DCCJ 5079/2015

[2025] HKDC 197

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

CIVIL ACTION NO 5079 OF 2015

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BETWEEN

LEUNG CHI CHING CANDY Plaintiff

and

YEUNG HON SING (楊漢成) Defendant

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Before: His Honour Judge Ko in Court

Dates of Hearing: 16-19, 22 & 23 April 2024 and 5 June 2024

Date of Judgment: 28 February 2025

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JUDGMENT

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*A. Introduction*

1. The trial of this defamation action (“first trial”) took place before a deputy District Judge (“DDJ”). On 15 November 2019, the DDJ handed down his judgment in favour of the plaintiff (“DC Judgment”).[[1]](#footnote-1) The plaintiff was awarded damages in the sum of HK$400,000 and a final injunction to restrain further publication of the defamatory statements.
2. On 26 November 2021, the Court of Appeal allowed the defendant’s appeal and remitted the case for re-trial before a different judge restricted to the issue of malice in the context of qualified privilege (“CA Judgment”).[[2]](#footnote-2)
3. This is the re-trial of this action.

*B. Background*

1. The following background, taken largely from CA Judgment, is not disputed.

*B1. Significant events*

1. The plaintiff and the defendant are both owners and occupiers of residential flats in Cheerful Garden (富怡花園) in Siu Sai Wan, Hong Kong (“Estate”).
2. Prior to the establishment of its incorporated owners (“IO”), the Estate was managed by Chevalier Property Management Limited (“Chevalier”) who was the manager appointed under the applicable deed of mutual covenants (“DMC”). The DMC also provided for the formation of an owners’ committee (“OC”) to represent the owners in all dealings with the manager.
3. The defendant was the chairman of the last OC (“14th OC”) prior to the formation of the IO. After the establishment of the IO on 14 April 2010, he was elected chairman of the management committee of the IO (“1st MC”).
4. Under the defendant’s chairmanship, the 14th OC halted the major renovation proposed by previous OC and Chevalier. The 14th OC also renegotiated with Chevalier with a view to convert Chevalier from a DMC-appointed manager to a manager appointed under a new management services contract.
5. In June 2011, the defendant and some other members resigned from the 1st MC. At the extraordinary general meeting (“EGM”) of the IO held on 21 August 2011, the plaintiff was elected in a by-election as the chairman for the remaining term of the 1st MC (“By-Elected 1st MC”).
6. During the plaintiff’s chairmanship, she proposed a major renovation for the Estate. The By-Elected 1st MC sent out a questionnaire to the owners to collect their views. Based on the result of the questionnaire, the By-Elected 1st MC resolved at its 6th meeting held on 8 February 2012 to commence the renovation and to collect $10,000 from the owners of each flat.
7. On 15 February 2012, the legal advisor of the IO advised against relying on the questionnaire as a basis to raise funds from the owners. The By-Elected 1st MC was advised that an owners’ resolution passed at an owners’ meeting would be necessary.
8. On 17 February 2012, the plaintiff informed the owners that more than half of the owners who responded to the questionnaire had agreed to the renovation. On the same day, the By-Elected 1st MC advertised to invite tenders for the post of consultant in relation to the proposed renovation.
9. In the selection process for the consultant, the plaintiff relied on a scoring system managed by three volunteers but the identities were not disclosed. At the 8th meeting of the By-Elected 1st MC held on 31 March 2012, Wong Kwong (“W&K”) was selected as the consultant for the proposed renovation.
10. W&K issued its consultancy report on 25 May 2012. However, it did not provide a price estimate for the renovation. On 3 June 2012, a consultancy meeting was held for W&K to answer questions raised by the owners directly.
11. The process for accepting tenders from contractors for the proposed renovation began on 30 June 2012 and ended on 11 July 2012.
12. On 7 July 2012, the notice for the annual general meeting of the IO to be held on 22 July 2012 (“2012 AGM”) was issued. There were 18 items on the agenda, including the approval of the proposed major renovation (item 11), the seeking of contribution from the owners for the renovation (item 9), the approval of the management services contract (item 3), the appointment of the security service provider (item 7) and the election of the chairman and other officers and members of the 2nd MC (items 14 to 18).
13. Out of 14 tendering contractors, W&K required 10 to provide supplemental information but most of them were unable to do so due to the time constraint. As a result, only four contractors who submitted tenders were interviewed on 17 July 2012. On 20 July 2012 (just two days before the 2012 AGM), W&K provided its analysis of the tenders from those interviewed.
14. At the 2012 AGM, the major renovation proposed by the plaintiff was voted down by the majority of the owners (68.47% of the votes). The plaintiff withdrew from the election, and the defendant was elected as the chairman of the 2nd MC.
15. As for the appointment of the security service provider, the plaintiff announced before the votes were cast that one of the candidates, Centurion Facility Co Ltd (“Centurion Facility”), would lower its bid to $8.7 million. This announcement was made after the other candidates had put in their bids which were made known to the By-Elected 1st MC and the owners. By a resolution passed by the owners, Centurion Facility was chosen as the security service provider.
16. After the 2012 AGM, there were campaigns, harassing events and disturbances in the Estate seeking to remove the defendant as the chairman. In 2012 and 2013, there were disruptions of the meetings of the 2nd MC and the police were called on several occasions.

*B2. The claim*

1. The plaintiff’s claim is based on six articles (enumerated herein as “1st Article” to “6th Article”) published by the defendant between March 2013 and August 2015 during his tenure as Chairman of the MC.

*B3. The defence*

1. The main defences advanced by the defendant in the first trial were justification, honest comment and qualified privilege.

*B4. The findings of the DDJ*

1. It was not disputed that the defendant published or caused to be published all six articles and the DDJ found them to be defamatory of the plaintiff. As recorded in para 18 of CA Judgment, there was no appeal against such finding.
2. The DDJ analyzed the defences in terms of seven categories of defamatory stings, which was adopted by the Court of Appeal in its own analysis. They were:

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| --- | --- |
| *Categories of Defamatory Statements and Allegations* | *Article(s)* |
| (1) Defamatory statements arising from the renovation | The 1st, 4th, 5th and 6th Articles |
| (2) Defamatory statements arising from the tender process for the security service contract | The 2nd Article |
| (3) Defamatory statements arising from the replacement of the 118 Gate | The 6th Article |
| (4) Allegations that the plaintiff persistently attempted to seize control of the IO for ulterior motives causing chaos | The 1st, 3rd, 4th and 5th Articles |
| (5) Allegations that the plaintiff colluded with Chevalier, the manager of the Estate | The 6th Article |
| (6) Allegations that the plaintiff did not properly discharge her duty as chairman of the IO | The 1st Article |
| (7) Defamatory statements concerning the plaintiff’s behavior and character, eg being greedy, devious, deceitful, cunning, abusive, violent and lacking in integrity | The 1st, 3rd, 4th and 6th Articles |

1. The DDJ found the underlying factual basis for all six articles to be false. As recorded in para 20 of CA Judgment, there was no appeal against such findings.
2. For the defence of justification, the DDJ found that none of the seven categories were justified by facts and hence the defence failed. As recorded in para 22 of CA Judgment, there was no appeal against such finding.
3. The DDJ found the defamatory stings for Categories 1 and 2 to be imputations of facts and so the defence of honest comment was not available for them. Furthermore, the DDJ found that the comments made were not ones which could have been made by an honest person and/or that the defendant had acted dishonestly when making such comments. Hence, all the defamatory statements did not come within the objective limits of the defence and/or were rebutted by malice, and the defence failed. As recorded in para 22 of CA Judgment (and subject to the elaboration in paras 47 & 48 below), there was no appeal against such findings either.
4. Turning to the defence of qualified privilege, it was not disputed that communications between the IO or MC and the owners regarding the management and administration of the Estate would be capable of being covered by qualified privilege.[[3]](#footnote-3) The DDJ also found that the purpose for which the privilege was accorded on the occasions the six articles were published was consistent only with the communication of a matter believed to be true.[[4]](#footnote-4) Based on his other findings, the DDJ held that the defendant did not publish the articles for a proper purpose and so the defence was defeated by malice.[[5]](#footnote-5)

