

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *David v. Song*,
2025 BCSC 231

Date: 20250211
Docket: S223541
Registry: Vancouver

Between:

Cindy David, also known as Qian Ma and Cindy Ma, and Richard David
Plaintiffs

And:

**Jing Song, also known as Tracey Song, and Zuquan Liu, also known as
George Liu**
Defendants

Before: The Honourable Mr. Justice Funt

Reasons for Judgment

Counsel for the Plaintiffs: M.T. Wolf
S. MacDonald, Articled Student

The Defendants, appearing in person: J. Song
G. Liu

Place and Dates of Trial: Vancouver, B.C.
October 28–31
November 1, 4–8, 18–22, 25–29,
December 2–6, 10–13,
16–20, 2024, February 7, 2025

Place and Date of Judgment: Vancouver, B.C.
February 11, 2025

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1. Introduction

[1] In May 2018, the plaintiff, Ms. Cindy David, was diagnosed with ovarian cancer and underwent surgery.

[2] In the witness box, Ms. David, now 51, was energetic and appeared fit without any telltale of disease. She testified in a thoughtful and clear way.

[3] On April 7, 2022, in a WeChat forum serving Chinese-speaking residents in the area of the Village of Lions Bay, British Columbia, the defendant, Mr. George Liu, libelled (in Chinese) Ms. David with the defamatory stings that she is a tax evader, a fraudster, a public resource abuser and, staggeringly, the vile sting that she uses her cancer for personal gain.

[4] Mr. Liu also libelled Mr. Richard David, the second plaintiff, as an illegal immigrant.

[5] With respect to Ms. David’s cancer, Mr. Liu wrote in Chinese (in part): “it is mind-blowing that she always attacks others with her cancer as a spear and causes troubles or wins other’s sympathy with her cancer as a gimmick for her ulterior personal gain”.

[6] The plaintiffs, a married couple, and the defendants, a married couple, are neighbours residing in Lions Bay.

[7] Not long after the plaintiffs’ defamation claims were brought, the defendant, Ms. Tracey Song, in the presence of Mr. David, and Ms. David’s parents, in Mandarin, yelled at Ms. David (in part):

So, karma caught up with you, you know? Karma caught up with you. Karma has caught up with you. Ovarian cancer, neither a man nor a woman, people with no ovaries, would you say it’s a female eunuch? Is it a female eunuch? Is it a female eunuch?

[8] Also present, Mr. Liu did not try to dissuade Ms. Song.

[9] Without Ms. David’s parents present, later that same day, and after the police had attended and left, Ms. Song again cruelly mocked Ms. David:

Female eunuch, looks like, you’ve been shown the door, female eunuch?

[10] On the eve of the then scheduled last day of trial (December 20, 2024), without first telling Ms. David or Mr. David, or their counsel, Mr. Liu apologized on the WeChat forum (in English) for his libellous statements and stated that he “would like to formally withdraw the statements”.

[11] On December 20, 2024, with the submissions of Mr. M. Wolf, plaintiffs’ counsel, the parties agreed to the publication of a more fulsomely worded apology and withdrawal.

[12] As recommended by Dr. A. Tinker, Ms. David’s oncologist, Ms. David, having exhausted other treatments, was, at the time she testified, on a Phase 1 experimental regime, at the University of California, Los Angeles, where she received treatment every three weeks. Before me, Ms. David stated her appreciation for Dr. Tinker’s special care and attentiveness.

[13] By December 20, 2024, Ms. David’s prognosis was terminal.

[14] The pleadings consist of an Amended Notice of Civil Claim (“ANOCC”), an Amended Response, an Amended Counterclaim, and a Response to the Amended Counterclaim.

[15] In the ANOCC, Ms. David and Mr. David seek damages for defamation and damages relating to the obstruction of a driveway shared by the parties, as neighbours, under an easement. With respect to both damage claims, they also seek related injunctive relief. They also seek a declaration related to the repavement of the driveway.

[16] In the Amended Counterclaim, Mr. Liu and Ms. Song made claims for: damages relating to the driveway shared by the parties; obstruction; nuisance;

trespass; privacy breaches; and defamatory statements Mr. Liu said Ms. David made about him.

[17] I address below the Court's finding that Mr. Liu is liable for his libel of Ms. David and Mr. David and the associated award of general and punitive damages, along with the other relief sought, or which had been sought by the parties, either individually or with their spouses, arising from the pleadings.

2. Balance of Probabilities

[18] In *F.H. v. McDougall*, 2008 SCC 53, Justice Rothstein, writing for the Supreme Court of Canada, stated:

[49] In the result, I would reaffirm that in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.

[19] In *F.H.*, Justice Rothstein also stated that “evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test”: para. 46.

3. Credibility

[20] In *Bradshaw v. Stenner*, 2010 BCSC 1398, aff'd 2012 BCCA 296, leave to appeal to SCC ref'd, [2012] S.C.C.A. No. 392, Justice Dillon described the assessment of credibility:

[186] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont. H.C.); *[[Faryna] v. Chorny*, [1952] 2 D.L.R. [354] (B.C.C.A.)] *[Faryna]*; *R. v. S.(R.D.)*, [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on

whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time ([*Faryna*] at para. 356).

[21] In *Ford v. Lin*, 2022 BCCA 179, Justice Frankel, writing for our Court of Appeal, stated:

[104] Credibility and reliability are not the same thing. Credibility is concerned with a witness's veracity. Reliability is concerned with the accuracy of a witness's testimony; it involves consideration of a witness's ability to accurately observe, recall, and recount the events in issue: *R. v. Khan*, 2015 BCCA 320 at para. 44, 374 B.C.A.C. 262, leave to appeal ref'd [2016] 1 S.C.R. xii; *R. v. H.C.*, 2009 ONCA 56 at para. 41, 241 C.C.C. (3d) 45. [...]

[22] In *Le (Guardian ad litem of) v. Milburn*, [1987] B.C.J. No. 2690, 1987 CarswellBC 1589 (S.C.) [*Milburn*], Justice Southin, as she then was, stated (at para. 2):

When a litigant practices to deceive, whether by deliberate falsehood or gross exaggeration, the court has much difficulty in disentangling the truth from the web of deceit and exaggeration. If, in the course of the disentangling of the web, the court casts aside as untrue something that was indeed true, the litigant has only himself or herself to blame.

4. Background

a) The Parties

[23] Ms. David and Mr. David are immigrants to Canada.

[24] Ms. David was born in China in 1973 and lived there until she moved to Singapore in 1999. Ms. David graduated from Nankai University in China with a bachelor of economics degree and then worked for a Canadian company, Mitel, in China, and was subsequently transferred to Singapore.

[25] In July 2004, Ms. David moved to Hong Kong and worked there for a publicly-listed Australian company. In 2006, Ms. David moved to Shanghai, China, and worked there until 2012.

[26] In 2012, Ms. David and Mr. David became romantically involved. From 2012 to early 2016, Ms. David used Shanghai as her home base, often travelling with Mr. David.

[27] In her examination-in-chief, Ms. David described her desire to emigrate:

Q Now, when you were younger and living in China, did your parents give you any advice about where you should live?

A Well, they -- they did. They didn't ask me to move anywhere specifically, but they want me to leave China.

Q And what was the reason for that?

A Part of mom's family history. My grandfather from mom's side was a lawyer who was also a founder and chief editor of a major legal journal in my hometown, and during the Cultural Revolution, when Mao tried to topple all the intellectuals and he was public-shamed and he was defamed, and they tried to get him to admit the crime he never admitted, committed, and he refused to give in, and they ended up putting him in jail and tortured him to death. So that's just a scar, deep scar in my family.

Q So in terms of choosing Canada as a place to live, to eventually emigrate to, what was it about Canada that drew you to this country?

A Well, I was fortunate enough that, after my graduation, I worked for Mitel, and that's - - that's a company they base in Ottawa. It's a big company. And the years I worked for Mitel, everything I experienced was totally different from I grew up in, and the fairness, the justice, the humility, just people's - - I can't explain that feeling, but just love it. I was very drawn.

[28] In 1998, Ms. David applied for permanent residency status. In 2006, she was granted permanent residency status while she still lived in Asia. In 2023, Ms. David became a Canadian citizen.

[29] Mr. David was born and raised in Australia. In 1987, he obtained a business degree from the Queensland University of Technology. In 2012, he was working in China in real estate development when he met Ms. David.

[30] In 2006, Mr. David, with his first wife, purchased a condominium in Whistler (the "Whistler Condo"), which they travelled to from time to time for recreational purposes. Mr. David and his first wife were divorced in 2011. In 2015, he bought out his first wife's interest in the Whistler Condo.

[31] As Ms. David's and Mr. David's relationship developed, they would travel together, including to Whistler to ski and stay at the Whistler Condo. In early 2016, they moved to Canada.

[32] After moving to Canada, the Whistler Condo became their home or "base" but they continued to travel extensively to Australia and China for both family and business reasons. In February 2016, Mr. David and Ms. David were married. In March 2016, Ms. David obtained her real estate agent licence. Since then, she has worked part-time as a realtor.

[33] Mr. David is a licensed property manager in British Columbia and works in real estate development.

[34] In Canada, from 2018 to 2022, Mr. David held work permits. In 2023, Mr. David was granted permanent residency. He remains an Australian citizen.

[35] As noted, in May of 2018, Ms. David was diagnosed with ovarian cancer and she underwent surgery later that month.

[36] In October 2018, Ms. David purchased a home in Lions Bay. She resides there and in Whistler with Mr. David.

[37] The defendant, Ms. Song, owns the property adjacent to Ms. David's Lions Bay residence. In early 2013, Ms. Song acquired her residence and lives there with her husband, Mr. Liu. They have one son who attends Stanford University.

[38] Neither Mr. David nor Mr. Liu has a registered interest in their respective spouse's property.

[39] Mr. Liu and Ms. Song moved to Canada about 20 years ago. They are also from China.

[40] Mr. Liu has a university degree in economics from China. Prior to moving to Canada, he worked in New York in connection with trade between China and the US, including commodities trading. In Canada, he has provided business advice to

Chinese companies wishing to enter the North American market. For the past six years, he has been on medical leave.

[41] Ms. Song works remotely in the evenings providing educational counselling services to parents in China. I was provided with very little of Ms. Song's background.

b) The Parties as Neighbours

[42] As noted, the plaintiffs and the defendants are next-door neighbours.

[43] The two subject properties are each large lots that rise steeply from the roadway to the respective single family homes of Ms. David and Ms. Song. Each home enjoys an exceptional view of Howe Sound.

[44] On Ms. Song's property, there is a driveway which provides access to her home and extends to provide access to Ms. David's residence.

[45] The driveway is relatively straight and steep, as it follows Ms. Song's lot uphill from the roadway. When looking uphill, to the immediate left of the driveway are stairs that run parallel to the driveway. The overall length of the driveway is approximately 110 feet.

[46] Most of the driveway is subject to a registered easement (the "Easement Agreement"). There are two exceptions. First, the apron portion of the driveway on Ms. David's property. Second, the apron portion of the driveway on Ms. Song's property. I will refer to the driveway, without the two apron portions, as the "Easement Driveway".

[47] The area in which the driveway rests is that common to the Lions Bay area, with soil, roots, rocks, bushes, shrubs, and considerable water flows in our rainier months. The driveway does not rest on bedrock and, like many driveways on the West Coast, is subject to freezing, thawing, and refreezing conditions, as our winter temperatures often fluctuate around the freezing point.

[48] Having regard to the topography of each property, the only practical access to each residence is the driveway.

[49] For the first few years, the parties were neighbourly. They would exchange gifts at Christmas, Chinese New Year, and on other occasions leave gifts at the home of the other, including home-cooked meals. In one WeChat post, Ms. David referred to Mr. Liu as “Brother George”. The couples did not invite the other into their homes.

[50] The defendants’ son resided with his parents until he left home several years ago to attend Stanford University. He was home-schooled before pursuing undergraduate studies.

c) Construction and Renovations

[51] In April 2021, the plaintiffs started the construction of a new carport with a deck above, renovations to the existing garage, and extensive renovations inside Ms. David’s home.

[52] Mr. David had arranged for the necessary building permit.

[53] The overall cost was greater than Ms. David and Mr. David had originally expected as a result of the COVID-19 pandemic that affected both the cost of building materials and skilled labour. The interior renovations included special woodworking, such as a custom stair railing. In the end, the overall cost was approximately \$700,000.

[54] Some soil excavation was required. Concrete was required to anchor the supporting posts for the new carport, which also served to support the new deck.

[55] The excavated material, such as rocks, roots, and dirt, was small relative to the construction of a cellar, basement, or other below ground area. There was approximately 500 cubic feet of excavated material.

[56] Most of the required backfill (including gravel) was moved up the driveway using a skid-steer or a similar small rubber tired vehicle. The total number of times a large dump truck went up and down the driveway would have been relatively few. A large cement mixer truck was not used for pouring the footings for the deck above the carport.

[57] In October 2020, the bushes and shrubs in the area of the future carport were either trimmed or removed in anticipation of the construction of the carport to start in the Spring of 2021.

[58] In April 2021, the construction and renovations began. The structural components were generally completed by July, 2021, and the internal renovations by the end of March 2022. In April 2022, tradespeople returned to finish the external works which were completed that month (other than deficiencies).

