Lim Eng Hock Peter v Lin Jian Wei and Another
[2008] SGHC 108

Case Number : Suit 514/2007, SUM 4849/2007

Decision Date : 09 July 2008

Tribunal/Court : High Court

Coram : Tan Lee Meng J

Counsel Name(s) : K Shanmugan SC, Muthu Arusu s/o Murugayair and Tay Yong Seng (Allen & Gledhill LLP) for the applicants/defendants; Alvin Yeo SC, Chan Hock Keng and Koh Swee Yen (Wong Partnership LLP) for the respondent/plaintiff

Parties : Lim Eng Hock Peter — Lin Jian Wei; Tung Yu-Lien Margaret

Civil Procedure – Striking out – Determination of question of law or construction of document without trial – Claim for defamation – Statements in Explanatory Statement alleged to be defamatory in natural and ordinary meaning as well as by innuendo – Whether defamation claim should be struck out for want of reasonable cause of action, being scandalous, frivolous or vexatious or abuse of process of court – Whether natural and ordinary meaning of words alleged to be defamatory may be determined under O 14 r 12 Rules of Court (Cap 322, R 5, 2006 Rev Ed) – Order 14 r 12 and O 18 r 19 Rules of Court (Cap 322, R 5, 2006 Rev Ed)

Tort – Defamation – Statements in Explanatory Statement alleged to be defamatory in natural and ordinary meaning as well as by innuendo – Whether defamation claim should be struck out for want of reasonable cause of action, being scandalous, frivolous or vexatious or abuse of process of court – Whether natural and ordinary meaning of words alleged to be defamatory may be determined under O 14 r 12 Rules of Court (Cap 322, R 5, 2006 Rev Ed)

9 July 2008 Judgment reserved.

Tan Lee Meng J:

1 The plaintiff, Mr Peter Lim Eng Hock ("Mr Lim"), a businessman who was involved in the formation of the Raffles Town Club Pte Ltd ("the company") and the setting up of the Raffles Town Club ("the club"), claims that he was defamed by the first defendant, Mr Lin Jian Wei, and the second defendant, Ms Tung Yu-Lien Margaret, who are presently the only shareholders and directors of the company.

2 The defendants applied to strike out Mr Lim's action. They also sought a determination under O 14 r 12 of the Rules of Court (Cap 332, R5, 2006 Rev Ed) that the allegedly defamatory words referred to in the Statement of Claim did not bear any defamatory meaning.

Background

3 In 1996, the company was set up to own and manage a proprietary club to be constructed at the junction of Dunearn Road and Whitley Road. At that time, its shareholders and directors were Mr Lawrence Ang Yee Lim ("Mr Ang"), Mr William Tan Leong Ko ("Mr Tan") and Mr Dennis Foo Jong Long ("Mr Foo").

4 In November 1996, the company invited selected members of the public to join the club at a discounted price of $28,000. The invitees were informed about the club's "exclusive and limited membership". They were also told that they were joining the most "prestigious private city club" in Singapore. The membership drive was rather successful and many "founding" members paid $28,000 each to join the club.

5 In the initial months after the club began its operations in March 2000, its members had to put up with overcrowding at the club's premises. The founding members did not realise at that time that their supposedly premier and exclusive club had more than 19,000 members.

6 In 2000, the company, its then shareholders and Mr Lim were embroiled in the following suits that created unwanted adverse publicity:

(a) In the first suit, Mr Lim sued the former shareholders of the company (Mr Ang, Mr Tan and Mr Foo) for specific performance of an oral agreement, under which he was entitled to 40% of the shares in the company;

(b) In the second suit, the company sued Mr Ang for advances of more than $51m that had been made to him. Mr Ang joined Mr Lim as a third party, claiming that $26.6m had been handed over to the latter;

(c) In the third suit, the company sued Mr Tan for advances of almost $6m that had been made to him; and

(d) In the fourth suit, Mr Ang and Mr Tan sued Mr Lim and Mr Foo, alleging that the latter two had wrongly converted to their own use certain bearer share certificates.

7 The suits in question were eventually settled by the parties but not before it was disclosed at the trial of Mr Lim's action against the company's former shareholders that the club had 19,000 members. This fact, which was widely publicised by the media in March 2001, caused dissatisfaction among members of the club.