*B5. The comments of the Court of Appeal on appeal*

1. Feeling aggrieved, the defendant applied to the DDJ for leave to appeal. The draft notice of appeal that was placed before the DDJ ran into 62 pages. By his decision dated 22 May 2020, the DDJ refused to grant leave to appeal.[[6]](#footnote-6)
2. In the renewed leave application, the Court of Appeal directed the defendant to submit a revised draft notice of appeal. Eventually, leave was granted on 6 grounds only, relating to honest comment (grounds 1 and 2), qualified privilege (grounds 3 and 4), wrongful exclusion of the evidence of Ma Chun Fat (ground 5) and judicial copying (ground 6).
3. At the substantive hearing before the Court of Appeal, the defendant did not pursue grounds 1 and 2 as independent grounds of appeal (although the matters stated therein were relied upon in developing the arguments for grounds 3 and 4) and ground 6 was rejected.
4. As regards grounds 3 and 4, the main criticism raised by the defendant was that the DDJ’s approach “short-circuited” the subjective test for finding malice as regards the defence of qualified privilege and had thereby excluded most of the subjective factors which ought to have been taken into account in finding the dominant purpose of publishing the defamatory statements.
5. It was held by the Court of Appeal that:
6. Whilst the DDJ had stated the legal principles correctly, it was not clear whether the DDJ had applied the correct test and approach in considering malice in the context of qualified privilege. See para 68 of CA Judgment.
7. The DDJ’s conclusion, in the context of qualified privilege, that the defendant did not publish the articles for a proper purpose was built on his findings in relation to honest comment. The Court of Appeal doubted whether the DDJ had conflated the subjective test of malice in the context of honest comment with the objective limit of that defence as to whether an honest person could have made the comment. At the very least, thought the Court of Appeal, there was ambiguity whether the DDJ had applied a predominantly objective test in arriving at his view that the defendant knew the comments were without factual or evidential foundation and was dishonest. Consequently, the Court of Appeal had difficulty with the DDJ’s finding that the defendant did not make the communication for a proper purpose. See paras 71 to 73 of CA Judgment.
8. All the relevant circumstances surrounding the making of the communications should be considered but the DDJ had wrongly excluded (i) the evidence of Ma Chun Fat (“Ma”) and (ii) the evidence of the disturbances in the Estate and the plaintiff’s lobbying for signatures in a campaign to remove the 2nd MC. See paras 74 and 76 of CA Judgment.
9. The Court of Appeal was unable to say that the reasons given by the DDJ in arriving at his conclusion that the defendant did not make the communications for a proper purpose would be sufficient in themselves to support his conclusion or that the evidence the DDJ excluded would have made no difference to his conclusion. See para 77 of CA Judgment.
10. On the available evidence, the Court of Appeal was unable to determine the question of fact whether the defendant knew at the time what he published was false or that he was reckless as to whether it was true or false. See para 77 of CA Judgment.
11. The Court of Appeal allowed the appeal and ordered “a re-trial of this case before a different judge of the District Court, limited to the issue of malice in the context of qualified privilege.” See para 79 of CA Judgment.

*C. The re-trial*

1. At this re-trial,
2. The plaintiff is represented by Mr Andrew Mak and Mr Abel Lam (collectively “the plaintiff’s counsel”).[[7]](#footnote-7)
3. The defendant is represented by Ms Audrey Eu SC leading Mr Ken To and Mr Matthew Choi (collectively “the defence counsel”).[[8]](#footnote-8)

*C1. What is this re-trial about?*

1. Despite the court’s direction, the parties did not lodge an Agreed Statement of Findings of the DDJ for the purpose of the re-trial.[[9]](#footnote-9) At the re-trial, both parties offered their commentaries on the articles with reference to the significant events highlighted above. No or no sufficient reference was made to the findings of the DDJ. Significantly, they were still in dispute in closing argument as to the binding effect of DC Judgment.
2. The defence counsel made it clear in their opening submissions that they did not dispute the underlying events, the contemporaneous documents in the trial bundles and the fact that the defendant published the articles.[[10]](#footnote-10) They submitted in closing submissions that:
3. The DDJ’s findings on justification and honest comment are not binding in the re-trial.[[11]](#footnote-11)
4. The DDJ’s findings on the defendant’s knowledge of falsity are not binding in the re-trial.[[12]](#footnote-12)
5. The plaintiff’s counsel criticized the defendant for attempting to reopen the findings of the DDJ via the backdoor “bypass[ing] the *Ladd v Marshall* rule and/or the *Flywin* test”.[[13]](#footnote-13)
6. Both parties cited Lord Reed NPJ’s speech at para 55 of *Jonathan Lu v Paul Chan Mo Po* (2018) 21 HKCFAR 94 in argument.
7. According to the plaintiff, applying Lord Reed’s reasoning, it is plain that the DDJ’s findings in relation to justification and honest comment are findings or conclusions that bind the parties as they are not affected by CA Judgment. The DDJ’s findings of fact in relation to malice in the context of honest comment are also binding on the parties.[[14]](#footnote-14)
8. The defendant submitted that *Jonathan Lu* is distinguishable as the Court of Appeal did not refer to any of the DDJ’s findings as being applicable or binding for the re-trial in CA Judgment. Therefore, so they argued, the re-trial on the issue of qualified privilege should not be circumscribed in any way by the findings of the DDJ.[[15]](#footnote-15)
9. To start with, I do not think the *Ladd v Marshall* rule or the *Flywin* test applies in the present context, as this is neither an application for leave to adduce further evidence on appeal nor an attempt to raise new points on appeal which had not been canvassed in the court below. Rather, the present dispute relates to the limits of my adjudicative power on the remitter.
10. Recently in *First Laser Limited v Fujian Enterprises (Holdings) Company Limited* [2023] HKCFA 39, the Court of Final Appeal gave the following answer to the question “What is the scope of a remitter when the Court of Appeal (or the appellate court) remits an issue for trial?”:

“Its scope must depend on the terms of the order understood in the context of the judgment giving rise to the remitter.”

1. The Court of Final Appeal specifically approved the following elaboration of Lord Sumption in *Sans Souci Ltd v VRL Services Ltd* [2012] UKPC 6 at para 13.

“It is of course correct that the scope of a remission depends on the construction of the order to remit. ... the construction of a judicial order, like that of any other legal instrument, is a single coherent process. It depends on what the language of the order would convey, in the circumstances in which the Court made it, so far as these circumstances were before the Court and patent to the parties. The reasons for making the order which are given by the Court in its judgment are an overt and authoritative statement of the circumstances which it regarded as relevant. They are therefore always admissible to construe the order. In particular, the interpretation of an order may be critically affected by knowing what the Court considered to be the issue which its order was supposed to resolve.”