[59] In their pleadings, Mr. Liu and Ms. Song say that by March 2022, the use of the driveway by construction vehicles related to the construction and renovation of Ms. David's home caused "substantial damage" to the driveway.

[60] Mr. Liu and Ms. Song also plead that the damage was "not normal wear and tear" and that but for the damage the driveway "would not need immediate repair". They plead that the driveway was in "fairly good condition" before the construction and renovation.

[61] Mr. Liu and Ms. Song plead that in March 2022, on "numerous occasions", they requested Ms. David and Mr. David to repair the damage and they refused.

[62] Mr. Liu and Ms. Song further plead that on March 19, 2022, they advised Ms. David and Mr. David that "if they did not make a proposal to repair the Construction Damage by the end of March 2022, [they] would have to find a remedy". Further, they plead that they provided a "formal notice" on March 31, 2022 that repair work would start the next day.

[63] Unknown to Mr. Liu and Ms. Song, March 31, 2022 was a particularly emotional day for Ms. David and Mr. David. On March 31, 2022, Dr. Tinker, unfortunately, had to tell Ms. David that a tumour on her liver had grown in size.

[64] On April 1, 2022, without obtaining any professional advice, Mr. Liu started to manually dig what he describes as a “drainage trench” across the driveway just below the border where Ms. David’s apron portion meets the driveway on Ms. Song’s property, which is subject to the Easement Agreement. Mr. Liu also placed two small sawhorse-like structures styled as “safety signs”, which he said would be required by WorkSafe BC.

[65] Ms. David and Mr. David describe the “drainage trench” as a “hole” and the “safety signs” as “barricades” (moveable as a sawhorse would be).

[66] The apron portion of the driveway on Ms. David’s property slopes further up to her carport area. Mr. Liu says the surface water flows from Ms. David’s apron portion onto Ms. Song’s portion of the driveway and that “the surface water freezes in the winter causing slippery conditions” on the driveway.

[67] On April 1, 2022, Mr. David called 9-1-1 for the RCMP. He made it clear it was not an emergency. He was not sure which detachment covered his area. He was then either put through to the Squamish detachment or given its phone number to call.

[68] Mr. David was concerned that if, in the future, Ms. David required emergency help, the barricades would impede access.

[69] An RCMP officer attended later that morning. The officer assessed the situation as a civil matter.

[70] On April 6, 2022, Mr. Wolf, counsel for Ms. David and Mr. David, wrote to Mr. Liu and Ms. Song, demanding that the digging of the “hole” cease and the barricades be removed within 24 hours of their receipt of the letter. Mr. Liu continued digging and the barricades remained until May 19, 2022.

d) Defamatory Statements

[71] With respect to the defamatory statements (in Chinese) made about them, in their ANOCC, Ms. David and Mr. David plead:

49. On or about April 7, 2022, Mr. Liu wrote and published of one or both of the plaintiffs the following defamatory words:
- a) “she always had an attitude of indifference and denial like a scoundrel”;
 - b) “the once tranquil, beautiful and harmonious Lions Bay has a fishy smell now because of this stinky fish” [stinky fish causing trouble]¹;
 - c) “she said that she felt that everything was good in Singapore when she was there, but there was no free medical care. It seems that she immigrated to Canada for the free medical resources in Canada. When did she exactly get the cancer? Is her purpose of immigration an immigration fraud? All the questions are worth discussing. She made no contributions to the Canadian society, but she always uses her cancer as an excuse to actively get all kinds of preferential treatments and tries to strain and enjoy the free medical system in Canada with priority. She even so proudly flaunts it [she even takes pride in it]. For example, she could be vaccinated without waiting in line, and so on. That reminds me again that her husband was once particularly nervous in a Lion’s Bay council meeting. When I asked her for the reason, she said that her husband was afraid of the immigration status being revealed, and I foolishly comforted her that the village wouldn’t check the immigration status. All in all, there are many suspicions in her family immigration process. Do you think that it is necessary to report her family’s abnormal immigration to CIC for a retroactive investigation?”
 - d) “it is mind-boggling that she always attacks others with her cancer as a spear and causes troubles or wins other’s sympathy with her cancer as a gimmick for her ulterior personal gain”;
 - e) “This reminds me of what this neighbour who appears to be a decent person has done: she bought a cabinet at the beginning of the pandemic and asked for a refund simply because of a small scratch. The merchant may have taken into account the pandemic factor, the fact that she had damaged packaging, and the shipping fee associated with the return, and disinfection fees, and so on, so the merchant directly gave her a full refund and let her keep the cabinet (I was very puzzled at that time that she actually felt comfortable telling me herself that she had done such an ugly evil act). She was extremely complacent at that time about the fact that which such a simple trick, she got more than \$2,000

¹ The square brackets represent a refined translation either agreed to by the parties or as accepted by the certified translator at trial.

Canadian for free. This kind of despicable and calculating behavior that takes advantage of the honesty and kindness of Canadians with every possible means, in fact, is lowering the moral standard of our Canadian society. It is completely the behavior of a scum!”:

- f) “She also often posts photos of skiing in Whistler in the group, flaunting that she has a vacation home in Whistler. [She also often posts photos of staying in Whistler in a group, showing off she has a vacation home in Whistler.] What made her more complacent is that she bought the property in the name of her company but she enjoyed it personally. In this way, she could achieve her goal of tax-avoidance and evasion. Although she thought she was smart, this is another vivid example of her taking advantage of Canadian policy loopholes. Once, in order to cotton up to me [in an attempt to get closer to me], she told me that she had hidden a significant [large] amount of savings in Hong Kong, but she could not transfer them to Canada. Do you think this kind of behavior should be reported to the CRA? Of course, after she learned that the information has been made public, she will definitely take steps to move it away quickly”;

[72] After the foregoing was posted, later, on April 7, 2022 at 5:57 p.m., Ms. David posted the following message on the WeChat forum:

First of all, my apology to all the neighbors in this chat group that you have to see such an unpleasant thing – equivalent to a big-character poster in the Cultural Revolution period – in such a beautiful environment. My husband and I moved to Lions Bay in 2018 and bought a house more than 30 years old. Many parts of the house were in disrepair for years and we wanted to make the house our dream home. During the entire process from our application in 2021 to the renovation (completely in compliance with all the bylaws of Lions Bay), the neighbor at [civic address] displayed the utmost hatred and discontent and then gave a long-winded written speech, especially including an extensive part making an issue out of such privacy as physical health and illness. Fortunately, we live in a country under the rule of law where any brazen illegal activity will ultimately be dealt with through legal process. Therefore, I won't make any response to the personal attack against me or my family by this social media.

[73] Then later on April 7, 2022, the plaintiffs plead Mr. Liu posted:

Indeed, you should apologize to the neighbors for confusing and deceiving people with your airs and graces over the past years, more so to the patients in Canada who are seriously ill because you put strain on the free medical resources, to the CIC your family deceived, to the police you deceived to come to your home, to the merchant that you scammed out of over CAD\$2000, and to me, whose driveway was severely damaged by you! You always think my driveway is yours. You even think on last occasion that the police department is run by your family. Now you think that court is run by

your family. Facts speak louder than any words. I believe that the world has its own trust and justice for the evil things you have done.

[74] Further, the plaintiffs plead:

On or about April 19, 2022, Mr. Liu wrote and published of Ms. [David] the following defamatory words: "...she, acting like a villain, brought lawsuits one time after another. Facing such a scoundrel, we have no other way out but follow through to the end. [However, her family repeatedly acted as the offender who falsely accused others first. Facing such a shameless person, we have no other choice but to see this through to the end.]

[75] On April 29, 2022, Ms. David and Mr. David filed a Notice of Civil Claim with respect to the obstruction of the Easement Driveway. They pleaded that the obstruction was contrary to the Easement Agreement. They sought injunctive relief and damages.

[76] On May 19, 2022, Ms. David and Mr. David were successful in obtaining a mandatory interlocutory injunction for the removal of the barricades and the cessation of any work by Mr. Liu on the Easement Driveway. In a timely manner, Mr. Liu and Ms. Song complied with the Court Order.

[77] Just over a year later, on May 25, 2023, Ms. David and Mr. David amended their Notice of Civil Claim to include their defamation claims.

[78] On June 3, 2023, Ms. David and Mr. David had planned to enjoy a brunch with Ms. David's parents on their new deck. Shortly after starting their brunch, Ms. Song and Mr. Liu started yelling at them from the rooftop of Ms. Song's home.

[79] Ms. David recorded (in part) Ms. Song and Mr. Liu yelling insults. The translation of portions of the recordings read:

Speaker	Translation
Ms. Song	[Inaudible] The immoral couple, immoral couple, do immoral things every day. So, you got ovarian cancer. That's karma, right? It's karma, you know? Karma has caught up with you. How stupid does one have to be? How stupid does one have to be? How stupid does one have to be? Speak Chinese! Speak Chinese! You

	<p>married a Chinese wife and you don't speak Chinese? You married a Chinese wife and you don't speak Chinese? Don't talk that shit to me. Don't talk that shit to me. Don't talk that shit to me, okay? Don't talk that shit to me. I'm in my own home. Don't talk that shit to me. Don't talk that shit to me. Don't point at me. Who are you to point at me? Don't point at me. Beat it! Beat it! Karma will catch up with those who do a lot of bad things. You've done too many bad things, your family. You've done too many immoral things, don't you know? So, karma caught up with you, you know? Karma caught up with you. Karma has caught up with you. Ovarian cancer, neither a man nor a woman, people with no ovaries, would you say it's a female eunuch? Is it a female eunuch? Is it a female eunuch?</p> <p>[Unintelligible] I'm telling you. [Unintelligible] Idiot, idiot, idiot, idiot, moron, moron, moron, moron. Australia is the descendants of convicts. Married to a rogue, a rogue to a rogue. It's a typical rogue to rogue. Look at the history of Australia. Who are these people descended from? Convicts, exiles, European exiles, right? The descendants of convicts are all [unintelligible]. Your rogue behavior [unintelligible]</p>
Mr. Liu	It serves you right! It serves you right! [Unintelligible]
Ms. Song	It serves you right! It serves you right! It serves you right! It serves you right to get cancer! You did this to yourself, you know?
Mr. Liu	And there's, there's more karma. There's more karma waiting for you.
Ms. Song	Wait for the karma! You just wait for the karma. Wait for the karma! You've done too many immoral things, your family. Your family has done too many immoral things, you know? Your family has done too many immoral things.
Mr. Liu	Karma! Karma!
Ms. Song	Karma! Karma! Teach you a Chinese word, Baoying [translator: meaning karma]. Come on, Baoying. Learn a Chinese word. Learn a Chinese word, Baoying.
Mr. Liu	[Unintelligible]
Ms. Song	Baoying, Baoying. Learn a Chinese word, Baoying, Baoying, Baoying, you know? Baoying, Baoying, Baoying. The immoral couple, immoral couple, only do

	immoral things. You think you can paint black as white by spending money. Your family just relies on a lawyer by spending money, don't you? Don't get a lawyer if you can. You just create discord without reason. You [sic] family just relies on spending money. The immoral couple, immoral couple [unintelligible]
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[80] Mr. David contacted the RCMP in order to help address the verbal abuse. Constable H. Khan of the Squamish RCMP attended and met separately with the respective couples. After Constable Khan left, Ms. Song and Mr. Liu continued the verbal abuse, in particular, when Mr. David and Ms. David left to walk their dog.

[81] On June 3, 2023, Mr. David placed a speaker on the balcony of Ms. David's residence and played music directed at Ms. Song's house in an attempt to drown out Mr. Liu's and Ms. Song's abusive insults.

[82] On June 4, 2023, Mr. David walked to neighbouring properties to explain to his neighbours that he was playing the music to "drown out" the verbal abuse he and Ms. David were experiencing and to apologize for any disruption.

[83] Mr. Liu's and Ms. Song's verbal abuse of Ms. David and Mr. David ceased on or about June 7, 2023.

[84] On July 12, 2024, Mr. Liu conducted an examination for discovery of Ms. David for the current action.

[85] On July 14, 2024, Mr. Liu and Ms. Song wrote an email to Constable Khan. In an attachment to their email, they referred to "some fraudulent activities that Ms. [David] told Mr. Liu in the past" and that Mr. and Ms. David had "contacted law enforcement to prevent us from revealing their fraudulent activities".

[86] On July 16, 2024, Mr. Liu wrote an email to Mr. Ross Blackwell, the Chief Administrative Officer for the Village of Lions Bay. In an attachment to that email was an email written by Mr. Liu and Ms. Song. In the attached email, they state:

"All those fraudulent activities by the plaintiffs and were disclosed by Ms. [David] herself, and they did not want to reveal their information."

And further, with respect to Ms. David's cancer:

"We found Ms. [David] always initiated the topic and mentioned her disease to get sympathy and privilege."

e) The Apologies (and Withdrawal – Retraction)

[87] As noted, without first telling Mr. and Ms. David, or their counsel, on the eve of December 20, 2024, the then last day of trial, Mr. Liu posted, in English, the following to the WeChat forum:

Hi everyone,

I deeply regret the posts I made on April 7 and April 19, 2022. My posts caused harm to Ms. Cindy David and Mr. David, and I sincerely apologize for the distress my posts have caused. I would like to formally withdraw the statements I made in those posts and express my heartfelt apologies to Ms. Cindy David and Mr. David.