8 In April 2001, the defendants and the first defendant's wife acquired all the shares in the company from its former shareholders despite the adverse publicity regarding the company and the club.

9 In November 2001, dissatisfied members of the club decided to sue the company for failing to deliver to them a premier and exclusive club. Suit No 1441 of 2001 was commenced against the company in the names of 10 members of the club, who sued on behalf of themselves and 4,885 other members of the club. Calling themselves the "Raffles5000" group and headed by the "Raffles5000" committee, they each claimed a refund of their $28,000 entrance fee on the ground of misrepresentation and/or damages for breach of contract.

10 In August 2003, the Court of Appeal held that there was breach of an implied promise to deliver to the plaintiffs a premier and exclusive club and ordered damages to be assessed.

11 The High Court awarded each claimant $1,000 as damages for loss of amenity and enjoyment. However, in August 2005, the Court of Appeal increased the damages payable to each claimant to $3,000.

12 A sum of around $45m was required to compensate members of the club. The company claimed that it did not have sufficient funds to pay this amount. It thus proposed a Scheme of Arrangement (the "Scheme") under s 210 of the Companies Act (Cap 50, 1994 Rev Ed) (the "Act").

13 Under the proposed Scheme, a Scheme Creditor was regarded as any individual who was an ordinary member of the club at anytime in March 2001 and was required to and did pay the $28,000 entrance fee to join the club. Scheme Creditors were required to recover the $3,000 damages by way

of cash instalments, vouchers for use in the club, reduction of transfer fees of membership of the club or a combination of these options.

14 On 30 August 2005, Kan Ting Chiu J gave the green light for the convening of a meeting of "Scheme Creditors" to approve the proposed Scheme. On 30 November 2005, more than 90% of the Scheme Creditors voted in favour of the Scheme. On 6 January 2006, Kan J approved the Scheme.

15 Mr Lim's defamation action, which was started in September 2007, has its roots in the Explanatory Statement on the effects of the Scheme that was furnished to Scheme Creditors in accordance with s 211 of the Act, which provides as follows.

> (1) Where a meeting is summoned under section 210, there shall —
>
> (a) with every notice summoning the meeting which is sent to a creditor or member, be sent also a statement explaining the effect of the compromise or arrangement and in particular stating any material interests of the directors, whether as directors or as members or as creditors of the company or otherwise, and the effect thereon of the compromise or arrangement in so far as it is different from the effect on the like interests of other persons; …

16 Mr Lim's complaint relates to the following paragraphs in the Explanatory Statement, which contains 391 pages:

> **1.3 THE COMPANY**
>
> ….
>
> The present shareholders of the Company are Lin Jianwei (as holder of 800,000 shares in the Company) and Tung Yu-Lien Margaret (as holder of 200,000 shares in the Company) and they acquired their shareholding in April and June 2001, following the settlement of litigation among former shareholders of the Company.
>
> ….
>
> Prior to April 2001, the Company was run by, *inter alia*, Mr Lawrence Ang Yee Lim, Mr William Tan Leong Ko, Mr Dennis Foo Jong Long, Mr Tan Buck Chye and Mr Lim Eng Hock, Peter.
>
> ….
>
> **1.4.4. Background to Company's Current Financial Difficulties**
>
> All the original promoters, directors and shareholders of the Company have left. At the time the new shareholders assumed control, a substantial portion of the monies collected in entrance fees had already been spent.
>
> ….
>
> <u>High start up costs</u>
>
> …. The costs of constructing the Club added another $107,574,209.00 to the bill. The unit cost of constructing the Club was $6,204.70 per square meter. Seah Meng Choo, a chartered quantity surveyor and Executive Chairman of Davis Langdon & Seah gave evidence of this number during the hearing before the Honourable Justice Belinda Ang in September 2004. He noted that this

figure was the highest in his 37 years of experience.

….

Moreover, approximately $70 million has been paid out to the Company's former registered shareholders, namely Lawrence Ang Yee Lim, William Tan Leong Ko and Dennis Foo Jong Long by way of, *inter alia*, loans that were subsequently off set against dividends from the Company.

….

Litigation involving the Company and ex-shareholders of the Company

In 2001, the Company came under the public spotlight with several lawsuits involving its directors and shareholders.

