IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 3

Suit No 664 of 2019

Between

Lee Kok Choy

… *Plaintiff*

And

Leong Keng Woo

… *Defendant*

JUDGMENT

[Limitation of Actions] — [Particular causes of action] — [Tort]
[Tort] — [Defamation] — [Qualified privilege]
[Tort] — [Defamation] — [Damages]

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v
Leong Keng Woo

[2022] SGHC 3

General Division of the High Court — Suit No 664 of 2019
Dedar Singh Gill J
27–29 April, 21 June 2021

12 January 2022 Judgment reserved.

Dedar Singh Gill J:

Introduction

1 The plaintiff was an executive director of Manhattan Resources Limited ("MRL") from 2006 to 2012.[1] The defendant, who was an employee of one of MRL's indirectly owned subsidiaries,[2] sent two e-mails on 13 August and 14 August 2011 respectively (collectively, the "E-mails") to Mr Ho Soo Ching ("Mr Ho"), who was the Chief Executive Officer ("CEO") of MRL at the material time.[3] The contents of the E-mails attribute a series of wrongdoings to the plaintiff and form the basis of the plaintiff's claim in libel against the defendant.

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1 Lee Kok Choy's Affidavit of Evidence-in-Chief ("AEIC") ("LKC") at para 3.

2 Leong Keng Woo's AEIC ("LKW") at para 4(d).

3 Ho Soo Ching's AEIC ("HSC") at paras 4 and 11–12.

Background Facts

2 MRL was a listed company incorporated in Singapore.[4] Through several joint venture companies, MRL provided logistics and shipping services to the coal mining and oil and gas industries in Indonesia.[5] These joint venture companies included Lian Beng Energy Pte Ltd ("Lian Beng Energy"), ASL Energy Pte Ltd ("ASLE"), and Tat Hong Energy Pte Ltd.[6] PT Aneka Samudera Lintas ("PT Aneka") was a wholly owned subsidiary of ASLE.[7] At the time the plaintiff joined, MRL only had a 50% interest in ASLE. Sometime in 2007 or 2008, ASLE became wholly owned by MRL. As a result, PT Aneka became wholly owned by MRL, through ASLE.[8]

3 On 13 August 2011, the defendant sent an e-mail to Mr Ho, alleging a series of wrongdoings committed by the plaintiff (the "13 August E-mail"):[9]

> I have witnessed some of the corruption practices by [the plaintiff] and Mr Kelvin Loh from year 2008 to 2011 until today.
>
> a) In Lian Beng Energy (2008) they used underhand like negotiation with creditors to pay them 10-20% percent commission once they received the full payment, happened to company like CV Borneo, CV Eka Magic, CV Double Dragon and many more but some company refused. Together with the dry docking of 8 x 300 ft barges, they collected more than USD 900 K
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> b) In PT Aneka (2009) they started 2 companies Mega Jaya and Abadi Jaya (managed by Miss Nanin Wirowah Hadi) the later married to Kelvin Loh in year 2010 and having a baby boy in 2011. These companies controlled all the supplies to

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4 LKC at para 5.

5 LKC at para 5.

6 LKC at para 8.

7 LKC at paras 3 and 8.

8 LKC at para 10.

9 Agreed Bundle of Documents ("ABOD") at p 16.

> PT Aneka daily materials request like marine paints, lubricants, repair kits, consumable, hardware and etc, etc. On top of these they controlled one company CV Sunjaya to repair all barges' sideboards and steelworks, rental LBE machineries to this company and kept the rental charges like generator sets, welding machines, air compressor and others, all the scrap materials sold never returned to company PT Aneka. They inflated around 30-50% in the Sunjaya invoices. Total sum they collected crossed USD 700 K
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> c) Year 2010 they started another company PT Buana Lintas Samudera (Director - Miss Nanin Wirowah Hadi) collaborated with the company Harapan Baru to controlled all tugs & barges repairs in Samarinda, inflating all the invoices by adding 30%, reason from Kelvin Loh, very simple - [the plaintiff] already approved, shutting off the subject. They collected more than USD 500 K thru this scheme
>
> d) Year 2011 they started to own one small shipyard premises and building a 300-500 mt oil tanker (in progress) the location in Samarinda where we rental the storage space for excavators PC 1250 x 2 units and drill rig

The reference to "Kelvin Loh" in the 13 August E-mail was in fact a reference to Mr Kelvin Low Peng Hong ("Mr Low"). Mr Low was a general manager of PT Aneka, who oversaw the accounting and logistics department in PT Aneka.[10] Both Mr Low and the defendant were in charge of the day-to-day operations of PT Aneka and reported to the plaintiff.[11]

4 The next day, on 14 August 2011, the plaintiff sent out another e-mail to Mr Ho (the "14 August E-mail").[12] I set out the relevant portion below:

> 3) Year 2009 - Mr Thomas left the company on the 1st Jan and replaced by myself in the Operation dept and P&M dept by [the plaintiff] and Account, Purchasing and Logistic Dept under Kelvin, assisted by Nanin in Samarinda. Things began to change in their planning like cheating, abuse, criminal breach of trust and myself wasn't in the position to stop the act,

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10 LKC at para 15.

11 LKC at para 16.

12 ABOD at p 18.

> otherwise losing my job. Their planning to control every opportunities of money making in the company was very obvious example
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> a) purchasing
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> b) ship repairs / maintenance / supplies
>
> c) shipping agent (Balikpapan)
>
> d) tug & barge time-chartering
>
> e) spot transhipment
>
> f) dry docking
>
> g) monthly pay-out to authorities
>
> h) fuel oil bunker

5 The statements made in the E-mails will be collectively referred to as the Alleged Defamatory Statements.

The parties' cases

The plaintiff's case

6 On the basis of the Alleged Defamatory Statements found in the E-mails, the plaintiff pursues a claim in libel against the defendant in the present suit.

7 The plaintiff pleads that in their natural and ordinary meaning, or by way of innuendo, the Alleged Defamatory Statements in the 13 August E-mail are understood to bear the following meanings:[13]

(a) the plaintiff has conspired with the creditors of Lian Beng Energy to acquire monetary benefit in the form of commission in exchange for the assurance that the creditors will be repaid;

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13 Statement of Claim dated 4 July 2019 ("SOC") at para 6.

(b) the plaintiff embezzled money from the dry docking of barges;

(c) the plaintiff has an interest in Mega Jaya and Abadi Jaya, from which monetary benefit was acquired from their commercial transactions with MRL;

(d) the plaintiff has an interest in CV Sunjaya from which monetary benefit was attained from its supply of repair services to MRL;

(e) the plaintiff embezzled the money from the sale of PT Aneka's scrap material;

(f) the plaintiff deliberately increased CV Sunjaya's quotation as a ploy to benefit from its transaction with MRL;

(g) the plaintiff has an interest in PT Buana Lintas Samudera's quotations as a ploy to benefit from its transactions with MRL; and

(h) the plaintiff owns a small shipyard premise, which was rented out to MRL for storage usage in turn acquiring monetary benefit which was in conflict of interest.

8 As for the Alleged Defamatory Statements in the 14 August E-mail, the plaintiff avers that in their natural and ordinary meaning, or by way of innuendo, they are understood to mean that:[14]

(a) the plaintiff is guilty of cheating, abuse, criminal breach of trust; and

(b) the plaintiff is involved in multiple instances of corruption.

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14 SOC at para 8.

9 The plaintiff pleads that the E-mails were not published on an occasion of qualified privilege and, in any event, were published with malice.[15] In this connection, the defendant knew that the Alleged Defamatory Statements were untrue, or was reckless as to whether they were true or false.[16] Even if the defendant had a genuine or honest belief in the truth of the Alleged Defamatory Statements, the defendant's dominant motive in making the Alleged Defamatory Statements was to injure the plaintiff, or was otherwise improper.[17]

10 It is the plaintiff's case that even though the E-mails were sent to Mr Ho, the defendant knew that the Alleged Defamatory Statements would be republished and made known to MRL's Board of Directors (the "MRL Board"). The plaintiff avers that the defendant had communicated the Alleged Defamatory Statements to Mr Ho with the full appreciation and intention that what he said would be repeated in whole or in part.[18]

11 By reason of the foregoing, the plaintiff claims that his personal and professional reputation has been injured and that he has suffered distress, embarrassment and hurt to his feelings.[19] The plaintiff, through his solicitors, sent a letter of demand dated 20 June 2019 (the "Letter of Demand") to the defendant demanding that the latter deliver an apology (including a written retraction of the Alleged Defamatory Statements), and compensate the plaintiff by way of damages.[20]

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15 Reply (Amendment No 1) dated 1 April 2020 ("Reply") at paras 10–11.

16 Reply at para 11(b).

17 Reply at para 11(c).

18 Reply at para 6.

19 SOC at para 10.

20 SOC at para 11.

12 As the defendant failed to comply with these demands, the plaintiff instituted the present suit to claim damages for libel.[21] According to the plaintiff, this suit is not time-barred because he only had sight of the E-mails on 25 November 2017. Prior to 25 November 2017, he had no knowledge of the requisite facts necessary to bring an action for libel against the defendant.[22]

The defendant's case

13 The defendant avers that he obtained the information which formed the basis of the E-mails through his interactions with various suppliers, customers and other stakeholders during the course of his work.[23] The defendant denies that the contents of the E-mails are defamatory,[24] and raises the defence of qualified privilege.[25] The defendant also avers that he did not send the E-mails with malice.[26]

14 In any event, the defendant argues that the plaintiff has not suffered any damage to his reputation.[27] This is because the defendant only sent the E-mails to Mr Ho.[28] It was Mr Ho who brought the Alleged Defamatory Statements to the attention of the MRL Board.[29] The plaintiff was fully capable of explaining away the Alleged Defamatory Statements when questioned by Mr Ho or the

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21 SOC at para 12.

22 Reply at para 17.

23 Defence (Amendment No 1) dated 11 March 2020 ("Defence") at para 7.

24 Defence at paras 8 and 10.

25 Defence at paras 9(a) and 11(a).

26 Defence at para 9(b) and 11(b).

27 Defence at para 13.

28 Defence at para 13(b).

29 Defence at para 13(c).

MRL Board.[30] It was the plaintiff who had tendered his own resignation following internal investigations conducted by, among others, KPMG International ("KPMG").[31]

15 The defendant also avers that the plaintiff's suit is time-barred by the operation of s 6 of the Limitation Act (2020 Rev Ed) ("Limitation Act").[32]

Issues

16 This suit raises four issues for my determination:

(a) whether the plaintiff's claim in libel is time-barred;

(b) whether the plaintiff has established a *prima facie* case of defamation;

(c) whether the defendant can rely on the defence of qualified privilege; and

(d) the amount of damages to be awarded to the plaintiff, if liability is established.

Whether the Alleged Defamatory Statements were subsequently republished will be considered under the damages inquiry.

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30 Defence at para 13(a).

31 Defence at para 13(c).

32 Defence at para 15.

Whether the plaintiff's claim in libel is time-barred

The applicable Limitation Act provisions and applicable principles

17 The plaintiff seeks to rely on s 24A of the Limitation Act and, in particular, s 24A(3)(*b*).[33] On the other hand, the defendant argues that the starting point for any time-bar defence must be s 6(1)(*a*) of the Limitation Act,[34] and that s 24A of the Limitation Act does not apply to the tort of defamation.[35]

18 Section 6(1)(*a*) of the Limitation Act reads:

> **6.**—(1) Subject to this Act, the following actions shall not be brought after the expiration of 6 years from the date on which the cause of action accrued:
>
> (*a*) actions founded on a contract or on tort …

19 Sections 24A(1) to 24A(3) of the Limitation Act provide:

> **24A.**—(1) This section shall apply to any action for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under any written law or independently of any contract or any such provision).
>
> (2) An action to which this section applies, where the damages claimed consist of or include damages in respect of personal injuries to the plaintiff or any other person, shall not be brought after the expiration of —
>
> (*a*) 3 years from the date on which the cause of action accrued; or
>
> (*b*) 3 years from the earliest date on which the plaintiff has the knowledge required for bringing an action for damages in respect of the relevant injury, if that period expires later than the period mentioned in paragraph (*a*).

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33 Plaintiff's Closing Submissions ("PCS") at para 33.

34 Defendant's Closing Submissions ("DCS") at para 8.

35 DCS at para 20.

> (3) An action to which this section applies, other than one referred to in subsection (2), shall not be brought after the expiration of the period of —
>
> (*a*) 6 years from the date on which the cause of action accrued; or
>
> (*b*) ***3 years from the earliest date on which the plaintiff or any person in whom the cause of action was vested before him first had both the knowledge required for bringing an action for damages in respect of the relevant damage and a right to bring such an action, if that period expires later than the period mentioned in paragraph (a).***
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> [emphasis added in bold italics]

20 As the Court of Appeal held in *IPP Financial Advisers Pte Ltd v Saimee bin Jumaat and another appeal* [2020] 2 SLR 272 ("*IPP Financial Advisers*") at [44], ss 6(1)(*a*) and 24A of the Limitation Act do not apply concurrently. Instead, s 24A applies to all claims in tort, whether or not the tort is a strict-liability tort or a fault-based tort. Indeed, the Court of Appeal in *Yan Jun v Attorney-General* [2015] 1 SLR 752 ("*Yan Jun*") at [61] expressly stated that a purposive interpretation of s 24A(1) would entail reading the phrase "breach of duty" as encompassing all torts. It follows that the plaintiff's claim in libel, which falls under the tort of defamation, is to be considered under s 24A of the Limitation Act.

