

\$500,000 in damages awarded for comments about yellow Ferrari's ownership

Damages | Defamation | Litigation | Litigation & Dispute Resolution | Torts

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Cars are a tremendous invention. Historically, among other things, cars changed the way that people travelled and reduced significantly the travel time between destinations. Cars are certainly very popular and a luxury car parked on a city street often draws a lot of stares from passersby who dream of being able to sit behind a high-priced car's steering wheel and taking a drive. Accordingly, for someone with a potential ownership interest in a luxury car, it is easy to understand that departing with it will be difficult.

However, as demonstrated in the recent case of *Groh v. Quocksister*, 2021 ONSC 3226, false accusations about the ownership of a luxury car, or any piece of property, can lead to a claim for defamation and significant damages.

In this case, the plaintiff had been involved in a dispute about property that belonged to his hospitalized mother. One of the items was a 1973 yellow Dino Ferrari. While the plaintiff held a Power of Attorney for Property for his mother, she appointed new Attorneys for Property because the plaintiff provided her with no assistance. The plaintiff's mother directed her new Attorneys to wind up a motel business she had operated with her late husband and to sell the assets, including the car.

In August 2015, the Ferrari was bought by the defendants. Evidence showed that the plaintiff had actually personally signed transfer documentation. At that point, the plaintiff knew or ought to have known that the buyer was entitled to assume title had been transferred to it.

The buyer refurbished the Ferrari and sold it to G for \$400,000 USD. The Ferrari was then consigned by G for auction which an auction house in California.

In January 2016, the plaintiff discovered that the Ferrari was being auctioned and took steps to prevent its sale. In an email sent to the auction house and copied to the plaintiff, the plaintiff's lawyer informed the auction house that the Ferrari had been removed from his client's possession without his consent or authorization and that the plaintiff had taken steps to have those who took the car criminally charged. A Notice of Hearing with respect to the charge was attached to the email.

The criminal Information laid by the plaintiff alleged that the yellow Ferrari was the plaintiff's property and that it was fraudulently converted by the mother's Attorneys.

The email caused a chain reaction. The auction house contacted G, who in turn contacted the defendants. G demanded a refund for having bought the car and that the car be taken back. While the defendants obliged, the long-standing business relationship between the parties was severely damaged. Evidence showed that prior to the kerfuffle over the yellow Ferrari, the defendants had earned over \$1 million in profits from cars it had bought from G between June 2012 and January 2016. More than 15 cars had been bought and sold.

Afterward, G only sold 1 car to the defendants.

Justice LeMay found that the email was defamatory and that the defendants were entitled to damages.

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His Honour concluded that the email accused the defendants of having stolen the Ferrari. Even though the defendants were not named specifically in the email, the auction house would have known that the Ferrari came from the defendants.

The statements in the email and the Information, which were found to be statements of fact, were not protected by justification or qualified privilege. The statements were simply knowingly untrue and the plaintiff had no duty to communicate his comments to the auction house.

With respect to damages, Ontario courts have determined that loss of business reputation is compensable. As held by Justice Blair in *Grand Financial Management Inc. v. Solemio Transportation Inc.*, 2016 ONCA 175, leave to appeal to SCC refused, 2016 CanLII 58416 (SCC), a corporation that suffers a loss of reputation caused by an intentional tort can obtain damages at large for associated economic loss.

Justice Blair described these damages as being a matter of impression.

In the British Columbia case of *Howard v. Madill*, 2010 BCSC 525, the court commented as follows in connection with damages at large:

An accurate summary of the law with respect to the assessment of damages at large, and the circumstances in which such an award may be made, is contained in *[Uni-Jet Industrial Pipe Ltd. v. Canada (Attorney General)]*, 2001 MBCA 40 (CanLII) at paras. 66 to 73...[T]hese principles are as follows:

1. Damages other than for pecuniary loss are “damages at large” and generally include compensation for loss of reputation, injured feelings, bad or good conduct by either party, or punishment.
2. Damages at large are compensatory for loss that can be foreseen but cannot be readily quantified.
3. Damages at large are a matter of discretion for the trial judge and are more a “matter of impression and not addition”.
4. Where damages at large are imposed for intentional torts, the assessment of damages provides an opportunity to condemn flagrant abuse of the legal process.

The defendants estimated their business loss at \$100,000 per year from 2016 to 2020. Given their previous profit and the decline in business transactions with G, the court held that this amount was reasonable. Accordingly, Justice LeMay awarded the defendants \$500,000 in damages for the plaintiff's defamation.

The lesson from this case is that a person cannot make knowingly false allegations of criminal conduct against anyone. Such allegations will not be protected against a claim from defamation even if contained in a lawyer's correspondence or a criminal Information. Where these kinds of allegations cause a business to suffer a loss of reputation, the business will be entitled to damages at large. Those damages can be significant in comparison to damages awarded in defamation cases where only an individual suffers a loss of reputation, particularly where the business is able to prove a nexus between the defamatory comment and a significant decline in profits. Any attachment to a car or any other property is simply not worth making false allegations about the property. A PDF version is available to download [here](#).

If you require any litigation assistance, our **Dispute Resolution Group** lawyers are available to assist you. Please contact **Stephen Thiele** at 416.865.6651.

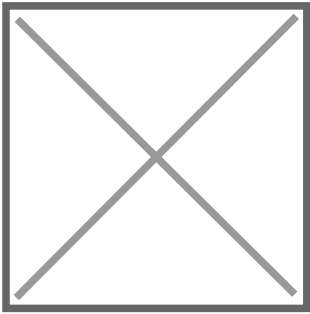
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