(1) Suit No 742 of 2000/F was a lawsuit where one Lim Eng Hock, Peter sued Lawrence Ang Yee Lim, William Tan Leong Ko and Dennis Foo Jong Long for the specific performance of an oral agreement whereby he stood to gain a 40% shareholding of the Company. It was Lim Eng Hock Peter's case that in consideration of his assistance to Europa Holdings Pte Ltd and the Company (where the said defendants were majority shareholders) to raise the necessary financing, shares in the Company were promised to him. Peter Lim claimed to have been entitled to 40% of the total shareholding in the Company, and Dennis Foo was to become a 10.1% shareholder.

(2) Suit No 782 of 2000/C was an action brought by the Company against Lawrence Ang Yee Lim (a 75% shareholder of the Company) and Peter Lim (Third Party) for a sum in excess of S$51m being advances made by the Company to Lawrence Ang Yee Lim from 13 April 1998 to 30 June 2000. Lawrence Ang Yee Lim's defence was that the shareholders had agreed to offset the loan against future dividends by the club and he joined Peter Lim as a third party, claiming that S$26.6 million was given to him. This was denied …

(4) Suit No 1000 of 2000/M was an action commenced by Lawrence Ang Yee Lim and William Tan against Dennis Foo and Peter Lim, where it was alleged that the defendants wrongfully converted to their own use, certain bearer share certificates.

1.50 Shareholders Equity

…

The components of Shareholders Equity is set out as follows:

….

c Dividends Paid

Based on the Company's audited financial statements for the period 31 December 2001 to 31 December 2004 and the un-audited financial statements for the seven months ended 31 July 2005, the Company, since its inception, paid dividends to shareholders of $124,213,169.

1.51 Conclusion

The financial position of the Company as at 31 July 2005 shows, inter alia that:

a The Company's current cash balance is not sufficient to pay the potential damages claim of all Scheme Creditors (estimate at approximately $48 million before set off);

…

c Unless the issue of the Company's obligations to all Scheme Creditors is addressed, continuous use of the Club on the same terms and conditions presently enjoyed and the ability of the Company to meet its obligations may be adversely affected.

17 Mr Lim's case is that the defendants sought in the Explanatory Statement to deflect the blame for the company's financial woes onto the former shareholders and former directors and that, in the process, portions of the above-mentioned paragraphs in the said statement were defamatory, both in their natural and ordinary meaning as well as by way of innuendo. In his Statement of Claim (Amendment No 1), he pleaded as follows at [16]:

In their natural and ordinary meaning the said words meant and were understood to mean in their proper context within the Explanatory Statement as a whole that:

a. the Plaintiff was party to the culpable mismanagement of RTC prior to April 2001 and primarily responsible (with others) for RTC's then serious financial difficulties and the need for an arrangement with creditors;

b. the Plaintiff negligently approved, condoned or otherwise failed to prevent RTC paying an excessive or unreasonable construction cost for the Club;

c. the Plaintiff culpably or negligently approved, condoned or otherwise failed to prevent an improper preferment of Lawrence Ang, William Tan and Dennis Foo, whereby very substantial loans made to them (when they were directors of RTC) by RTC in the sum of $70m were not repaid by them as they should have been but later set off against dividends and/or the Plaintiff culpably or negligently permitted, condoned or otherwise failed to prevent RTC from voting grossly excessive dividends to is own directors/shareholders, having regard to RTC's financial position;

d. the Plaintiff culpably or negligently approved, condoned or otherwise failed to prevent the payment of further grossly excessive dividends to shareholders (the dividends in their entirety totalling $124 million), having particular regard to RTC's financial position, and there are strong, reasonable or some grounds for suspecting that some of this sum was received by the Plaintiff;

e. There are strong, reasonable or some grounds for suspecting that the Plaintiff was himself given and fraudulently or improperly received $26,6 million of the loan made by RTC to Lawrence Ang (being over half the loan which was in excess of $51 million) without declaring it and strong, reasonable or some grounds for suspecting that the Plaintiff's denial of receipt of this sum is a lie;

f. There are strong, reasonable or some grounds for suspecting that the Plaintiff wrongfully converted bearer share certificates in RTC to his own use.

