ask the strata council, residential unit owners, the owners' association, Wyndham, or Ms. Clark to investigate any specific incident or complaint about Mr. Sanderson. He filed no police report regarding any alleged illegal activity. At trial, he professed surprise on learning that Wyndham had terminated its consulting agreement with Gaitor, Mr. Sanderson's company. Mr. Bennett's own evidence persuades me that he made his statements recklessly, for personal strategic reasons and without regard for their potential impact on Mr. Sanderson.

[103] Defence counsel referenced the classes of communications in Halsbury's which have recognized the existence of a privileged occasion, including:

a) Family communications;

b) Communications regarding employment;

c) Union communications;

d) Management/employee communications;

e) Business and credit reports;

f) Business to business communications;

g) Communications among shareholders and directors;

h) Communications about litigation to third parties;

i) Communications by bankruptcy trustees;

j) Complaints to appropriate authorities (i.e. to bodies such as the police, government authorities, or non-government authorities such as the "Better Business Bureau");

k) Doctor and patient communications;

l) Statements to public bodies including municipal councils and school boards; and

m) Response to personal attack or criticism.

[104] In my view, none of these categories, all of which reference more circumscribed situations than those present here, are analogous.

[105] Mr. Bennett relies heavily on *Martin v. Lavigne*, 2011 BCCA 104. The Court of Appeal in *Martin* found that the elected strata council president had a duty to inform strata owners about the appellants' allegations and the strata council's actions in an attempt to resolve them, and that he could rely on the defence of qualified privilege: *Martin* at para. 43. Justice Smith, speaking for the Court, noted that the trial judge found the strata president reasonably and honestly believed he was under a duty to communicate the information he provided to the strata owners and that he only did so after speaking with legal counsel: *Martin* at paras. 45 – 46.

[106] Mr. Bennett did not send his email to all strata council members or all owners. In my view, that fact is significant because it suggests Mr. Bennett did not have a reasonable or honest belief that he was under a duty to inform all strata members and owners. There is no evidence that he asked the strata council (or anyone else in a position of authority) to investigate Mr. Sanderson for any acts of impropriety, or that he obtained any legal advice before making his defamatory statements. Those facts distinguish this case from *Martin*.

[107] In my view, the timing of Mr. Bennett's June 4, 2017 email is also significant. By Mr. Bennett's own admission, Mr. Kim first provided him with unsubstantiated second-hand information about Mr. Sanderson's alleged reputation for taking kickbacks in early 2015. Mr. Bennett admitted he saw Wyndham as the owners' new contracting partner by January 2016, when he wrote to Ms. Clark to express his frustration and disappointment with ResortQuest, Wyndham's newly acquired subsidiary. Notably, Mr. Bennett said nothing in this letter about Mr. Sanderson having a reputation for taking kickbacks. It is unclear why he considered himself to have an interest or duty to do so in June 2017, almost one and a half years later. I

conclude that Mr. Bennett took no steps to communicate this information to Ms. Clark until he perceived that it was strategically advantageous for him to do so: namely, once it had become apparent that Mr. Sanderson would remain a clear obstacle to Mr. Bennett achieving his goal of having Coast owners engage in a form of collective bargaining in order to renegotiate the RMAs.

[108] I find that the evidence does not support the conclusion that Mr. Bennett's written defamatory statements are protected by an occasion of qualified privilege.

c) Malice and the Scope of Qualified Privilege

[109] Mr. Sanderson denies the defence of qualified privilege is available to Mr. Bennett. Alternatively, he says Mr. Bennett acted with malice, was driven by an ulterior motive, and exceeded the scope of any occasion protected by the privilege.

[110] Words are presumed to be made honestly and in good faith when they are made appropriately on an occasion of qualified privilege, unless actual or express malice is proven: *Martin* at para. 35; *Bent* at para. 121. Malice includes spite or ill will and any indirect motive or ulterior purpose which conflicts with the sense of duty created by the occasion of qualified privilege: *Botiuk* at para. 79; *WIC Radio Ltd. v. Simpson*, 2008 SCC 40 at paras. 101-102.

[111] Malice includes circumstances when the speaker was reckless as to the truth of the words spoken: *Bent* at para. 121. A defendant who acts carelessly, foolishly, or with stupidity is distinct from one who acts with malice: *Botiuk* at paras. 96-97. A communication is actuated by malice if it is published by the author with reckless indifference for whether or not it is true: *Smith v. Cross*, 2009 BCCA 529 at para. 34. Evidence of malice can be extrinsic or intrinsic: *Botiuk* at para. 94.

[112] Speech will exceed the occasion if it is unrelated to the occasion or does not have a reasonable bearing on the interest entitled to protection: *Hall* at para. 136. In *Hall* at para. 136, Justice Young found that the defendant exceeded the occasion of qualified privilege by making false accusations of identity theft, a criminal activity.

[113] I have found that Mr. Bennett's defamatory oral statement is not protected by an occasion of qualified privilege. Even if I had found that it was, I have concluded that Mr. Bennett made this statement with reckless disregard for its truth. By his own admission, Mr. Bennett had no objective factual basis to substantiate his serious allegation about Mr. Sanderson having a reputation for taking kickbacks; he neither made any inquiries nor took any steps to verify this information.

[114] On July 24, 2017, after he had been sued for defamation, Mr. Bennett made his first inquiries about the veracity of his allegations regarding Mr. Sanderson. He did so by emailing a group of owners, including Mr. Kim, to ask if they had heard anything about Mr. Sanderson's reputation within Whistler, to advise that their witness statements could have a significant impact on the outcome of this action, and to state that he would appreciate their support.