21 Section 24A(2) of the Limitation Act is not applicable because the damages claimed in the present case do not consist of or include damages in respect of personal injuries. This leaves s 24A(3) of the Limitation Act. It is well-settled that for actions in tort which require proof of damage, the cause of action accrues when the damage occurs: *IPP Financial Advisers* at [46]; *Lian Kok Hong v Ow Wah Foong and another* [2008] 4 SLR(R) 165 ("*Lian Kok Hong*") at [24]. As the E-mails were published on 13 and 14 August 2011 and received by Mr Ho on or around the same time, more than six years have passed

from the date on which the cause of action accrued. Hence, to avoid having his action time-barred, the plaintiff has to rely on s 24A(3)(*b*) of the Limitation Act.

22 Under s 24A(3)(*b*) of the Limitation Act, time starts running from the date on which the plaintiff acquired "the knowledge required for bringing an action for damages in respect of the relevant damage and a right to bring such an action". In this regard, s 24A(4) of the Limitation Act provides:

> (4) In subsections (2) and (3), the knowledge required for bringing an action for damages in respect of the relevant injury or damage (as the case may be) means knowledge —
>
> (*a*) that the injury or damage was attributable in whole or in part to the act or omission which is alleged to constitute negligence, nuisance or breach of duty;
>
> (*b*) of the identity of the defendant;
>
> (*c*) if it is alleged that the act or omission was that of a person other than the defendant, of the identity of that person and the additional facts supporting the bringing of an action against the defendant; *and*
>
> (*d*) of material facts about the injury or damage which would lead a reasonable person who had suffered such injury or damage to consider it sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment.
>
> [emphasis added]

All four limbs in s 24A(4) of the Limitation Act have to be satisfied before it can be said that the plaintiff has the requisite knowledge under s 24(3)(*b*). The Court of Appeal in *Lian Kok Hong* at [42] summarised the applicable principles as to the requisite knowledge under s 24A(4) of the Limitation Act:

> (a) First, in respect of s 24A(4)(*a*) read with s 24A(5), *viz*, attributability, the claimant need not know the details of what went wrong, and it is wholly irrelevant whether he appreciated that what went wrong amounted in law to negligence, ***as long he knew or might reasonably have known of the factual essence of his complaint.***

> (b) Second, the requirements under ss 24A(4)(*b*) and 24A(4)(*c*) as to the identity of the defendant or otherwise, which we have not elaborated on above because of their relative simplicity, should be addressed when appropriate.
>
> (c) Third, in relation to s 24A(4)(*d*), the material facts referred to need not relate to the specific cause of action, and the *assumptions as to the defendant not disputing his liability and his ability to satisfy a judgment*, coupled with the requirement of "sufficient seriousness", must be read to mean that ***the case must be one sufficiently serious for someone to actually invoke the court process given these assumptions.***
>
> (d) Finally, ***conditioning the above is the degree of knowledge*** required under paras (a) to (c), and ***this does not mean knowing for certain and beyond the possibility of contradiction***.
>
> [emphasis added in italics and bold italics]

Knowledge of the factual essence of the complaint is to be interpreted in broad terms of the facts on which the plaintiff's claim is based and of the defendant's acts or omissions and knowing that there is a real possibility that those acts or omissions have been a cause of the damage: *Lian Kok Hong* at [36].

23 Accordingly, there are two sub-issues to be addressed under the knowledge inquiry:

(a) When did the plaintiff know, or when might he reasonably have known, of the factual essence of his complaint and the identity of the defendant?

(b) When did the plaintiff know of material facts about the damage which would lead a reasonable person who had suffered such damage to consider it sufficiently serious to justify instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment?

The time at which the plaintiff knew or might reasonably have known of the factual essence of his complaint and the identity of the defendant

24 The plaintiff's case is that he only knew the factual essence of his claim and the identity of the defendant on 25 November 2017. The writ was filed on 4 July 2019, well within the three-year period under s 24A(3)(*b*) of the Limitation Act.[36]

The plaintiff's version of events

25 In the middle of 2017, the plaintiff and his wife, Mdm Chung Poh Yoke ("Mdm Chung"), were in the midst of moving out from their unit at Block 314 Shunfu Road ("Shunfu Ville") and were mainly staying at another location.[37] On 25 November 2017, Mdm Chung received a call from one of their neighbours at Shunfu Ville. She was informed that there was a massive water leak in their next-door neighbour's unit and the water was seeping into their unit.[38] Hence, the plaintiff and his wife went to Shunfu Ville on the morning of 25 November 2017 to check on the situation.[39]

26 When the plaintiff reached Shunfu Ville, he visited his neighbour's unit first before going into his own unit.[40] No one was in his neighbour's unit at that time. According to the plaintiff, his neighbour had asked him to check on the

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36 PCS at paras 18(a) and 18(c).

37 LKC at para 26; 27 April 2021 Transcript at p 10 line 18 p 11 line 5.

38 LKC at para 27; 27 April 2021 Transcript at p 12 lines 20–28.

39 LKC at para 27.

40 27 April 2021 Transcript at p 13 lines 5–8.

water leakage situation and had left the door unlocked.[41] While the plaintiff checked on the water leakage situation, Mdm Chung went to the market.[42]

27 When Mdm Chung came back from the market, she handed him two stacks of documents which she had collected from the mailbox of their apartment and the area near the mailbox.[43] This took place in their own unit.[44] For one stack, some of the documents were in an envelope ("the Envelope") while the others came as loose sheets of paper. This stack was bundled together with a sheet of A4 paper that was used to keep the documents together. The plaintiff claims that he does not recall seeing any stamp or post-mark on the Envelope. However, he recalls seeing his Shunfu Ville address and his name printed on a sticker and stuck on the sheet of A4 paper. The other stack of documents was also bundled in the same way.[45]

28 When the plaintiff reviewed the two stacks of documents on the same day,[46] he realised that they contained various MRL-related documents and hardcopy print-outs of e-mail correspondence between Mr Ho and the defendant. In particular, he found hardcopies of the E-mails within the Envelope.[47]

29 The plaintiff claims that this was the first time he saw the E-mails. Prior to 25 November 2017, the E-mails were never forwarded or copied to him. He

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41 27 April 2021 Transcript at p 13 lines 15–24.

42 LKC at para 28.

43 LKC at para 28.

44 27 April 2021 Transcript at p 15 lines 19–21.

45 LKC at para 28.

46 27 April 2021 Transcript at p 20 lines 23–25.

47 LKC at para 29.

had no knowledge that the E-mails existed. He also had no knowledge that the defendant had made such statements.[48] Till this day, the plaintiff does not know who delivered the E-mails to him.[49]

Summary of parties' arguments

30 The defendant argues that the plaintiff's account of receiving the E-mails is inherently unbelievable. Apart from Mdm Chung, there is no other independent witness proving that the plaintiff visited Shunfu Ville on 25 November 2017 and that he received the E-mails on that exact date.[50] There are also no corroborative documents showing that he received the E-mails on 25 November 2017.[51] The Envelope containing the two E-mails was discarded and the plaintiff's evidence was that there were no markings on it indicating the date it was received and the sender's identity.[52] Mdm Chung's testimony is also unreliable. She could not identify whether there was a date printed, stamped or written on the Envelope or documents, and she could not explain why she remembered the date as being 25 November 2017. She also could not identify the contents of both the first and second stack of documents because she did not look at the documents themselves.[53] Moreover, the plaintiff was not able to give an adequate explanation as to why he instructed his lawyers to state in his Letter of Demand that he obtained the E-mails on 25 November 2015. This was two years before 25 November 2017.[54]

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48 LKC at paras 23–24.

49 LKC at para 31.

50 DCS at para 26(a).

51 DCS at para 26(b).

52 DCS at para 23(b).

53 DCS at para 25.

54 DCS at para 26(c).

31 The defendant also argues that, in any event, the plaintiff would have obtained knowledge of the factual essence of his complaint sometime in 2011 during the MRL Board or KPMG investigations.[55] In addition, the plaintiff must have had a reasonable belief that the defendant had made a complaint against him as the plaintiff already knew in 2011 that there was friction between him and the defendant. The plaintiff could and should have started to enquire about the complaints behind the investigations back in 2011, and he could have found out about the E-mails if he had put in sufficient effort back then.[56]

32 Against this, the plaintiff submits that the defendant has failed to satisfy his evidential burden as he had not adduced any evidence in rebuttal to show that the E-mails were received by the plaintiff on an earlier date such that the claim is time-barred. Since the plaintiff's evidence on this issue is not "inherently incredible" and the defendant has not discharged his evidential burden, the plaintiff submits that this court must conclude that he has discharged his legal burden of proving that his claim in libel is within time.[57]

Analysis

33 It is undisputed that the Alleged Defamatory Statements in the E-mails form the factual essence of the plaintiff's claim in libel. The question, therefore, is when the plaintiff knew of their existence.

34 As the Court of Appeal held in *IPP Financial Advisers* at [37] and [41], the legal burden of proof rests on the plaintiff to establish that his claim is not time-barred. Accordingly, the plaintiff in the present case bears the evidential

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55 DCS at para 21(a)(i).

56 DCS at para 21(b)(ii).

57 PCS at paras 18(d) and 18(e).

burden of adducing some not inherently incredible evidence showing that he first saw the E-mails on 25 November 2017. If the plaintiff is able to adduce such evidence, the evidential burden then shifts to the defendant to adduce evidence in rebuttal. If no evidence in rebuttal is adduced, the court may conclude from the evidence of the plaintiff that the legal burden is discharged. If evidence in rebuttal is adduced by the defendant, the evidential burden shifts back to the plaintiff. If, ultimately, the evidential burden comes to rest on the defendant, the legal burden of proving that the claim is not time-barred would have been discharged by the plaintiff: see *SCT Technologies Pte Ltd v Western Copper Co Ltd* [2016] 1 SLR 1471 ("*SCT Technologies*") at [19].

35 The plaintiff's evidence that he first saw the E-mails on 25 November 2017 is believable. Against this, the defendant did not adduce evidence refuting the plaintiff's account of events. In particular, there is no evidence that the plaintiff came to know of the factual essence of his claim in libel, or the defendant's identity, during the MRL Board or KPMG's investigations.

36 The plaintiff's account of what transpired on 25 November 2017 in his affidavit of evidence-in-chief ("AEIC") and on the stand is internally consistent. Some weight must also be given to the fact that the plaintiff's evidence is corroborated by Mdm Chung's account of events.

37 The defendant points out that apart from Mdm Chung's evidence, there is no independent or objective evidence corroborating the plaintiff's assertion that he only found out about the E-mails on 25 November 2017. This is indeed the state of the evidence before me. There is no independent testimony from the plaintiff's neighbours corroborating the plaintiff's and Mdm Chung's claim that there was a water leakage incident, and that they went down to Shunfu Ville to check on the situation on 25 November 2017. In addition, neither the Envelope

nor the A4 papers were adduced as evidence before me. The plaintiff claimed that he could not recall what he did with the Envelope and the A4 papers and had assumed that these were either lost or destroyed during the move.[58] Be that as it may, a lack of corroborative evidence is insufficient to render the plaintiff's account unbelievable.

38 The defendant then points to how Mdm Chung was unable to testify as to whether a date was indicated on the Envelope or documents and did not know the contents of the documents delivered. But all these are consistent with the fact that her role was simply to pass these two stacks of documents to the plaintiff.[59] The plaintiff's evidence was that he, not Mdm Chung, reviewed the documents.[60] Hence, the defendant's contention on this point does not successfully challenge the plaintiff's account of events.

39 Accordingly, I am satisfied that the plaintiff has shown that he saw the E-mails on 25 November 2017. It then falls to be considered whether the defendant has been able to adduce any evidence to challenge the plaintiff's assertion that he did not have knowledge of the E-mails prior to 25 November 2017.

40 At the outset, I note that the E-mails were only addressed to Mr Ho. The defendant did not adduce any documentary evidence showing that the E-mails were forwarded to the plaintiff prior to 25 November 2017.

41 After the E-mails were sent, there was a MRL Board meeting on 9 November 2011 (the "9 November Board Meeting") discussing a whistle-

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58 LKC at paras 30–31; 27 April 2021 Transcript at p 22 lines 1–7.

59 27 April 2021 Transcript at p 9 lines 27–28.

60 27 April 2021 Transcript at p 26 line 31 to p 27 line 3.

blowing report prepared by Mr Ho dated 4 November 2011 (the "4 November Report").[61] The plaintiff was present at the meeting.[62] The plaintiff's evidence was that during the meeting, the MRL Board informed him that it had received a whistle-blowing report in relation to PT Aneka. As the plaintiff was involved in the running of PT Aneka and for confidentiality reasons, the plaintiff was not allowed to have sight of the whistle-blowing report. He also claimed that he was not informed as to who issued the report.[63] This is not far-fetched evidence. It is consistent with the reality that whistle-blowing reports of such nature are handled with great sensitivity.

42 In this connection, the defendant did not adduce any evidence showing that the plaintiff came to know about the existence and contents of the E-mails and the identity of the defendant at the 9 November Board Meeting. The meeting minutes only state what was discussed during the 9 November Board Meeting at a very broad level. The only topic of discussion which came close to alluding to the contents of the E-mails relates to the discussion about how the operations in Indonesia were important to MRL and that the whistle-blowing report would invariably affect the relationship between MRL and its major customer, Bayan Resources.[64] There is no indication, on the face of the meeting minutes, that the plaintiff was informed about the existence or contents of the E-mails, or who sent the E-mails. Importantly, there is also no evidence from Mr Ho, who was present at the 9 November Board Meeting, to the effect that the plaintiff was shown the E-mails or was told that the defendant had sent the E-mails alleging misconduct on the part of the plaintiff.

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61 28 April 2021 Transcript at p 45 line 19 to p 46 line 5; ABOD at pp 88–89.