1. In the present case, the Court of Appeal did not order a full re-trial but only remitted the issue of malice in the context of qualified privilege for re-trial. In so doing, the Court of Appeal must have assumed that the findings of the DDJ in DC Judgment in other respects would form the basis of the limited re-trial. This is all the more so as the re-trial is directed to take place before a different judge who was not present at the first trial and did not enjoy the benefit of seeing how the witnesses testified in the first trial. It would be impossible for the re-trial court to make findings on the matters afresh.
2. Given the limited scope of the remitter, this re-trial must be built on the findings in the first trial unless they are doubted or overturned by the Court of Appeal. This much is plain from the language of the order when read in the context of CA Judgment. It does not matter that the Court of Appeal did not expressly refer to any of the DDJ’s findings as being applicable or binding for the re-trial as in *Jonathan Lu*.
3. In any event, the Court of Appeal commented that the DDJ, in making findings of the underlying facts, had “rightly” took into account the objective facts, the plaintiff’s evidence and the defendant’s admissions of his knowledge of various matters put to him in cross-examination. The Court of Appeal also commented that the DDJ was “entitled” to draw the inference that the complaints were of no substance based on the evidence he considered.[[16]](#footnote-16) So, the Court of Appeal has endorsed the findings of the underlying facts of the DDJ and the inference drawn by him.
4. Based on his findings of the underlying facts and the inference drawn, the DDJ rejected the defence of justification.[[17]](#footnote-17) As there was no appeal, the findings of the DDJ on the defence of justification remain valid. I reject the defendant’s contention that such findings are not binding for the purpose of the re-trial.
5. Whilst the Court of Appeal doubted the DDJ’s finding, in the context of honest comment, that the defendant knew the comments were without factual or evidential foundation and was dishonest,[[18]](#footnote-18) the defendant did not pursue grounds 1 and 2 of his appeal and the Court of Appeal did not remit the issue of malice in the context of honest comment for re-trial. Save as to one aspect which will be discussed shortly, I reject the defendant’s contention that the DDJ’s findings on honest comment are not binding in the re-trial.
6. Given the way DC Judgment was structured, the Court of Appeal started its analysis by discussing how the DDJ got it wrong in the context of honest comment.[[19]](#footnote-19) The defendant’s abandonment of the grounds of appeal pertaining to honest comment was without prejudice to his argument pertaining to qualified privilege which eventually found favour with the Court of Appeal.[[20]](#footnote-20) In any event, “malice” bears different meaning in honest comment and qualified privilege.[[21]](#footnote-21) Thus, the DDJ’s finding in the context of honest comment that the defendant knew the comments were without factual or evidential foundation and that the defendant was dishonest would not circumscribe the defendant’s case on malice in the context of qualified privilege in the re-trial.
7. For the above reasons, the ensuing discussion will be based on the findings of the DDJ but subject to the comments of the Court of Appeal.
8. It should be emphasized, however, that the DDJ’s findings only serve as the starting basis of the re-trial. The Court of Appeal has reiterated that malice is a subjective test, entirely dependent on the defendant’s state of mind and intention at the time of communication.[[22]](#footnote-22) As such, all the relevant circumstances surrounding the making of the communications should be taken into account, as they could have some bearing in shaping the defendant’s belief, intention and thinking at the time.[[23]](#footnote-23) That would include the evidence omitted by the DDJ (ie Ma’s evidence and the evidence of the disturbances in the Estate and the plaintiff lobbying for signatures in a campaign to remove the 2nd MC), the matters enumerated in para 52 of CA Judgment (see para 74 of CA Judgment) and other matters urged upon me by the parties at the re-trial.

*C2. The focus of the re-trial*

1. To recap, all six articles were found to be defamatory of the plaintiff. The defences of justification and honest comment having failed, the only defence left for consideration is qualified privilege.
2. The only issue that was remitted for re-trial is malice in the context of qualified privilege. As the pleadings go:
3. It is the defendant’s case that all six articles were published “in the ordinary course of business of the Incorporated Owners”.[[24]](#footnote-24)
4. The plaintiff replied that the articles were published “maliciously in that the Defendant knew the statements complained of were untrue, or was reckless as to whether the same were untrue and/or the same were published with an ulterior motive or out of spite or ill-will towards the Plaintiff”.[[25]](#footnote-25)
5. The Court of Appeal has given comprehensive guidance in CA Judgment on the law and how to decide whether a communication was published maliciously, for the purpose of rebutting the defence of qualified privilege. For present purpose, the following summary, taken from para 19.04 of *Duncan and Neill on Defamation and other media and communications claims*, 5th edition (2020), is instructive:

“In the context of qualified privilege express malice connotes that the occasion of privilege has been misused. This misuse of the occasion can be shown in three ways: (a) by proof that the publisher did not believe that what they said was true; (b) by proof that in making the publication the publisher was reckless as to the truth of what they wrote or said; or (c) by proof that the publisher’s dominant motive in making the publication was an improper one, for example, to injure the claimant or to obtain some advantage or to further some interest (of their own or of others) which is unconnected with the duty or interest that gives rise to the privilege. In all these cases, the defendant will have used the occasion for some purpose other than that for which the occasion was privileged.”

1. In this case, it is not disputed that communications between the IO or the MC on the one hand and the owners of the Estate on the other hand regarding the management and administration of the Estate are capable of being covered by qualified privilege.[[26]](#footnote-26) If the defendant’s dominant motive is not to communicate with the owners regarding the management and administration of the Estate, then he is outside the ambit of the defence.[[27]](#footnote-27) This should be one of the focuses of the re-trial.
2. The DDJ also found that the privilege accorded is consistent only with the communication of a matter believed to be true.[[28]](#footnote-28) The Court of Appeal commented that it was a finding that the DDJ was entitled to make, provided there was good reason for it. As it was not fully argued on appeal, the Court of Appeal did not find it necessary to deal with it and left that finding untouched.[[29]](#footnote-29) That finding remains valid for the purpose of the re-trial.
3. According to the Court of Appeal, the significance of that finding is that:

“35. ‘Where the purpose for which the privilege is accorded is consistent only with the communication of a matter which is believed to be true, … the defendant’s knowledge that the matter was false at the time when he communicated it, or his recklessness as to whether it was true or false, will generally be conclusive evidence that he did not make the communication for a proper purpose: normally, that is the only inference which can reasonably be drawn.’

36. ‘In cases where the purpose for which the privilege is accorded is consistent only with the communication of a matter which is believed to be true, the parties may therefore focus on the question whether the defendant knew of the matter’s falsity, or did not care whether it was true or false. … It should however be borne in mind that knowledge of falsity, or indifference as to truth or falsity, is not itself the test of malice: it is merely evidence from which an improper motive can often, but not always, be inferred.’”

1. Given the DDJ’s finding that the underlying factual basis for all six articles was false, another focus of the re-trial should be whether the defendant knew of the matters’ falsity or whether he did not care whether they were true or false.
2. Thus, the focuses of the re-trial are:
3. Whether the defendant did not believe that what he stated in the articles was true?[[30]](#footnote-30)
4. Whether the defendant was reckless as to the truth of what he stated in the articles? [[31]](#footnote-31)
5. Whether the defendant had an improper motive in publishing the articles?

The burden of proving the above is on the plaintiff, as she is seeking to prove malice to rebut the defence of qualified privilege.

1. In closing argument, the defendant also invited this court to decide “if privilege is accorded for communication of matter even if it is not believed to be true”.[[32]](#footnote-32) As I understand, it is not the defendant’s case that he did not believe in the truth of any of the matters stated in the articles. In fact, neither party has proffered argument in that regard. It is not necessary for me to grapple with that issue. In any event, helpful guidance has been given by the Court of Final Appeal in para 21 of *Jonathan Lu*.