[115] I find that Mr. Bennett sent his defamatory email statements to Ms. Clark for an ulterior purpose: namely, one that had nothing to do with any reciprocal interest or duty in providing information of concern about Mr. Sanderson. Significantly, he copied this email to 14 individuals who had no reciprocal duty or interest in receiving it; none (apart from Ms. Clark) had any duty or ability to investigate Mr. Sanderson or the authority to remove him from his position. I conclude that Mr. Bennett copied these individuals with his email because he perceived them to share his goal of removing Mr. Sanderson from his role at the Coast, thereby gaining leverage in their efforts to implement a collective bargaining process at the Coast and permit the owners' association to renegotiate more lucrative RMAs. Even if I had found that the defence of qualified privilege applied here, I would have concluded that Mr. Bennett acted with reckless disregard for the truth of his statements and for an ulterior purpose, thereby exceeding any occasion of qualified privilege: *Botiuk* at para. 96; *Creative Salmon Co v. Staniford*, 2009 BCCA 61 at para. 37.

B. Justification

[116] In the further alternative, Mr. Bennett relies on the defence of justification. He concedes that justification is not a defence to his statements that Mr. Sanderson has a reputation for taking kickbacks.

[117] Courts have described the defence of justification as follows:

(a) The defendant is not required to prove the literal truth of every word (*Bruno v. Vultaggio,* 2006 BCSC 1029 at para. 4);

(b) The defendant need only prove that the sting, main charge, or gist of the words was true (*Bruno v. Vultaggio* at para. 4; *Smith v. Cross,* 2007 BCSC 1757 at para. 37, aff'd 2009 BCCA 529); and

(c) It is enough for a defendant to show that the words were substantially true - the publication needs to convey an accurate impression and minor inaccuracies do not preclude the defence (*Bondar v. Neufeld*, 2024 BCSC 594 at para. 82).

[118] Mr. Bennett parses and paraphrases his defamatory email statements to mean that:

a) Owners have witnessed Mr. Sanderson:

1. Shouting at AGM meetings;

2. Refusing to leave a strata council meeting in order to permit strata council to discuss strata business *in camera*;

3. Withholding owner contact information, contrary to the *SPA*; and

4. Engaging in bullying, intimidating, or threatening physical posturing;

b) Owners have information that Mr. Sanderson:

1. Unlawfully used ResortQuest's owner database to promote a candidate with whom he had personal business dealings for election to strata council;

2. Acted as a strata manager (through ResortQuest) and collected fees for doing so without a licence, contrary to the *SPA*; and

3. Has a reputation in Whistler, BC for taking kickbacks from contract partners; and

c) Collectively, these experiences made Mr. Sanderson uniquely unqualified to act as the liaison between Ms. Clark and owners at the Coast.

[119] Mr. Bennett argues that the trial evidence proves the substantial truth of the sting of all these statements, except for the one about Mr. Sanderson having a reputation for taking kickbacks.

[120] Having regard to the trial evidence as a whole, I conclude that the parties are both strong-willed individuals who likely raised their voices at the 2014 AGM. There is no serious dispute that Mr. Sanderson refused to leave a strata council meeting in 2014, to permit strata council to discuss a matter *in camera*; on his uncontroverted evidence, this item was not on the agenda.

[121] I find Mr. Bennett has proved that the sting of the following statements is substantially true:

a) Mr. Sanderson shouted at the 2014 AGM; and

b) Mr. Sanderson once refused to leave a strata council meeting in order to permit the strata council to discuss strata business *in camera*.

[122] In my view, neither of those statements is defamatory.

[123] Ms. Crozier was a straightforward witness whose evidence I accept without difficulty. She denied being friends with, or having seen, either party in many years.

[124] Ms. Crozier testified that on one occasion in the spring of 2016, she felt personally intimidated by Mr. Sanderson's words and actions; she recalled him telling her on this occasion that the RMAs had been written so that they could never be broken. I accept Ms. Crozier's evidence on this point. Given Mr. Sanderson's admission that reference in Mr. Bennett's June 4, 2017 email to "proletarian physical posturing in personal interactions with many owners" is not defamatory, I have not considered whether justification is a defence to those statements, or whether Mr. Bennett has proved the substantial truth of them.

[125] I find Mr. Bennett has proved the substantial truth of his statement that some owners viewed Mr. Sanderson as "uniquely unqualified" to be their liaison with Ms. Clark. However, this description is based, in part, on Mr. Bennett's statement (for which there is no justification defence) that Mr. Sanderson had a reputation for taking kickbacks.

[126] I turn next to Mr. Bennett's defamatory statements that Mr. Sanderson acted unlawfully and contrary to the *SPA* by: 1) using the owners' database and withholding contact information when owners requested it; and 2) acting as a strata manager without a license.

[127] In the transcript of his examination for discovery, read in as part of the plaintiff's case, Mr. Bennett was asked to explain what he meant by his email statement that Mr. Sanderson had unlawfully used hotel management's owner database. In response, Mr. Bennett said he meant that Mr. Sanderson had used this database for the purpose of having Mr. Evans-Atkinson receive proxies to represent owners at AGMs, thereby giving Mr. Evans-Atkinson an unfair advantage. Mr. Bennett admitted he knew of no law that Mr. Sanderson had contravened but maintained that, in his view, Mr. Sanderson's conduct was unethical.

[128] At trial, Mr. Sanderson denied withholding owner contact information. On his evidence, when Mr. Bennett requested this information, he advised that it was owned by Coast management but that Mr. Bennett could request it from strata council. I do not agree that Mr. Bennett has proved the truth of the sting of his

defamatory statement that Mr. Sanderson violated the *SPA* by unlawfully withholding owner contact information.