Thank you.

George Liu.

[88] At the start of the then final day of trial, Mr. Liu's apology (and withdrawal) was discussed.

[89] Mr. Liu and Ms. Song wished to maintain one or more defences.

[90] After further discussions, including with the Court, Mr. Liu and Ms. Song agreed to an apology (without any defences) using language prepared by Mr. Wolf.

[91] The apology (and retraction) now reads:

My name is George Liu and I reside in Lions Bay.

On April 7, 2022 and 19 April 2022, I posted defamatory comments to this WeChat Group in regard to Ms. Cindy David and Mr. Richard David who are my neighbours in Lions Bay.

In the court case brought by the Davids to seek a legal finding of defamation against me, I have now acknowledged and agreed that these comments were a total fabrication and as such unreservedly apologized to the Davids for the hurt and harm caused to them and also to the court for the cost and time wasted as a result of my actions.

For all the members of this WeChat group I confirm these comments were fabrications in their entirety and written solely to harm the reputation and standing of Mr. and Ms. David in the community.

I unreservedly apologize for the obvious harm and hurt that I caused Mr. and Ms. David through the posts of these defamatory comments and I provide a permanent retraction of these posts.

[92] It was further agreed that the apology would be posted in Chinese and English on the WeChat forum and also on a Facebook Lions Bay forum (approximately 1,000 users).

[93] It was also agreed that a similar apology would be provided to Constable Khan and Mr. Blackwell in relation to the July 14, 2024 and July 16, 2024 correspondence to Constable Khan and Mr. Blackwell respectively.

[94] Through oversight, I did not discuss the *Apology Act*, 2006 S.B.C., c. 19. Neither Mr. Liu nor Mr. Wolf raised the *Apology Act*.

[95] Section 1 of the *Apology Act* defines “apology” broadly:

1 In this Act:

“**apology**” means an expression of sympathy or regret, a statement that one is sorry or any other words or actions indicating contrition or commiseration, whether or not the words or actions admit or imply an admission of fault in connection with the matter to which the words or actions relate;

[96] Section 2 of the *Apology Act* provides (in part) that an apology “does not constitute an express or implied admission of fault or liability” and the apology “must not be taken into account in any determination of fault or liability in connection with that matter”.

[97] On January 21, 2025, while reasons were still under reserve, I wrote to the parties noting the *Apology Act*. I gave the parties the opportunity to make written submissions (no longer than three pages) with respect to the *Apology Act* by no later than 4:00 p.m., January 28, 2025.

[98] Mr. Wolf submitted (in part):

5. The plaintiffs submit however that the apologies proffered by Mr. Liu in his interactions with the Court on the last day of the trial were separate from oral admissions that Mr. Liu also made to the Court with respect to the plaintiffs’ claims based in defamation, namely that the contents of the WeChat posts

were “untrue” and “defamatory” and made with “malice”. The plaintiffs further note in support of that submission that near the conclusion of the trial in the late afternoon of December 20, 2024 Mr. Liu did not raise any objection to the Court’s statement (according to counsel’s notes) that “as far as judgment, the defamation matter is fully done and resolved”. (From the plaintiffs’ perspective, counsel understood that statement by the Court to refer to the liability component only of the plaintiffs’ defamation claim and the damages component remained a live issue for the Court’s determination).

[99] In his January 28, 2025 submissions, Mr. Liu specifically asked the Court to “disregard my apologies as evidence of fault or liability”.

[100] As noted, Mr. Liu had wished to maintain his defences with respect to his liability for libel.

[101] During the December 20, 2024 submissions, Mr. Liu and I had the following discussion:

THE COURT: But what -- but Mr. Wolf is asking, are you proposing to still argue defences?

GEORGE LIU: I think -- you see, as I've said, that we have sent the emails, and I have posted it in a WeChat post, and we will have -- express our apologies in the court. I have written it in my response, in the -

THE COURT: Yes.

GEORGE LIU: -- document. So, I -- my position is that I will still have the defence.

THE COURT: What's the defence? You have a -- if he -well, you can correct me. Either it's a full apology or it's not. You're saying, 'I was totally in the wrong,' or you -- 'I and my spouse, Ms. Song, were totally in the wrong. The defamatory statements were wholly unwarranted. That's why I'm giving this sincere apology for the distress of my post.' How can there be, you know -- legally, we can't point both ways, you know? Or -- what do you mean by 'sincere apology for the distress may have caused'? And you say that, and then you -- and an hour later, after Mr. David's -- or Mr. Wolf has finished saying, 'Well, I still have a defence of fair comment or truth,' or what have you.

GEORGE LIU: Mm-hmm. So, we have sent our apology, so that means we cannot have the defence anymore. So, I mean -

THE COURT: That's -- would be my understanding of the law. I mean, isn't it inconsistent?

GEORGE LIU: Yeah, that's what I'm thinking too.

[102] Having now regard to the *Apology Act* and my December 20, 2024 statement that it was “my understanding of the law” that one could not take “inconsistent” positions was wrong, I arranged for a further day of submissions. These occurred on February 7, 2025. Sometime before, as had been agreed, the December 20, 2024 apology had been posted on the WeChat forum and on Facebook (Lions Bay forum), and also provided to Constable Khan and Mr. Blackwell.

[103] In defamation, the withdrawal of the libellous statements, and an apology, may reduce the quantum of an award because they may serve to reduce the harm caused by the defamation.

[104] In *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130, Justice Cory, writing for the majority, stated :

[191] There are a number of factors that a jury may properly take into account in assessing aggravated damages. For example, was there a withdrawal of the libellous statement made by the defendants and an apology tendered? If there was, this may go far to establishing that there was no malicious conduct on the part of the defendant warranting an award of aggravated damages. [...]

[105] From *Hill*, it is apparent that the withdrawal or retraction of libellous statements and an apology are separate actions.

[106] Similarly, in *Canadian Libel and Slander Actions* by Roger D. McConchie and David A. Potts (Toronto: Irwin Law, 2004) the distinction between an apology and a retraction is described:

Conceptually an “apology” and a “retraction” are different. An apology is a statement of remorse or regret for publishing defamatory expression and for its consequences in terms of injury or damage to the plaintiff. A retraction withdraws the defamatory imputation.

This distinction is expressed in certain provincial defamation statutes. For example, the Ontario *Libel and Slander Act* speaks variously of a “full and fair retraction” (section 5(2)), “a full apology” (section 9(1)) and “a written apology” (section 22). In British Columbia, the concept of an apology is an element of a mitigation of damages provision (section 6) whereas the limitation of damages provision speaks of a “full and fair retraction.” (section 7).

[107] *Black's Law Dictionary*, 12th ed, edited by Bryan A. Garner (Toronto: Thomson Reuters, 2024) defines retraction (in relevant part):

[...] The act of recanting; specif., an official statement that something one said previously is not true <retraction of a defamatory remark>. [...]

[108] Both *Hill* and *Canadian Libel and Slander Actions* pre-date our *Apology Act*.

[109] As may be seen from our *Apology Act*, the definition of apology includes any “words or actions” that “admit or imply an admission of fault in connection with the matter”. In short, the definition of “apology” in our *Apology Act* includes any withdrawal or retraction of the libellous statements.

[110] In sum, in our province, *Hill* must now be read in the context of our *Apology Act*.

[111] Separately, in their December 20, 2024 written submission, Mr. Liu and Ms. Song also apologized with respect for their words directed at Ms. David on June 3, 2023. The apology reads:

I, especially my wife Ms. Song, would like to express our deepest regret and offer our sincere apologies to Ms. Cindy David and her family. On June 3, 2023, in a moment of emotional reaction, Ms. Song said words that were extremely offensive and gravely inappropriate. These remarks were not only deeply disrespectful but also far exceeded the boundaries of what is acceptable.

Ms. Song deeply recognizes that her words caused distress and harm to Ms. Cindy David and her family. She deeply regrets this and sincerely apologizes for her behavior. Ms. Song hopes that this apology can convey her genuine remorse and help mitigate the negative impact of her actions. This experience has been a profound lesson for her, and she commits to being more mindful and respectful in her words and actions in the future to ensure that such behavior does not happen again.

At the same time, I also made some inappropriate remarks on June 3, 2023, although fewer in number. I recognize that my words may have caused additional distress to Ms. Cindy David and her family. I sincerely apologize for my behavior and hope this apology can also help address the impact of my actions.

Together, my wife and I hope that this apology conveys to the court and to Ms. Cindy David and her family our heartfelt remorse. We will take this experience as a lesson to be more careful and respectful in the future.

5. Credibility Findings

a) Ms. David

[112] Ms. David was a truthful and credible witness.

[113] In their Amended Response, Mr. Liu and Ms. Song plead:

And all facts about the fraudulent activities mentioned in the Chat were provided to Mr. Liu by Ms. [David], as otherwise Mr. Liu would not be able to get such information in detail.

[114] I accept Ms. David's testimony and find that she did not provide any such information to Mr. Liu that would justify his libellous postings of fraudulent activities.

[115] For example, I note that Ms. David ordered and received a cabinet that, upon delivery, was noticeably damaged with some small scratches and a decorative metal bracket separated from the cabinet. As Ms. David described under cross-examination:

Q You claim that you received the cabinet and there were some damages to it and then you keep it. You return it and you got a refund, isn't that true?

A Yes, and contact -- as I already testify here, the first, that is to contact the cancelsome -- customer service at Wayfair. They direct me to a particular spot where I upload my evidence and those images you saw today was the images I uploaded to the Wayfair particular spot where you tell them what happened. They then make assessment. When they came back they told me, yes, they confirm it is damaged, and then they ask me whether I want replacement or refund. I said, because of circumstance, I don't trust they can shipping it properly so I want a refund, and that's how it happened.

Q You admit that keeping the cabinets while also getting a full refund undermines your claim that you -- it was defective and unfit for use?

THE COURT: Sorry, sir, I don't understand the question.

GEORGE LIU: So my question is that she claimed that the cabinet was damaged and she got a refund, full refund, and she kept it, and my question is then whether keeping it -- keep the cabinet undermines your claim that it was defect -- defective, damaged and unfit for use, whether it is to contradict her.

THE COURT: So I think the question is does keeping it -- keeping the cabinet undermine that it was not fit for use.

A Mr. Liu, this is not a bookshelf, the one we gave to you. This is not a storage unit. This is an accent piece I want to put -- give to Richard as a present. It's an accent piece. It's more a decorative piece, so it's not just to store shoes or books. It's not a storage unit. It's why it's cost \$2,000, if that answer your question.

GEORGE LIU:

Q So you have gotten a full refund and you return it, and it is -- so do you use -- I should put it in this way. Even if damaged, you -- it is not unfit for use, as you claim when you requested a refund.

THE COURT: I'd -- I haven't heard testimony that she said it was un -- did I? I don't think I heard testimony that she's told Wayfair it was unfit for use. They asked -- she contacted them. They asked her to upload images a certain way or a certain place, and that's what she did.

GEORGE LIU:

Q So do you admit that your actions during this incident were aimed at gaining an improper financial benefit by exploiting Wayfair's pandemic policies?

A No.

Q Have you made similar refunds request for any other I'm -- items during pandemic without returning products and so you get refunds?

A Since we moved to Canada I've been a Wayf -- loyal customer of Wayfair and I purchased many products, and some of them, if they don't fit the description and -- I will return them, and this is the only piece of furniture, because we were about to start renovation, and I haven't purchased more since the pantem -- pan -- pandemic.

Q So let's move on. ...

[116] Mr. Liu seems unwilling to accept that the supplier would not wish to have the damaged cabinet returned, or require some partial payment, rather than giving Ms. David a full refund and allowing her to keep the damaged cabinet.

[117] Having regard to the factual context that Ms. David had previously ordered many items from the same supplier (with only some returns), the shipping costs associated with a return of a large item, the COVID-19 pandemic, and the fact that the supplier would have marked-up the cabinet from its cost in order to realize a profit, I accept and find Ms. David's testimony to be entirely plausible and true.

[118] With respect to the cabinet, Mr. Liu's April 7, 2022 posting—"It is completely the behaviour of a scum!"—was wholly unfounded and outlandishly concocted. Mr. Liu's exaggeration diminishes significantly his credibility and reliability.

[119] In challenging Ms. David’s credibility, Mr. Liu submitted that Ms. David had verbally abused Ms. Song and himself.

[120] Mr. Liu referred to a short August 5, 2024 video where Ms. David and Mr. David were walking up the driveway and Ms. David said, knowing Ms. Song’s surveillance video camera would also record her voice, saying “fisherman’s wife” and “you had shit in the day”, or similar words.

[121] I accept Ms. David’s explanation as truthful and fair:

That night I maybe had a bit of enough.

[122] I reject that there was any ongoing verbal abuse by Ms. David (or Mr. David).

[123] In sum, I found Ms. David to be a truthful and credible witness. Her testimony with respect to the cabinet is a good example of her general credibility and reliability.

b) Mr. David

[124] I also found Mr. David to be a truthful and credible witness. In particular, I accept his testimony over that of Mr. Liu with respect to the construction and renovations of Ms. David’s home and matters respecting the shared driveway.