*C3. The evidence at the re-trial*

*C3a. Witnesses*

1. Pursuant to the order dated 29 September 2022, the plaintiff, the defendant and Ma attended the re-trial for cross-examination.
2. In para 118 of his closing submissions, the plaintiff’s counsel accepted that the plaintiff’s evidence at the retrial is not particularly relevant, as it did not “relate to what D knew or believed at the time.” Given that the focus of the re-trial is on the subjective state of mind and intention of the defendant at the time of publishing the articles, the evidence of the defendant would be particularly pertinent.
3. The plaintiff’s counsel submitted in paras 121 to 124 of his closing submissions that the defendant had undermined his credibility by his evidence at the re-trial. I do not agree.
4. The defendant clarified in the re-trial that he had a master degree in IT and a bachelor’s degree in BBA. He did not retract from his evidence in the first trial that he was well-educated (相當高學歷[[33]](#footnote-33)).
5. I agree with the defence counsel that the defendant did not “sought to retract from his earlier evidence” concerning the definition of major renovation as submitted by the plaintiff’s counsel. At the re-trial, the defendant made a distinction between renovations that required approval of the general meeting of the owners and extra contribution from the owners and renovations that could be done by Chevalier out of the surplus of the management fees received. There is no inconsistency in the defendant’s evidence on major renovation.
6. The defendant did not describe in the first trial that he had “a friendly and working relationship with Leung at [B/63-64/§§24-25]” as submitted by the plaintiff’s counsel. The submission that the defendant had “sought to distance himself by suggesting in this re-trial that he does not even know Leung, and did not invite him to be part of the 1st MC as consultant” is unwarranted.
7. The defendant’s application to introduce new evidence in the re-trial will be discussed in section C3d below. Whilst I have dismissed the application, I do not accept the submission of the plaintiff’s counsel that that was a “surreptitious attempt at re-shaping his evidence”. As pointed out by the defence counsel, the defendant was then unsure about the details of W&K’s involvement in the renovation of 富嘉花園 and only found that out later (“因為喺開呢個會嘅時候，我對大圍富嘉嗰邊冇知道咁多詳情嘅，咁到後來報章呀、雜誌呀，或者有線新聞台呀，都重點講大圍富嘉，喺報章上面，咁我哋先攞到多啲資料嘅，當時我哋知道富嘉係有問題嘅。”[[34]](#footnote-34)).
8. The fact that at the re-trial the defendant repeatedly reiterated his subjective thinking at the time does not constitute malice.
9. In closing argument, the plaintiff’s counsel urged this court to place little weight on Ma’s evidence because *inter alia* Ma is not an independent witness. With respect, that submission is not open to the plaintiff to make without proper cross-examination. As noted by the defence counsel, Ma was not questioned on any of the contents of the articles when he was tendered for cross-examination at the re-trial.
10. The plaintiff has not succeeded in discrediting the defendant and Ma and I accept their evidence.

*C3b. The absence of Kot Ching Chu (“Kot”)*

1. Kot did not testify in the first trial and the re-trial.
2. In closing argument, the plaintiff’s counsel criticised the defendant for not calling Kot.[[35]](#footnote-35) It is said that Kot was a member of the 14th OC, the 1st MC and the By-Elected 1st MC and was familiar with the affairs of the Estate. She would be able to give helpful evidence on matters such as the discussion at various meetings of the OC or MC on “大型維修工程”. The plaintiff went so far as to invite this court to draw an adverse inference against the defendant. In reply, the defendant’s counsel said no adverse inference could be drawn as the defendant was confined by the order of 29 September 2022 to call the defendant and Ma only. The defence is right.
3. When this case was set down for re-trial, it was directed *inter alia* that the evidence given by the witnesses in the first trial be part of the evidence in the re-trial and that the plaintiff, the defendant and Ma would be further cross-examined: see paras 2 and 3 of the order dated 29 September 2022.[[36]](#footnote-36) It is not apparent from the Reasons accompanying the order that the plaintiff had requested the defendant to tender any additional witnesses for cross-examination.[[37]](#footnote-37)
4. As a matter of fact, Kot was scheduled to testify for the defendant in the first trial. When the defendant opened his case, a decision was made not to call Kot “for the purpose of procedural economy”.[[38]](#footnote-38) Upon the plaintiff confirming that there was no application to subpoena Kot, the DDJ decided to ignore Kot’s witness statement and proceeded with the trial.[[39]](#footnote-39)
5. In the first trial, the counsel then representing the plaintiff did not ask the DDJ to draw any adverse inference against the defendant for not calling Kot. Instead, she invited the court to reject the defendant’s evidence that he had learnt from Kot that the plaintiff had begun lobbying to unseat the 2nd MC “immediately” after the 2012 AGM[[40]](#footnote-40) as it was not supported by Kot’s evidence.[[41]](#footnote-41) As it turned out, the DDJ excluded from consideration the evidence of the plaintiff’s lobbying for signatures in a campaign to remove the 2nd MC altogether.
6. In any event, since the re-trial is concerned with the defendant’s state of mind when he published the articles and much had happened since the 2012 AGM, whether the plaintiff started lobbying for signatures to unseat the 2nd MC “immediately” after the 2012 AGM is neither here nor there. There is no basis to draw any adverse inference against the defendant and I reject the plaintiff’s contention.

*C3c. Documentary evidence*

1. The trial bundles used in the first trial, with the necessary updates, are reused in the re-trial. As noted by the DDJ, the factual matrix of this case was mostly contemporaneously recorded in writing and neither party had significantly challenged the accuracy of the record.[[42]](#footnote-42) That remains the position in the re-trial.
2. The transcript of the first trial is also provided for my reference in Bundles D1 to D3.

*C3d. The defendant’s new evidence*

1. On Day 3 of the re-trial, the defendant filed his 3rd Supplemental List of Documents giving discovery of four newspaper articles and applied to cross-examine the plaintiff on such documents. That was met with strong objection from the plaintiff.
2. In argument, the defendant’s counsel referred to the defendant’s evidence in the first trial that after the 2012 AGM he found out more from newspapers about W&K’s involvement in bid-rigging in the renovation of 富嘉花園.[[43]](#footnote-43) Counsel said the new documents were provided by the defendant at a conference prior to the re-trial and the same was annexed to the defendant’s opening submissions to give advance notice to the plaintiff.
3. I dismissed the application after hearing the argument. Whereas the defendant took the trouble to file a Supplemental List of Documents, there was no affidavit to ground the application. In particular, there was nothing to explain the lateness of the discovery. It is quite apparent that these documents were recent printouts (printed in 2024 after the first trial) and the defendant could not have referred to them in his witness statement and in the first trial.

*D. Discussion*

*D1. The 1st Article*

1. The 1st Article, dated March 2013, was published by the defendant in the name of the IO to the owners of the Estate. A copy of the article is at [A1/29].
2. The article has three parts.
3. The concluding part called for support of the owners to fight against the so-called “greedy and violent” person or persons (貪婪的、暴力的人).
4. The first part, entitled “業主又要夾$幾萬$，重選法團?”, is on greed. The DDJ found that a reasonable reader would understand it to mean that the plaintiff was keen to be the chairperson of the IO so that she could enrich herself by pushing through the renovation works, that she was cunning and deceitful, that she compromised the interests of the owners while she benefited, and that she did not properly discharge her duty as the chairperson.[[44]](#footnote-44) Specifically, the DDJ found that defamatory stings that the plaintiff would derive a personal benefit from the renovation project (such as “二千多萬工程已是囊中之物，但見財化水”, “做法團係唔係有著數？死都要搶，兩年換一屆都等唔切，真係咁等錢洗” and “咁多個主席當中，妳最古惑、最夠膽去掠水” in the 1st Article) were not based on true facts.[[45]](#footnote-45)
5. The second part, entitled “誰令富怡變得如此暴力？”, is on violence. The DDJ found that a reasonable reader would understand the article to mean that the plaintiff persistently tried to seize control of the IO and caused disruption and chaos for that purpose, and she resorted to verbal abuse or violence.[[46]](#footnote-46)
6. It is the defendant’s evidence that the dominant purpose of his publication of all six articles was to respond to something that had happened in the Estate:

“嗱，我哋呢五、六份嘢裡面，最主要就係話，每一次有嘢發生咗。我哋去respond嘅啫，唔係專注係去點樣去--點樣講呢？去對邊--講邊個。”[[47]](#footnote-47)