[129] Mr. Bennett admitted on discovery that he raised the legality of ResortQuest being paid as a strata manager at the Coast on the basis that Mr. Sanderson was not licensed. Mr. Bennett wanted this matter clarified; accordingly, Mr. Evans-Atkinson sought a legal opinion. This August 10, 2015 legal opinion is in evidence. It describes the self-managed strata corporation at the Coast, reviews the relevant sections of the *Real Estate Services Act*, S.B.C. 2004, c. 42, *SPA*, and applicable Regulations, and concludes:

> We therefore are of the opinion that [O'Neill Hotels and Resorts] or [ResortQuest] is entitled to act as manager as understood in the specific role played in the administration of the Strata's building and assets, and may receive remuneration despite not being licensed in accordance with the Real Estate Services Act as such licensing is unnecessary.

[130] Mr. Bennett understood that Mr. Sprenkels was licensed to act as a strata manager. He conceded that once the strata council obtained this legal opinion, he did not wish to pursue the matter further. At trial, Mr. Bennett described this legal opinion as "soft" and "convenient"; however, he admitted no one, himself included, ever challenged its validity. Strata council sought no further legal opinion on the matter and neither did Mr. Bennett.

[131] On discovery, Mr. Bennett testified that he believed Mr. Sanderson was acting unlawfully as a strata manager, at least until 2013 or 2014 (when Mr. Sprenkels' company assumed this role) and that this is what he meant by his email statement. Mr. Bennett made a similar assertion at trial. Notably, he conceded that he neither specified this 2013/2014 timeframe, nor made this distinction, in his defamatory email.

[132] Defence counsel submits that by asking Mr. Sprenkels, on behalf of Century 21, to take over as strata manager at the Coast, there is a clear inference that Mr. Sanderson was previously engaged in unlawful activity by collecting strata fees, paying strata bills, and coordinating strata fees without a license. He asserts that Mr.

Sanderson's actions effectively acknowledge the legitimacy of this concern and give rise to an inference that proves the substantial truth of the sting of this defamatory statement. I disagree.

[133] I find that justification is no defence to Mr. Bennett's statements that Mr. Sanderson:

a) Unlawfully used or withheld owner contact information, contrary to the *SPA*; and

b) Unlawfully acted as a strata manager (through ResortQuest) and collected fees for doing so without a licence, contrary to the *SPA*.

[134] I find Mr. Bennett has not proved the substantial truth of the sting of his most serious defamatory statements: namely, that Mr. Sanderson acted unlawfully in violation of the *SPA*, and that he had a reputation for taking kickbacks. As noted, Mr. Bennett admits justification is not a defence to his statements that Mr. Sanderson had a reputation for taking kickbacks.

V. DAMAGES

[135] The parties' positions on damages are significantly different. Mr. Sanderson seeks total damages in the range of $609,718.67 - $659,718.67. Mr. Bennett denies Mr. Sanderson has proved any actual loss; he says that Mr. Sanderson is, at most, entitled to nominal presumed damages in the range of $500 – $1,000.

[136] Defence counsel concedes that once a plaintiff has proved the three constituent elements of the tort of defamation, there is a presumption of harm to reputation; he admits a plaintiff need prove nothing more than the existence of this presumed harm in order to succeed in a defamation claim. However, he submits that, in practice, courts typically award nominal damages only when a plaintiff pursues a defamation claim to trial with no proof of harm or losses beyond presumed harm to reputation. He cited no case to support this proposition.

A. General Damages

[137] Mr. Sanderson seeks general damages in the range of $30,000 to $50,000.

[138] The primary remedy for defamation is an award of general damages: *Pineau v. KMI Publishing and Events Ltd.*, 2022 BCCA 426 at para. 51 [*Pineau* BCCA]. The purpose of such an award is to compensate a plaintiff for the loss of reputation and injury to their feelings, to console them, and to vindicate them so that their reputation may be re-established: *Pineau* BCCA at paras. 51 – 52; *Bent* at para. 148.

[139] General damages in defamation cases are presumed from the publication of the false statement; they are awarded at large and the plaintiff is not required to prove specific loss or damage: *Hill* at para. 164. General damages are often difficult to quantify: *Hee Creations Group Ltd. v. Chow*, 2018 BCSC 260 at para. 108. While damages for defamation are presumed once a cause of action is established, there is no presumption that they be substantial: *Boehmke v. Grant*, 2010 BCSC 682 at para. 158. Quantification is governed by all the circumstances of the particular case: *Pineau v. KMI Publishing and Events Ltd.*, 2021 BCSC 1952 at para. 73.

[140] The Supreme Court of Canada identified the key factors to be considered in determining an appropriate general damages award in the context of a defamation claim in *Hill* at para. 182, including:

a) The plaintiff's conduct;

b) His position and standing;

c) The nature of the libel;

d) The mode and extent of publication;

e) The absence or refusal of any retraction or apology; and

f) The conduct of the defendant, from the time the libel was published to the date of trial.

[141] I conclude that the following factors have particular relevance here:

a) Mr. Bennett's defamatory statements included serious allegations of unlawful and criminal activity;

b) He made these statements recklessly and without any first-hand knowledge or objective factual foundation for them;

c) He communicated them to a significant number of individuals;

d) Mr. Sanderson earned his reputation in the property management business in the small community of Whistler, BC where such information could reasonably be expected to circulate relatively quickly;

e) Mr. Sanderson's company lost its lucrative consulting contract with Wyndham and he was thereafter bound by the non-competition clause it contained;

f) Mr. Sanderson was 60 years old in 2017 and is now 68; and

g) Mr. Bennett offered only a partial apology and retraction and did so only after he received a formal demand letter from plaintiff's counsel.