[125] Mr. David had a good firmness of memory. He, like Ms. David, had little motive to lie. Although they were plaintiffs, the causes of action they brought were in reaction to Mr. Liu, without legal right, digging a hole (or the trench) in the Easement Driveway, which served to affect the ingress and egress of Ms. David’s home, and the highly defamatory WeChat postings which Mr. David (and Ms. David) knew were not true. The hole (or the trench), the barricades, and the WeChat postings constituted evidence which would be readily accepted.

[126] The damages Mr. David (and Ms. David) sought were modest relative to the financial costs and emotional aspects usually associated with particularly contentious litigation.

[127] Mr. David was not successfully challenged in any material way in cross-examination. His testimony was “consistent with the probabilities affecting the case”.

[128] The relevant immigration documents reflect nothing untoward. As noted, from 2018 to 2022 he held work permits, and in 2023 he was granted permanent residency.

[129] Although at trial Mr. Liu tried to resile from the fact that the day after the Lions Bay council meeting where Mr. David briefly spoke (by video), and according to Mr. Liu’s April 7, 2022 WeChat post that Mr. David had appeared “particularly nervous”, Mr. Liu emailed Mr. David and Ms. David on July 28, 2020, shortly after the meeting, stating (in part), “Richard, you spoke very well!!!” (Exhibit 52, Tab 46).

[130] Ms. David’s testimony gave no basis, nor was there other evidence to ground Mr. Liu’s post-WeChat assertion that Mr. David was afraid of his immigration status being revealed.

c) Mr. Liu

[131] Mr. Liu was not a truthful or credible witness.

[132] For many of the days of this trial, Mr. Liu maintained and asserted that the defamatory statements were true, while challenging the truthfulness of Ms. David and Mr. David. By doing so, Mr. Liu compounded the harm caused by his defamatory statements.

[133] In his December 20, 2024 written closing submissions, he wrote:

Mr. Liu’s statements were based on factual observations and legitimate opinions regarding the plaintiffs’ conduct, making them non-defamatory under the law.

[134] The foregoing submission is not consistent with Mr. Liu’s and Ms. Song’s Amended Response where, as previously noted, they plead:

And all the facts about the fraudulent activities in the Chat were provided to Mr. Liu by [Ms. David], as otherwise Mr. Liu would not be able to get the information in such detail.

[135] Further, Mr. Liu’s submission does not square with the examples I have set forth above regarding the cabinet Ms. David ordered or his July 28, 2020 email to Ms. David and Mr. David respecting Mr. David’s nervousness.

[136] During the trial, Mr. Liu “practice[d] to deceive by deliberate falsehood or gross exaggeration” (as Southin J. describes in *Milburn*).

d) Ms. Song

[137] Ms. Song was also not a truthful or credible witness.

[138] In cross-examination, Ms. Song testified that she was not aware that Ms. David and Mr. David were making a defamation claim against Mr. Liu until the start of the trial on October 28, 2024.

[139] On June 9, 2023, Mr. Liu and Ms. Song filed an Amended Response to the ANOCC to address, among other matters, the significant defamatory stings Ms. David and Mr. David pleaded in the ANOCC (filed May 25, 2023).

[140] On June 9, 2023, Mr. Liu and Ms. Song also filed their Amended Counterclaim. Its amendments include a pleading of defamation (which reads, in part):

Ms. [David] had also exposed the Defendants’ address on the social media on April 7, 2022, Ms. [David] posted on the social media that “the neighbour at [civic address]” was a liar; “bring shame to Chinese people”, and even threatened Mr. Liu that “I will treat you badly”, etc. that was absolutely a defamation and breach of privacy.

[141] In the Amended Counterclaim, Mr. Liu and Ms. Song sought punitive damages, among other relief, based on their claims of defamation and breach of privacy.

[142] I can accept that Ms. Song may have left many details of the litigation to Mr. Liu as she attended to other matters. However, I cannot accept that until October 28, 2024, Ms. Song did not know that her husband was being sued for defamation by Ms. David and Mr. David under the ANOCC filed May 25, 2023.

[143] As noted, on June 9, 2023, both the Amended Response to the ANOCC and the Amended Counterclaim were filed. In the Amended Counterclaim, damages for defamation, including punitive damages for both Mr. Liu and Ms. Song, were sought.

[144] I find that no later than June 9, 2023, Ms. Song was aware of the general defamatory thrusts of the litigation.

[145] Separately, Ms. Song asserted in her testimony that she was trapped into yelling at Ms. David and Mr. David. She says she was provoked by Ms. David and Mr. David and that when she reacted, Ms. David would start to record. Accordingly, Ms. Song testified that the Court had an incomplete picture of events.

[146] For several reasons, I do not find Ms. Song's explanation to be credible, which, in turn, diminishes her credibility generally.

[147] First, on June 3, 2023, Ms. Song and Mr. Liu positioned themselves on the roof of Ms. Song's house at the corner that overlooks Ms. David's deck. Although the roof of Ms. Song's house is flat, no part of it is designed to be used as a rooftop deck. There are no safety rails or fencing. In the summer months, Mr. Liu has a small garden on the roof.

[148] Second, Ms. Song and Mr. Liu had no other reason to take chairs to the roof and place them in the corner of the roof overlooking Ms. David's deck other than to observe (and possibly harass) Ms. David and Mr. David.

[149] June 3, 2023 was shortly after Ms. David's and Mr. David's Notice of Civil Claim was amended to include their defamation claim.

[150] In her testimony, Ms. David explained that June 3, 2023 was, for practical purposes, the first time she and her husband were at her home for any period of time since the May 25, 2023 ANOCC which then included the defamation claims.

[151] Third, Ms. Song's insults were cruel. Ms. Song's language was not that of frustration or a momentary loss of temper. They continued even after the police had attended and left. Persistent, cruel insults evidence intent.

[152] In sum, I do not find Ms. Song to have been a truthful or credible witness. Her apology does redound somewhat to her character.

6. Outstanding Issues

[153] Various claims have been withdrawn.

[154] The plaintiffs' outstanding issues are:

- a) Whether Mr. Liu is liable for libelling Ms. David, and, if so, the quantum of the damages;
- b) Whether Mr. Liu is liable for libelling Mr. David, and, if so, the quantum of the damages;
- c) Ms. Song's liability, if any, for Mr. Liu's obstruction of the driveway from April 1, 2022 to shortly after May 19, 2022 and, if so, the quantum of damages;
- d) The sharing of costs related to the repaving of the driveway and, if so, the quantum of the damages; and
- e) Injunctive relief.

[155] The defendants' outstanding issues are:

- a) Whether Ms. David and Mr. David are liable for damage to the driveway and, if so, the quantum of the damages;
- b) Whether Ms. David is liable for obstructing the driveway, and, if so, the quantum of the damages;
- c) Whether Ms. David and Mr. David are liable for causing a nuisance (involving the noise and sawdust from the construction and renovations related to Ms. David's home), and, if so, the quantum of the damages; and
- d) Whether Ms. David is liable for libelling Mr. Liu, and, if so, the quantum of the damages.

[156] On December 20, 2024, Mr. Liu and Ms. Song withdrew their claims related to trespass and privacy breaches.

[157] Costs will be addressed separately after the release of these reasons.

7. Legal Principles - Re: Liability

a) Easements

[158] In *Grant v. Lowres*, 2018 BCCA 311, Justice Saunders, writing for our Court of Appeal, stated:

[19] Easements are to be interpreted as contractual documents, which raises questions of mixed fact and law: *Robb v. Walker*, 2015 BCCA 117 at paras. 30–31.

[20] Contractual interpretation generally involves discerning “the intent of the parties and the scope of their understanding” by “read[ing] the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract”: *Sattva* at para. 47. In *Sattva*, the Supreme Court of Canada explained the manner and extent to which surrounding circumstances may inform contractual interpretation:

[57] While the surrounding circumstances will be considered in interpreting the terms of a contract, they must never be allowed to overwhelm the words of that agreement (*Hayes Forest Services [Hayes Forest Services Ltd. v. Weyerhaeuser Co.*, 2008 BCCA 31], at para. 14; and Hall [Geoff R. Hall, *Canadian Contractual Interpretation Law*, 2nd ed. (Markham, Ont.: LexisNexis, 2012)], at p. 30). The goal of examining such evidence is to deepen a decision-maker’s understanding of the mutual and objective intentions of the parties as expressed in the words of the contract. The interpretation of a written contractual provision must always be grounded in the text and read in light of the entire contract (Hall, at pp. 15 and 30-32). While the surrounding circumstances are relied upon in the interpretive process, courts cannot use them to deviate from the text such that the court effectively creates a new agreement (*Glaswegian Enterprises Inc. v. B.C. Tel Mobility Cellular Inc.* (1997), 101 B.C.A.C. 62).

[21] This court adapted those insights to the particular context of easements in *Robb v. Walker*:

[31] When interpreting an easement, the court must have regard to the plain and ordinary meaning of the words in the grant to determine what the intention of the parties was at the time the agreement was entered into. Surrounding circumstances, that is, objective evidence of the background facts at the time of the execution of the contract, are to be considered in interpreting the terms of a contract: *Sattva* at para. 58.

[32] The wording of the instrument creating the right of way should govern interpretation unless (1) there is an ambiguity in the wording, or (2) the surrounding circumstances demonstrate that both parties could not have intended a particular use of the easement that is authorized by the wording of the document: *Granfield v. Cowichan Valley (Regional District)* (1996), 16 B.C.L.R. (3d) 382 (C.A.).

See also *Arbutus Bay Estates v. Canada (Attorney General)*, 2017 BCCA 374.

[Emphasis in original.]

[159] The key provisions of the Easement Agreement read:

[Ms. Song] for [her]self, [her] successors and assigns hereby gives, grants and conveys to [Ms. David, her] invitees, licensees, agents, employees, guests, successors and assigns for so long as [Ms. David] shall require it the full, free and unrestricted right, licence, easement, liberty and privilege over that portion of the [Easement Driveway]... for the purpose of passing and repassing over the Easement with or without vehicles and to use the Easement as a driveway for access to and from [Ms. David's] Property.

[Ms. David] shall indemnify and save harmless [Ms. Song] from and against any loss, damage, or liability suffered by [Ms. Song] as a result of the use of the Easement by [Ms. David], [her] invitees, licensees, employees, agents, or guests pursuant to this Agreement.

The Easement shall not be obstructed in any way, including without limitation, with gates or locks, without the express written consent in writing of both [Ms. Song] and [Ms. David]. Neither [Ms. Song] nor [Ms. David] shall park vehicles or store goods and materials on the Easement.

And,

[Ms. David] shall at [her] expense maintain the Easement in a good and substantial state of repair during the term of this agreement so long as [she] is the sole user of the Easement. If [Ms. Song] uses the Easement for access to and from [Ms. Song's] property, the expense of such maintenance shall be split equally between [Ms. Song] and [Ms. David]. If [Ms. Song] decides to extend the driveway beyond the Easement area [she] shall do so at [her] sole cost and expense.

[160] Ms. David has the burden to prove, on a balance of probabilities, that Ms. Song (Mr. Liu) obstructed the Easement Driveway. Similarly, Ms. Song has the burden to prove on a balance of probabilities that Ms. David (Mr. David) caused the Easement Driveway to be obstructed.

[161] Ms. Song has the burden to prove, on a balance of probabilities, that Ms. David (Mr. David) was (were) responsible for damage to the driveway beyond that of normal wear and tear.

[162] To the extent that normal wear and tear requires repair or the replacement of the driveway's bitumen surface on the Easement portion of the driveway, the cost is to be shared equally by Ms. David and Ms. Song.

b) Nuisance

[163] In *Baker v. Rendle*, 2017 BCCA 72, Justice Garson, writing for our Court of Appeal, summarized the law of nuisance:

[38] In *Antrim Truck Centre Ltd. v. Ontario (Transportation)*, 2013 SCC 13, the court affirmed *St. Lawrence Cement Inc. v. Barrette*, 2008 SCC 64, and set out the two elements necessary to establish private nuisance:

[19] The elements of a claim in private nuisance have often been expressed in terms of a two-part test of this nature: to support a claim in private nuisance the interference with the owner's use or enjoyment of land must be both *substantial* and *unreasonable*. A substantial interference with property is one that is non-trivial. Where this threshold is met, the inquiry proceeds to the reasonableness analysis, which is concerned with whether the non-trivial interference was also unreasonable in all of the circumstances. This two-part approach found favour with this Court in its most recent discussion of private nuisance and was adopted by the Court of Appeal in this case, at para. 80: *St. Lawrence Cement Inc. v. Barrette*, 2008 SCC 64, [2008] 3 S.C.R. 392, at para. 77; see also *St. Pierre v. Ontario (Minister of Transportation and Communications)*, 1987 CanLII 60 (SCC), [1987] 1 S.C.R. 906, at pp. 914-15, quoting with approval H. Street, *The Law of Torts* (6th ed. 1976), at p. 219; *Susan Heyes Inc. v. Vancouver (City)*, 2011 BCCA 77, 329 D.L.R. (4th) 92, at para. 75, leave to appeal refused [2011] 3 S.C.R. xi; *City of Campbellton v. Gray's Velvet Ice Cream Ltd.* (1981), 1981 CanLII 2866 (NB CA), 127 D.L.R. (3d) 436 (N.B.C.A.), at p. 441; *Royal Anne Hotel Co. v. Village of Ashcroft* (1979), 1979 CanLII 2776 (BC CA), 95 D.L.R. (3d) 756 (B.C.C.A.), at p. 760; *Fleming's The Law of Torts* (10th ed. 2011), at s. 21.80; J. Murphy and C. Witting, *Street on Torts* (13th ed. 2012), at p. 443; L. N. Klar, *Tort Law* (5th ed. 2012), at p. 759.