1. As regards the 1st Article, he said:

“如果就住呢份文件，因為其實完咗嗰個所謂722嗰個AGM之後，其實原告人喇，即係，係，同埋佢哋一班人係不斷咁係滋擾嘅，咁同埋喺當時情況嘅時候，佢哋又要即係發動一次5個per cent，咁變咗成個屋苑根本滋擾得係好利害嘅，其實啲居民係真係好反感嘅。咁其實呢封信裡面講嘅嘢，係我係quote啲街 -- 即係我係引述啲街坊講嘅嘢，其實我自己都係同意嘅。因為真係嗰段日子喇，係從來富怡 -- 即係我哋屋苑喇，未試過係咁混亂嘅。同埋差唔多每個禮拜六、日，都係有人出嚟搞事、鬧事，每一次同管委會都係開唔到嘅，每一次都係報警收場。咁其實個管委會上場，只不過就係話好短時間之嘛，幾個月之嘛，咁其實每兩年都會係會重選一次㗎嘛，咁冇乜必要係花咁多氣力咁樣做。我唔認同--我唔認同呢種做法嘅，而其實大部分居民都係覺得咁係唔啱嘅，所以好多居民都有呢個反應，咁當然喇，我都係其中一個居民，一個業主喇，其實我都係同意呢啲講法嘅。”[[48]](#footnote-48)

1. He said that the 1st Article was prompted by the following incidents:
2. On 2 February 2013, the plaintiff and others distributed leaflets at the Estate and the police was called. A copy of the leaflet, issued in the name of “劉志榮（法團成員）” (“Lau”) and entitled “富怡花園將失去40多萬元資助！”, is at [C1/161]. The leaflet was concerned with the Energy Efficiency Project at the Estate and it ended with a call to “切換現屆委員，重新進行選舉”. According to the incident reports at [C4/931 to 934], there were complaints from owners that the conduct of the plaintiff’s camp had caused nuisance.

On 6 February 2013, Chevalier issued a letter entitled “有關捏造事實，造假誤傳將失去四十萬，發動解散法團” to the owners in response to Lau’s leaflet. It clarified that Lau was not a member of the 2nd MC and refuted the other allegations in the leaflet. Chevalier’s letter is at [C4/1113 to 1114].

1. There were then reports of distribution of leaflets through the iron grille of the residential flats in the Estate on 7 February 2013 (see the incident report at [C4/938 to 939]). A copy of the leaflet, again issued in the name of “劉志榮（法團成員）”, is at [C1/162]. Apart from mentioning the Energy Efficiency Project, the leaflet also touched upon renovation of the Estate (天台工程，污水渠 ... 法團業主從未見過圖則、內容、規模和維修保養開支，更無諮詢。管委會卻聲稱：無需集資、價廉物美、便宜多少、居民欣然，節省多少。從無說明內容，如何比較！如今，幾項工程同時進行，不須法團業主通過，管委會可隨意動用數百萬元！本苑財務並不充裕，是否應該審慎？). The leaflet ended with a plea for re-election of the MC (本人希望可重選委員 …).
2. On 8 February 2013, the plaintiff handed in copies of signatures to support Lau’s request to convene an EGM.[[49]](#footnote-49) That evening, the plaintiff, Lau and others including Tsang (曾寶強, an owner of the Estate) (“Tsang”) were seen distributing leaflets to the owners through the letter box and the police were called (see the incident report at [C4/936 to 938]).
3. On 23 February 2013, the defendant was threatened at the Estate. According to his statement to the police at [C4/943 to 944], he was followed as he was walking to the car park in the Estate and someone used foul language against him. Upon reaching the passenger lift in the car park, a male and a female came forward to hold the lift and uttered foul language against him and threatened, “我認得你架，你再做我就搵人郁你。” The defendant told the police, “今次我比人刑事恐嚇相信係有關依家我從事業主立案法團主席既問題，另外之前係數月前都係依一班人鬧我，但係今次有刑事既成份我先會報警救助。”
4. According to the incident report at [C4/940], leaflets were found at the IO’s notice box and the car park notice box on 23 February 2013.
5. On 24 February 2013, leaflets were found affixed at some shops in the Estate. The relevant incident report is at [C4/942] and photographs of such leaflets are at [C1/164 to 166]. The leaflet, issued in the name of the plaintiff and Lau, was in these terms:

“推翻楊XX這隻狗

勾結及指示管理處

破壞及偷取車主物品

並未還回被偷取及損壞物品

作出賠償

經已兩次報警

同律師商討採取法律行動

起來，起來，革命！

推翻這隻狗

梁志貞、劉志榮”

1. On 19 March 2013, the plaintiff and Lau disrupted the meeting of the 2nd MC to hand in copies of the signatures for calling an EGM again. As recorded in the minutes of that meeting at [C4/945 to 946], the meeting ended abruptly because of verbal violence (因會議進行期間，有部份在場列席的業主以粗暴的言語干擾會議，令會議無法繼續進行，於21:44被逼腰斬。)
2. On 23 March 2013, the plaintiff and others distributed leaflets block by block at the Estate. According to the incident report at [C4/947 to 948], approximately 18 people including the plaintiff and Lau swiftly moved from block to block to distribute the leaflets with some people blocking the security guards.
3. On 24 March 2013, an anonymous letter entitled “「富怡」淪陷，政府無能，業主叫苦連天，天理何在？” was issued to the owners of the Estate. The letter, exhibited at [C5/1104], was critical of the defendant (富怡花園主席楊漢成一幫人，欺騙業主支持，濫用職權，黑箱作業，隻手遮天 …) and its content touched upon the state of repair of the facilities at the Estate (不擇手段--為求目的，犧牲屋苑利益，任由屋苑內設施失修，水管破爛，縱使居民投訴，亦視若無睹), the 2nd MC’s approach in renovation (貪婪掠水 -- 將工程拆細，避過開會議決，甚至先斬後奏，陰乾業主血汗錢) and the request to convene an EGM (漠視業主 -- 有足夠投訴業主簽名，亦拒絕召開業主大會，與業主對話). The letter ended with this statement, “我們是否繼續啞忍呢？有誰可以幫助我們呢？”
4. The incidents highlighted above are well-documented and not disputed. I give due weight to the contemporaneous documents and make the following findings:
5. As the Court of Appeal noted in para 16 of CA Judgment, there were concerted efforts after the 2012 AGM to remove the defendant as the chairman of the 2nd MC. The incidents highlighted above is evidence that such efforts had not abated and the Estate was still embroiled in turmoil at the time of the 1st Article.
6. Although the plaintiff’s proposal for major renovation was voted down some time ago in the 2012 AGM, the issue of renovation was still being used as an excuse to recall the defendant (eg paras 80(b) and (i) above).
7. The incidents caused nuisance to the owners (eg paras 80(a), (c) and (h) above) and disrupted meetings of the 2nd MC (eg paras 80(g) above). Some of the incidents involved verbal violence (eg paras 80(f), (g) and (i) above) or threat of physical violence (eg paras 80(d) above), and reports were made to the police (eg paras 80(c) and (d)).
8. The plaintiff was personally involved in some of the above incidents (eg paras 80(a), (c), (g) and (h) above). Although she denied any involvement in the incident mentioned in para 80(f) above, her name appeared on the leaflet. The plaintiff was unmistakably party to Lau’s campaign to recall the defendant (eg paras 80(c) and (g)).
9. The contents of the 1st Article reflected what had happened. There is nothing to suggest that the defendant did not believe in what he stated in the 1st Article concerning violence or that he was reckless as to whether such statements were true or not.
10. It is the defendant’s evidence that he was referring to the contractor for the renovation project (信豪) when he wrote the statement “二千多萬工程已是囊中之物，但見財化水”.[[50]](#footnote-50) Nonetheless, he admitted that he intended the 1st Article to convey to the owners that the plaintiff would derive a personal benefit from the renovation project.[[51]](#footnote-51)
11. He said he had no evidence of the plaintiff deriving personal benefit from the renovation project but he had his suspicion (“我覺得我倚賴嘅基礎唔薄弱，但係我證據係薄弱嘅，我係冇證據嘅。”[[52]](#footnote-52)). He elaborated that:

“問： … 佢點樣喺呢一啲過程裡面從中獲利呢？

…

答： 其實好多時大維修香港而家，好多時候嗰啲不法嘅商人喇， 或者承辦商喇，黑社會喇，或者物管公司，往往係用好多 手法同嗰啲法團，特別係主席係拉--即係連線起嚟嘅，咁其 實佢哋會教好多方法喇，提佢點樣做喇，有晒律師，有晒 唔同嘅人去幫佢哋手嘅，咁令到佢哋能夠逃避咗好多嘅法 律責任喇，同埋表面上好似好公道咁做嘅。咁妳問我有冇 實質證據，我--喺我哋屋苑裡面嘅case，我係提供唔到實質 證據畀妳嘅，但係我自己都熟習，即係我自己都曾經係主 席，而家都係喇，我都明白--或者我知少少喇，就話嗰個市 場嘅做法囉。所以妳睇番之前佢嘅運作，其實冇可能係唔 清晰，就算我哋做一個好細嘅工程，都冇可能喺由招標到 投標二十幾日--二十二日裡面做，16號通知見標，17號就 見標。20號就擺嗰啲分析出嚟，22號過大會，其實就睇中 咗我哋呢類型基層屋苑，大部分都係年紀比較大，知識水 平比較低嘅人係埋手嘅啫。”[[53]](#footnote-53)

1. He offered three bases for his suspicion:

“問： 咁你都同我講咗，有三--大致上三個原因點解你懷疑嘅， 第一，就係嗰個--頭先嗰個同梁德戴嗰個飯局喇。

答： 係。

問： 第二，就係嗰個時間上好倉促，推出呢個維修喇。

答： 係。

問： 咁第三就係，有--唔係咁公開同埋唔係咁透明。

答： 係。

問： 係，咁其實你都承認你冇任何事實嘅根據，或者證據去支 持你呢一個說法，就係話當中係牽涉所謂利益呀，有嚿肥 豬肉呀咁樣樣落袋呀呢啲咁樣嘅指稱㗎喎，係咪？

答： 我同意我係冇具體嘅證據嘅。

問： 而我哋琴日同埋今日都講過，亦都向你指出，就係話其實 你頭先所謂嘅懷疑嘅基礎，亦都理據係好薄弱嘅，你同唔 同意呀？

答： 我唔同意。”[[54]](#footnote-54)

1. The Court of Appeal held that the first basis (梁德戴個飯局) should be taken into account. It is the defendant’s evidence that:

“問： 咁當然其實梁生亦都唔係證人，咁我哋都冇辦法得知佢當 時嘅想法係點喇。咁但係我相信你都會同意，呢一個飯局 我諗當時係2010年喇，係咪？大概。

答： 係，約莫係嗰個時分，係。

問： 咁同埋--咁梁女士--即係梁志貞女士（原告）係參與呢個飯 局嘅，係咪？

答： 冇嘅。

問： 亦都冇證據顯示佢同呢個梁德戴先生，或者梁德戴先生嘅 朋友係有啲甚麼嘅--不當嘅想法或者勾當喎，係咪？嗰陣 時。

答： 冇嘅，係。

問： 咁你亦都唔會--你當時亦都唔會猜想話呀，梁女士係點樣有 份呀，被牽連在內呀咁樣樣喇。

答： 當時冇。

問： 咁但係你就倚賴--睇下我理解正唔正確，你係咪倚賴呢一個 經歷，呢一個食飯呢一個佢當時同你講嗰樣嘢喇，假設係 真嘅話，你係咪倚賴呢一樣嘢去支持你嗰個想法，就係話 呀，所以管委會其後--即係梁女士做主席嗰屆喇，建議呢個 大維修就一定係涉及一啲不當嘅行為，同埋涉及一啲不當 嘅利益呀，呢個係咪你嘅...

答： 其實我係有些少懷疑嘅，坦白講。”[[55]](#footnote-55)

1. As to the second basis (時間上好倉促), the defendant maintained that:

“因為最主要就係話成個大維修係牽涉好多居民嘅利益嘅，咁又係成個大維修喇，根本個--嗰個時間，由開始公開招標，到到業主大會通過只係得二十二日，實質除番晒啲假期，回咗標之後得幾日時間之嘛，咁一個即係幾千萬嘅咁巨型嘅項目，而且個居苑裡面第一次發生囉，咁其實成個運作係--我覺得係唔理想同唔恰當囉。”[[56]](#footnote-56)

1. As to the third basis (唔係咁公開同埋唔係咁透明), the defendant stated in his witness statement:

“45. 根據補選管委會2012年3月31日的會議紀錄，黃鄺作為工程顧問，其中一項職責是提供工程估價。業戶即使沒有維修經驗和相關知識，亦可依據估價來衡量承建商的標價而作出選擇。可是，黃鄺於2012 年5 月25日向法團作出的《 詳細勘察報告及建議工程項目》("黃鄺報告")中，根本沒有作出工程的建議估價。這違反了當初黃鄺被委任為工程顧問的根本要求。

46. 除了沒有估價之外，黃鄺報告實際上只有11頁內文(其餘全部是勘察照片和描述記錄)，對比起意顧問報告及裕基報告，黃鄺報告對於勘察部份及建議工程的討論和分析極之簡單。另外,其建議使用物料的單價和估計數量完全欠奉，最重要的是，黃鄺報告內的意見竟然沒有經由任何合資格人士簽署核實。總括而言，黃鄺報告顯得是一份急就章的文件，予補選管委會用以支持他們繼續推動大維修。

…

52. 即使時間緊迫，黃鄺仍只在2012年7月20日（即距離2012年7月22日業主大會2天前）才發出《承投商標價分析報告》 ... 可是，黃鄺的實質估價卻從沒有向業主披露 ...”[[57]](#footnote-57)

1. The fact that the information and papers were made available to the owners before the 2012 AGM (as found by the DDJ in para 104 of DC Judgment) does not render the defendant’s evidence on his subjective suspicion unbelievable.
2. Given the defendant’s explanation (which I accept), there is no basis for the plaintiff to contend that the defendant did not believe in what he stated in the 1st Article concerning greed or that the defendant was reckless as to whether such statements were true or not.
3. At the re-trial, the plaintiff’s counsel also submitted in para 175 of his closing submissions that:

“… it was plain and obvious that the publication of the 1st Article was … for the dominant purpose of retaining and controlling the IO/MC, with a view to participating in the 2015 District Council election. These matters were interconnected in D’s mind, and the publications were not aimed at informing or otherwise communicating to the owners [about] affairs relating to the management of their residences.”

1. The defendant took a pleading objection. His counsel submitted that insofar as the plaintiff made a point that the defendant had published the articles with an ulterior motive not related to the affairs of the Estate, such other motive would need to be pleaded.[[58]](#footnote-58)
2. The plaintiff’s counsel responded that:[[59]](#footnote-59)
3. The plaintiff has pleaded that the articles were published “with ulterior motive” in her Amended Reply (at paras 14, 23, 30, 37, 45 and 53). Insofar as the defendant was dissatisfied with the plaintiff’s pleading, he should have sought further and better particulars.
4. In any event, District Council election was pleaded by the defendant in paras 2(k) to 2(n) of the Amended Defence.
5. The defendant is right. There is a special rule for defamation actions in Order 82, rule 3(3) of the *Rules of the District Court*, Cap 336H, that:

“Where in an action for libel or slander the plaintiff alleges that the defendant maliciously published the words or matters complained of, he need not in his statement of claim give particulars of the facts on which he relies in support of the allegation of malice, but if the defendant pleads that any of those words or matters are fair comment on a matter of public interest or were published on a privileged occasion and the plaintiff intends to allege that the defendant was actuated by express malice, he must serve a reply giving particulars of the facts and matters from which the malice is to be inferred.”