18 As for innuendos, Mr Lim pleaded in his Statement of Claim (Amendment No 1) at [17] as follows:

Further or alternatively, the said words bore the meanings pleaded in paragraph 16 above by way of innuendo.

PARTICULARS

a. The Plaintiff will rely on reports in the media in the period 2001 to 2005, which referred to the Plaintiff as a "shadow director" and "shareholder" of RTC.

b. In the High Court judgment in Suit No 1441 of 2001, which was publicly reported, it was stated that the Plaintiff was "one of the original shareholders" of RTC.

c. On or about 7 September 2005, shortly after the Scheme was announced but before the distribution of the Explanatory Statement, the 1st Defendant wrote to members of the Club to seek support for the Scheme.

d. On 12 September 2005, in response to the 1st Defendant's 7 September 2005 letter, a letter was posted by the Raffles5000 committee on the website (www.Rafflesmembers.com.sg), which specifically complained of the lack of information as to when and to whom the total dividends of $124,213,169 had been paid. This letter would have been read by all or most of the participating members to whom it was addressed.

e. Accordingly, members of the Club reading the Explanatory Statement would have paid particular attention to the issue of dividends. The Explanatory Statement solely refers to dividends being voted to the former directors/shareholders (at paragraph 1.4.4) and no express reference to any payment of dividends to the Defendants.

19 The defendants contended that Mr Lim's defamation action did not get off the ground because what was stated in the Explanatory Statement is true and could have no defamatory meaning. Furthermore, even if the said statement contained words which could be construed as defamatory, the defendants claimed to be entitled to rely on the defence of absolute privilege, qualified privilege and justification.

20 In reply to the defence of qualified privilege, Mr Lim averred that the allegedly defamatory words were published maliciously.

Whether the claim should be struck out

21 O 18 r 19 of the Rules of Court provides as follows:

(1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the endorsement of any writ in the action, or anything in any pleading or in the endorsement, on the ground that -

(a) it discloses no reasonable cause of action or defence, as the case may be;

(b) it is scandalous, frivolous or vexatious;

(c) it may prejudice, embarrass or delay the fair trial of the action; or

(d) it is otherwise an abuse of the process of the Court,

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

(2) No evidence shall be admissible on an application under paragraph 1(*a*).

22 The defendants' grounds for striking out the action are that the words complained of do not bear any meaning defamatory of Mr Lim, that no reasonable cause of action has been disclosed and that the claim is scandalous, frivolous or vexatious or is otherwise an abuse of the process of the Court.

23 As a general rule, the courts are rather reluctant to strike out an action. In *Gabriel Peter & Partners v Wee Chong Jin* [1998] 1 SLR 374 ("*Gabriel Peter*"), the Court of Appeal, while considering the principles for striking out an action under O 18 r 19 of the Rules of Court, made it clear that the court's power to strike out an action is a draconian one and should not be exercised too readily unless the plaintiff's case is wholly devoid of merit. The Court of Appeal explained as follows at [18]:

> In general, it is only in plain and obvious cases that the power of striking out should be invoked…. It should not be exercised by a minute and protracted examination of the documents and facts of the case in order to see if the plaintiff really has a cause of action. The practice of the courts has been that where an application for striking out involves a lengthy and serious argument, the court should decline to proceed with the argument unless, not only does it have doubts as to the soundness of the pleading but, in addition, it is satisfied that striking out will obviate the necessity for a trial or reduce the burden of preparing for a trial.

24 The defendants maintained that the question of defamation does not arise because they stated the truth in the Explanatory Statement and nothing therein suggested any wrongdoing on Mr Lim's part. However, Mr Lim's counsel, Mr Alvin Yeo SC, retorted that there is more than meets the eye in the Explanatory Statement because the defendants had disclosed "a bunch of clever little half truths" to create the overall impression that they are not to blame for the club's financial difficulties and that the former shareholders, the former directors and his client are at fault.

25 Mr Yeo emphasized that s 211 of the Act merely required the defendants to explain the effect of the compromise or arrangement and to state any material interests of the directors and "the effect thereon of the compromise or arrangement in so far as it is different from the effect on the like interests of other persons." However, the Explanatory Statement went much further than what was required under s 211. It contained numerous gratuitous statements deflecting the blame for the company's financial woes onto the former shareholders and former directors. Mr Lim contended that he has a right to a trial to determine whether or not he was defamed in the Explanatory Statement because he had been described in the media as a "shadow director" and "shareholder" of the company. Furthermore, the defendants themselves had stated in their Defence that Mr Lim was a beneficial shareholder of the company and its *de facto* managing director and/or *de facto* director from September 1996 to April 2001.