[142] Mr. Sanderson testified that Mr. Bennett's defamatory statements were a stain on his character and reputation. He denied having any business contacts in Canada outside Whistler and questioned how he would explain the termination of his consulting agreement to a new employer. According to Mr. Sanderson, his specialized skills apply to a niche market: namely, taking ownership of failing businesses and strategizing plans to make them profitable. Gaitor's consulting agreement with Wyndham contained a non-competition clause which prohibited Mr. Sanderson from engaging in, managing, operating, or controlling any business within Whistler that dealt with the provision of vacation condominiums, home rental property management, or home brokerage services.

[143] On Mr. Sanderson's uncorroborated evidence, he was depressed after Wyndham terminated Gaitor's consulting agreement. Mrs. Sanderson did not testify at trial. Mr. Sanderson offered no specifics about how his mental health symptoms, if

any, affected his life. It is unclear whether he required treatment and if so, what it involved, how long it lasted, whether it was successful, or what his prognosis is now. There are no medical records in evidence. No medical witness testified.

[144] I accept that defamatory statements against a professional person, including allegations that they have engaged in dishonest conduct, can be particularly harmful: *Botiuk* at paras. 59 and 92. Mr. Bennett's kickback allegations were serious and implied that Mr. Sanderson had engaged in illegal activity. Mr. Bennett provided them to Ms. Clark, someone with whom Mr. Sanderson had forged a positive relationship and reputation. I accept that Mr. Bennett's partial retraction and apology, provided in response to a demand letter from Mr. Sanderson's former lawyer, is of limited relevance; it had no impact on Ms. Clark's decision to terminate Gaitor's consulting agreement with Wyndham.

[145] Plaintiff's counsel referenced three cases on general damages. In *Tjelta v. Wang*, 2012 BCSC 299, the court awarded damages of $20,000 after the defendant sent defamatory statements to persons in the plaintiff's business circle. In *Salager v. Dye & Durham Corporation*, 2018 BCSC 438, the court awarded general damages of $25,000 to compensate for injury to the plaintiff's professional reputation. In *McNairn v. Murphy*, 2017 ONSC 1678, the court awarded general damages of $50,000 against defendant, Ms. Murphy, who falsely accused the plaintiff of theft in an email to 37 condo owners. Mr. Pene, the other defendant in *McNairn*, sent an email suggesting that the plaintiff was acting improperly and hiding information from condo owners. The court found those claims were false and amplified the damage from Ms. Murphy's email, particularly as Mr. Pene touted his position as a lawyer when he sent the email. The court awarded the plaintiff general damages of $70,000 against Mr. Pene: *McNairn* at paras. 67-68, 71.

[146] Defence counsel cited no authorities on general damages.

[147] Ultimately, I agree that little is gained by comparing general damage awards in defamation cases; each case is unique and general damage awards vary greatly: *Hall* at para. 227.

[148] Mr. Bennett submits that his defamatory statements were published to a "tiny" audience. Notably, he copied his June 2017 email to 14 individuals; it is unclear whether any of them forwarded this email to others but any of the recipients could easily have done so. Mr. Bennett notes there is no evidence that any of Mr. Sanderson's friends, family, business colleagues, or personal acquaintances heard about any of these defamatory statements, or that anyone changed their opinion of his reputation. He suggests that Mr. Sanderson probably already had a less than stellar reputation among the owners who received his June 2017 email, and says that he retracted and apologized for his most serious kickback allegation.

[149] Before quantifying general damages in this case, I consider Mr. Sanderson's claims for special damages, aggravated damages, and punitive damages.

B. Special Damages

[150] Mr. Sanderson seeks special damages arising from the termination of Gaitor's consulting agreement with Wyndham in June 2017 as follows:

a) $122,218.67 – from the date of termination to December 31, 2017

b) $275,000 – for the loss of a consulting agreement in 2018

c) $137,500 – for the loss of a consulting agreement in 2019

TOTAL: $534,718.67

[151] Gaitor, Mr. Sanderson's holding company, and not Mr. Sanderson personally, entered into serial consulting agreements with Wyndham. Gaitor is not a plaintiff in this action. Mr. Sanderson says he was the principal and controlling mind of Gaitor, and that Gaitor was his alter ego. Accordingly, Mr. Sanderson submits that he can recover damages on Gaitor's behalf, despite Gaitor not being a named plaintiff in this action. Mr. Sanderson denies Gaitor has standing to bring a claim against Mr. Bennett for the loss of its consulting agreement with Wyndham because Mr. Bennett did not defame Gaitor, citing s. 63 of the *Law and Equity Act*, R.S.B.C. 1996 c. 253, which prohibits a company from bringing a claim for losses occasioned by injury to

one of its employees. On Mr. Sanderson's evidence, he and Gaitor were effectively one and the same entity. Ms. Clark confirmed that she conducted all of her business dealings with Gaitor via Mr. Sanderson.

[152] The alter ego doctrine is ultimately defined by the concept of control: *DeltaQ Technologies Corp. v. Pylon International Limited*, 2020 BCSC 2059 at para. 12. It can be applied to permit an individual owner a means of seeking redress: *D'Amato v. Badger*, [1994] 10 W.W.R. 141,1994 CanLII 2288 (B.C.C.A.) at paras. 18 – 25. The Court in *D'Amato* applied a proportionate loss approach and awarded the percentage of the company's losses that were attributable to the individual. On appeal, the SCC noted that the *alter ego* doctrine is not as strong as it once was but upheld the Court of Appeal's award because the respondents did not cross-appeal on this issue*: D'Amato v. Badger*, [1996] 2 SCR 1071, 1996 CanLII 166 at para. 52.