62 ABOD at pp 55 and 57.

63 LKC at para 69.

64 ABOD at p 57.

43 Following the 9 November Board Meeting, the plaintiff also attended an interview before the audit committee of the MRL Board. At the material time, three members of the MRL Board formed the audit committee ("the audit committee board members"). They were Mr Liow Keng Teck, Mr Thia Peng Heok George and either Mr Choo Hsun Yang or Mr Tjio Kay Loen.[65] The plaintiff's evidence was that he could not recall the exact questions that the audit committee board members asked, but he remembered that it concerned the operations of PT Aneka and revolved around a debt owed by PT Buana Lintas Marine to PT Aneka.[66] The plaintiff subsequently attended an interview with KPMG. His evidence was that the questions raised by KPMG were similar to those asked by the audit committee board members. He remembered KPMG enquiring about transactions with certain companies which he allegedly had an interest in, but none of the companies was stated in the E-mails.[67] There is nothing unbelievable about the plaintiff's evidence.

44 The defendant did not adduce any evidence from the audit committee board members or KPMG contradicting the plaintiff's account of events. There is also no evidence that KPMG had sight of the E-mails and knew that it was the defendant who made the complaint. There is thus no basis for suggesting that KPMG could have told the plaintiff that it was the defendant who sent the E-mails implicating him.

45 The defendant then seeks to refute the plaintiff's assertion that he first saw the E-mails on 25 November 2017, on the basis that the Letter of Demand stated that the plaintiff "only became aware of [the E-mails] on or about

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65 27 April 2021 Transcript at p 48 line 24 to p 49 line 5; 28 April 2021 Transcript at p 42 line 9 and 17–18, p 83 lines 26–30; PCS at para 162.

66 LKC at paras 47 and 71.

67 LKC at para 72.

25 November *2015*" [emphasis added].[68] However, the plaintiff had explained that this was a mistake. He did not realise the error back then as the defendant did not respond to his Letter of Demand.[69] I accept the plaintiff's explanation.

46 Finally, I reject the defendant's argument that the plaintiff must have had a reasonable belief that the defendant had made a complaint against him in 2011, as a result of the friction between them. At its highest, the disagreements the plaintiff had with the defendant would only lead the plaintiff to *speculate* that the defendant might have lodged a complaint against him and, even if the plaintiff had believed that the defendant made a complaint against him, he would not be privy to the contents of the E-mails. The defendant also argues that if the plaintiff had enquired about the complaints propelling the investigations back in 2011, he could have found out about the E-mails. This is a highly speculative claim as there is no evidence that Mr Ho or the MRL Board would have been willing to disclose their source to the plaintiff.

47 In the main, I am satisfied that the plaintiff has discharged his legal burden of showing that he first came to know about the factual essence of his complaint, and the identity of the defendant, on 25 November 2017.

Whether the damage would lead a reasonable person to consider it sufficiently serious to institute proceedings, and when the plaintiff knew of material facts about the damage

48 By the same token, it was only on 25 November 2017 that the plaintiff came to know of the material facts about the damage he sustained.

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68 ABOD at p 146.

69 LKC at para 32; 27 April 2021 Transcript at p 30 lines 28–31.

49 The damage was of a nature that would lead a reasonable person to consider commencing proceedings. The Alleged Defamatory Statements claim that the plaintiff was guilty of cheating, abuse, criminal breach of trust, and multiple instances of corruption over some years. The total amount of ill-gotten gains the plaintiff allegedly obtained from his misconduct amounted to at least US$2.1 million. On the face of the E-mails, these grave allegations were made known to Mr Ho, the CEO of MRL. In these circumstances, a reasonable person in the plaintiff's position would take the view that these publications had seriously diminished his reputation and thereby seek recourse through the courts.

50 The defendant argues that the plaintiff had merely suffered some inconvenience due to the various investigations. His appointment as a director was not terminated and no prosecution was pursued against him due to the investigations.[70] However, this argument ignores the fact that a claim in libel seeks compensation for the injury to one's reputation and the distress one has to endure due to the publication of the defamatory material. For the reasons set out above, a reasonable person in the plaintiff's shoes would most probably invoke the court process to claim compensation upon discovering the E-mails.

Conclusion

51 Therefore, time starts running from 25 November 2017. As the writ was filed on 4 July 2019, the plaintiff's action for libel is brought well within the time limit of three years.

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[70] DCS at para 21(b)(i).

Whether the plaintiff has established a *prima facie* case of defamation

52 Three requirements have to be satisfied to establish a *prima facie* case of defamation (*Yan Jun* at [106]):

(a) the statement must be defamatory in nature;

(b) the statement must refer to the plaintiff; and

(c) the statement must be published.

53 In relation to the first requirement, the offending words can be defamatory in two senses (*Review Publishing Co Ltd and another v Lee Hsien Loong and another appeal* [2010] 1 SLR 52 ("*Review Publishing*") at [26]):

(a) in their natural and ordinary meaning, which includes any meaning capable of being inferred from the offending words standing on their own in addition to their literal meaning; or

(b) in their innuendo meaning, *ie*, in some other meaning (apart from the natural and ordinary meaning) which, although not defamatory from the viewpoint of the ordinary reasonable person, is nonetheless defamatory from the viewpoint of people with knowledge of the special meaning of the offending words or the relevant extrinsic facts.

The court has to decide what meaning the words would convey to an ordinary, reasonable person using his general knowledge and common sense: *Review Publishing* at [27].

54 As for the third requirement, that the statement must be published, it is sufficient to make out a *prima facie* case of defamation that one other person, apart from the plaintiff, has seen, read, or heard the communication: *Qingdao*

Bohai Construction Group Co, Ltd and others v Goh Teck Beng and another [2016] 4 SLR 977 at [38], [128] and [135].

55 In the instant case, there is no need to consider whether the Alleged Defamatory Statements carry innuendos. It is evident on the face of the E-mails that the natural and ordinary meanings of the Alleged Defamatory Statements are what the plaintiff alleges (see above at [7] and [8]), and those natural and ordinary meanings are defamatory. They contain allegations that the plaintiff committed multiple transgressions which could constitute criminal offences and reaped at least US$2.1 million from his dishonest ways. This would clearly lower the plaintiff's standing in the estimation of right-thinking members of society. Finally, the Alleged Defamatory Statements refer to the plaintiff and the E-mails were published to Mr Ho. The Alleged Defamatory Statements were also republished (see below at [138]).

56 The defendant does not put up much of a fight in so far as these three requirements are concerned. Rather, his case is that the plaintiff's claim in libel should be defeated because no real and substantial tort has been committed. In so arguing, the defendant relies on the Court of Appeal's decision in *Yan Jun*, which he claims followed the decision in *Jameel (Yousef) v Dow Jones & Co Inc* [2005] 2 WLR 1614 ("*Jameel*").[71] For context, the English case of *Jameel* stands for the general principle that a claim which discloses no real and substantial tort is liable to be struck out for being an abuse of process of the court ("the *Jameel* principle") (see *Yan Jun* at [120]). The defendant argues that in the present case, no real and substantial tort has been committed because of the limited publication of the E-mails to Mr Ho and the limited particularity with which republication is pleaded. Specifically, the plaintiff's pleadings do

[71] DCS at para 29.

not state how he could be certain that the E-mails would be republished to the MRL Board, how many persons from the MRL Board the E-mails were republished to and their exact identities, and what damage was caused by the alleged republication.[72]

57 As against the defendant's argument that the *Jameel* principle defeats the plaintiff's claim in libel, the plaintiff submits that the *Jameel* principle is not binding on this court given that the discussion of *Jameel* by the Court of Appeal in *Yan Jun* was strictly *obiter*.[73] Even if the *Jameel* principle was to be accepted as part of Singapore law, the plaintiff argues that it is wholly inappropriate to apply the *Jameel* principle in the present case. The Court of Appeal in *Yan Jun* at [118] had cautioned that the *Jameel* principle must be approached with the "necessary circumspection" [emphasis in original omitted] by the Singapore courts in light of how *Jameel* was decided under fundamentally different procedural rules and the potentially far-reaching nature of the principle. The plaintiff also relies on several High Court decisions which have confined the application of the *Jameel* principle.[74] The plaintiff argues that, in any event, the *Jameel* principle cannot assist the defendant in the present circumstances for the following reasons:[75]

(a) The E-mails were in fact republished to the MRL Board.

(b) Even assuming that the E-mails were only published to Mr Ho, this was a situation where limited publication caused the plaintiff great embarrassment or distress and might have blighted his financial

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72 DCS at paras 29–37.

73 PCS at para 71.

74 PCS at paras 72–74.

75 PCS at paras 75–78.

> prospects. In particular, the injury suffered by the plaintiff here is greater than what was suffered by the claimant in *Yan Jun* because the Alleged Defamatory Statements implicated the plaintiff, who was a director of a public listed company at the material time, in multiple instances of corruption, cheating, abuse and criminal breach of trust.

58 I agree with the plaintiff that the *Jameel* principle is not binding on this court. The Court of Appeal in *Yan Jun* at [120] acknowledged that the case of *Jameel* contains some general principles that may be applicable in the Singapore context, but its discussion relating to *Jameel* is purely *obiter*. Even if the *Jameel* principle is binding on this court, the plaintiff's claim in libel cannot be dismissed as an abuse of process for not disclosing a real and substantial tort.

59 First, as Aedit Abdullah J noted in *Lee Hsien Loong v Leong Sze Hian* [2021] 4 SLR 1128 ("*Leong Sze Hian*") at [69], the case of *Jameel* was really a case concerned with private international law principles and issues of forum shopping. These do not arise in the present case.

60 Second, even if I accept that the *Jameel* principle extends beyond such situations, this court should not reject a claim in defamation as readily as the court in *Jameel* did. In holding that the claim in defamation did not amount to a real and substantial tort, the court in *Jameel* at [55] remarked that:

> ***There have been two recent developments which have rendered the court more ready to entertain a submission that pursuit of a libel action is an abuse of process. The first is the introduction of the new Civil Procedure Rules***. Pursuit of the overriding objective requires an approach by the court to litigation that is both more flexible and more proactive. ***The second is the coming into effect of the Human Rights Act 1998***. Section 6 requires the court, as a public authority, to administer the law in a manner which is compatible with Convention rights, in so far as it is possible to do so. *Keeping a proper balance between the article 10 right of freedom of*

> *expression and the protection of individual reputation must, so it seems to us, require the court to bring to a stop as an abuse of process defamation proceedings that are not serving the legitimate purpose of protecting the claimant's reputation, which includes compensating the claimant only if that reputation has been unlawfully damaged.*
>
> [emphasis added in italics and bold italics]

It is for this reason that the Court of Appeal in *Yan Jun* stated that the principle enunciated in *Jameel* should be approached with necessary circumspection (at [118]). In *Leong Sze Hian* at [67], the High Court also observed that a broad-brush approach in applying the *Jameel* principle is not entirely appropriate since *Jameel* was largely animated by legal developments unique to the United Kingdom which find no ready parallel in Singapore.

61 Third, it is evident from the case of *Jameel* that the thrust of the mischief which the *Jameel* principle seeks to address is the abuse of process in "commit[ting] the resources of the…court" to an action where "so little is … at stake" (*Jameel* at [69]–[70]):

> *If the claimant succeeds in this action* and is awarded a small amount of damages, it can perhaps be said that he will have achieved vindication for the damage done to his reputation in this country, *but both the damage and the vindication will be minimal.* ***The cost of the exercise will have been out of all proportion to what has been achieved****. The game will not merely not have been worth the candle, it will not have been worth the wick.*
>
> … ***It would be an abuse of process to continue to commit the resources of the English court, including substantial judge and possibly jury time, to an action where so little is now seen to be at stake.*** …
>
> [emphasis added in italics and bold italics]

In determining whether the present claim is one where so little is at stake, the court should not *solely* look at the extent of the publication. As observed by the Court of Appeal in *Yan Jun* at [118], citing *Gatley on Libel and Slander* (Alistair

Mullis & Richard Parkes QC joint eds) (Sweet & Maxwell, 12th Ed, 2013) ("*Gatley*") at para 6.2, the question of whether there has been a real and substantial tort cannot depend upon a numbers game. Rather, the question is one of a cost-benefit calculation: "costs" in terms of the parties' costs and the impact upon the court's increasingly hard-pressed resources, and "benefit" in terms of the true value to the plaintiff of any realistically available remedy. This is ultimately a fact-sensitive inquiry. As Choo Han Teck J said in *Chan Boon Siang and others v Jasmin Nisban* [2018] 3 SLR 498 at [7], "[t]he crux of the matter is that although the court's resources ought not to be used for the pursuit of trivial or pointless claims, each case must be determined on its own facts".

62 Bearing in mind the principles set out at [60] and [61], the plaintiff's claim in libel cannot be struck down under the *Jameel* principle, because a real and substantial tort has been committed.

63 First, the plaintiff has sufficiently pleaded the republication of the Alleged Defamatory Statements to members of the MRL Board. Paragraph 6 of the plaintiff's Reply (Amendment No 1) reads:

> In relation to paragraph 6 of the Amended Defence, the Plaintiff does not dispute that the 13 August 2011 and 14 August 2011 Emails were sent to Mr Ho Soo Ching ("**Mr Ho**"), the former Chief Executive Officer of MRL as stated at paragraph 6(a). However, given the nature and gravity of the Defamatory Statements, *the Defendant knew very well that his Defamatory Statements would also be republished and made known to MRL's Board of Directors ("**Board**"). In fact, the Defendant communicated those Defamatory Statements to Mr Ho with the full appreciation and intention that what he said would be repeated in whole or in part.*
>
> [emphasis in original in bold; emphasis added in italics]

Inherent in the above is a plea of republication to the MRL Board. By the averment that "the [d]efendant knew very well that his Defamatory Statements

would also be republished and made known to MRL's Board of Directors", the defendant was put on notice that the plaintiff is seeking to claim damages for the republication to the MRL Board. This is because it is well-settled that damages to be assessed for the original publication include foreseeable loss, and that in turn encompasses loss arising out of foreseeable republication (*Goh Chok Tong v Jeyaretnam Joshua Benjamin* [1997] 3 SLR(R) 46 ("*Goh Chok Tong*") at [127]; cited with approval in *Low Tuck Kwong v Sukamto Sia* [2014] 1 SLR 639 ("*Low Tuck Kwong*") at [38]).