1. As explained in para 30-005 of *Gatley on Libel and Slander*, 13th edition (2022):

“There is a specific rule of pleading that whenever it is intended to allege in answer to a plea of common law or statutory qualified privilege that the defendant was actuated by express malice, the claimant must serve a reply giving particulars of the fact and matters from which the malice is to be inferred. Malice is a very serious allegation of intentional impropriety or bad faith and the rules of pleading allegations of this kind are strict. It is not sufficient merely to plead that the defendant acted maliciously. The plea must be more consistent with the presence of malice than with its absence; if it is not, it is liable to be struck out.

…

Generalised or formulaic statements will not be permitted. The plea of malice must focus upon what the defendant did or said or knew. The court will be sceptical about pleas of malice in which the claimant pitches the meaning high and then asserts that the defendant did not or could believe that high meaning to be true, and so was malicious. The claimant must allege specific facts from which it is alleged the inference is to be drawn. …”

1. In my view, the plea in the Amended Reply that the articles were published “with ulterior motive” is too generalized to satisfy Order 82, rule 3(3).
2. Moving on, the defendant complained in paras 2(k) to 2(n) of the Amended Defence that the plaintiff had “sent out around 2,000 letters to each and every flat and shops of the Estate to inform the latter of her commencement of these proceedings” and as a result of that “the Defendant lost his election of District Councilor”. That relates to alleged bad faith on the part of the plaintiff in using this action to sabotage the defendant’s election and has nothing to do with the state of mind of the defendant at the time of communication.
3. It is true that at the first trial:
4. It was the defendant’s evidence that:

“喺2011年嘅時候我當時落選嘅票數係1100票，咁妳睇番2015年嘅時候呢，我雖然落選，我已經攞到1950票，咁我亦明白到，叫做僥倖喇，做法團嘅時候都好多街坊嘅認同喇。咁好明顯地呢，我主要嘅票源係嚟自富怡花園嘅，咁我哋支持度係相當高㗎，所以如果要打擊我嘅選情呢，就最重要就喺富怡嗰度埋手嘅，因為我主要嘅source（即係個來源）個票源就喺富怡…”[[60]](#footnote-60)

1. It was put to him that:

“問： 而你出呢一啲咁樣嘅通告同埋信件並唔係為咗保護屋苑裡面居民嘅利益？

答： 哦，我唔同意。

問： 而只係你「一而再，再而三」利用你作為主席嘅身分，喺由2013年至到2015年兩年嘅期間係不斷咁樣針對原告人，你同唔同意？

答： 我唔同意。

問： 而你咁樣做呢，係因為你想㧬固番你做主席呢一個身分或者地位嘅，你同唔同意？

答： 我更加唔同意，係。

問： 因為你覺得如果㧬固到你作為主席嘅話呢，係可以幫助到你區議會選舉嘅選情，你同唔同意？

答： 唔同意。”

1. The plaintiff’s then counsel submitted in her written closing submissions that:

“The irresistible inference is that D is plainly abusing his position as the Chairman to repeat these defamatory statements to arouse controversies or disgust against P (as the only other previous Chairlady of the IO) in order to keep his throne to the chairmanship. This is clearly an improper motive which destroys the privilege (if any) apart from personal spite: *Horrocks v Loew* at 150E-G. On his own evidence, D accepted that his position as the Chairman of the IO would assist him in running for the District Council election.”[[61]](#footnote-61)

1. And she supplemented in her oral closing submission that:

“We say the predominant purpose was to make use of these leaflets to arouse controversy, to maintain his position as the chairman, to eliminate any possible threat to that position. Now, of course when you run for a particular election in the District Council, you need time to prepare for that. And in the box he accepted that his position as the chairman of the incorporated owners was certainly helpful to his election campaign and in fact he said most of the votes should come from his own very estate, that’s Cheerful Garden.

So your Honour, we say the fact that the first to fifth publications were not that close in time to the election does not detract from the position that all these publications were published with an improper motive.”[[62]](#footnote-62)

1. It is not apparent from the record that the defendant had taken objection at the first trial to the plaintiff relying on an unpleaded purpose or that the DDJ was asked to make a ruling.
2. In any event, the Court of Final Appeal made it clear in para 21 of *Kwok Chin Wing v 21 Holdings Ltd* (2013) 16 HKCFAR 663 that:

“It should by now really be quite unnecessary to issue yet another reminder on the rationale behind pleadings. The basic objective is fairly and precisely to inform the other party or parties in the litigation of the stance of the pleading party (in other words, that party’s case) so that proper preparation is made possible, and to ensure that time and effort are not expended unnecessarily on other issues: *Wing Hang Bank Limited v Crystal Jet International Limited*. It is the pleadings that will define the issues in a trial and dictate the course of proceedings both before and at trial. Where witnesses are involved, it will be the pleaded issues that define the scope of the evidence, and not the other way round. In other words, it will not be acceptable for unpleaded issues to be raised out of the evidence which is to be or has been adduced.”

1. It is clear that the plaintiff should not be allowed to rely on any unpleaded purpose out of the evidence.
2. Turning to the plaintiff’s pleaded case that the defendant published the articles “out of spite or ill-will towards the Plaintiff”, Lord Diplock gave some examples of improper motives that destroy qualified privilege in p 150 F-G of *Horrocks v Lowe*:

“The commonest case is where the dominant motive which actuates the defendant is not a desire to perform the relevant duty or to protect the relevant interest, but to give vent to his personal spite or ill will towards the person he defames. If this be proved, then even positive belief in the truth of what is published will not enable the defamer to avail himself of the protection of the privilege to which he would otherwise have been entitled.”

1. That was followed up by Lord Reed NPJ in para 18 of *Jonathan Lu* where His Lordship said:

“In practice, as Lord Diplock also said at 149, the plaintiff generally sets out to prove that a desire to injure him was the defendant’s dominant motive. But Lord Diplock went on to explain that ‘qualified privilege would be illusory, and the public interest that it is meant to serve defeated, if the protection which it affords were lost merely because a person, although acting in compliance with a duty or in protection of a legitimate interest, disliked the person whom he defamed or was indignant at what he believed to be that person’s conduct and welcomed the opportunity of exposing it’ (at 151). Accordingly, in a case where a person has published what he believes to be true, ‘it is only where his desire to comply with the relevant duty or to protect the relevant interest plays no significant part in his motives … that ‘express malice’ can be properly found’ (*Ibid*).”

1. The Court of Appeal also reiterated in para 33 of CA Judgment that:

“A person may have more than one motive or purpose for making a communication. The critical question is whether the dominant purpose was one other than the purpose for which the occasion was privileged. …

in a case where a person has published what he believes to be true, ‘it is only where his desire to comply with the relevant duty or to protect the relevant interest plays no significant part in his motives for publishing what he believes to be true that ‘express malice’ can properly be found’.”

1. So, even if the plaintiff manages to point to some evidence of spite or ill will on the part of the defendant, she still has to prove that the defendant’s desire to communicate with the owners regarding the management and administration of the Estate played no significant part in his motives in order to succeed in proving express malice. That, she has failed to establish in this case.
2. All in all, I am not satisfied that the plaintiff has succeeded in proving malice on the part of the defendant and the defence of qualified privilege is not rebutted as regards the 1st Article.