26 Mr Lim's case is that the defendants defamed him by omitting from the Explanatory Statement important and relevant information that would have changed the dismal picture painted by the defendants to the Scheme Creditors about him and the company's former shareholders. For instance, in relation to dividends paid to shareholders, the defendants knew that the Scheme Creditors had sought the disclosure of the amount of dividends declared to shareholders as they wanted to know why there were insufficient funds to pay them damages of $3,000 each when entrance fees totalling several hundred million dollars had been collected from them. Despite this, the Explanatory Report mentioned the payment of $70m in dividends to the company's former shareholders without adding that the defendants themselves had pocketed $54m in dividends. More importantly, the Explanatory Statement also failed to disclose that the dividends of $70m paid to the former shareholders were declared by the defendants themselves pursuant to the Sales and Purchase Agreement for their

acquisition of the company. In short, the dividends to the former shareholders were part of the consideration for the transfer of the company to the defendants. Mr Lim contended that had the additional information in question been disclosed in the Explanatory Statement, the former shareholders would not be viewed as the persons who almost bankrupted the company.

27 Mr Yeo urged the court to note the allegedly defamatory statements appeared in the Explanatory Statement under the bold heading "Background to the Company's difficulties" and this showed that the defendants were suggesting that his client and the company's former shareholders had contributed to the company's financial problems. He referred to the decision of the Australian High Court in *John Fairfax Publications Pty Ltd v Rivkin* [2003] HCA 50 ("*John Fairfax*"), where Callinan J said at p 130 that while an article has to be read as a whole, this does not mean that matters that have been emphasized should be treated as if they have only the same impact or significance as matters which are treated differently. He added that a headline designed to catch the eye and give the reader a predisposition about what follows may well assume more importance than the latter.

28 Mr Yeo added that it ought not be overlooked that around two months after issuing the Explanatory Statement, the defendants had caused the company, which they control as directors and 100% shareholders, to commence Suit No 46 of 2006, alleging breach of fiduciary duties owed to the company by, amongst others, Mr Lim. In support of their plea of justification in the present case, the defendants annexed a copy of their Statement of Claim (Amendment No 2) in Suit No 46 of 2006. Mr Yeo questioned whether one could take the defendants' argument that the Explanatory Statement contained no words capable of defaming Mr Lim seriously when they sought to rely on the defence of justification by alleging breach of fiduciary duties by Mr Lim.

29 The defendants' motive for the copious reference to the litigation involving the company and its former shareholders in an Explanatory Statement was also questioned. The defendants countered that the Explanatory Statement did not adopt, confirm or embellish any of the allegations made in the actions and made it clear that those allegations had not been proved in a Court of law as the suits were settled. However, Mr Lim's view is that these suits should not have been incorporated in an Explanatory Statement that was merely required by the Act to explain the effect of the Scheme as they are irrelevant and had nothing to do with the company's financial difficulties. At this juncture, it is pertinent to note that in *John Fairfax*, Callinan J emphasized at p 130 that the "intrusion of irrelevant information may raise questions as to the meaning intended to be, and actually conveyed. Mr Lim insisted that by referring to the numerous suits, the defendants tried to give the impression that huge sums of money had been siphoned out of the company by the former shareholders. He took exception to the fact that it was specifically mentioned in the Explanatory Statement that he had allegedly taken away $22.6 million. He had no doubt that the defendants had insinuated that the whole business was fishy and that there had been a cover-up.

30 Even if statements in a report are, without more, true, there may, in appropriate circumstances, be a triable issue as to whether they are defamatory if other important relevant information that would have given a totally different picture is omitted. In this context, reference may be made to a Canadian case, *Dundee Bancorp Inc v Fairvest Corp* [2005] OJ No 2699 ("*Dundee*").