64 There is no need for the plaintiff to plead how he came to know about the republication to the MRL Board. This is a matter of evidence. There is also no need to specify precisely how many persons from the MRL Board the Alleged Defamatory Statements were republished to and their exact identities, since the category of persons is sufficiently identified. It simply refers to the directors of MRL. As set out in *Singapore Civil Procedure 2021* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell, 2021) at para 18/12/25:

> … In the case of a letter or other private communication, the name of each person to whom publication is alleged must be stated in the pleading; or, *if his name is unknown, he must be indicated in some manner that will identify him*. …
>
> [emphasis added]

Although this proposition is made in the context of publication, it should equally apply to republication. As for the damage caused by the alleged republication, the plaintiff has pleaded that he is claiming damages for libel.[76] This necessarily includes the injury to his reputation and the distress he suffered as a result of a foreseeable republication of the Alleged Defamatory Statements. Accordingly,

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[76] SOC at para 12(1).

the plaintiff has sufficiently pleaded matters relating to the republication of the Alleged Defamatory Statements to the MRL Board.

65 Second, as noted below at [138], the Alleged Defamatory Statements were subsequently republished. The sense and substance of all the Alleged Defamatory Statements was republished to the three audit committee board members, and the sense and substance of two of the Alleged Defamatory Statements was republished to the entire MRL Board, save for the plaintiff. Furthermore, the defendant had published the E-mails with malice (see below at [123]), and it is trite that express malice is a ground to claim aggravated damages (*Arul Chandran v Chew Chin Aik Victor* [2001] 1 SLR(R) 86 ("*Arul Chandran (CA)*") at [57]). All these go to show that the plaintiff's claim is not a "trivial" one.

66 Accordingly, the plaintiff's claim is not barred by the *Jameel* principle, since a real and substantial tort has been committed. I therefore find that the plaintiff has established a *prima facie* case of defamation.

Whether the defendant can rely on the defence of qualified privilege

67 The defence of qualified privilege applies where the defendant to a defamation suit has an interest or duty, whether legal, social or moral, to communicate the information and the recipient has a corresponding interest or duty to receive the information (the "interest-duty test"). Privilege attaches to the occasion on which the defamatory statement is made and not the statement itself: *Yan Jun* at [112].

68 However, even if the communication is made on an occasion of qualified privilege, the defence of qualified privilege can be defeated by the presence of malice: *Lim Eng Hock Peter v Lin Jian Wei and another and another appeal*

[2010] 4 SLR 331 ("*Lim Eng Hock Peter*") at [36], referring to the judgment of Lord Diplock in *Horrocks v Lowe* [1975] AC 135 ("*Horrocks*") at 149–150.

Whether the interest-duty test is satisfied

69 The defendant argues that, as an employee of PT Aneka, he owed a duty of loyalty to MRL and PT Aneka to report the plaintiff's suspected misdemeanours to Mr Ho. Mr Ho, as CEO of MRL, also had a corresponding interest in receiving information pertaining to the misdemeanours of the plaintiff, who was a director of MRL at the material time.[77] Separately, the defendant had an interest in communicating statements suggesting impropriety on the part of the plaintiff because he had an interest in the operational efficacy and reputation of MRL. For the same reason, Mr Ho had a corresponding duty to receive such communications.[78] The defendant also relies on MRL's whistle-blowing policy, which encouraged employees to report instances of wrongdoing to senior management, to argue that there is a strong basis for finding that there was a corresponding interest to communicate and receive the E-mails.[79]

70 On the other hand, the plaintiff argues that the common interest between the defendant and Mr Ho was vague. It is unclear how the defendant, as a mere employee, possessed any interest in respect of PT Aneka's or MRL's business interests.[80] Furthermore, as MRL's whistle-blowing policy provided that whistle-blowing reports were to be made directly to the audit committee of the MRL Board, it cannot be said that Mr Ho had a duty or interest to receive such

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77 DCS at para 52.

78 DCS at para 55.

79 DCS at para 56.

80 PCS at para 90.

information, and neither can it be said that the defendant had an interest and duty to communicate the contents of the E-mails to Mr Ho.[81]

71 At the outset, I note that the document setting out MRL's whistle-blowing policy is not adduced in evidence before me. On the one hand, there is evidence from the plaintiff that the defendant could not make whistle-blowing reports to Mr Ho because there were "rules" to the effect that any complaints about corrupt practices or serious misconduct had to be made to the audit committee of the MRL Board.[82] On the other hand, the evidence of the defendant and Mr Ho was that the whistle-blowing policy "allowed" complaints to be reported to the audit committee of the MRL Board.[83] Their position was that the whistle-blowing policy did not make it mandatory for whistle-blowing reports to be made directly to the audit committee, but the audit committee would eventually get hold of the whistle-blowing report.[84] Given the different interpretations of what the whistle-blowing policy entailed, I am unable to make a determination as to whether it was compulsory, as a matter of MRL and PT Aneka's internal policy, for the defendant to send the E-mails to the audit committee of the MRL Board.

72 Even if MRL and PT Aneka's internal policy was mandatory in nature, the fact remains that a moral duty existed on the part of the defendant to communicate the Alleged Defamatory Statements to Mr Ho. They contain allegations of corruption, cheating, abuse and criminal breach of trust committed in relation to MRL's subsidiaries. In particular, they involve

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81 PCS at paras 91–95.

82 27 April 2021 Transcript at p 47 lines 1–15.

83 LKW at para 7; HSC at para 10.

84 28 April 2021 Transcript at p 41 lines 5–24; 29 April 2021 Transcript at p 5 line 23 to p 6 line 7.

wrongdoings perpetrated against PT Aneka, which was an indirect subsidiary of MRL. All of these are grave transgressions which, if true, would greatly injure MRL's business interests and reputation. As an employee of PT Aneka, and hence a part of the wider MRL corporate group, the defendant had a moral duty to bring these to the attention of Mr Ho, the CEO of MRL, who wielded the power to take steps to commence investigations and put an end to the transgressions. For the same reason, Mr Ho had an interest in receiving such information. I therefore find that the interest-duty test is satisfied, and that the E-mails were published on an occasion of privilege to Mr Ho.

Malice

Applicable legal principles

73 As the Alleged Defamatory Statements were made on an occasion of privilege, it is for the plaintiff to prove that the privilege was lost because of malice: *Hady Hartanto v Yee Kit Hong and others* [2014] 2 SLR 1127; [2014] SGHC 40 ("*Hady Hartanto*") at [204]; *Lim Eng Hock Peter* at [36], citing *Horrocks* at 149–150.

74 Malice can be proven in one of two ways (*Hady Hartanto* at [205]; *Lim Eng Hock Peter* at [35]–[38], [40] and [44]):

(a) First, the plaintiff can show that the defendant had no honest belief, knew that the publication was false, or was reckless to the truth of what he published.

(b) Second, even if the defendant had an honest belief in the truth of what he published, there would still be malice if: (i) the defendant's dominant motive for publishing the statement was to injure the plaintiff, or (ii) he used the occasion (giving rise to the privilege) for an improper

> purpose, for example, to give vent to his personal spite towards the plaintiff or to obtain some advantage unconnected with the duty or the interest which constituted the reason for the privilege.

75 Evidence of the defendant's conduct and actions prior to the publication, at the time of the publication and after the publication, including the entire surrounding circumstances, must be viewed in totality: *Arul Chandran v Chew Chin Aik Victor JP* [2000] SGHC 111 ("*Arul Chandran (HC)*") at [301].

Summary of parties' submissions

76 The foregoing legal principles are not in dispute. Where parties differ is whether the defendant was actuated by malice in the present case.

77 The plaintiff submits that not only did the defendant not believe in the truth of the Alleged Defamatory Statements, but he in fact knew that the Alleged Defamatory Statements were false. Alternatively, and at the very least, the plaintiff was reckless to the point of wilful blindness.[85] The plaintiff has four main arguments in support of his submission.

78 First, the plaintiff highlights how the defendant's account of events at trial was entirely different from his pleaded case and his original testimony in his AEIC.[86]

79 Second, relying on what the defendant stated in the E-mails and the defendant's testimony under cross-examination, the plaintiff argues that the

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85 PCS at para 103.

86 PCS at paras 105–106.

defendant knew that the Alleged Defamatory Statements were false at the time of the publication.[87]

80 Third, contrary to what the defendant claimed, the defendant did not conduct any investigations relating to the Alleged Defamatory Statements and did not receive his information from MRL or PT Aneka's suppliers, customers and other stakeholders (the "Informants"). The effect of these, the plaintiff contends, is that the defendant had no basis to make the Alleged Defamatory Statements, and therefore could not have had an honest belief in their truth.[88]

81 Fourth, the plaintiff contends that the defendant's lack of honest belief in the truth of the Alleged Defamatory Statements is evident from his post-publication conduct, namely his conduct when he was informed that there was no evidence against the plaintiff with regard to the allegations he made, and the defendant's conduct during a meeting which took place on 15 November 2011 (the "15 November Meeting").[89]

82 Even if the defendant can be said to have had a genuine or honest belief in the truth of the Alleged Defamatory Statements, the plaintiff submits that the defendant had used the occasion giving rise to privilege for improper purposes.

83 The first of such improper purposes, as alleged by the plaintiff, was to give vent to his personal spite towards the plaintiff.[90] The plaintiff points to an incident in May 2011, whereby the plaintiff asked the defendant to resign from PT Aneka upon learning that the defendant had allowed third parties to overload

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87 PCS at paras 108–111.

88 PCS at paras 117–118.

89 PCS at para 119.

90 PCS at para 134(a).

certain barges (the "May Overloading Incident"). According to the plaintiff, the defendant had sent the E-mails in indignation to get back at the plaintiff.[91] In addition to this, the plaintiff relies on Mr Ho's admission that he and the defendant shared a common agenda to get the plaintiff in trouble,[92] and the defendant's e-mail correspondence with Mr Ho wherein the defendant repeatedly referred to the plaintiff as "Fat" and "Idiot".[93] The plaintiff also submits that the defendant had conspired with Mr Ho and one "Ling Ling" (a representative of a creditor of PT Aneka) to leave the plaintiff stranded in Balikpapan, Indonesia in November 2011.[94] There is e-mail correspondence where the defendant told Mr Ho that "IF [THE PLAINTIFF] TURNS UP, SOMETHING WILL HAPPENS [*sic*] TO HIM, JUST WATCH MY ACTION" and "… [if] our plan is smooth [the plaintiff] is going to be stuck in Balikpapan until Tuesday, haha".[95]

84 The second improper purpose alleged by the plaintiff was to conceal the May Overloading Incident.[96] The plaintiff claims that the defendant's purpose for sending the E-mails was to turn the spotlight on the plaintiff so that the plaintiff would not have an opportunity to expose the defendant's misdeeds in relation to the May Overloading Incident.[97]

85 On the other hand, the defendant submits that the defence of qualified privilege remains undefeated by malice. First, he believes in the truthfulness of

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91 PCS at paras 135–136.

92 PCS at para 137.

93 PCS at para 140(a).

94 PCS at paras 140(c) and 148.

95 PCS at paras 140(b), 147 and 148(a).

96 PCS at para 134(b).

97 PCS at para 152.

the Alleged Defamatory Statements. He witnessed monies being exchanged between the plaintiff, Mr Low, and representatives of other companies, and his Informants provided him with information relating to the Alleged Defamatory Statements.[98] The defendant claims that he has not come across any evidence which reveals that the Alleged Defamatory Statements are false. On the contrary, the audit reports by KPMG and UHY Lee Seng Chan & Co ("UHY") appear to vindicate his allegations.[99] The fact that various entities conducted investigations into the plaintiff's conduct shows that the Alleged Defamatory Statements are well-founded.[100]

86 Second, the defendant contends that his omission to verify the Informant's information and the activities he witnessed does not establish malice.[101] He was in no position to verify such information as he would be going against the plaintiff, who was of a higher rank.[102] He also had no resources to investigate further.[103] He could only forward this information to Mr Ho, who had the power to investigate.[104]

87 Third, the defendant submits that the plaintiff has not demonstrated that the nature of the allegations is so unbelievable that the defendant could not reasonably have believed them.[105] Neither has the plaintiff shown how the

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98 DCS at para 84(a).

99 DCS at para 122.

100 DCS at paras 81–82.

101 DCS at para 83(a).

102 DCS at para 79.

103 DCS at para 84(b).

104 DCS at paras 78–79.

105 DCS at para 117.

circumstantial evidence proves that the defendant never formed an opinion about the allegations.[106]

88 Finally, the defendant argues that he did not harbour any improper motive to harm the plaintiff's reputation.[107] The plaintiff cannot prove that the defendant bore a grudge over the May Overloading Incident,[108] and neither is there sufficient evidence to show that Mr Ho, the defendant and Ling Ling conspired to detain the plaintiff's passport at the Balikpapan airport in November 2011.[109] The defendant referred to the plaintiff as "Fat" or "Idiot" on occasion but, at its highest, this only showed that the defendant disliked the plaintiff.[110] That is insufficient to prove malice.[111] Moreover, the e-mails between the defendant and Mr Ho which feature rude name-calling and discussions about how to entrap the plaintiff at Balikpapan are not indicative of an improper motive actuating the publication of the E-mails, since they were sent only after the E-mails were published to Mr Ho.[112]

Evidential analysis

89 Having considered the evidence and the parties' submissions before me, I am satisfied that the plaintiff has proven, on a balance of probabilities, that the defendant had no honest belief in the truth of the Alleged Defamatory Statements. The defendant has failed to produce credible evidence of how he

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106 DCS at para 119.