[39] In *St. Lawrence* at para. 77, the court noted that the focus of the court is on the harm suffered by the plaintiff rather than the prohibited conduct of the defendant:

At common law, nuisance is a field of liability that focuses on the harm suffered rather than on prohibited conduct (A. M. Linden and B. Feldthusen, *Canadian Tort Law* (8th ed. 2006), at p. 559; L. N. Klar, *Tort Law* (2nd ed. 1996), at p. 535). Nuisance is defined as unreasonable interference with the use of land (Linden and Feldthusen, at p. 559; Klar, at p. 535). Whether the interference results from intentional, negligent or non-faulty conduct is of no consequence provided that the harm can be characterized as a nuisance (Linden and Feldthusen, at p. 559). The interference must

be intolerable to an ordinary person (p. 568). This is assessed by considering factors such as the nature, severity and duration of the interference, the character of the neighbourhood, the sensitivity of the plaintiff's use and the utility of the activity (p. 569). The interference must be substantial, which means that compensation will not be awarded for trivial annoyances (Linden and Feldthusen, at p. 569; Klar, at p. 536).

[40] The subjective nature of the proof of nuisance is discussed in *Royal Anne Hotel Co. Ltd. v. Village of Ashcroft* (1979), 1979 CanLII 2776 (BC CA), 95 D.L.R. (3d) 756 (B.C.C.A.), which was cited in *Antrim. Royal Anne Hotel Co.* was a case involving nuisance created by the escape of raw sewage from a backed up municipal sewer. Mr. Justice McIntyre, speaking for the court, explained at 760-61:

When then can it be said that the tort of nuisance has been committed? A helpful proposition is advanced by the learned author of Street, *Law of Torts*, at p. 215 in these terms:

A person then may be said to have committed the tort of private nuisance *when he is held to be responsible for an act indirectly causing physical injury to land or substantially interfering with the use or enjoyment of land or an interest in land, where, in the light of all the surrounding circumstances, this injury or interference is held to be unreasonable.*

This proposition, stated in a variety of ways, has been accepted generally in the authorities.

The test then is, has the defendant's use of this land interfered with the use and enjoyment of the plaintiffs' land and is that interference unreasonable? ...

In my opinion the *rationale* for the law of nuisance in modern times, whatever its historical origins may have been, is the provision of a means of reconciling certain conflicting interests in connection with the use of land, even where the conflict does not result from negligent conduct. It protects against the unreasonable invasion of interests in land.

What is an unreasonable invasion of an interest in land? All circumstances must, of course, be considered in answering this question. What may be reasonable at one time or place may be completely unreasonable at another. It is certainly not every smell, whiff of smoke, sound of machinery or music which will entitle the indignant plaintiff to recover. It is impossible to lay down precise and detailed standards but the invasion must be substantial and serious and of such a nature that it is clear according to the accepted concepts of the day that it should be an actionable wrong. It has been said, see McLaren, "Nuisance in Canada" ..., that Canadian judges have adopted the words of Knight Bruce V.C. in *Walter v. Selfe* (1851), 4 De G. & Sm. 315 [at p. 322], 64 E.R. 849, affirmed on other grounds 19 L.T.O.S. 308 (L.C.), to the effect that actionability will result from an interference with

...the ordinary comfort physically of human existence, not merely according to elegant or dainty modes and habits of living, but according to plain and sober and simple notions.

These words were approved by Middleton J.A. in the Ontario High Court in *Appleby v. Erie Tobacco Co.* (1910), 22 O.L.R. 533 at pp. 535-6.

In reaching a conclusion, the court must consider the nature of the act complained of and the nature of the injury suffered. Consideration must also be given to the character of the neighbourhood where the nuisance is alleged, the frequency of the occurrence of the nuisance, its duration and many other factors which could be of significance in special circumstances. While an owner of land in a quiet residential district may well expect to be protected from the operation of a boiler factory on his neighbour's land, he may not be entitled to expect to prevent the boilermaker from pursuing his lawful calling when he seeks to put his residence in an industrial area next to the factory. The conflicting interests must be weighed and considered against all the circumstances. The social utility of the conduct complained of must be weighed against the significance of the injury caused and the value of the interest sought to be protected. But where the conduct of the defendant has caused actual physical injury to the plaintiffs' land, the mere fact that such conduct may be of great social utility, for example, construction and maintenance of a sewer, will not attract greater licence or immunity.

[Garson J.A.'s emphasis .]

[41] In summary, the requirements for proof of private nuisance are two-fold. First, a plaintiff must prove a substantial, non-trivial interference with his use and enjoyment of his property. Second, he must establish that the interference is unreasonable. The focus is primarily on the effect on the complainant rather than on the alleged tortfeasor's conduct (*Antrim* at para. 28). [...]

[164] Ms. Song and Mr. Liu have the burden to prove on a balance of probabilities that Ms. David and Mr. David caused a nuisance.

c) Defamation

i) General Principles

[165] In *British Columbia Recreation and Parks Association v. Zakharia*, 2015 BCSC 1650, I stated:

[66] The internet has not changed the law with respect to free expression. While the internet may serve as the modern day Speaker's Corner in Hyde Park (and with a potentially far greater audience), the internet does not licence the circumvention of the law of defamation.

[67] In *Grant v. Torstar Corp.*, [2009] 3 S.C.R. 640 [*Torstar*], the Supreme Court of Canada states:

[1] Freedom of expression is guaranteed by s. 2(b) of the *Canadian Charter of Rights and Freedoms*. It is essential to the functioning of our democracy, to seeking the truth in diverse fields of inquiry, and to our capacity for self-expression and individual realization.

[2] But freedom of expression is not absolute. One limitation on free expression is the law of defamation, which protects a person's reputation from unjustified assault. The law of defamation does not forbid people from expressing themselves. It merely provides that if a person defames another, that person may be required to pay damages to the other for the harm caused to the other's reputation. However, if the defences available to a publisher are too narrowly defined, the result may be "libel chill", undermining freedom of expression and of the press.

And further:

[51] [...] *Charter* principles do not provide a licence to damage another person's reputation simply to fulfill one's atavistic desire to express oneself.

[166] In *Grant v. Torstar Corp.*, 2009 SCC 61 [*Torstar*], the Supreme Court of Canada describes the elements necessary for defamation:

[28] A plaintiff in a defamation action is required to prove three things to obtain judgment and an award of damages: (1) that the impugned words were defamatory, in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person; (2) that the words in fact referred to the plaintiff; and (3) that the words were published, meaning that they were communicated to at least one person other than the plaintiff. [...]

[167] With respect to publishing on the Internet, our Court of Appeal in *Crookes v. Newton*, 2009 BCCA 392, stated:

[25] The Internet has fostered an exponentially expanded opportunity for individuals to communicate about every conceivable matter to the world at large. It has, thus, created an exponentially expanded potential for the spread of defamatory material. This fact has presented challenges to courts seeking to find the balance between the competing values of freedom of speech and protection of reputation which arise in defamation cases. One expression of the nature of those competing interests in the Internet context is found in an article, Lyrisa Barnett Lidsky, "Silencing John Doe: defamation & discourse in cyberspace" (2000), 14:4 *Duke L.J.* 855, where the author, in commenting on the potential effects of "libel chill" on freedom of speech, states at 860-61, 863-64:

The promise of the Internet is empowerment: it empowers ordinary individuals with limited financial resources to “publish” their views on matters of public concern. The Internet is therefore a powerful tool for equalizing imbalances of power by giving voice to the disenfranchised and by allowing more democratic participation in public discourse. In other words, the Internet allows ordinary John Does to participate as never before in public discourse, and hence, to shape public policy.

...

Although Internet communications may have the ephemeral qualities of gossip with regard to accuracy, they are communicated through a medium more pervasive than print, and for this reason they have tremendous power to harm reputation. Once a message enters cyberspace, millions of people worldwide can gain access to it. Even if the message is posted in a discussion forum frequented by only a handful of people, any one of them can republish the message by printing it or, as is more likely, by forwarding it instantly to a different discussion forum. And if the message is sufficiently provocative, it may be republished again and again. The extraordinary capacity of the Internet to replicate almost endlessly any defamatory message lends credence to the notion that “the truth rarely catches up with a lie.” The problem for libel law, then, is how to protect reputation without squelching the potential of the Internet as a medium of public discourse. [Footnotes omitted.]

[My emphasis]

ii) Malice

[168] In *Hill*, Justice Cory described the meaning of malice in defamation:

[145] Malice is commonly understood, in the popular sense, as spite or ill-will. However, it also includes, as Dickson J. (as he then was) pointed out in dissent in *Cherneskey [v. Armadale Publishers Ltd.]*, [1979] 1 S.C.R. 1067 at p. 1099, “any indirect motive or ulterior purpose” that conflicts with the sense of duty or the mutual interest which the occasion created. See, also, *Taylor v. Despard*, [1956] O.R. 963 (C.A.). Malice may also be established by showing that the defendant spoke dishonestly, or in knowing or reckless disregard for the truth. See *McLoughlin [v. Kutasy]*, [1979] 2 S.C.R. 311, at pp. 323-24, and *Netupsky v. Craig*, [1973] S.C.R. 55, at pp. 61-62.

[169] Express malice will defeat a defendant’s claim of fair comment: *Pineau v. KMI Publishing and Events Ltd.*, 2021 BCSC 1268 at para. 66.

iii) Justification

[170] A plea of justification is that the defamatory words are true “in substance and in fact”: *Douglas v. Tucker*, [1952] 1 S.C.R. 275 at 285.

8. Findings

a) Obstruction of the Easement Driveway

i) Ms. David's Claim

[171] Ms. David seeks damages for Mr. Liu's and Ms. Song's blockage of the easement as a result of Mr. Liu's digging the trench and erecting the sawhorse-like signs. The blockage started on April 1, 2022 and only ceased shortly after the May 19, 2022 Order requiring all obstructions to be removed within 24 hours.

[172] The Easement Agreement is clear: the easement "shall not be obstructed, in any way, [...] without the express written consent in writing of both [Ms. Song] and [Ms. David]".

[173] Ms. Song (Mr. Liu) did not obtain Ms. David's written consent to Mr. Liu's trench digging and signage prior to Mr. Liu commencing his work on April 1, 2022.

[174] The work was undertaken without any professional advice as to the need for a trench, its design, or possible effectiveness. Mr. Liu apparently assumed that Ms. David's drain was not working because water would flow over its grate.

[175] Ms. David and Mr. David hired Mr. R. Kirk, a plumber/gas-fitter, to determine if there was any blockage in the underground drainage, and its nature. Mr. Kirk, using a powered snake, concluded that the blockage was located just below where the two arms of a "Y-looking" configuration of piping join. Looking up the driveway, the left arm serviced Ms. David's property and the right arm serviced Ms. Song's property.

[176] The nature of the blockage was not determined, other than it was a hard blockage which forced the power snake to turn up into the right arm of the "Y" after having travelled from Ms. David's property down the left arm of the "Y". The cause of the blockage could have been as simple as roots, rocks, a broken tile or pipe, or some combination thereof.

[177] From the foregoing, it appears that Mr. Liu's efforts would, in any event, be fruitless. Ms. David's drain may have overflowed, not because it did not work, but

because the shared “Y” drain system was blocked just below where the arms of the Y join.

[178] Ms. Song’s (Mr. Liu’s) remedy to undertake the trench work, absent Ms. David’s approval, was to apply to court to show that Ms. David was unreasonably withholding her consent to cooperate to facilitate the workings of the drainage, largely located under the Easement Driveway serving both properties. Ms. Song (Mr. Liu) did not apply to court for relief.

[179] In sum, I find that Ms. Song (Mr. Liu) obstructed the Easement Driveway in breach of the Easement Agreement. Ms. David is entitled to damages.

ii) Ms. Song’s Claim

[180] Ms. Song’s claim that Ms. David caused the Easement Driveway to be obstructed is not proven and consequently must fail.

[181] As noted, the Easement Agreement provides for the use of the Easement Driveway. The Easement Agreement provides for the “passing and repassing” over the Easement and, further, to use it “as a driveway for access to and from Ms. David’s” property.

[182] Ms. Song says that Ms. David and Mr. David “used construction vehicles, trailer and heavy equipment to block the [Easement Driveway], completely obstructing access”.

[183] Ms. Song has not satisfied me on a balance of probabilities that the Easement Driveway was blocked, obstructing access.

[184] First, there was no evidence that vehicles or equipment were parked on the Easement Driveway for any period of time or that construction materials were stored on the Easement Driveway.

[185] Second, while the construction activities did involve the loading and unloading of materials and goods, such were temporary stoppages. Similarly, activities such as

moving gravel up the Easement Driveway to Ms. David's property using skid-steers were of a temporary nature. Such activity is allowed under the Easement Agreement.

[186] As noted, the Easement Agreement allows for more than just the "passing and repassing" over the Easement Driveway. The Easement Agreement provides for the use of the Easement Driveway "as a driveway".

[187] The construction activities were consistent with the use of a residential driveway where construction and renovations are being undertaken with respect to the owner's residence.