[153] Alternatively, Mr. Sanderson seeks to recover damages in trust for his wife, a one-third shareholder in Gaitor, citing *Milliken v. Rowe*, 2012 BCCA 490 at paras. 25 - 28. This request for relief is not pleaded. Mrs. Sanderson is not a named plaintiff in this action. *Milliken* arose in the context of a negligence and not a defamation claim. The question before the court in *Milliken* was whether the plaintiff was entitled to damages for providing care to their spouse following a car accident that injured the plaintiff. Those facts are not analogous here. Notably, a majority of the Court of Appeal found these damages were too remote to be recoverable: *Milliken* at paras. 32 and 34. In my view, *Milliken* does not assist Mr. Sanderson.

[154] Defence counsel denies special damages for pecuniary loss resulting from libel are presumed, citing Halsbury's on special damages:

> Special damages for pecuniary loss resulting from the libel are not presumed. They must be specifically pleaded and proven in court. They are rarely claimed and often difficult to prove. Where a plaintiff claims business losses as special damages, there can be difficulty in identifying: specific changes in a company's financial position following a publication; whether the defamation caused any such changes; and whether any loss of profit was made good by other means. Often the plaintiff's only recovery lies in the award of general damages.

> Methods of proof. Special damages may be established by showing a general falling off of business, a loss or decline of patronage, or a loss of custom. The plaintiff may recover if the libel is by its nature intended to produce such a loss, or is reasonably likely to produce such a loss, and a loss can be shown to have occurred. If the plaintiff does claim specific economic loss, the plaintiff's financial affairs will be open to examination for discovery. A court may discount damages for economic loss having regard to contingencies arising from other possible causes of the loss. [Citations omitted.]

C. Causation of Damages

[155] Mr. Bennett argues that Mr. Sanderson's special damages claim cannot succeed because he has not proven causation. Defence counsel denies Mr. Sanderson made any serious attempt to prove actual harm or losses at trial as a result of Mr. Bennett's defamatory statements.

[156] Mr. Bennett denies Mr. Sanderson has any knowledge about why Wyndham terminated its consulting agreement with Gaitor, apart from Ms. Clark's reference to "serious allegations" during their brief telephone conversation. He underscores that Mr. Sanderson filed a separate notice of civil claim on August 4, 2017, naming Joan Michelle Newbigin, another owner at the Coast, as the defendant. In this pleading, Mr. Sanderson alleged that Ms. Newbigan defamed him in her email of June 6, 2017, sent to Ms. Clark and other owners at the Coast. Mr. Bennett argues that Mr. Sanderson's decision to commence a separate defamation action against Ms. Newbigan means that he must also have considered her email to contain serious allegations about him.

[157] Mr. Sanderson pleaded in his claim against Ms. Newbigan that:

a) She sent an email to Ms. Clark and other owners on June 6, 2017;

b) This email was defamatory to Mr. Sanderson;

c) The natural and ordinary meaning of Ms. Newbigan's words meant that Mr. Sanderson:

    1. Shouted down people who did not share his views;

2. Is divisive;

3. Is a bully; and

4. Is unable to listen.

[158] In the result, defence counsel argues that Mr. Sanderson's evidence regarding the causation of his alleged damages has no probative value.

[159] Mr. Sanderson did not plead that Ms. Newbigan defamed him by stating that he had acted unlawfully, contrary to the *SPA*, or that he had a reputation for taking kickbacks. Mr. Sanderson did not pursue his claim against Ms. Newbigan; the action against her was dismissed by consent at the opening of trial in Mr. Sanderson's action against Mr. Bennett. I do not agree that Mr. Sanderson's allegations against Ms. Newbigan are comparable to the ones he makes against Mr. Bennett.

[160] I found Ms. Clark to be a frank and forthright witness. I accept her clear evidence that Mr. Bennett's serious allegation about Mr. Sanderson having a reputation for taking kickbacks prompted her to take immediate action (including contacting Wyndham's legal counsel and terminating Gaitor's consulting agreement in lieu of undertaking a fulsome investigation). In my view, this evidence is sufficient to establish a causal link between Mr. Bennett's defamatory email and Ms. Clark's termination of Gaitor's consulting agreement with Wyndham.

[161] In the alternative, Mr. Bennett argues that Ms. Clark's decision to terminate Gaitor's consulting agreement with Wyndham was remote and not a reasonably foreseeable outcome of his allegation that Mr. Sanderson had a reputation for taking kickbacks. He asserts that no reasonable person would expect a company to have such rigid policies, or to be so callous and overworked as to terminate a consulting contract because of an unsubstantiated reference to kickbacks. Mr. Bennett submits that even if this causal link could be proven, no reasonable person would expect a company to refuse to reinstate a consultant's contract after being advised twice by Mr. Bennett (once to Wyndham's legal counsel and once to its president, Ms. Clark)

that he withdrew his kickback allegation, which was only ever based on hearsay. I disagree.

[162] I do not find Ms. Clark's evidence about why she terminated Wyndham's consulting contract with Gaitor to be surprising. In my view, her decision ought not to have surprised Mr. Bennett. By his own admission, Mr. Bennett had business experience with many large public companies. He knew that Wyndham, as a large, publicly-traded company, would be compelled to take his allegations (which included reference to illegal activity) seriously, whether or not he had ever taken steps to: 1) verify the information he communicated; 2) report it in any official capacity; or 3) request that any person in a position of authority investigate it in the years after it had come to his attention. Mr. Bennett conceded that he understood public companies must be very diligent about following up on this kind of information, and that he assumed Wyndham would investigate his allegation concerning kickbacks.