107 DCS at para 87(a).

108 DCS at para 90.

109 DCS at paras 95 and 98.

110 DCS at para 92.

111 DCS at para 93.

112 DCS at paras 129–131.

came to know about the information on which the Alleged Defamatory Statements are based. The defendant had simply plucked the Alleged Defamatory Statements out of thin air.

90 I draw support for this conclusion from the following findings:

(a) the defendant's evidence that he had personally witnessed the plaintiff's wrongdoings is incredible;

(b) the defendant failed to adduce credible evidence that his information originated from the Informants;

(c) there is no credible evidence supporting the defendant's allegation that he had investigated and gathered evidence of the plaintiff's unlawful conduct before sending out the E-mails;

(d) the defendant's delay in surfacing one of the Alleged Defamatory Statements; and

(e) the defendant's post-publication conduct, namely his failure to mention the plaintiff's alleged wrongdoings during the 15 November Meeting.

(1) The defendant's evidence that he had personally witnessed the plaintiff's wrongdoings is incredible

91 The defendant claimed in his AEIC that the contents of the 13 August E-mail originated from the Informants, including one Mr Hengky Wijaya, one Mr Anga, one Mr Jeffrey, and one Mr Jonli.[113] This is also the defendant's pleaded position.[114] However, the defendant's position changed drastically at

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113 LKW at paras 17–18.

114 Defence at para 7.

trial. When confronted with the contents of the 13 August E-mail, wherein the defendant stated that he "*witnessed* some of the corruption practices by [the plaintiff] and Mr Kelvin Loh from year 2008 to 2011 until today" [emphasis added],[115] the defendant claimed that he had witnessed all of the wrongdoings referred to in the 13 August E-mail.[116] Quite apart from this, further inconsistencies arose in the course of the defendant's oral testimony. When confronted with his own conflicting evidence, the defendant could only muster a feeble attempt at explaining away the inconsistencies. As will be demonstrated, all these go towards showing that the defendant's allegation, that he had personally witnessed the transgressions listed in the 13 August E-mail, is a mere afterthought.

92 I begin with the defendant's evidence as to how he came to know that the plaintiff acquired commissions from Lian Beng Energy's creditors in exchange for giving an assurance that they would be repaid.

(a) The defendant claimed in his AEIC that he had obtained information regarding this Alleged Defamatory Statement from his Informants.[117]

(b) On the stand, the defendant claimed that he saw Mr Low receive the commission in a bag. This was accompanied by an express clarification that he did not see the plaintiff receive commissions.[118]

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115 ABOD at p 16.

116 29 April 2021 Transcript at p 10 lines 5–7.

117 LKW at para 18(a).

118 29 April 2021 Transcript at p 10 lines 8–18.

(c) A few moments later, the defendant changed his position again by claiming that he personally saw the plaintiff receive 10–20% commission from the creditors.[119]

(d) When the defendant was subsequently asked to identify which of the four Informants named in his AEIC provided him with information relating to this Alleged Defamatory Statement, the defendant named Mr Anga. According to the defendant, Mr Anga was the "[b]oss of CV Putra Borneo", which was one of the creditors who allegedly paid commissions to the plaintiff.[120] The plaintiff's counsel then challenged the defendant's earlier testimony that he had witnessed the plaintiff's receipt of commissions:[121]

> Q So Mr Anga gave you information on (a), correct?
>
> A Correct.
>
> Q So you never witnessed anything, correct? It's based on his information, correct?
>
> A You want me to explain?
>
> Q Yes or no? (a) is based on information given by Mr Anga. Yes or no?
>
> A It's not just information. It's not just information, Sir.
>
> Court: What is it?
>
> Witness: He used to bring lots of money. He used to bring a lot of money.
>
> Q He used to play a lot of money? Pay?
>
> A No, bring. Bring a lot.
>
> Che: Bring.

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119 29 April 2021 Transcript at p 11 lines 1–5.

120 LKW at para 17(d)(ii); ABOD at p 16.

121 29 April 2021 Transcript at p 18 line 23 to p 19 line 8.

> A Bring – bring a lot of money.
>
> Q "He" meaning Mr Anga?
>
> A Anga. In a bag, in a big bag because Indonesian currency is very small, so he used a big bag.
>
> Court: So who brings the money in the big bag? Mr Anga?
>
> Witness: Mr Anga.

In brief, the defendant's reply was that the Alleged Defamatory Statement was not only based on information given by Mr Anga, but was also based on his sighting of Mr Anga bringing a big bag of money. I make two points. First, seeing Mr Anga bring a big bag of money does not adequately account for the Alleged Defamatory Statement that the plaintiff received commissions from creditors in exchange for an assurance that they would be repaid. Second, it was never stated in the defendant's AEIC that he saw Mr Anga bring a bag of money.[122] All the defendant stated in his AEIC was that the Informants had "complained" to him about the plaintiff's misdemeanours.[123] Witnessing Mr Anga bring a big bag of money does not square with the description of receiving a complaint from Mr Anga. All these indicate that the alleged sighting of Mr Anga bringing a bag of money was merely an afterthought by the defendant, in his attempt to reconcile his evidence that he personally witnessed the wrongdoing, with his evidence that the information was given to him by Mr Anga.

93 Next, in relation to the Alleged Defamatory Statement which refers to the plaintiff having an interest in PT Buana Lintas Samudera and collecting more than US$500,000 from its transactions with MRL, the defendant initially

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122 29 April 2021 Transcript at p 19 lines 9–12.

123 LKW at para 18.

testified that he witnessed the wrongdoing referred to in this Alleged Defamatory Statement.[124] When the defendant later resiled from this position and claimed that he did not see the plaintiff collect money in respect of PT Buana Lintas Samudera's transactions with MRL,[125] he was again confronted with the 13 August E-mail wherein he stated that he had "witnessed" the plaintiff's wrongdoings.[126] Backed into a corner, the defendant claimed that his description in the 13 August E-mail was not perfect.[127] However, this contradicts another part of the defendant's oral testimony where he accepted that he used the word "witnessed" in the 13 August E-mail to mean that he personally saw the plaintiff commit these wrongdoings.[128] This is another instance of the defendant's feeble attempt to shore up his internally inconsistent evidence, which constantly vacillated as to whether he had witnessed the plaintiff's wrongdoing involving PT Buana Lintas Samudera.

94 I now move on to the defendant's evidence as to how he came to know that the plaintiff owned a small shipyard premise, which was rented out to MRL for storage purposes. In his AEIC, the defendant claimed that the Informants had supplied him with information regarding this Alleged Defamatory Statement.[129] On the stand, however, the defendant claimed that he had witnessed the allegation encompassed in this Alleged Defamatory Statement because "[his] storage [was] there, so [he] used to … go to their shipyard".[130] If

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124 29 April 2021 Transcript at p 10 lines 5–7.

125 29 April 2021 Transcript at p 15 lines 21–24.

126 ABOD at p 16.

127 29 April 2021 Transcript at p 16 lines 20–23.

128 29 April 2021 Transcript at p 26 lines 8–23.

129 LKW at para 18(f).

130 29 April 2021 Transcript at p 16 line 26 to p 17 line 6.

what the defendant claimed on the stand were true, it is puzzling why this piece of information was never stated in his AEIC. No explanation for this was provided.

95 Turning to the Alleged Defamatory Statements found in the 14 August E-mail, the defendant's AEIC was devoid of details as to his basis for those allegations. At trial, the defendant initially testified that he had witnessed the misconduct set out in the 14 August E-mail.[131] As the plain meaning of the Alleged Defamatory Statements in the 14 August E-mail is that the plaintiff and his associates, including Mr Low, had committed acts of cheating, abuse and criminal breach of trust, the defendant essentially testified that he had witnessed the plaintiff committing acts of cheating, abuse and criminal breach of trust.

96 However, in so far as the allegation of criminal breach of trust is concerned, the defendant subsequently took a different position: he *only* witnessed Mr Low (and not the plaintiff) keeping monies after sales were made.[132]

97 As for the allegation of cheating, the defendant clarified that he used the word "cheating" to refer to the act of inflating the prices on invoices.[133] However, he later conceded that he did not witness the plaintiff engage in such acts of cheating:[134]

> Court: So what did you witness?
>
> Witness: What I'm saying, inflate the invoices, the price – *the price of the repair or what or the purchase,*

131 29 April 2021 Transcript at p 22 lines 20–26.

132 29 April 2021 Transcript at p 24 lines 1–16.

133 29 April 2021 Transcript at p 23 lines 3–11.

134 29 April 2021 Transcript at p 23 lines 12–21.

> *then you can see there's a difference there*, very different. I'll consider this one as cheating.
>
> Q So you saw my client inflate the invoices?
>
> A It was already leaked out from the account department.
>
> Q ***So you did not see my client engage in this inflating of invoices, it was from something that you saw from the accounts department, correct?***
>
> A ***Yah***, ***I'm not allowed to enter the account department***.
>
> [emphasis added in italics and bold italics]

98 Finally, when asked to explain the allegation of abuse, the defendant responded as follows:[135]

> Q Abuse. What is "abuse"? What abuse did my client do? What did you witness? What abuse did you witness my client commit?
>
> A Okay, first, like I say when you employ a Malaysian in Singapore to work in Indonesia, but working for his company and not PT Aneka. So I consider it's abuse. Another one is that he buy over my men. My superin – I – my supervisor also doing part job for them. Part-time job for them. It is totally abuse to me.
>
> Q What you just said is not in your 13th of August email and it's not in your affidavit, correct? Again, this is the first time we're hearing this, correct?
>
> A Yah, yah. Yes.

As the defendant rightly conceded, these allegations were entirely new and never raised in his AEIC or the 13 August E-mail. This is yet another instance of the defendant inexplicably leaving out evidence, which would have been material to his case, from his AEIC.

99 Summing up the foregoing, it is apparent to me that the defendant had concocted the allegation that he had "witnessed" the plaintiff's wrongdoings.

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135 29 April 2021 Transcript at p 23 lines 22–31.

He took this position only when he was confronted with the 13 August E-mail on the stand. This position did not feature anywhere in his AEIC: his AEIC merely claimed that the information in the 13 August E-mail originated from the Informants, and his AEIC was bereft of details as to his basis for the 14 August E-mail. No explanation was given as to why he had omitted to mention that he personally witnessed the plaintiff's wrongdoings in his AEIC. This position proved to be indefensible as the cross-examination progressed. At times, when forced to specify what he saw, it became clear that what he allegedly saw did not lend any support to the Alleged Defamatory Statements (see above at [92(d)], [96] and [97]). For four of the Alleged Defamatory Statements, the defendant's oral testimony oscillated as regards whether he witnessed or did not witness the plaintiff's wrongful acts (see above at [92(b)]–[92(c)], [93], [95]–[97]). I therefore disbelieve the defendant's evidence that he had personally witnessed the plaintiff's wrongdoings that were set out in the E-mails.

(2) Absence of credible evidence that the defendant's information originated from the Informants

100 There is no objective evidence in the form of e-mail correspondence or messages between the Informants and the defendant proving that the defendant had obtained his information from the Informants. Furthermore, the defendant is the only witness before this court who has personal knowledge of whether his information came from the Informants. The defendant claimed that the Informants had told him the relevant information "through handphone or face-to-face meetings", and no one else was present during his conversations with the Informants.[136] The Informants were not called as witnesses.

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136 LKW at para 19.

101 Accordingly, the question is whether the defendant's evidence, that he had obtained his information from the Informants, can be believed. In this regard, I find the defendant's evidence incredible, as the timing of events simply does not add up.

102 The defendant claimed in his AEIC that his Informants had complained to him about the plaintiff's misdemeanours while he was working at Lian Beng Energy.[137] The defendant confirmed this at trial.[138] The defendant also confirmed at trial that Lian Beng Energy had ceased its business at the end of 2008.[139] In other words, on the defendant's account of events, the Informants complained to him in the year 2008, or in the years before 2008. This is surprising because many of the Alleged Defamatory Statements concern matters which took place in 2009, 2010 and 2011.

103 Counsel for the plaintiff confronted the defendant with this issue at trial. The defendant's only explanation for this was that even though Lian Beng Energy was winding up at the end of 2008, he was still a "commissioner"[140] who disposed of equipment and cleared outstanding payments. Hence, he was "delayed for [a] few more [*sic*] months before [he] [could] leave the site totally".[141]

104 However, there is no official record or other objective evidence verifying that the defendant was acting as a "commissioner" in the first few months of 2009, following the cessation of Lian Beng Energy's business. The

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137 LKW at para 18.

138 29 April 2021 Transcript at p 20 lines 19–21.

139 29 April 2021 Transcript at p 52 lines 13–17.

140 29 April 2021 Transcript at p 20 line 22 to p 21 line 7.

141 29 April 2021 Transcript at p 52 line 28 to p 53 line 13.

defendant also did not call any of his Informants to give evidence. The defendant's assertion in this regard remains a bare one. Even if I assume that the Informants complained to the defendant in the first few months of 2009, this still does not adequately account for how the Informants could have relayed information pertaining to events that took place in 2010 and 2011.

105 In these circumstances, the defendant has failed to put forward any credible evidence showing that the Alleged Defamatory Statements originated from the Informants.

(3) Absence of credible evidence showing that the defendant had conducted his own investigations

106 The defendant also asserted during cross-examination that he had conducted his own investigations and gathered evidence of the plaintiff's unlawful conduct before sending the 13 August E-mail.[142] Setting aside the fact that this was not pleaded by the defendant, I am unable to accept this assertion for two reasons.