[188] Ms. Song's claim for obstruction is dismissed.

b) The Driveway - Construction Damage

[189] Mr. Liu and Ms. Song, in their June 9, 2023 Amended Counterclaim, plead:

By comparing the condition of the Driveway before the Plaintiffs' Construction Project on October 28, 2020 to its present state, it is evident that there has been severe Construction Damage.

[190] The actual age of the driveway is not known but certainly it was laid at least some years before Ms. Song bought her property in 2013.

[191] In 2013, Ms. Song took two photographs which show portions of the driveway (Exhibit 27 and Exhibit 54, Tab A, pg. 2). At trial, from these two photographs there were also four digitally enhanced screenshots of portions of the driveway (Exhibits 32 to 35). The two photographs and the digital enhancements show visible cracks in the driveway as of 2013.

[192] The October 28, 2020 photos of the upper part of the driveway (Exhibits 54, A3, and A4) and a March 29, 2021 picture looking down the driveway show a tired driveway with cracks and unevenness (Exhibit 1).

[193] Mr. B. Lawry is the owner of Kombi Construction Co. Ltd. ("Kombi"). Ms. David and Mr. David hired Kombi for the construction and renovation. Mr. Lawry

described the condition of the driveway before the start of the project, including: “looked old”; “a good number of cracks”; “water coming out of the driveway” (see page 1/2 to 3/4 way up the driveway); and “looked like a driveway needed to be replaced”.

[194] My examination of the relevant photos and videos aligns with Mr. Lawry’s description.

[195] An old worn suit may warrant buying a new suit, but the old suit can often still be worn for a few more years.

[196] I also note that the project was primarily a renovation with relatively little excavation and fill required.

[197] Some years before Ms. David purchased her property, Mr. Liu had used a power saw to cut lines into the lower part of the driveway. His thinking was to help drain water which apparently seeped from under the driveway and then (when cold) froze, making the driveway slippery. He undertook the sawcuts without any professional advice as to the possible effectiveness or the possible consequences to the driveway’s structural integrity.

[198] In an April 1, 2022 email, Mr. Liu, with respect to the driveway, said (in part):

After the lines were cut, it is not supposed to have any bulldozers, excavators, trailers, or pick up trucks to use the driveway at such a high frequency.

[199] With respect to the construction and renovation activities, Mr. David took steps, such as using skid-steers when a load of gravel was delivered for the back-filling of the carport/deck posts to transport the gravel up the driveway in smaller loads.

[200] Mr. Liu directed me to photos taken after the construction and renovation (Exhibit 54, E-2, E-3, and E-8). I can see that the driveway looks more tired. That said, I am not satisfied, on a balance of probabilities, that the construction and renovation activities caused any change beyond that of normal wear and tear.

c) Nuisance

i) Noise

[201] Ms. Song and Mr. Liu seek compensation in relation to the construction noise.

In their Amended Counterclaim, they plead:

54. The noise level from the Plaintiffs' Construction Project was constantly between 75 to 80 decibels, which is substantially higher than 55 decibels as stated in the Lions Bay Bylaw No. 283. The Defendants' son was home-schooled until Sept. 2021, and the excessive noise from the Construction Project severely disrupted his schooling, exams, studies, and independent research work. The disturbing noise made the Defendants' son deeply stressful. On the AP tests dates, the sharp noise from the Plaintiff's Construction Project distracted the Defendants' son's exams, the disturbance resulted in a decline in his academic performance, including but not limited to his school grades and AP test scores, it had also caused delay in the Defendants' son's independent research work.
55. The excessive noise from the Construction Project caused the Defendant, Ms. Song neurasthenia and serious sleep disorder. Ms. Song had to take sleeping pills every night, the lack of sleep made Ms. Song dizzy and nauseous every morning when she was woken up by the sharp noise from the Plaintiffs' Construction Project. Ms. Song's health, work and daily life has been affected severely by the Plaintiffs' Construction Project since April 2021.

[202] In this context, I do not find that the construction/renovation noise was unreasonable.

[203] I had no evidence that the noise from the construction/renovation was more than that typically associated with the construction/renovation of an existing home. Mr. Liu's and Ms. Song's claim of a noise level "constantly between 75 to 80 decibels" was not objectively shown.

[204] The construction/renovation was undertaken within the permissible hours for construction/renovation.

[205] From Mr. Lawry's testimony, I found him to be a careful and experienced contractor who valued his reputation and the reputation of his firm. At the time of the subject construction and renovations, Kombi had several projects underway in the Lions Bay area.

[206] Mr. Lawry is a carpenter by trade. His son, Christian, was also employed by Kombi as a carpenter, including working at Ms. David's home.

[207] There was no evidence that the construction/renovation involved the jack-hammering of say, rocks or large portions of concrete.

[208] The main source of noise would have been from power saws or table saws. While saw-noise may be annoying, it is typical of residential construction/renovation and it is generally accepted with restrictions placed on the hours of work.

[209] There was no evidence that Ms. David or Mr. Lawry (or his corporation) were cited for the breach of any Village noise by-law associated with the construction/renovation of Ms. David's home.

[210] I find that the noise did not constitute an unreasonable interference as contemplated in *Baker*.

[211] In sum, Ms. Song's and Mr. Liu's claim in relation to a nuisance caused by noise is dismissed.

ii) Dust Accumulation

[212] Ms. Song and Mr. Liu say that there was significant dust, primarily sawdust, that caused the gutters of Ms. Song's home to be blocked and its drainage system to fail. They also say that from April 2021 to May 2022 they spent 260 hours cleaning the inside of Ms. Song's home as a result of the dust created by the construction/renovation.

[213] On a balance of probabilities, I do not find the dust (including sawdust) from the construction/renovation to have caused the problems that Ms. Song and Mr. Liu describe.

[214] First, the construction/renovation, while undoubtedly creating dust (including sawdust), would not likely create the amount of dust the defendants claim. The

construction/renovation was not a particularly large project. The renovations were primarily also inside Ms. David's home.

[215] Second, it is apparent that Mr. Lawry had dust mitigation measures in place. For example, the use of power saws equipped with dust bags and table saws with a "Shop-Vac" attached. Further, as Mr. Lawry testified, "the guys are pretty concerned for their own health". Mr. Lawry "could not recall any issues or anything brought to his attention".

[216] Third, there are no pictures of dust in the air originating from Ms. David's construction/renovation. Mr. Lawry could not recall seeing any wood dust collecting on Ms. Song's property.

[217] There are pictures of what appears to be sawdust on Ms. Song's roof and balcony, but no samples were obtained and kept for evidence.

[218] Finally, having regard to the nature of the construction/renovation, Ms. Song's and Mr. Liu's claim that over 260 hours were needed to clean the dust from their home (inside and outside) is exaggerated. There were also no photos of dust inside Ms. Song's home tendered as evidence.

[219] In sum, Ms. Song's and Mr. Liu's claim in relation to a nuisance caused by dust is dismissed.

d) Defaming of Mr. David and Ms. David

[220] On April 6, 2022, Mr. David and Mr. Liu met on the driveway to discuss damage to the driveway. Mr. David offered to pay the majority of the cost to repair.

[221] After speaking to Ms. Song, Mr. Liu stated that the only acceptable percentage was 100 percent.

[222] Mr. David testified that if Ms. David did not agree, Mr. Liu said he would say on social media that Ms. David and Mr. David were tax and immigration cheats.

[223] Mr. Liu denies that he made the threat.

[224] The 100 percent demand was unreasonable. Mr. Liu knew that the driveway was an older driveway. In Mr. Liu's and Ms. Song's Amended Counterclaim they plead that the driveway "would not need immediate repair if not damaged" by the construction/renovation related to Ms. David's home (my emphasis).

[225] In short, Mr. Liu and Ms. Song were willing to replace an older driveway with a new driveway, but wanted Ms. David (Mr. David) to pay the full costs even though Ms. Song (Mr. Liu) would benefit from the replacement of the older driveway.

[226] The ready inference is that Mr. Liu (and Ms. Song) wished to force upon Ms. David (Mr. David) an extracted bargain.

[227] I find that Mr. Liu's April 7, 2022 WeChat posts are consistent with his April 6, 2022 threat.

[228] As noted, Mr. David was a truthful and credible witness with a good firmness of memory. Mr. Liu was not a truthful or credible witness. I specifically accept Mr. David's testimony that Mr. Liu threatened as Mr. David described.

[229] As noted, defamation has three elements that a plaintiff must prove in order to obtain judgment:

- a) the impugned words refer to the plaintiff;
- b) the impugned words were published, i.e. communicated to at least one person other than the plaintiff; and
- c) the words were defamatory in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person.

Torstar at para. 28.

[230] Ms. Sherry Shu, a member of the WeChat group, swore that when she first read Mr. Liu's first post she understood it was posted by Mr. Liu and understood that he was referring to Ms. David as his neighbour.

[231] Mr. Liu insisted that from his April 7, 2022 WeChat post the fact that he was the author could not have been determined without Ms. David's subsequent April 7,

2022 post referring to her neighbour with Mr. Liu's (Ms. Song's) civic address stated. He urged the Court to disregard Ms. Shu's testimony because she was a friend of Ms. David.

[232] In reviewing Mr. Liu's complete April 7, 2022 WeChat post I see that the following is also disclosed:

- a) the author is "George";
- b) George is referring to his neighbour;
- c) his former neighbour was a "department head professor at UBC";
- d) "During the intensive construction over the past whole year, without asking for permission, she had all kinds of construction vehicles drive through my driveway frequently, such as excavators, bulldozers, earth-moving trucks, trailer trucks, delivery trucks, garbage trucks and so on"; and
- e) "Those who live on this street, on your way home, should be able to feel that the curb of the lower [street name] is constantly occupied by renovation vehicles for her family".

[233] The foregoing is in the context of Chinese-speaking residents in the Lions Bay community concerning highly libellous statements. I am satisfied that the curiosity of many readers would have been prompted.

[234] In a word game, most of the letters of a word or phrase may be known. Often one or more players will know or guess the correct answer.

[235] I find that one or more readers would have correctly determined that Mr. Liu was the author of his first April 7, 2022 post, and Ms. David and Mr. David, the subjects.

[236] I find that Mr. Liu wished to target Ms. David and Mr. David while trying to construct some legal deniability.

[237] On the last day of submissions (February 7, 2025), Mr. Liu continued to assert that his identity was disclosed (and his privacy rights infringed) by Ms. David’s April 7, 2022 post responding to Mr. Liu’s earlier April 7, 2022 post.

[238] In his December 20, 2024 written submissions Mr. Liu stated:

The plaintiffs’ claims for defamation damages and injunctive relief are without merit and should be dismissed in their entirety for the following reasons:

The alleged posts did not contain the plaintiffs’ names, addresses, or photos, making it impossible for a reasonable person to identify the plaintiffs as the subject...

And again,

1. The posts do not identify the plaintiffs:

Mr. Liu’s posts did not include the plaintiffs’ names, addresses, photographs, or any other identifying details. Without such identification, the plaintiffs cannot establish that the posts were referring to them or that any reputation harm occurred.

...

[239] Further, in the December 20, 2024 written submissions, Mr. Liu stated:

Ms. David posted in the group, stating, “During the entire process of our application in 2021 to the renovation, the neighbor at [actual civic address] displayed the utmost hatred and discontent.” In doing so, she exposed the defendants’ address and identity while using derogatory language. If anyone in the chat group inferred that the post referred to Ms. David, it was solely because she had exposed Mr. Liu’s address and identified herself as his neighbor. It was her own actions, not the content of Mr. Liu’s post, that led others to associate her with it...

[240] In his February 7, 2025 oral submissions, Mr. Liu wished the Court to find that Ms. David is the one who caused the defamatory harm by identifying herself in her April 7, 2022 WeChat post.

[241] In lay terms, Mr. Liu wishes the Court, colloquially speaking, to “blame the victim”. This the Court will not do. There is no merit in Mr. Liu’s argument. A victim of defamation has the right to defend oneself and oneself’s reputation.

[242] Ms. Shu's evidence also establishes publication, the second element of defamation.

[243] The Court may also infer that the posts were published. In *Canada Easy Investment Store Corporation v. MacAskill*, 2022 BCSC 202, Justice Riley, as he then was, stated:

[43] With regard to the third element, proof of publication, the law requires proof that the defamatory meaning was conveyed to at least one third party who actually read it: *Hudson [v. Myong]*, 2020 BCSC 517 at para. 111, citing *Crookes v. Newton*, 2011 SCC 47 at para. 16. Although there is no presumption that material placed on the internet has been "published", a court may infer publication, and in doing so may take into account the modern realities of information dissemination via the internet: *Hudson* at para. 112, citing *Bernstein v. Poon*, 2015 ONSC 155 at para. 94; *Hee Creations Group Ltd. v. Chow*, 2018 BCSC 260 at paras. 74–85; *Holden v. Hanlon*, 2019 BCSC 622 at paras. 59–66.