[163] Mr. Bennett denies Mr. Sanderson can prove causation through Ms. Clark because he chose not to collect and preserve evidence of the reasons why she terminated Wyndham's consulting contract with Gaitor. He argues that this lack of evidence gives rise to an adverse inference against Mr. Sanderson on the issue of remoteness. I do not share that view. This information was equally available to Mr. Bennett through the usual discovery process, had he chosen to pursue it. I decline to draw the requested adverse inference: *Rohl v. British Columbia (Superintendent of Motor Vehicles)*, 2018 BCCA 316 at paras. 1 and 4; *Singh v. Reddy*, 2019 BCCA 79 at para. 9.

[164] Defence counsel suggests the same standard of proof that is applied to future hypothetical events when assessing damages in personal injury claims ought to be applied here, citing *Gill v. Lai*, 2019 BCCA 103 at para. 30. He says Mr. Sanderson chose not to retain an expert to assess his actual financial losses and argues that, even if Mr. Sanderson had proved he was entitled to every cent Wyndham owed to Gaitor under the consulting agreement, his maximum loss would be approximately

$122,000, representing the remaining months on the 2017 consulting agreement, after the 30-day termination notice period, before discounting for contingencies.

[165] Defence counsel argues that, if Mr. Sanderson defeats all of Mr. Bennett's defences to this claim, including the argument that Mr. Sanderson failed to mitigate his loss, any assessed damages must be discounted for future hypothetical events and contingencies. He says the most problematic continency for Mr. Sanderson is the fact that Gaitor's consulting agreement with Wyndham had a built-in 30-day termination clause. He says Ms. Clark could have exercised this option at any time, particularly, given the dissatisfaction of many Coast owners with Mr. Sanderson.

[166] Defence counsel suggests that other relevant negative contingencies include the possibility that Mr. Sanderson could eventually have been barred from working in the United States, thereby impacting his ability to work on other Wyndham projects, or that either ResortQuest and/or Wyndham could have undergone corporate reorganizations or sales (which is what ultimately did happen) and caused Ms. Clark (or a new owner) to terminate Gaitor's consulting agreement. He suggests that Mr. Sanderson himself could have ended this consulting agreement early given his age and personal circumstances, including his ability and likely desire to travel and spend time with his children and grandchildren. He asserts that, given the number of negative contingencies which could have resulted in the early termination of Gaitor's consulting contract with Wyndham, any special damages award ought to be heavily discounted (by 75 – 90%) to reflect this contract's "extreme instability". Finally, defence counsel argues that the most Mr. Sanderson can recover is two-thirds of any remaining amount, representing his shareholdings in Gaitor.

[167] Plaintiff's counsel objects to this argument on the basis that none of these hypothetical events, including the sale of ResortQuest, was put to Ms. Clark in cross examination. He argues that it is ultimately for the court to consider all the evidence and determine whether the plaintiff has established a pecuniary loss which warrants special damages. I agree that no one, including Ms. Clark, is able to testify with certainty about past or future hypothetical events.

[168] Ms. Clark testified that, but for Mr. Bennett's June 4, 2017 email alleging that Mr. Sanderson had a reputation for taking kickbacks, she would have continued to make use of his consulting services, while she had an ongoing business need for them. She anticipated that she would have renewed his contract for another year but acknowledged that she had the option of terminating it at any time, for any reason, on 30-days' written notice. Mr. Bennett argues, and I accept, that the continued renewal of this contract is a future hypothetical event that cannot be determined with certainty.

[169] In June 2017, six months and ten days remained on Gaitor's 2017 consulting contract with Wyndham. Mr. Sanderson was given 30 days' notice and paid until July 21, 2017. I estimate the monetary value for the five months and 10 days of the remaining term in 2017 was $122,218.67 (or about $23,000 per month).

[170] I appreciate that Ms. Clark said she would have renewed Wyndham's contract with Gaitor in 2018 for comparable compensation, if she had then had ongoing business needs for Mr. Sanderson's services. Accordingly, Mr. Sanderson seeks $275,000 for the loss of this contract in 2018. Mr. Sanderson seeks damages of $137,500, based on six months of estimated lost revenue, projected annual compensation of $275,000, and a renewed consulting contact in 2019.

[171] Ms. Clark agreed that, if Wyndham had renewed Gaitor's consulting agreement in 2018, he would have been paid in the range of about $23,000 per month CAD. She said Wyndham decided to sell ResortQuest in 2018; this sale was completed in 2019. Ms. Clark admitted it would have been open to the new owner to terminate Gaitor's consulting agreement at any time (assuming it had been renewed in 2018).

[172] Ms. Clark's evidence is not determinative of Mr. Sanderson's entitlement to special damages for the loss of Gaitor's consulting contract in 2018 or 2019. Rather, this loss must be assessed based on the plaintiff's pleadings and all the trial evidence, including whether Mr. Sanderson adduced the evidence necessary to

show a pecuniary loss: *Botiuk* at paras. 109 and 112. The standard for showing loss is a balance of probabilities: *Houseman v. Harrison*, 2020 SKQB 36.

[173] Our Court of Appeal has found it to be unnecessarily confusing to attempt to import principles regarding the assessment of damages for lost opportunity in an employment contract setting to a defamation case: *Pineau* BCCA at para. 113. I have not done so here.

[174] In accordance with well-settled law, a plaintiff in a defamation action may pursue compensation for pecuniary loss through two alternative paths: (1) a claim for special damages where the plaintiff has pleaded and proved actual pecuniary loss; or (2) as part of a general damages award where actual pecuniary loss is a possibility on the evidence but cannot be proven with specificity: *Pineau* BCCA at 113.