107 First, the defendant himself acknowledged that this assertion was raised for the first time during his oral testimony.[143] It was not set out anywhere in the defendant's AEIC. All that was asserted in his AEIC was that he had "suspicions" concerning the plaintiff's "purported misdemeanours", and that he had treated the matter with "utmost care" before deciding to raise these allegations to Mr Ho's attention.[144] The defendant accepted that accumulating

142 29 April 2021 Transcript at p 9 lines 3–9.

143 29 April 2021 Transcript at p 9 lines 21–24.

144 LKW at paras 11–12.

evidence against the plaintiff is very different from claiming that he had suspicions concerning the plaintiff's conduct.[145]

108 Second, as the plaintiff rightly points out,[146] the defendant has failed to adduce any evidence before this court proving that he had conducted investigations into the plaintiff's conduct. No satisfactory explanation was given for this complete lack of evidence. The defendant claimed that he had submitted "[m]ost of [the] evidence" to the "office".[147] In re-examination, he explained that this "office" referred to MRL's main office and PT Banyan's office in Balikpapan.[148] It is difficult to accept the defendant's evidence in this regard. There is no objective evidence, such as e-mail correspondence, proving that he submitted the evidence to MRL and PT Banyan. There was also no evidence to that effect from Mr Ho. No other staff from MRL or PT Banyan was called to testify that he or she received evidence allegedly gathered by the plaintiff.

109 On a related note, the defendant claimed during cross-examination that he compiled a list comparing the market price in Samarinda and the prices quoted by Mega Jaya and Abadi Jaya.[149] This allegedly formed the basis of the Alleged Defamatory Statement that the plaintiff and Mr Low collected a total sum of US$700,000 as a result of their interests in three of PT Aneka's suppliers: Mega Jaya, Abadi Jaya and CV Sunjaya.[150] The defendant explained

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145 29 April 2021 Transcript at p 25 lines 12–24.

146 PCS at para 114.

147 29 April 2021 Transcript at p 25 line 28 to p 26 line 7.

148 29 April 2021 Transcript at p 54 line 17 to p 55 line 1.

149 29 April 2021 Transcript at p 19 lines 13–30.

150 ABOD at p 16.

that he could not have disclosed this list in the present proceedings because he had left it in Indonesia.[151]

110 I disbelieve the defendant's explanation. At the material time, he was still in Indonesia working at PT Aneka.[152] If the defendant did in fact compile this list while he was in Indonesia, he would have sent it to Mr Ho along with the 13 August E-mail. After all, the defendant claimed that he had conducted his own investigations before he sent the 13 August E-mail.[153] However, there is no indication in the 13 August E-mail, or in any other e-mail correspondence thereafter, that the defendant had provided this list to Mr Ho.

111 In October 2011, Mr Ho told the defendant that there was insufficient evidence against the plaintiff. Mr Ho informed the defendant via e-mail that he needed "cast iron proof rather than 'hear say'", and that it was difficult to "nail" the plaintiff on the current evidence.[154] Mr Ho also told the defendant in a separate e-mail sent on 6 October 2011 that "we do not have any evidence against [the plaintiff]".[155] The defendant accepted during cross-examination that he had understood Mr Ho to mean that there was no evidence at all against the plaintiff.[156] Had this list existed, the defendant would have brought this list to Mr Ho's attention when the latter aired his concerns regarding the state of evidence. Yet, there is no evidence that the defendant ever provided Mr Ho with this list.

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151 29 April 2021 Transcript at p 19 lines 15–24.

152 LKW at para 4(d); LKC at para 16.

153 29 April 2021 Transcript at p 9 lines 3–9.

154 ABOD at p 177.

155 ABOD at p 185.

156 29 April 2021 Transcript at p 29 lines 7–11.

112 In the light of the foregoing, the defendant has failed to adduce credible evidence in support of his assertion that he had conducted his own investigations and had accumulated evidence on the plaintiff's misconduct prior to sending the 13 August E-mail.

(4) Delay in surfacing one of the Alleged Defamatory Statements

113 On the defendant's account of events, the Alleged Defamatory Statement concerning the plaintiff's conspiracy with the creditors of Lian Beng Energy was only brought to Mr Ho's attention three years after the defendant came to know of the conspiracy. The defendant claimed that he had witnessed the plaintiff conspiring with the creditors of Lian Beng Energy in 2008. Yet, this was only brought to Mr Ho's attention on 13 August 2011, via the 13 August E-mail. When confronted with this delay, his only response was that he did not think that it was necessary to report it earlier.[157] This is implausible given the seriousness of the allegation made. No other proper explanation was put forward to account for the delay of three years. This renders the defendant's claim that he had witnessed the plaintiff conspiring with the creditors of Lian Beng Energy even more improbable than it already is.

(5) Post-publication conduct

114 There is case authority that the defendant's conduct following the publication of the impugned material can support an inference that the defendant published those materials out of malice: see *Goh Lay Khim and others v Isabel Redrup Agency Pte Ltd and another appeal* [2017] 1 SLR 546 at [82] and [83].

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157 29 April 2021 Transcript at p 13 lines 12–22.

115 In his submissions, the plaintiff seeks to rely on the fact that the defendant did not retract the Alleged Defamatory Statements after being informed by Mr Ho that there was insufficient evidence to back up his claims.[158] As this additional ground is not pleaded by the plaintiff, and bearing in mind O 78 r 3(3) of the Rules of Court (2014 Rev Ed), I decline to make a factual finding on this point.

116 What the plaintiff has pleaded in support of his case is the defendant's omission to mention the plaintiff's wrongdoings during the 15 November Meeting.[159] For context, the 15 November Meeting was attended by the defendant as well as members of the MRL Board, some of whom were the audit committee board members. The plaintiff did not attend the 15 November Meeting.[160]

117 Turning to the evidence, the meeting minutes of the 15 November Meeting show that the defendant had omitted to bring up the plaintiff's wrongdoings during that meeting. This is also not disputed by the defendant. The defendant explained that he did not talk about the plaintiff's misconduct because it was a question-and-answer session and the MRL board members did not ask him a question that required him to raise this point.[161] In re-examination, the defendant even went so far as to say that the MRL board members *did not even question him about the plaintiff*, so it was not for him to raise matters about the plaintiff.[162]

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158 PCS at paras 122–128.

159 Reply at para 11(b).

160 ABOD at p 303.

161 29 April 2021 Transcript at p 32 line 30 to p 33 line 13.

162 29 April 2021 Transcript at p 56 lines 1–24.

118 The last point is patently untrue. The minutes of the 15 November Meeting clearly show that the MRL board members raised questions relating to the plaintiff.[163] The defendant could have taken those opportunities to draw the plaintiff's misconduct to their attention.

119 I note that the way in which the meeting minutes are worded does indicate that the 15 November Meeting was conducted in a question-and-answer format. Be that as it may, given the gravity of the allegations levelled against the plaintiff, and the fact that the plaintiff was a director of MRL at the material time, the MRL board members would certainly have wanted to hear the defendant out even if they had not asked a question which required him to raise this issue.

120 In addition, the questions posed to the defendant during the meeting clearly related to the operations of PT Aneka. Since most of the plaintiff's wrongdoings set out in the E-mails relate to the running of PT Aneka, the 15 November Meeting presented itself as a great opportunity for the defendant to inform the MRL board members of the plaintiff's multiple transgressions. The plaintiff was also not present at that meeting.

121 Yet, the defendant did not raise any of the plaintiff's misconduct set out in the E-mails. This is at odds with the defendant's claims in his AEIC that he felt "duty bound to forward the complaints" to Mr Ho,[164] and that he "had not come across any evidence that revealed to him that the allegations were false".[165] If so, then one would have thought that he would similarly act on that same

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163 ABOD at p 305 (at paras 14 and 16).

164 LKW at para 21.

165 DCS at para 122.

sense of duty and seize the opportunity to bring the plaintiff's misconduct to the board members' attention at the 15 November Meeting, especially since they had the power and authority to put an end to the plaintiff's wrongdoings. But he did not.

122 The defendant's omission to mention the plaintiff's wrongdoings during the 15 November Meeting is telling. It indicates that at the time of publication, the defendant had no honest belief in the truth of the Alleged Defamatory Statements. He knew that these allegations could not stand up to scrutiny, which was why he kept quiet about these allegations when he went face to face with members of the MRL Board. It also indicates that the defendant had no Informants, and had not gathered evidence of the plaintiff's misconduct or personally witnessed any of the misconduct. If he had, he could have relayed what he saw to the MRL board members, presented the evidence he had gathered and given the names of his Informants so that the MRL board members could interview them.

Conclusion: The defendant was motivated by malice

123 I am satisfied that the defendant was motivated by malice when he published the E-mails to Mr Ho. The plaintiff has pointed to the defendant's inexplicable omission to raise the plaintiff's misconduct to the MRL board members during the 15 November Meeting. In turn, the defendant is unable to adduce any credible evidence of his basis for making any of the Alleged Defamatory Statements. He pleaded in his Defence that he had obtained his information from his Informants. At trial, however, he asserted for the first time that he had personally witnessed all of the plaintiff's wrongdoings as detailed in the E-mails and had conducted his own investigations into the plaintiff's conduct. Quite apart from the fact that a new narrative had emerged at trial,

these alleged sources of information are either riddled with internal inconsistencies or consist only of bare assertions which are implausible in the surrounding circumstances and unsupported by objective evidence.

124 How the defendant came to know of information underlying the Alleged Defamatory Statements is something squarely within the defendant's knowledge. Yet, he is unable to get his story straight. The natural inference to draw from the state of the defendant's evidence is that he had simply invented these allegations. It follows that he did not have an honest belief in the truth of the Alleged Defamatory Statements.

125 A main plank of the defendant's case is that he had no way of knowing whether the information provided to him was false. He merely forwarded the information he received to Mr Ho, who had the power to investigate.[166] The defendant relies on the legal proposition that a publisher's failure to obtain independent verification of the alleged defamatory statement does not in itself demonstrate a lack of honest belief: *Price Waterhouse Intrust Ltd v Wee Choo Keong and others* [1994] 2 SLR(R) 1070 at [45].[167] The defendant also points to case authorities which observed that people ought not to be expected to form their beliefs by a process of logical deduction from facts ascertained by a rigorous search for all available evidence and a judicious assessment of its probative value.[168]

126 These propositions are certainly sound in principle, but they are simply not applicable to the instant facts. This is not a case where the defendant had

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166 DCS at paras 79–80.

167 DCS at para 59.

168 DCS at paras 60 and 68.

received information from certain sources and conveyed it to Mr Ho without verification. It is also not a case where the defendant personally witnessed certain events and relayed his observations to Mr Ho without searching for more evidence to corroborate what he saw. This is a case where the defendant spun his own tale. There was simply nothing to verify.

127 Another argument raised by the defendant is that the plaintiff must demonstrate that the allegations were so unbelievable that the defendant could not reasonably have believed them.[169] In support of this argument the defendant relies on *Low Tuck Kwong*, where the Court of Appeal at [84] cited Scrutton LJ's remarks in *Greers Ltd v Pearman and Corder Ltd* (1922) 39 RPC 406 at 417:

> Honest belief in an unfounded claim is not malice. But the nature of the unfounded claim may be evidence that there was not an honest belief in it. *It may be so unfounded that the particular fact that it is put forward may be evidence that it is not honestly believed.*
>
> [emphasis in original omitted; emphasis added in italics]

128 These authorities do not assist the defendant. To the contrary, they support the plaintiff's case by showing that an inference of a lack of honest belief should be drawn where the claim is *so unfounded*. As the analysis of the evidence reveals, the defendant's alleged belief was completely unfounded. The defendant is unable to put forward any credible evidence that he had made these Alleged Defamatory Statements based on his own observations, information from his Informants, or his investigations. The complete lack of basis for the Alleged Defamatory Statements not only supports the inference that the defendant did not have an honest belief in them, but also leads to the conclusion

169 DCS at para 117.

that the defendant knew that they were false because they were conjured up by him.

129 To close off this section, I reiterate the comments by the Court of Appeal in *Lim Eng Hock Peter* at [41]:

> … The rationale underpinning the privilege is that because the defendant has a moral, social or legal duty to disclose the information and the recipient has an interest in receiving it, he should not be penalised for making an honest mistake. This will be the case where the defendant publishes statements which he genuinely believes to be true and accurate. *He cannot claim the protection of privilege, whatever his dominant intention or motive may be, if he knows that what he has written or said was untrue. …*
>
> [emphasis added]

I therefore find that the defendant is not entitled to the protection of qualified privilege given that he published the E-mails to Mr Ho with malice.

Damages

130 Before considering the amount of damages to award, I will first determine whether the Alleged Defamatory Statements had been republished as a matter of fact, and whether such republication was foreseeable to the defendant. This is because the damages to be assessed for the original publication include foreseeable losses, such as those arising from foreseeable republication (*Goh Chok Tong* at [127] cited with approval in *Low Tuck Kwon*g at [38]). If there had been a foreseeable republication of the Alleged Defamatory Statements, the quantum of damages ought to be calibrated accordingly.

Republication of the Alleged Defamatory Statements

131 The plaintiff contends that the E-mails, or the sense and substance of the Alleged Defamatory Statements, were republished to the audit committee board

members as well as the entire MRL Board.[170] These republications were not too remotely foreseeable a consequence. In fact, the defendant had authorised and intended these republications.[171]

132 On this point, the defendant only takes issue with the limited particularity with which republication is pleaded.[172] This has already been dealt with above at [63]–[64].