31 In *Dundee* ([30] *supra*), W Corp approached D Inc, its parent company, for financial assistance to acquire another company, Cartier. D Inc agreed to provide a credit facility to W Corp in return for a commitment fee and the issuance by W Corp of warrants to purchase 1.8 million of its shares at a fixed price. W Corp did not have to rely on D Inc's credit facility as it was able to raise funds by other means but it was evident that without D Inc's credit facility in place, it would not have been in a position to acquire Cartier. The defendants, who provided advice to institutional shareholders, recommended that a proposal at W Corp's annual general meeting to issue warrants to D Inc to

purchase 1.8 million of its shares be rejected. Without mentioning that W Corp could not have acquired Cartier if D Inc's credit facility was not in place, the defendants emphasized in their report that the credit facility had not been utilised by W Corp. D Inc sued the defendants for defamation on the ground that the report suggested that it was receiving too much compensation from W Corp. The question before the court was whether there was a genuine issue for trial. McMahon J agreed that a plain reading of the defendants' report could leave the reader with the belief that as the facility was never utilised, D Inc would be receiving more compensation than it deserved. He noted that having the financing in place was instrumental to W Corp being able to obtain Cartier and accepted that it would certainly be open to a court to accept the plaintiff's interpretation should it, upon hearing all the evidence, conclude that the defendant's report misrepresented the facts about what benefit had been received by W Corp from D Inc. In his view, the defendant's report could be construed by an ordinary person to injure D Inc's reputation and for this reason, there was a triable issue as to whether the said report was defamatory of D Inc.

32 *Dundee* ([30] *supra*) is very pertinent to the present case, which also concerns an allegation of defamation as a result of omission of important relevant facts. Mr Lim should thus be allowed to prove his allegations at a trial, and especially so since he is also alleging that he has been defamed by way of innuendo.

33 An attempt to stop a defamation trial also failed in *McCann v Scottish Media Newspapers Ltd* [2000] SLT 256. Here, the pursuer, the chairman of a football club, which operated as a limited company, claimed that three newspaper articles defamed him by representing that he had made misleading statements regarding the company's accounts, that he had concealed the true financial position of the company and that misleading statements were made with the intention of securing a higher price for his own shares in the company. Lord Macfadyen pointed out that where the words complained of are not "obviously and on the face of it defamatory", it is for the claimant to set out in his pleading the meaning which he contends the words bear. Although the court did not agree that all the pursuer's averments had merit, there was enough in the averments to entitle the case to proceed to trial.

34 In the present case, Mr Lim has pleaded the meanings of the offending passages in the Explanatory Statement which may be adopted by a reader of the said Statement, inclusive of the innuendos that may arise from a reading of the same. It is not for this court to decide at this preliminary stage whether or not there is any merit in Mr Lim's assertions. What is relevant for the purpose of a striking out application is that Mr Lim's case is not so hopelessly devoid of merit that the court should exercise its draconian power to stop the claim from proceeding to trial.

35 As for whether Mr Lim's action should be struck out on the basis that he has no "reasonable cause of action", the defendants contended that the action involves a "baseless and contrived claim" and a "vain attempt to cobble together a case by giving an undue subjective and slanted presentation" of the few references to him in the 391-page Explanatory Statement, which was *solely* focussed on its statutory purpose of explaining the Scheme to the Scheme Creditors. It is pertinent to note that a "reasonable cause of action" connotes a cause of action that has some chance of success *when only the allegations in the pleading are considered*: see *Gabriel Peter* at ([23] *supra*) at [21]. As such, there is no basis for striking out the action on the ground that it discloses no reasonable cause of action, and especially when whether or not the Explanatory Statement was solely focussed on its statutory purpose is a hotly contested issue.

36 No strong evidence was adduced as to why the action should be regarded as "scandalous, frivolous or vexatious".

37 As for "abuse of process", in *Gabriel Peter* ([23] *supra*), the Court of Appeal noted at [22] that this signifies that "the process of the court must be used bona fide and properly" and that the improper use of the judicial machinery will be prevented. In *Goldsmith v Sperrings* [1977] 1 WLR 478 at 500, Scarman LJ ruled that strong evidence that the plaintiff is in fact seeking something beyond the protection and vindication of his reputation is required before the court may stay his action as an abuse of process. The defendants asserted that Mr Lim has no genuine desire to vindicate his reputation if it has indeed been damaged and they pointed out that he had commenced his action nearly two years after the publication of the Explanatory Statement. However, Mr Lim claims that he is entitled to employ these proceedings to vindicate and protect his reputation as a prominent businessman and investor in Singapore. The defendants retorted that he is seeking to embarrass, scandalise and vex them by linking this suit to the suit by the company for breach of fiduciary duties in order to complicate, prejudice and derail the fair trial of both suits. This allegation, which was vehemently denied by Mr Lim's counsel, is not easy to prove. Without strong evidence of the nature referred to by Scarman LJ, I am in no position to conclude that the present action is an abuse of process.