[175] I adopt the second approach here. I conclude that Mr. Sanderson has not proven an actual pecuniary loss with certainty or specificity. Special damages are not presumed, must be established with reasonable certainty, and identified with sufficient particularity; they are rarely asserted and are generally exceedingly difficult to prove: Raymond E. Brown, Erika Chamberlain & Karen Eltis, *Law of Defamation: Canada, United Kingdom, Australia, New Zealand, United States* (Toronto: Thomson Reuters Canada, 2021) (loose-leaf Release No. 2024-5), ch. 25:2, citing *Rutman v. Rabinowitz*, 2018 ONCA 80.

[176] I have factored the loss of some remaining time on Gaitor's 2017 consulting agreement with Wyndham in my assessment of general damages. In my view, given Wyndham's contemplated sale of ResortQuest in 2018, and its actual sale of ResortQuest in 2019, doing so for those years would be unduly speculative.

D. Aggravated Damages

[177] Mr. Sanderson seeks aggravated damages of $15,000 to $25,000.

[178] Aggravated damages may be awarded in circumstances where the defendant's conduct was insulting, high-handed, spiteful, malicious, or oppressive: *Hill* at para. 188. The key consideration is whether the defendant was motivated by actual malice: *Hill* at para. 190. A plaintiff can establish malice based on intrinsic evidence from the defamatory statements themselves, or by extrinsic evidence of surrounding circumstances which demonstrate that the defendant was motivated by an unjustifiable intention to injure the plaintiff: *Hill* at para. 190.

[179] I have found that Mr. Bennett made his defamatory statements, including statements implying unlawful and criminal activity, with reckless disregard for their truth and for an ulterior purpose. I have considered this finding in my assessment of general damages.

E. Punitive Damages

[180] Mr. Sanderson seeks punitive damages in the range of $30,000 to $50,000.

[181] Unlike aggravated damages, punitive damages are not compensatory; rather, they are intended to punish a party for their wrongdoing: *Hill* at para. 196. The question is whether the defendant's misconduct is so outrageous that punitive damages are required to act as a deterrent: *Hill* at para. 197. Punitive damages are awarded where the court's sense of decency has been offended: *Hill* at para. 196.

[182] As noted by the Supreme Court of Canada in *Whiten v. Pilot Insurance Co.*, 2002 SCC 18 at para. 94, punitive damages are very much the exception and not the rule. They are 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 behavior: *Whiten* at para. 94.

[183] Mr. Bennett has made no further defamatory statements about Mr. Sanderson since June 4, 2017. He did not engage in an extended email campaign designed to defame Mr. Sanderson. His defamatory conduct was confined to oral statements on one occasion, followed by one defamatory email. The parties no longer have any contact with each other and Mr. Bennett no longer resides in Canada. I conclude

that a punitive damages award is unnecessary to provide a deterrent in this case. In my view, this lawsuit, followed by a public trial and a monetary judgment, will have that effect.

[184] Having regard to the relevant factors, I conclude that punitive damages are not warranted here and I make no such award.

F. Quantification of Award

[185] The quantification of damages for defamation is notoriously difficult; no objective measure can be applied and such damages need not be calculated mathematically: *Salager* at para. 176. While damages are difficult to assess, courts should sensibly and rationally attempt to arrive at a monetary sum that will compensate a plaintiff appropriately; the award should provide solatium, vindication, and compensation: *Salager* at para. 176, citing *Brown on Defamation*, Vol. 8, at 25.3; *Tjelta* at para. 135, citing *Best v. Weatherall*, 2010 BCCA 202 at para. 46.

[186] Doing my best on the available evidence, taken as a whole, and having regard to my findings of fact and the applicable law, I award general damages of $85,000. In arriving at this figure, I have considered the range of general damages proposed by Mr. Sanderson, the general damages awards in the defamation cases counsel cited, the amount payable to Gaitor for the remainder of 2017 under its consulting contract with Wyndham, Mr. Sanderson's two-thirds shareholdings in Gaitor, the fact that Wyndham could have relied on the 30-day termination clause to end this agreement at any time for any reason, or no reason, and my findings that Mr. Bennett's statements were made with reckless disregard for the truth and for an ulterior motive.

[187] I make no separate award for aggravated, punitive, or special damages. While I find that Mr. Sanderson has not established his claim for special damages, I have considered the loss of Gaitor's 2017 consulting agreement with Wyndham and some corresponding economic loss that cannot be expressly proven in assessing general damages: *Brown v. Cole*, [1999] 7 W.W.R. 703, 1998 CanLII 6471 (B.C.C.A.) at para. 107.

G. Mitigation of Damages

[188] Mr. Bennett argues that Mr. Sanderson has failed to mitigate his damages, if any. He says a plaintiff has an obligation to mitigate his damages and a defendant bears the onus of proving that the plaintiff failed to: 1) take reasonable steps to mitigate his loss; and 2) that if he had taken those steps, he would have succeeded in reducing his loss, citing *Hawes v. Dell Canada Inc.*, 2021 BCSC 1149 at para. 13*; McLeod v. Lifelabs BC LP*, 2015 BCSC 1857 at para. 57; *Forshaw v. Aluminex Extrusions Ltd.*, 39 B.C.L.R. (2d) 140, 1989 CanLII 234 (C.A.) at 143 – 144. Notably, these cases consider the duty of mitigation following termination from employment; in my view, all are distinguishable on their facts. Mr. Sanderson did not dispute that he has a duty to mitigate.