[244] Justice Abella, as she then was, writing for the Ontario Court of Appeal in *Canadian Broadcasting Corporation v. Color Your World Corp.* (1998), 38 O.R. (3d) 97 (C.A.) at para. 15, 1998 CanLII 1983, leave to appeal dismissed [1998] S.C.C.A. No. 170 [*Color Your World*], describes the reasonable person:

The standard of what constitutes a reasonable or ordinary member of the public is difficult to articulate. It should not be so low as to stifle free expression unduly, nor so high as to imperil the ability to protect the integrity of a person's reputation. The impressions about the content of any broadcast -- or written statement -- should be assessed from the perspective of someone reasonable, that is, a person who is reasonably thoughtful and informed, rather than someone with an overly fragile sensibility. A degree of common sense must be attributed to viewers.

[My emphasis.]

[245] Justice Abella, in *Color Your World* at para. 14, also provides a particularized explanation of what is meant by lowering an individual's reputation:

I take as my starting point the following definition of defamation:

A defamatory statement is one which has a tendency to injure the reputation of the person to whom it refers; which tends, that is to say, to lower him [or her] in the estimation of right-thinking members of society generally and in particular to cause him [or her] to be regarded with feelings of hatred, contempt, ridicule, fear, dislike, or disesteem. The statement is judged by the standard of an ordinary, right-thinking member of society. Hence the test is an objective one ...

(R.F. Hueston and R.A. Buckley, Salmond on the *Law of Torts*, 21st ed. (London: Sweet & Maxwell, 1996) at p. 140 citing *Sim v. Stretch* (1936), 52 T.L.R. 669 at p. 671, [1936] 2 All E.R. 1237 (H.L.), and *Vander Zalm v. Times Publishers* (1980), 1980 CanLII 389 (BC CA), 109 D.L.R. (3d) 531 at pp. 535 and 543, 18 B.C.L.R. 210 (C.A.)

[246] Mr. Liu's April 7, 2022 and April 19, 2022 WeChat posts were libellous of Mr. David and Ms. David. As stated at para. 114 above, I have found that Ms. David did not provide Mr. Liu with any information which would justify his libellous postings.

[247] For completeness, I agree that, with respect to Mr. David, the pleaded and ordinary meaning of the WeChat posts was that "Mr. David used illegal means to emigrate to Canada".

[248] Similarly, I agree that, with respect to Ms. David, the pleaded and ordinary meanings of the WeChat posts were that "Ms. [David] is a dishonest person, used fraudulent means to emigrate to Canada, is a public resources abuser and thief, engaged in deceit/theft to obtain goods of others, is a tax evader and used the police for a fraudulent purpose", and further that Ms. David uses her cancer for personal gain.

[249] In passing, I will note Justice Cory's comments about tax evasion in *Knox Contracting Ltd. v. Canada*, [1990] 2 S.C.R. 338 at 350:

It is fitting and appropriate that the s. 239 offences be considered as criminal law. The *Income Tax Act* is a major source of funds for the federal government. Its provisions are applicable to most adult Canadians. The vast majority pay their income tax by way of payroll deduction with little or no opportunity for evasion or misstatement. Those who do evade the payment of income tax not only cheat the State of what is owing to it, but inevitably increase the burden placed upon the honest taxpayers. It is ironic that those who evade payment of taxes think nothing of availing themselves of the innumerable services which the State provides by means of taxes collected from others.

[My emphasis.]

[250] The sting that Mr. David was an illegal immigrant is patently defamatory. Similarly, the stings that Ms. David is a tax evader, a fraudster, a public resource abuser, and uses her cancer for personal gain are defamatory.

[251] In short, a reasonable person reading the April 7 and 19 WeChat posts would understand the posts to mean that Mr. David and Ms. David were neighbours who were to be avoided and were, in general terms, morally bad, dishonest, unprincipled, and cheats.

[252] A defence of fair comment cannot succeed for at least two reasons: first, Mr. Liu's posts were not based on true facts; and second, Mr. Liu was motivated by express malice (he wanted Ms. David and Mr. David to pay 100 percent of the cost of repairing the Easement Driveway). Similarly, a defence of responsible communication cannot succeed without more; Mr. Liu was motivated by express malice.

e) Defaming of Mr. Liu

[253] In the Amended Counterclaim (paras. 38 and 45) Mr. Liu and Ms. Song plead that Mr. Liu was defamed as being a liar or lying.

[254] The defence of justification applies to defeat these claims. Mr. Liu had no basis for his defamation of Ms. David or Mr. David. In short, Mr. Liu was a liar.

[255] In the Amended Counterclaim (para. 38) Mr. Liu and Ms. Song plead that Mr. Liu was defamed as a person who would "bring shame on the Chinese people". In my view, as a liar one brings shame, often to one's family, community, or profession. The defence of justification applies.

[256] Mr. Liu's claim in defamation is dismissed.

9. Damages

a) For Obstruction of the Easement Driveway

[257] Ms. David and Mr. David seek \$12,500 as an at-large award for the seven-week obstruction of the Easement Driveway caused by Mr. Liu (and Ms. Song), where it joined Ms. David's apron portion of the driveway.

[258] I will award \$12,500. The award is a reasonable amount having regard to three aspects in particular. First, the obstruction made ingress and egress for Ms. David's property awkward, if not difficult, for the workers undertaking the renovations, which, in turn, served to increase the costs of the renovations (many of the charges for labour were based on hourly rates). Second, the obstruction made ingress and egress more difficult for Ms. David and Mr. David. Third, the obstruction would have delayed access in the case of an emergency. Whether a heart attack, a bad burn, a serious fall, or say, a fire, the timing of an emergency arises without notice. Often minutes or even seconds may count to prevent further harm. On a dark, rainy night Mr. Liu's (Ms. Song's) obstruction may have caused particularly unnecessary delay.

[259] Finally, there is an aspect of loss of peace of mind where one is disabled, elderly, or suffering from a disease with an uncertain path. There is a greater sense of vulnerability where there is a concern that, if required, the quickest possible arrival of emergency services may not occur.

[260] In sum, I find that a \$12,500 award for the approximately seven-week obstruction is appropriate in the circumstances.

b) Driveway Repavement

[261] The parties agree that the Easement Driveway needs to be repaved.

[262] I have found that Ms. David's construction and renovations did not cause damage to the Easement Driveway or Ms. Song's apron portion of the driveway beyond that of normal wear and tear.

[263] The Easement Agreement provides that, with Ms. David and Ms. Song both using the Easement Driveway, the cost of repavement is to be split equally.

[264] The parties recognized that Ms. Song would wish her apron portion of the driveway to be repaved at the same time. Ms. David's apron portion of the driveway was recently repaved.

[265] Ms. David is willing to have Mr. Liu select an experienced repaver to undertake the repavement. Ms. David will pay 50 percent of the total cost of the replacement of the driveway after deducting the appropriate portion of Ms. Song's apron portion.

[266] For example, if the total cost of repaving the Easement Driveway and Ms. Song's apron portion is \$20,000, and Ms. Song's apron portion represents 15 percent of the total area, then Ms. David will pay \$8,500:

\$20,000 (the Easement Driveway and Ms. Song's apron portion)

~~<\$3,000>~~ Ms. Song's apron portion

\$17,000 / 2

\$ 8,500

[267] Prior to the replacement of the driveway on Ms. Song's property, she, at her cost, will ascertain, address, and fix the blockage in the drain system. Such work will be undertaken by a contractor with recognized experience and credentials.

[268] The obvious purpose for first addressing the drain problem is to ensure that a new driveway may not have to be partially dug up to address a drain problem.

[269] The parties will make best efforts to determine the approximate area of Ms. Song's apron portion of the driveway on her property relative to the total area of her apron portion and the Easement Driveway (e.g. 15 percent).

[270] Without agreement of the parties or an order of the Court, Ms. David's share will not exceed \$12,500 (including taxes).

[271] At trial, Ms. David agreed that the drainage from her property would be serviced by a drainage system to be constructed at her cost. The proposed drainage system will comply with any applicable by-laws and will be designed and constructed by persons with recognized experience and expertise. No portion of the drainage system will be located on Ms. Song's property.

[272] In conjunction with Ms. David's new drainage system, Ms. David will cause the access pipe from her property to Ms. Song's property to be blocked, removed, or otherwise, made inoperable.

c) Defamation

i) Types of Damages

[273] In *Valley Traffic Systems Inc. v. Malak*, 2024 BCCA 370 [*Valley Traffic*], our Court of Appeal, in defamation cases, encouraged trial judges to award damages as general damages, or as punitive damages, and to avoid the use of aggravated damages. Justice Fenlon, writing for the Court of Appeal, stated:

[70] In my view, it may be time to reconsider the use of aggravated damages in defamation cases. It would make sense instead to use general damages to compensate the plaintiff fully for the defendant's conduct, and to use punitive damages to deter and denounce, should the award of general damages prove insufficient to achieve that end. In light of *Hill* and other decisions of this Court, it is not open to us to preclude awards of aggravated damages in defamation cases. But I would go so far as to encourage trial judges to adopt this approach. It has the advantage of both avoiding any prospect of double-counting and discouraging appeals based on over-compensation.

[274] In *Valley Traffic*, Justice Fenlon described general damages for defamation:

[52] General damages are awarded to compensate a plaintiff for loss of reputation, injured feelings, stress, embarrassment, humiliation, mental and emotional distress, and personal hurt. They are intended to console and vindicate the plaintiff so that their reputation may be re-established: *Bent v. Platnick*, 2020 SCC 23 at para. 148, quoting Peter A. Downard, *The Law of Libel in Canada*, 4th ed. (Toronto: LexisNexis, 2018) at §14.2; *Pineau v. KMI Publishing and Events Ltd.*, 2022 BCCA 426 at paras. 51, 53. General damages for defamation are compensatory, "at large," and subject to the same highly deferential standard of review as non-pecuniary damages in personal injury cases: *Nazerali v. Mitchell*, 2018 BCCA 104 at para. 77 [*Nazerali*], leave to appeal to SCC ref'd, 2018 CanLII 73625.

[275] *Hill* sets out the various factors a court may consider when awarding general damages:

[182] The factors which should be taken into account in assessing general damages are clearly and concisely set out in *Gatley on Libel and Slander* (8th ed.), *supra*, at pp. 592-93, in these words:

Section 1. Assessment of Damages

1451. Province of the jury. In an action of libel "the assessment of damages does not depend on any legal rule." The amount of damages is "peculiarly the province of the jury," who in assessing them will naturally be governed by all the circumstances of the particular case. They are entitled to take into their consideration the conduct of the plaintiff, his position and standing, the nature of the libel, the mode and extent of publication, the absence or refusal of any retraction or apology, and "the whole conduct of the defendant from the time when the libel was published down to the very moment of their verdict. They may take into consideration the conduct of the defendant before action, after action, and in court at the trial of the action," and also, it is submitted, the conduct of his counsel, who cannot shelter his client by taking responsibility for the conduct of the case. They should allow "for the sad truth that no apology, retraction or withdrawal can ever be guaranteed completely to undo the harm it has done or the hurt it has caused." They should also take into account the evidence led in aggravation or mitigation of the damages.

[276] In *Hill*, Justice Cory, also describes aggravated damages for defamation, stating (in part):

[189] These damages take into account the additional harm caused to the plaintiff's feelings by the defendant's outrageous and malicious conduct. Like general or special damages, they are compensatory in nature. Their assessment requires consideration by the jury of the entire conduct of the defendant prior to the publication of the libel and continuing through to the conclusion of the trial. They represent the expression of natural indignation of right-thinking people arising from the malicious conduct of the defendant.

[190] If aggravated damages are to be awarded, there must be a finding that the defendant was motivated by actual malice, which increased the injury to the plaintiff, either by spreading further afield the damage to the reputation of the plaintiff, or by increasing the mental distress and humiliation of the plaintiff. See, for example, *Walker v. CFTO Ltd.* [(1987), 59 O.R. (2d) 104], at p. 111; *Vogel [v. Canadian Broadcasting Corp.]*, [1982] 3 W.W.R. 97 (B.C.S.C.), at p. 178; *Kerr v. Conlogue* (1992), 1992 CanLII 924 (BC SC), 65 B.C.L.R. (2d) 70 (S.C.), at p. 93; and *Cassell & Co. v. Broome*, [[1972] 1 All E.R. 801 (H.L.)] at pp. 825-26. The malice may be established by intrinsic evidence derived from the libellous statement itself and the circumstances of its publication, or by extrinsic evidence pertaining to the surrounding circumstances which demonstrate that the defendant was motivated by an unjustifiable intention to injure the plaintiff. See *Taylor v. Despard*, [[1956] O.R. 963] at p. 975.

[191] There are a number of factors that a jury may properly take into account in assessing aggravated damages. For example, was there a withdrawal of the libellous statement made by the defendants and an apology tendered? If there was, this may go far to establishing that there was no malicious conduct on the part of the defendant warranting an award of

aggravated damages. The jury may also consider whether there was a repetition of the libel, conduct that was calculated to deter the plaintiff from proceeding with the libel action, a prolonged and hostile cross-examination of the plaintiff or a plea of justification which the defendant knew was bound to fail. The general manner in which the defendant presented its case is also relevant. Further, it is appropriate for a jury to consider the conduct of the defendant at the time of the publication of the libel. For example, was it clearly aimed at obtaining the widest possible publicity in circumstances that were the most adverse possible to the plaintiff?