3 8 For the reasons stated, the application to strike out Mr Lim's action under O 18 r 19 of the Rules of Court and/or under the inherent jurisdiction of the court is dismissed with costs.

Whether this case is suitable for determination without a full trial

39 O 14 r 12 provides as follows:

> (1) The Court may, upon the application of a party or of its own motion, determine any question of law or construction of any document arising in any cause or matter where it appears to the Court that -
>
> (a) such question is suitable for determination without a full trial of the action; and
>
> (b) such determination will fully determine (subject only to any possible appeal) the entire cause or matter or any claim or issue therein.

40 Admittedly, the natural and ordinary meaning of words that are alleged to be defamatory may be determined under O 14 r 12: see *Microsoft Corporation & Ors v SM Summit Holdings Ltd & Anor and other appeals* [1999] 4 SLR 529. However, in the present case, there are reasons why it is preferable that there be no preliminary ruling under O 14 r 12.

41 To begin with, the trial of a preliminary issue under O 14 r 12 is intended to save time. In *Keays v Murdoch Magazines (UK) Ltd* [1991] 1 WLR 1184 at 1192, Neill LJ warned that "there will be many cases where the trial of a preliminary issue will be wholly unnecessary and where it would itself add to the expense of the proceedings and would occasion unjustified delay." In similar vein, in *Tilling v Whiteman* [1980] AC 1, Lord Scarman noted at 25 that preliminary points of law are "too often treacherous short cuts" that cause delay, anxiety and expense.

42 Here, the parties had already exchanged their lists of documents more than seven months ago in November 2007 and the trial has been fixed for next month, namely August 2008. At this very late stage, it would be far better to allow Mr Lim's action to proceed to trial than to have the parties bog themselves down with an appeal as to whether there should be a trial in the first place. In any case, as Mr Lim has also pleaded that he was defamed by way of innuendo, a preliminary ruling on the natural and ordinary meaning of the allegedly defamatory words will not fully dispose of the case as he is entitled to prove at a trial that there are facts extrinsic to the words that give rise to

defamation by way of innuendo: see *Murugason v The Straits Times Press (1975) Ltd* [1984-1985] SLR 334.

43 Apart from the fact that a preliminary ruling in this case will not save time, the history of the profuse litigation regarding the company must be taken into account. While the objective test is relevant for determining the natural and ordinary meaning of allegedly defamatory words, the court must consider the extent of the knowledge of an ordinary reasonable person to determine what he would, using his general knowledge and common sense, understand from the Explanatory Statement. Just as the ordinary reasonable person in *Oei Hong Leong v Ban Song Long David and others* [2005] 3 SLR 608, where the issue was whether or not the words "playing to the gallery" are defamatory, is expected to be familiar with the "Natsteel saga", the ordinary reasonable person in this case is expected to be familiar with the "Raffles Town Club saga" ("RTC saga").

44 To determine the extent of the ordinary reasonable person's familiarity with the "RTC saga", reference may, in view of the fact that the addressees of the Explanatory Statement include members of Raffles5000, have to be made to the copious media reports on the "RTC saga" and the communications between the Raffles5000 Committee and members of Raffles5000. The same exercise will be required when the question of defamation by way of innuendo is considered at the trial. On balance, in the circumstances of this case, all the arguments as to what an ordinary reasonable person might be presumed to know for the purpose of determining the natural and ordinary meaning of words and whether or not there are innuendos should be considered by the same judge at the trial, which is just around the corner as it is presently scheduled for August 2008.

45 For the reasons stated, I rule that this is not a case where there should be a preliminary ruling under O 14 r 12. As far as the application for a preliminary ruling is concerned, costs will be in the cause.