Applicable legal principles

133 In *The Wellness Group Pte Ltd and another v OSIM International Ltd and others and another suit* [2016] 3 SLR 729 ("*The Wellness Group*"), Mr Manoj Mohan Murjani ("Manoj"), on behalf of The Wellness Group Pte Ltd ("TWG"), issued a press statement about Suit No 187 of 2014 ("S187/2014"), an ongoing suit commenced in the High Court by TWG and Manoj ("the TWG Press Statement"). *The Straits Times* approached Manoj for a copy of the writ of summons and statement of claim in S187/2014, and Manoj obliged (at [50]). The TWG Press Statement and the writ of summons and statement of claim in S187/2014 will be collectively referred to as "the Original Publication". Shortly thereafter, the *Straits Times* published an article ("the ST Article") about S187/2014 (at [52]). Six of the defendants in S187/2014 counterclaimed for defamation against Manoj and TWG.

134 The counterclaim in defamation was premised on the republication in the ST Article as opposed to the Original Publication (at [52] and [221]). As a result, one of the issues was whether Manoj and TWG were responsible for the

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170 PCS at paras 158–167.

171 PCS at paras 168–173.

172 DCS at paras 32(b) and 35–36.

republication by the *Straits Times* (at [222(a)]). Chua Lee Ming JC (as he then was) held that where the republisher uses language that is his own, the defendant who can be said to have authorised the republication will remain liable so long as the republication adheres to the sense and substance of the statement given by the defendant (at [228]). On the facts of that case, Manoj and TWG intended the *Straits Times* to publish an article based on the Original Publication (at [225]). As the republication in the ST Article adhered to the sense and substance of the Original Publication, the defendants were found responsible for the republication by *The Straits Times* (at [228]–[229]).

135 Unlike the defendants' counterclaim in *The Wellness Group*, the plaintiff's claim in defamation, in so far as liability (as opposed to damages) is concerned, is predicated on the publication of the E-mails to Mr Ho.[173] He is nevertheless claiming damages for the republication of the E-mails to the MRL Board on the basis that such republication was not too remotely foreseeable a consequence and was intended by the defendant.[174]

136 Notwithstanding this difference in the factual matrix, the principle in *The Wellness Group* should apply to the present case. In other words, the defendant in the present case ought to be liable for damages arising out of any republication which adheres to the sense and substance of the Alleged Defamatory Statements, as long as he intended or authorised that republication. Such republication would naturally be a consequence that is not too remotely foreseeable.

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173 SOC at para 9–10.

174 PCS at paras 156 and 168; Reply at para 6.

Whether the Alleged Defamatory Statements were republished

137 The plaintiff's pleaded case is that the Alleged Defamatory Statements were republished to members of the MRL Board (see above at [63]). At the material time, three members of the MRL Board formed the audit committee ("the audit committee board members"). In my view, the plaintiff's pleaded case is wide enough to cover any republication to the audit committee board members.

138 On the evidence before me, I find that the sense and substance of all the Alleged Defamatory Statements was republished to the three audit committee board members (Mr Liow Keng Teck, Mr Thia Peng Heok George and either Mr Choo Hsun Yang or Mr Tjio Kay Loen).[175] The sense and substance of two of the Alleged Defamatory Statements (which are set out below at [149]) was also republished to the entire MRL Board, save for the plaintiff, via the 4 November Report. As mentioned at [41]–[42] above, the plaintiff's uncontradicted evidence was that he was not allowed to have sight of the whistle-blowing report.[176] The entire MRL Board consisted of nine directors. Hence, apart from Mr Ho, the plaintiff and the three audit committee board members, there were only four other directors.[177]

139 Since the defendant intended for the Alleged Defamatory Statements to be communicated to the audit committee board members as well as the entire MRL Board, the plaintiff is entitled to damages arising out of these republications. I now turn to elaborate on my reasons for these findings.

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175 27 April 2021 Transcript at p 48 line 24 to p 49 line 5; 28 April 2021 Transcript at p 42 line 9 and 17–18, p 83 lines 26–30; PCS at para 162.

176 LKC at para 69.

177 ABOD at pp 55, 66 and 70.

(1) Events after the defendant sent the E-mails to Mr Ho

140 Mr Ho gave evidence on the various follow-up actions he undertook upon receiving the E-mails from the defendant.[178] He first visited Samarinda to talk to various suppliers and ex-employees in late August 2011. He then appointed UHY in early September 2011 to conduct an audit review for PT Aneka.[179] UHY provided him with an oral report in late September 2011. In early October 2011, Mr Ho met with the audit committee board members on a "couple of occasions" for oral discussions.[180]

141 Mr Ho elaborated on his interactions with the audit committee board members in early October 2011. He claimed that he did not show them the E-mails during their discussions.[181] Instead, he verbally told them that there were some problems with the Indonesian operations and that there were allegations of wrongdoings by "a senior member of staff" and "a mid-level person". He also informed them that he was waiting for the independent accountant's report and would make further enquiries.[182]

142 When asked whether the audit committee board members were aware of the gist and the substance of the E-mails, Mr Ho's initial position was that they did not know the contents of the E-mails "in full detail". He claimed that he only gave them "some idea" of the allegations of fraud and dishonesty made against

178 28 April 2021 Transcript at p 82 line 14 to p 86 line 9.

179 ABOD at p 24.

180 28 April 2021 Transcript at p 44 lines 1–2.

181 28 April 2021 Transcript at p 42 lines 25–27, p 43 lines 5–8.

182 28 April 2021 Transcript at p 83 line 20 to p 84 line 3.

the plaintiff and Mr Low, and stated that what he told them was summarised in the 4 November Report.[183]

143 However, when the plaintiff's counsel pursued this point, Mr Ho conceded that the audit committee board members knew of the gist, substance and *details* of the allegations that were made against the plaintiff and Mr Low in the E-mails:[184]

> Q Now turn to AB57. AB57, the first page will be AB55 which is the minutes of the board meeting on the 9th of November. Do you see that?
>
> …
>
> Q And:
>
> [Reads] "It was noted" – the next paragraph – "that the ***AC had deliberated on the WB report before today's board meeting*** and the ***AC had brought the matter to the Board Chairman's attention***."
>
> Do you see that?
>
> A Yes.
>
> Q So it certainly appears that the – this public-listed company, in compliance with its whistleblowing policy, had gone through the procedures of the ***AC deliberating on the whistleblowing repor****t* –
>
> A Right.
>
> Q – ***and bringing the matter to the board's chairman***, and the board chairman, in the third paragraph, talking about the operations in Indonesia, and the fourth paragraph, the board chairman proposing that someone from Banyan, which is the related company, send someone there to oversee the operations. Do you see that? There's been some deliberations, correct?
>
> A Yes.
>
> Q So wouldn't it – *would it be correct to say that* ***in order for the AC to have deliberated, for the board to have***

183 28 April 2021 Transcript at p 44 lines 5–20.

184 28 April 2021 Transcript at p 45 line 1 to p 46 line 27.

> ***discussed this whistleblowing report, that they must have known the gist, the substance, the details of the allegations that have been made against the two individuals in these two emails? Would you agree with me?***
>
> A ***Yes.***
>
> [emphasis added in italics and bold italics]

144 I take the view that this concession only extends to the audit committee board members (and not the entire MRL Board) knowing of the gist, substance and details of the allegations in the E-mails. The question by the plaintiff's counsel is to be read as asking whether the audit committee board members must have known the gist, substance and details of the allegations in the E-mails, in order to be in a position to consider those allegations with a view of bringing them to the attention of the entire MRL Board. This interpretation is buttressed by the fact that the questions preceding this part of the cross-examination focused on the audit committee board members' knowledge of the sense and substance of the allegations,[185] as opposed to the knowledge of the entire MRL Board. I also note that in his closing submissions, the plaintiff relies on this concession only for the purpose of proving his case of republication to the audit committee board members.[186]

145 After Mr Ho's oral discussions with the audit committee board members, UHY completed its written report on 2 November 2011.[187] Mr Ho then prepared the 4 November Report.[188] Mr Ho testified that the audit committee board members saw the 4 November Report before it was given to

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185 See 28 April 2021 Transcript at p 43 line 29 to p 44 line 32.

186 PCS at paras 158–160 and 166.

187 ABOD at pp 21–48.

188 ABOD at pp 88–89.

the entire MRL Board.[189] Mr Ho's evidence was that during the 9 November Board Meeting, he did not show the MRL Board the E-mails or disclose the full contents of the E-mails. All he told the MRL Board was that he had received e-mails which led to the 4 November Report.[190] This is not contradicted by the meeting minutes of the 9 November Board Meeting.[191]

(2) Analysis: Was there republication to the audit committee board members?

146 From the evidence set out above, I find that the sense and substance of the Alleged Defamatory Statements had been republished by Mr Ho to the audit committee board members. There are two reasons for this.

147 First, Mr Ho conceded that the audit committee board members knew of the gist, substance and details of the allegations that were made against the plaintiff in the E-mails. Since Mr Ho met them on a couple of occasions to discuss the allegations made against the plaintiff and Mr Low, Mr Ho must have republished the sense and substance of all the Alleged Defamatory Statements to the audit committee board members during their oral discussions.

148 Second, this finding is consistent with the context in which Mr Ho's oral discussions with the audit committee board members took place. It is important to appreciate that there was no written document accompanying Mr Ho's oral report to the audit committee board members: he did not show them the E-mails, and their discussions took place before UHY completed its written report on 2 November 2011 and before the 4 November Report was prepared. If Mr Ho

189 28 April 2021 Transcript at p 42 lines 9–12.

190 28 April 2021 Transcript at p 42 lines 19–27, p 43 lines 5–8.

191 ABOD at p 57.

had not told the audit committee board members the details of the allegations in the E-mails, their oral discussions would have been in a vacuum. It also would not make sense for Mr Ho to have met the audit committee board members on a couple of occasions if all they had to work with was Mr Ho's broad-sweeping statements that there had been some wrongdoings by a "senior member of staff" and "a mid-level person" (see above at [141]–[142]). Furthermore, the audit committee board members were in charge of receiving whistle-blowing reports in a public listed company. They could not have been satisfied with receiving a whistle-blowing report which only contained broad allegations of some wrongdoing concerning the Indonesian operations. They would most probably have inquired further and prompted Mr Ho to convey the details of the allegations in the E-mails.

(3) Analysis: Was there republication to the entire MRL Board?

149 I now turn to consider whether there was a republication of the Alleged Defamatory Statements to the entire MRL Board. Much of the analysis will turn on the contents of the 4 November Report as well as the 13 August E-mail. The relevant portions of the 13 August E-mail read:[192]

> b) In PT Aneka (2009) they started 2 companies Mega Jaya and Abadi Jaya (managed by Miss Nanin Wirowah Hadi) the later married to Kelvin Loh in year 2010 and having a baby boy in 2011. These companies controlled all the supplies to PT Aneka daily materials request like marine paints, lubricants, repair kits, consumable, hardware and etc, etc. On top of these they controlled one company CV Sunjaya to repair all barges' sideboards and steelworks, rental LBE machineries to this company and kept the rental charges like generator sets, welding machines, air compressor and others, all the scrap materials sold never returned to company PT Aneka. They inflated around 30-50% in the Sunjaya invoices. Total sum they collected crossed USD 700 K

192 ABOD at p 16.

c) Year 2010 they started another company PT Buana Lintas Samudera (Director - Miss Nanin Wirowah Hadi) collaborated with the company Harapan Baru to controlled all tugs & barges repairs in Samarinda, inflating all the invoices by adding 30%, reason from Kelvin Loh, very simple - [the plaintiff] already approved, shutting off the subject. They collected more than USD 500 K thru this scheme

150 I reproduce the 4 November Report in full below:[193]

1. ***I received an email from a staff member of Aneka Sumudera Linta***, our Indonesian shipping subsidiary, on 13 August 2011 ***alleging [the plaintiff]*** *and Kelvin Low, general manager of Aneka Samudera Lintas, are* ***defrauding company***.

2. After doing further research and collection of information, including interview with some Aneka Staff members, I am able to establish that ***Kelvin Low, through two companies owned by his wife (Nanin), have been dealing with Aneka without authority and without declaring his interests.***

3. One company, CV Mega Jaya, has virtually monopolized supplies of hardware and consumables to Aneka since mid-2009, and has been overcharging Aneka as high as 35% over what can be obtained from other suppliers. Taking what Aneka has actually spent on filters and engine oil alone in the month of October, the difference in prices work out to be Rp 135 million (USD 15,000).

4. Another company, PT Buana Lintas Marine, has been doing a lot of repair work on Aneka vessels since 2009, with evidence of overcharging Aneka on rate and quantity. Low has certified invoices accordingly. At the same time, Buana has also chartered Aneka's vessels at what appears to be low rate ***as approved by [the plaintiff].***

5. After confronting Kelvin Low on the above, he tendered his resignation.

6. We have recovered Rp9,300 million of receivables from Buana out of total outstanding of Rp13,800 million. Buana is claiming repair bills and other charter contract claims of Rp4,000 million or so. We are trying to ascertain whether Buana's claim is substantiable.