[277] In *Hill*, Justice Cory also described punitive damages for defamation:

[196] Punitive damages may be awarded in situations where the defendant's misconduct is so malicious, oppressive and high-handed that it offends the court's sense of decency. Punitive damages bear no relation to what the plaintiff should receive by way of compensation. Their aim is not to compensate the plaintiff, but rather to punish the defendant. It is the means by which the jury or judge expresses its outrage at the egregious conduct of the defendant. They are in the nature of a fine which is meant to act as a deterrent to the defendant and to others from acting in this manner. It is important to emphasize that punitive damages should only be awarded in those circumstances where the combined award of general and aggravated damages would be insufficient to achieve the goal of punishment and deterrence.

ii) Reputation

[278] In *Hill*, Justice Cory also described the importance of one's good reputation:

[107] The other value to be balanced in a defamation action is the protection of the reputation of the individual. Although much has very properly been said and written about the importance of freedom of expression, little has been written of the importance of reputation. Yet, to most people, their good reputation is to be cherished above all. A good reputation is closely related to the innate worthiness and dignity of the individual. It is an attribute that must, just as much as freedom of expression, be protected by society's laws. In order to undertake the balancing required by this case, something must be said about the value of reputation.

[108] Democracy has always recognized and cherished the fundamental importance of an individual. That importance must, in turn, be based upon the good repute of a person. It is that good repute which enhances an individual's sense of worth and value. False allegations can so very quickly and completely destroy a good reputation. A reputation tarnished by libel can seldom regain its former lustre. A democratic society, therefore, has an interest in ensuring that its members can enjoy and protect their good reputation so long as it is merited.

[109] From the earliest times, society has recognized the potential for tragic damage that can be occasioned by a false statement made about a person. This is evident in the Bible, the Mosaic Code and the Talmud. As

the author Carter-Ruck, in *Carter-Ruck on Libel and Slander* (4th ed. 1992), explains at p. 17:

The earliest evidence in recorded history of any sanction for defamatory statements is in the Mosaic code. In *Exodus XXII 28* we find 'Thou shalt not revile the gods nor curse the ruler of thy people' and in *Exodus XXIII 1* 'Thou shalt not raise a false report: put not thine hand with the wicked to be an unrighteous witness'. There is also a condemnation of rumourmongers in *Leviticus XIX 16* 'Thou shalt not go up and down as a talebearer among thy people'.

[110] To make false statements which are likely to injure the reputation of another has always been regarded as a serious offence. During the Roman era, the punishment for libel varied from the loss of the right to make a will, to imprisonment, exile for life, or forfeiture of property. In the case of slander, a person could be made liable for payment of damages.

[111] It was decreed by the Teutons in the *Lex Salica* that if a man called another a "wolf" or a "hare", he must pay the sum of three shillings; for a false imputation of unchastity in a woman the penalty was 45 shillings. In the Normal Costumal, if people falsely called another "thief" or "manslayer", they had to pay damages and, holding their nose with their fingers, publicly confess themselves a liar.

[112] With the separation of ecclesiastical and secular courts by the decree of William I following the Norman conquest, the Church assumed spiritual jurisdiction over defamatory language, which was regarded as a sin. The Church "stayed the tongue of the defamer at once *pro custodia morum* of the community, and *pro salute animae* of the delinquent". See V. V. Veeder, "The History and Theory of the Law of Defamation" (1903), 3 *Colum. L. Rev.* 546, at p. 551.

[113] By the 16th century, the common law action for defamation became commonplace. This was in no small measure due to the efforts of the Star Chamber to eradicate duelling, the favoured method of vindication. The Star Chamber even went so far as to punish the sending of challenges. However, when it proscribed this avenue of recourse to injured parties, the Star Chamber was compelled to widen its original jurisdiction over seditious libel to include ordinary defamation.

[114] The modern law of libel is said to have arisen out of the case *De Libellis Famosis* (1605), 5 Co. Rep. 125a, 77 E.R. 250. There, the late Archbishop of Canterbury and the then Bishop of London were alleged to have been "traded and scandalized" by an anonymous person. As reported by Coke, it was ruled that all libels, even those against private individuals, ought to be sanctioned severely by indictment at common law or in the Star Chamber. The reasoning behind this was that the libel could incite "all those of the same family, kindred, or society to revenge, and so tends *per consequens* to quarrels and breach of the peace" (p. 251). It was not necessary to show publication to a third person and it made no difference whether the libel was true or whether the plaintiff had a good or bad reputation. Eventually, truth was recognized as a defence in cases involving ordinary defamation.

[115] It was not until the late 17th century that the distinction between libel and slander was drawn by Chief Baron Hale in *King v. Lake* (1679), Hardres 470, 145 E.R. 552, where it was held that words spoken, without more, would not be actionable, with a few exceptions. Once they were reduced to writing, however, malice would be presumed and an action would lie.

[116] The character of the law relating to libel and slander in the 20th century is essentially the product of its historical development up to the 17th century, subject to a few refinements such as the introduction and recognition of the defences of privilege and fair comment. From the foregoing we can see that a central theme through the ages has been that the reputation of the individual is of fundamental importance. As Professor R. E. Brown writes in *The Law of Defamation in Canada* (2nd ed. 1994), at p. 1-4:

"(N)o system of civil law can fail to take some account of the right to have one's reputation remain untarnished by defamation." Some form of legal or social constraints on defamatory publications "are to be found in all stages of civilization, however imperfect, remote, and proximate to barbarism." [Footnotes omitted.]

[117] Though the law of defamation no longer serves as a bulwark against the duel and blood feud, the protection of reputation remains of vital importance. As David Lepofsky suggests in "Making Sense of the Libel Chill Debate: Do Libel Laws `Chill' the Exercise of Freedom of Expression?" (1994), 4 *N.J.C.L.* 169, at p. 197, reputation is the "fundamental foundation on which people are able to interact with each other in social environments". At the same time, it serves the equally or perhaps more fundamentally important purpose of fostering our self-image and sense of self-worth. This sentiment was eloquently expressed by Stewart J. in *Rosenblatt v. Baer*, 383 U.S. 75 (1966), who stated at p. 92:

The right of a man to the protection of his own reputation from unjustified invasion and wrongful hurt reflects no more than our basic concept of the essential dignity and worth of every human being -- a concept at the root of any decent system of ordered liberty.

iii) Reputational Harm

[279] Both Ms. David and Mr. David had business reputations which stings such as tax evader or illegal immigrant could readily harm.

[280] Further, as Justice Cory in *Hill* describes, most people cherish their good reputation as it is related to their "innate worthiness and dignity". Especially in a neighbourhood, one does not wish to be at, say, the local marina or at a local store with the pervasive thought that other neighbours may be quietly whispering or speculating, for example, as to how much tax was evaded—"they do have a very nice home with a great view—don't they".

[281] Defamation may be so harmful because it can corrode one's innateness and sense of self.

iv) General Damages

[282] Mr. Wolf submitted that the appropriate award for general (including aggravated) damages should be \$60,000 and \$15,000 for Ms. David and Mr. David respectively.

[283] Among the various factors I have considered are:

- a) fraud is a very serious allegation, as is tax evasion, and using one's cancer for personal gain;
- b) the postings were focused on the Chinese-speaking residents in Ms. David's and Mr. David's neighbourhood;
- c) the postings would likely hurt the business reputations of Ms. David and Mr. David, especially Ms. David, who at the time of the posts was trying to build a business as a real estate agent;
- d) within the past year, one or more of the defamatory stings were again made to the Village of Lions Bay and the RCMP;
- e) there was no apology or retraction until the eve of the last day of trial; and
- f) Mr. Liu would have known that Ms. David, with her serious cancer, was mentally vulnerable.

[284] With respect to the last factor, I am satisfied that even the strongest person is mentally vulnerable when he or she is fighting serious cancer.

[285] In *Saadati v. Moorhead*, 2017 SCC 28, Justice Brown, writing for the Supreme Court of Canada, stated that to prove mental injury:

[37] [...] While, therefore, tort law protects persons from negligent interference with their mental health, there is no legally cognizable right to happiness. Claimants must, therefore, show much more — that the disturbance suffered by the claimant is “serious and prolonged and rise[s] above the ordinary annoyances, anxieties and fears” that come with living in civil society (*Mustapha*, at para. 9). [...]

[286] I find that Ms. David, as would any other strong person fighting serious cancer, suffered mental injury as a result of the intentional sting that she uses her cancer for personal gain. The sting was compounded by the defendants' cruel mocking of Ms. David. The effect of the sting was serious, prolonged, and insidious, giving rise to a disturbance beyond "ordinary annoyances, anxieties and fears", despite Ms. David's general stoicism.

[287] I will award as general (including aggravated) damages: \$57,000 and \$14,250 to Ms. David and Mr. David respectively.

[288] I have reduced the awards sought by five percent each to take into account the December 20, 2024 apology.

[289] While the apology came very late and at the end of the trial, there is some value that must be recognized.

[290] By itself, the apology provides a clear record for Ms. David and Mr. David that Mr. Liu apologized, even though an apology by itself may not go to liability or fault.

[291] In my view, the foregoing awards for general (including aggravated) damages are appropriate and fair in the case at bar.

v) Punitive Damages

[292] Mr. Wolf submitted that a punitive damages award of \$25,000 should be made against Mr. Liu for his defamation of Ms. David.

[293] Mr. Liu's misconduct was clearly "so malicious, oppressive and high-handed that it offends the court's sense of decency". A punishment in the nature of a fine is wholly appropriate. I will award the \$25,000 sought. I will not reduce the award having regard to the apology because it would reduce the societal goal of punishment and deterrence.

[294] Especially having regard to the unknown scope of publication on the Internet, it is important that the Court make an award that ensures members of the public,

while enjoying free expression, are deterred from malicious, oppressive, and high-handed conduct.

10. Injunctive Relief

[295] An injunction is a drastic remedy: *Google Inc. v. Equustek Solutions Inc.*, 2017 SCC 34 at para. 23.

[296] Justice Forth, in *Grosz v. Guo*, 2020 BCSC 997, sets forth the relevant principles relating to the granting of a permanent injunction:

[73] Final or permanent injunctions are an extraordinary remedy, and the court must exercise its discretion to grant such relief cautiously. Because of their potentially broad and restrictive scope, and the potential consequences of their breach (including being found in contempt of court), injunctive orders must be tailored to the specific circumstances of the case in which they are ordered, and they must not go beyond what is reasonably necessary to effect compliance: *Cambie Surgeries [Corp. v. British Columbia]*, 2010 BCCA 396] at para. 39.

[74] In *NunatuKavut Community Council Inc. v. Nalcor Energy*, 2014 NLCA 46 at para. 72, the Newfoundland and Labrador Court of Appeal held that the question of whether to grant a permanent injunction may be resolved by answering the following questions:

- (i) Has the claimant proven that all the elements of a cause of action have been established or threatened? (If not, the claimant's suit should be dismissed);
- (ii) Has the claimant established to the satisfaction of the court that the wrong(s) that have been proven are sufficiently likely to occur or recur in the future that it is appropriate for the court to exercise the equitable jurisdiction of the court to grant an injunction? (If not, the injunction claim should be dismissed);
- (iii) Is there an adequate alternate remedy, other than an injunction, that will provide reasonably sufficient protection against the threat of the continued occurrence of the wrong? (If yes, the claimant should be left to reliance on that alternate remedy);
- (iv) If not, are there any applicable equitable discretionary considerations (such as clean hands, laches, acquiescence or hardship) affecting the claimant's *prima facie* entitlement to an injunction that would justify nevertheless denying that remedy? (If yes, those considerations, if more than one, should be weighed against one another to inform the court's discretion as to whether to deny the injunctive remedy.);
- (v) If not (or the identified discretionary considerations are not sufficient to justify denial of the remedy), are there any terms that

should be imposed on the claimant as a condition of being granted the injunction?

(vi) In any event, where an injunction has been determined to be justified, what should the scope of the terms of the injunction be so as to ensure that only actions or persons are enjoined that are necessary to provide an adequate remedy for the wrong that has been proven or threatened or to effect compliance with its intent?

[297] For two key reasons, I will not order injunctive relief. First, I am not satisfied that there is any real likelihood either Ms. Song or Mr. Liu will repeat their past conduct. Second, if there were a reoccurrence, in my view, an appropriate remedy would likely be a significant monetary award.

11. Conclusion

[298] Mr. David and Ms. David are jointly awarded \$12,500 as damages as against Ms. Song for the obstruction of the Easement Driveway.

[299] Ms. David is awarded \$57,000 general (including aggravated) damages and \$25,000 punitive damages, for a total of \$82,000 as against Mr. Liu for his defamation of her.

[300] Mr. David is awarded \$14,250 general (including aggravated) damages as against Mr. Liu for his defamation of him.

[301] The Court will not order any injunctive relief with respect to Ms. David's and Mr. David's claims related to the obstruction of the Easement Driveway or the defamation of either Ms. David or Mr. David.

[302] The claims set forth by Ms. Song and Mr. Liu in their Amended Counterclaim (filed June 9, 2023) are dismissed.

[303] The Easement Driveway and Ms. Song's apron portion of the driveway will be repaved as contemplated under the heading Damages - (b) Driveway Repavement with the costs shared as shown.

[304] At her cost, Ms. David will also construct a drainage system for her property as set forth in paras. 271 and 272 above.

[305] If further directions with any of the foregoing are required, there is liberty to apply.

12. Costs

[306] Within 60 days of these reasons, if costs need to be addressed, I ask that the parties contact Supreme Court Scheduling to schedule a hearing before me.

“Funt J.”