[189] Defence counsel emphasizes that Mr. Sanderson chose not to: 1) ask why Wyndham terminated Gaitor's consulting agreement; 2) seek particulars from Ms. Clark about the serious allegations against him so he could have disproved them; 3) ask Ms. Clark to reconsider her decision to terminate Gaitor's contract, despite the fact he must have believed the serious allegations against him were untrue; or 4) ask Ms. Clark to reinstate Gaitor's consulting agreement after Mr. Bennett retracted and apologized for his statement about Mr. Sanderson having a reputation for taking kickbacks.

[190] This submission overlooks Ms. Clark's unequivocal evidence that Mr. Bennett's kickback allegation required Wyndham to undertake a comprehensive investigation, whether or not it was based only on hearsay. In my view, the evidence does not support the conclusion that Ms. Clark would have changed her decision to terminate Wyndham's consulting contract with Gaitor if Mr. Sanderson had challenged it.

[191] Mr. Bennett asserts that Mr. Sanderson admitted he did absolutely nothing to mitigate his damages. In my view, that is an overstatement of the evidence.

[192] According to Mr. Sanderson, he attempted to find work in the hotel or property management industry outside Whistler after Wyndham terminated Gaitor's

consulting agreement. He provided no specifics, and was not asked, about precisely what he did, where he looked, or what opportunities he pursued. Mr. Sanderson denied any short-term job opportunities in Whistler arose after Wyndham terminated Gaitor's consulting contract.

[193] Defence counsel suggested that Mr. Sanderson might have made use of his time after Wyndham terminated Gaitor's consulting contract to do other work. Plaintiff's counsel notes that this suggestion was not put to Mr. Sanderson in cross examination, contrary to the Rule in *Browne v. Dunn*. I am unable to speculate about what Mr. Sanderson might have said in response to this question, if it had been asked. Defence counsel had the opportunity to question Mr. Sanderson about all of those matters, both on discovery and at trial. The defendant bears the onus of proving a plaintiff's failure to mitigate.

[194] At trial, Mr. Sanderson admitted:

a) He sought no advice about the scope or enforceability of the non-competition clause in Gaitor's consulting agreement with Wyndham;

b) He declined no jobs, employment offers, consulting or business opportunities as a result of this non-competition clause;

c) This non-competition clause did not preclude Mr. Sanderson from seeking work outside the hotel management industry in Whistler, or in other areas of work within the municipality of Whistler;

d) In June 2017, Mr. Sanderson continued to be the principal of his own company, Sanderson Hotels and Resorts Inc., and Gaitor remained a shareholder in two active businesses in Whistler, including Whistler Property Maintenance Inc. and Lanark Holdings Ltd., operating as Century 21, both of which were expressly excluded from the non-competition clause in Gaitor's consulting agreement with Wyndham; and

e) By May 2017, Mr. Sanderson was spending about 70% of his time in Steamboat, Colorado, doing project work for Wyndham.

[195] Mr. Sanderson conceded that he had no discussions with Ms. Clark after Wyndham terminated Gaitor's consulting contract about other opportunities with Wyndham, including ongoing work for Wyndham in a different capacity; he said he believed that this door was then closed to him. While Mr. Sanderson admitted he had relationships with Tourism Whistler and Blackcomb, he did not comment on how Mr. Bennett's defamatory statements affected those relationships, if at all.

[196] Ms. Clark described Mr. Sanderson as an amazing business partner, manager, and mentor with whom she had a great working relationship. She told Mr. Sanderson that he was free to use her name as a reference and readily agreed that she would have happily assisted him in finding new work.

[197] Mr. Sanderson did not produce his personal tax assessments in this action, despite Mr. Bennett's request that he do so. It was open to Mr. Bennett to seek an order compelling production of those documents before trial; there is no suggestion that he did so. Ultimately, it is unclear on the evidence what impact Mr. Bennett's defamatory statements had on Mr. Sanderson's actual personal financial situation. It is also unclear on the trial evidence what, if anything, Mr. Sanderson did for work after Wyndham terminated Gaitor's consulting contract in June 2017. According to Mr. Sanderson, he "works 24/7", regardless of where he is, saying that is "just me". He did not specify, and was not asked, whether he has worked since June 2017, and, if so, what work he has done. Mr. Sanderson admitted he currently has an ownership interest in about 12 properties around the world.

[198] Mr. Sanderson would have been about 61 years old in June 2017; he is now 68. He earned his reputation and gained specialized expertise improving the financial circumstances of businesses in the property management and hotel industry in the small community of Whistler, BC. I accept that, in 2017, his business contacts did not extend beyond Whistler, BC, and that Mr. Bennett's statements about him having a reputation for taking kickbacks effectively closed the door to him

doing any further work for Wyndham, at least pending the kind of comprehensive investigation Ms. Clark said Wyndham would have been required to pursue. Mr. Sanderson was bound by the terms of the five-year non-competition clause in Gaitor's consulting agreement with Wyndham.

[199] Mr. Bennett adduced no evidence that Mr. Sanderson declined any specific job opportunities that either were, or reasonably would have been, open to him with the exercise of reasonable due diligence.

[200] Ultimately, I am not persuaded Mr. Bennett has met the onus he bears of establishing that Mr. Sanderson failed to mitigate his loss. Mr. Sanderson's limited evidence about the steps he took to find alternate work after Wyndham terminated Gaitor's consulting contract does reinforce my view that his loss arising from Mr. Bennett's defamatory statements is substantially more modest than he claims.

VI. DISPOSITION

[201] I award general damages in the amount of $85,000.

[202] Absent information of which I am unaware that might alter this view, Mr. Sanderson is entitled to costs on the ordinary scale.

"Douglas J."