7. Mega Jaya has claimed invoice of about Rp2,300 million against Aneka. Aneka has told Mega Jaya there has been irregularities and is conducting investigation. Until it is clear,

193 ABOD at pp 88–89.

> Aneka is not paying. Mega Jaya has resorted to using physical threat on Aneka's staff.
>
> 8. One other ship-repairer, Harapan Baru, has also been used to siphon funds out of Aneka through invoice inflation method. Harapan Baru is owned by an unrelated party.
>
> 9. ***[The plaintiff] has been tasked to manage Aneka and since he is named in the whistle blower's email to me, he should be given an opportunity to answer some of the questions raised***.
>
> 10. As there is strong evidence of irregularities at Aneka, [i]t is recommended that an ad-hoc board committee be set up to investigate the matters and make a report to the board.
>
> [emphasis added in italics and bold italics]

151 Reading the 4 November Report in its entirety, a reasonable reader would understand it as indirectly claiming that the 13 August E-mail contained allegations that the plaintiff was involved in defrauding PT Aneka through its transactions with CV Mega Jaya and PT Buana Lintas Marine. The first paragraph of the 4 November Report claimed that the 13 August E-mail alleged that Mr Low and the plaintiff were "defrauding company". While there was no explicit elaboration of how the plaintiff was defrauding the company, the next few paragraphs are telling. Paragraph 2 stated that after doing "*further* research and collection of information" [emphasis added], Mr Ho was "able to establish" that Mr Low had been dealing with PT Aneka through two companies, CV Mega Jaya (see paragraph 3) and PT Buana Lintas Marine (see paragraph 4). Objectively understood, paragraph 2 claimed that Mr Ho undertook follow-up actions based on the allegations stated in the 13 August E-mail and confirmed the allegations that Mr Low had been transacting with PT Aneka through those two companies. In other words, the 13 August E-mail contained allegations that Mr Low had been dealing with PT Aneka through CV Mega Jaya and PT Buana Lintas Marine. Paragraphs 3 and 4 of the 4 November Report proceeded to elaborate on how both of these companies, which supplied goods and services to PT Aneka, had been overcharging the latter. Paragraph 9 of the 4 November

Report stated that the plaintiff was "named" in the 13 August E-mail, and recommended that the plaintiff "should be given an opportunity to answer some of the questions raised". Absent any indication of what other allegations the 13 August E-mail contained, this paragraph read with the aforementioned paragraphs would convey to the reader that the plaintiff was somehow involved in the fraud surrounding the CV Mega Jaya and PT Buana Lintas Marine transactions.

152 The plaintiff asks this court to infer that the E-mails must have been republished to the MRL Board. Paragraph 9 of the 4 November Report stated that the plaintiff "should be given an opportunity to answer some of the questions raised". The plaintiff submits that Mr Ho must have provided the E-mails to the MRL Board, otherwise the MRL Board would be clueless as to what sort of questions to ask the plaintiff.[194] In light of the analysis set out above at [151], I am unable to draw such an inference. The MRL Board had sufficient material from the 4 November Report alone to confront the plaintiff.

153 The plaintiff also argues that the sense and substance of the Alleged Defamatory Statements was made known to the MRL Board via the first paragraph of the 4 November Report, which stated that Mr Ho had received an e-mail on 13 August 2011 alleging that the plaintiff was defrauding the company.[195]

154 As noted above at [151], the 4 November Report communicated more than that. It indicated that the 13 August E-mail contained allegations that the plaintiff was involved in defrauding PT Aneka through its transactions with CV

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194 PCS at para 160(a).

195 PCS at para 160(b).

Mega Jaya and PT Buana Lintas Marine. This appears to correspond to only two of the Alleged Defamatory Statements in the 13 August E-mail (see above at [149]). The difficulty is that these two Alleged Defamatory Statements set out the total amount of illicit profits earned by the plaintiff (and Mr Low), and the way in which the plaintiff was perpetrating the fraud. These matters were not adequately conveyed, directly or indirectly, in the 4 November Report.

155 Nevertheless, in my judgment, the sense and substance of these two Alleged Defamatory Statements was republished by the 4 November Report. The *nub* of the defamatory sting embedded in these two Alleged Defamatory Statements was that the plaintiff was defrauding PT Aneka through its transactions with CV Mega Jaya and PT Buana Lintas. This was communicated in the 4 November Report. The extent of the illicit gains and the manner in which the fraud was carried out are merely ancillary details.

156 Even if the absence of these details reduces the original defamatory sting to some extent, there is no requirement for the republication to convey the *whole* sting of the original publication. I take guidance from *Gatley* at para 6.52:

> … *That is not to say however that the original statement must be repeated word for word in the republication.* Provided a media report of the initial publication ***conveys the sting of the original, in whole or in part***, it may be relied on to increase the damages flowing from the initial publication even if it cannot be said to "repeat" what was then said. …
>
> [emphasis added in italics and bold italics]

The authority cited for this proposition is *McManus and others v Beckham* [2002] 1 WLR 2982. In that case, the original publication contained an allegation that the claimants sold fakes generally on a habitual basis. The republication contained an allegation asserting only a part of that whole sting, *ie*, the claimants habitually sold fake David Beckham autographed memorabilia.

The court held that even a partial publication of the original sting could be causative of damage (at [13]). Hence, even if the 4 November Report only conveyed a part of the whole sting found in two of the Alleged Defamatory Statements in the 13 August E-mail, this is sufficiently causative of the damage to the plaintiff's reputation, especially since the part that was conveyed constitutes the essence of the defamatory sting.

157 To conclude, while I was unable to draw the inference that the E-mails must have been republished to the MRL Board, I am satisfied that the sense and substance of two of the Alleged Defamatory Statements in the 13 August E-mail was republished to the MRL Board through the 4 November Report.

Whether the defendant intended the republication to the audit committee board members and the entire MRL Board

158 I agree with the plaintiff that the defendant had intended the republication of the Alleged Defamatory Statements to the audit committee board members.[196] Not only did the defendant know that his whistle-blowing report would ultimately reach the audit committee of the MRL Board,[197] he also consciously sent the E-mails to Mr Ho pursuant to MRL's whistle-blowing policy with the knowledge that this policy allowed complaints to be reported to the audit committee.[198] These demonstrate that the defendant intended the audit committee board members to know of the Alleged Defamatory Statements.

159 The defendant also intended the republication of the Alleged Defamatory Statements to the entire MRL Board. It must be borne in mind that

196 PCS at para 172.

197 29 April 2021 Transcript at p 5 line 23 to p 6 line 7.

198 LKW at para 7.

the defendant had concocted all the allegations in the E-mails. The fact that he chose to fabricate allegations of such a severe nature reveals his design to ensure that his complaint would be surfaced by the audit committee board members to the entire MRL Board.

Conclusion on whether the plaintiff can claim damages arising out the republication of the Alleged Defamatory Statements

160 It follows from the foregoing analysis that the republication of the Alleged Defamatory Statements to the three audit committee board members, as well as the republication of two of the Alleged Defamatory Statements in the 13 August E-mail to the entire MRL Board, can be taken into account in assessing the quantum of damages. It is to this issue that I will now turn.

Assessing the quantum of damages

161 The plaintiff seeks S$80,000 in general and aggravated damages.[199] In his written submissions, the plaintiff refers to three case precedents, namely, *Arul Chandran (HC)*, *Yeo Nai Meng v Ei-Nets Ltd and another* [2004] 1 SLR(R) 73 ("*Yeo Nai Meng (HC)*") and *Isabel Redrup Agency Pte Ltd v A L Dakshnamoorthy and others and another suit* [2016] 2 SLR 634 ("*Isabel Redrup (HC)*").[200]

162 On the other hand, the defendant argues that the plaintiff has suffered no damage as there is "no real and substantial tort".[201] This argument has been rejected above. The defendant also contends that the plaintiff voluntarily resigned of his own accord and, even if his resignation was involuntary, it was

199 PCS at para 189.

200 PCS at paras 178–187.

201 DCS at para 37.

not directly attributable to the two E-mails. In my view, even if the plaintiff has not shown that the Alleged Defamatory Statements were the cause of his resignation, the plaintiff is still entitled to damages.

163 In this regard, it is well-settled that general damages serve three purposes (*Arul Chandran (CA)* at [53]):

(a) first, they act as a consolation to the plaintiff for the distress the publication causes;

(b) second, they repair the harm to the plaintiff's reputation; and

(c) third, they serve to vindicate the plaintiff's reputation.

164 The court can take into account the following factors in assessing the quantum of general damages (*Lim Eng Hock Peter v Lin Jian Wei and another and another appeal* [2010] 4 SLR 357 ("*Lim Eng Hock Peter (Damages)*") at [7]):

(a) the nature and gravity of the defamation;

(b) the conduct, position and standing of the plaintiff and the defendant;

(c) the mode and extent of publication;

(d) the natural indignation of the court at the injury caused to the plaintiff;

(e) the conduct of the defendant from the time the defamatory statement is published to the very moment of the verdict;

(f) the failure to apologise and retract the defamatory statement; and

(g) the presence of malice.

165 In addition, aggravated damages may be awarded in respect of the additional injury caused by the defendant's conduct or bad motives: Gary Chan Kok Yew, *The Law of Torts in Singapore* (Academy Publishing, 2nd Ed, 2016) at para 13.140. The presence of malice, the absence of an apology, the fact that the defendant unjustifiably maintained the defence of qualified privilege, and the defendant's lack of contrition are all factors justifying the plaintiff's entitlement to aggravated damages: *Arul Chandran (CA)* at [57], *Lim Eng Hock Peter (Damages)* at [38], *Low Tuck Kwong* at [91] and *Yeo Nai Meng (HC)* at [123].

166 Both aggravated damages and general damages are compensatory in nature. Accordingly, caution has to be exercised against double counting or otherwise over-compensating the plaintiff because the distress, humiliation and injury to feelings for which aggravated damages are awarded to compensate the plaintiff, are matters that may also properly be taken into account in awarding general damages. Ultimately, the total figure for both general and aggravated damages should not exceed fair compensation for the injury suffered by the claimant: *Koh Sin Chong Freddie v Chan Cheng Wah Bernard and others and another appeal* [2013] 4 SLR 629 at [75] and [77]. While there would be a single lump sum award for damages, the court ought to provide a breakdown of the sums awarded as general damages and as aggravated damages: *Lim Eng Hock Peter (Damages)* at [40]; *Basil Anthony Herman v Premier Security Co-operative Ltd and others* [2010] 3 SLR 110 at [65].

167 I now turn to consider the quantum of general damages to be awarded the plaintiff. At the time of the publication and republication of the Alleged Defamatory Statements, the plaintiff was a director of MRL, a public listed company. The Alleged Defamatory Statements assert that the plaintiff was a dishonest person who had abused his position and power in MRL to engage,

over a number of years, in acts of corruption, cheating, abuse and criminal breach of trust, and had amassed ill-gotten gains running up to at least US$2.1 million. There is no doubt that these cast serious imputations on the plaintiff as a director of a public listed company. Balanced against these is the limited circulation of the E-mails, which contained the damage to the plaintiff's reputation. The E-mails were only published to Mr Ho. While all the Alleged Defamatory Statements were republished to the three audit committee board members, only two of the Alleged Defamatory Statements were republished to the entire MRL Board. The entire MRL Board consisted of nine directors and apart from Mr Ho, the plaintiff and the three audit committee board members, there were only four other directors.[202]

168 The plaintiff argues that the defendant subjected him to humiliation and embarrassment in open court by causing the personal insults to be repeated during his cross-examination.[203] Counsel for the defendant did read out the Alleged Defamatory Statements in court while cross-examining the plaintiff,[204] but that was to build up to the intended cross-examination questions. In my judgment, this did not exceed the normal cut and thrust of litigation. Hence, I will not consider this as a factor aggravating the injury caused to the plaintiff.

169 After considering the factors set out at [167], I award the plaintiff S$45,000 in general damages.

170 I now consider whether the plaintiff is entitled to aggravated damages. The strongest factor in favour of granting aggravated damages is the malice with

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202 ABOD at pp 55, 66 and 70.

203 PCS at para 188(f).

204 See, *eg*, 27 April 2021 Transcript at p 114 line 16 to p 116 line 21.

which the defendant published the E-mails. In particular, he had invented the allegations contained within the Alleged Defamatory Statements. Notwithstanding his lack of honest belief in the truth of the Alleged Defamatory Statements, the defendant ignored the plaintiff's Letter of Demand, which asked for an apology.[205] To date, the defendant has not issued an apology, choosing instead to raise the defence of qualified privilege and maintain that he had proper sources of information for these allegations even though there is no evidential basis for such an assertion. Such conduct clearly evinces the defendant's lack of contrition. Having regard to these circumstances, I find that the plaintiff is entitled to S$5,000 in aggravated damages.

171 Having regard to the foregoing factors, I am of the view that awarding the plaintiff a total of S$50,000 in damages represents a fair compensation for the injury caused.

172 For completeness, I note that the plaintiff relies on the case of *Yeo Nai Meng (HC)* where the High Court awarded a total of S$80,000 in damages.[206] I do not find the award in that case to be persuasive. While this award of S$80,000 was upheld on appeal in *Ei-Nets Ltd and another v Yeo Nai Meng* [2004] 1 SLR(R) 153 ("*Yeo Nai Meng (CA)*"), the Court of Appeal at [69] remarked that the award of S$80,000 appeared to be high. In addition, there were two factors which justified a higher award of damages in *Yeo Nai Meng (HC)* than in the present case. First, while the plaintiff in the present case is a director of a public listed company, the plaintiff in *Yeo Nai Meng (HC)* "held positions of responsibility in public and private organisations": *Yeo Nai Meng (CA)* at [69]. Second, even though the defamatory allegations made against the

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205 ABOD at pp 146–148.

206 PCS at paras 181–183 and 188–189.

plaintiff in *Yeo Nai Meng (HC)* were comparable in nature to the Alleged Defamatory Statements, the defamatory sting of the allegations in *Yeo Nai Meng (HC)* was higher as they purported to be the considered opinions of a senior lawyer and a senior accountant. In particular, the opinion of the senior accountant was backed up with what appeared to be detailed calculations: *Yeo Nai Meng (HC)* at [29], [32], [50] and [116].

Conclusion

173 To conclude, the plaintiff has successfully established his claim in libel, and I order the defendant to pay the plaintiff S$50,000 in damages. I will hear the parties on interest and costs.

Dedar Singh Gill
Judge of the High Court

Pillai Pradeep G, Wong Shi Rui Jonas and Josiah Tham (PRP Law LLC) for the plaintiff;
Che Wei Chin (Covenant Chambers LLC) for the defendant.