*D2. The 2nd Article*

1. The 2nd Article, dated 18 April 2013, was published by the defendant in the name of the IO to the owners of the Estate. A copy of the article is at [A1/30].
2. This article is entitled “保安公司--辭職” and contains three parts.
3. The first part, entitled “違反招標程序”, is concerned with the selection of Centurion Facility at the 2012 AGM (世紀中標了). According to the DDJ, a reasonable reader would understand it to mean that the plaintiff acted against the relevant rules and regulations by substantially reducing the tender price of Centurion Facility which led to its appointment.[[63]](#footnote-63)
4. The second part is entitled “東窗事發，廉署介入”. According to the DDJ, a reasonable reader would understand it to mean that the plaintiff’s misconduct was so outrageous and appalling that the ICAC found it necessary to investigate.[[64]](#footnote-64) Furthermore, a reasonable reader would also understand the statements to mean that the plaintiff has committed a criminal offence, given the use of the phrases “東窗事發” and “明目張膽” which in Chinese would usually indicate the commission of an offence.[[65]](#footnote-65)
5. The third part, entitled “保安服務的安排”, set out the short-term (短期方案) and long-term solutions (業主大會，由業主投票選舉) upon the resignation of Centurion Facility.
6. The DDJ noted in para 132 of DC Judgment that there was a contemporaneous record of what had happened – Chevalier’s letter dated 1 August 2012 (at [C1/172 to 173]). Based on that letter, the DDJ found no impropriety on the part of the plaintiff as (a) the plaintiff was informed by Mr Wong of Chevalier that there was a legitimate reason for the reduction and she sought and relied on legal advice, (b) the reason for the revision of tender price was explained to the owners and (c) Centurion Facility was selected by the majority of the owners because they had been serving the Estate and there was no indication that the price reduction had any connection with the voting result.[[66]](#footnote-66)
7. The defendant confirmed in his evidence that he had read Chevalier’s letter before publishing the 2nd Article. But he insisted that the plaintiff’s action was improper:

“問： 咁我向你指出喇，其實你發呢個傳單，亦都係偏頗咁樣針 對梁女士嘅，你同唔同意呀？

答： 唔同意。

問： 如果唔係你睇完嗰封信，其實你知道有其他人係牽涉喺 內， 而亦都係有法律--有律師係表達過意見，覺得冇問題， 你 呢啲唔寫，凈係寫梁女士一個人違規，將呢個標價大幅 下降，你係咪咁嘅意思？

答： 係呀。

問： 你覺得咁樣都唔係針對佢？

答： 唔係針對，呢個係事實嚟㗎嘛。

問： 咁點解你唔寫話黃經理都有份牽涉在內，係佢要求宣布， 同埋你唔寫陳律師講咗--即係講解咗喇，當時？

答： 因為當時梁女士係大會主持，而且係法團主席吖嘛，其實 個--即係個決定係佢決定㗎嘛。

問： 咁所以即使你已經睇過頭先其士覆番嚟嗰封信，你亦都同 意咗即係部分嘅內容喇，起碼係關於陳律師同埋黃經理交 代嗰度嘅內容，你都仍然係選擇喺2013年4月18號，過 咗幾個月之後，出呢一封信嘅時候，仍然係將個矛頭指向 梁女士，係咪？

答： 係。”[[67]](#footnote-67)

1. Given the defendant’s evidence, there is no basis for the plaintiff to contend that the defendant did not subjectively believe that the plaintiff had acted improperly or that he was reckless. As the Court of Appeal said in paras 39 and 75 of CA Judgment, in ordinary life people may leap to conclusions based on inadequate evidence. Despite the imperfection of the mental process, a positive believe that the conclusions they have reached are true is all that the law requires.
2. As regards the second part of the article, it is the defendant’s evidence that he did not intend it to mean that the plaintiff was being investigated by the ICAC:

“問： … 「此舉」呢度，即係呢個舉動你係--意思係咪話緊梁女 士自己違規，將呢個投標價就大幅下降呢一個舉動呀？

答： 係呀，呢度講緊個降標價，係。

問： 就係講緊佢嗰個舉動喇，係。

答： 係。

問： 即係你講緊梁女士呢個舉動，就完全違反招標程序，同埋 公平原則。

答： 係。

問： 咁等等等等喇，咁就事態就--你呢度講就事態相當嚴重，亦 都太過明目張膽喇。

答： 係。

問： 咁所以廉政公署亦都進行調查喇，係咪？

答： 係。

問： 咁但係其實冇任何--就你所知嚟講，冇任何嘅證據係證明原 告係畀ICAC--即係廉政公署係作出調查或者起訴嘅，係 咪？

答： 我冇話係查佢。

問： 哦，你冇話係查佢，係。咁你自己知道，其實應該係冇查 佢嘅。

答： 唔係，我唔知佢--有冇查佢。

問： 你唔知有冇查佢。

答： 我亦唔知--我意思即係話呢單嘢ICAC係查嘅，但係唔知查 邊個，因為佢哋冇講係查邊個嘅。”[[68]](#footnote-68)

1. The DDJ followed well-established authorities and adopted an objective approach in analyzing the meaning of the articles.[[69]](#footnote-69) He excluded from consideration the subjective interpretation or understanding of the parties as to the meaning of the words used and came to his conclusion that the articles were defamatory.[[70]](#footnote-70) But as the Court of Appeal reiterated in para 37 of CA Judgment, when it comes to deciding whether a communication was published maliciously in the context of qualified privilege, the communication has to be understood in the context as the defendant meant it to be understood. Based on the defendant’s subjective understanding that the 2nd Article did not implicate the plaintiff, there is nothing to show that the defendant did not subjectively believe that what he wrote was true or that he was reckless.
2. It may be said that the first and second parts of the article contained defamatory materials that went beyond what was necessary for the purpose of communicating with the owners about the resignation of Centurion Facility. Yet, as the Court of Appeal explained in paras 42 and 43 of CA Judgment,

“… the test is not whether it is logically relevant but whether, in all the circumstances, it can be inferred that the defendant either did not believe it to be true or, though believing it to be true, realised that it had nothing to do with the particular duty or interest on which the privilege was based, but nevertheless seized the opportunity to drag in irrelevant defamatory matter to vent his personal spite, or for some other improper motive.  Here, too, judges and juries should be slow to draw this inference.”

1. In the present case, there is insufficient evidence to show that the defendant, though believing what he stated in the 2nd Article to be true, realised that it had nothing to do with communicating with the owners of the resignation of Centurion Facility, but nevertheless seized the opportunity to drag in irrelevant defamatory matter to vent his personal spite. Had it be so, he would have named the plaintiff in the second part of the article.
2. All in all, I am not satisfied that the defendant had abused the privileged occasion in publishing the 2nd Article.

*D3. The 3rd Article*

1. The 3rd Article, dated 25 April 2013, was published by the defendant in the name of the IO to all the owners of the Estate. A copy of the article is at [A1/31].
2. The article was concerned with what happened at the 7th meeting of the 2nd MC held on 20 April 2013. It contained five sections, with the following headings: “政治與黑勢力”, “克制令事件降溫”, “政治角力，永無寧日”, “是非謠言滿園飛” and “富怡和諧，需你我齊心打造”.
3. The DDJ found that a reasonable reader would understand it to mean that the plaintiff had connections with triads (黑勢力) and she mobilized those members to cause chaos and disruptions to meetings which required police intervention.[[71]](#footnote-71)
4. The defendant said that he published the article in response to what he described as “史上最大嘅騷動”. He gave this account to the police:

“於2013年4月20日，晚上8時30分我哋法團喺富怡花園法團辦公室開會，我事先準備咗10名保安員喺法團辦公室外戒備，及依法例設咗8個業主列席位置喺會場內，並俾佢哋呢班反對我哋嘅前法團成員及支持者代表入場，共5人入場，無登記姓名，其中一名男子年約40－50歲，高約1.78米，強壯身材，帶眼鏡，skin hair，身穿“新巴”公司制服。下稱WP。

佢哋集結咗一班居民在辦公室外，大約有100人鼓譟並拍打窗門，佢哋要求我哋停止法團之前所有嘅議決，並重選立案法團。我哋法團無理會佢哋嘅要求繼續開會，開會時有民政事務署職員在場列席。出面鼓譟者仲報警求助要求進入會場。

於同日晚上大約10時15分會議完畢，現場有保安員及警察保護我哋8名委員離開會議場地，當我行出門口時成班人已包圍我推撞，WP向我衝過嚟揮動左拳打中我右下腹，然後不斷拉扯我外套，當時保安經理李生立即捉住WP隻手保護我，我繼續向前行，WP再衝上嚟揮右拳打中我左前胸。

現場軍裝警察目擊過程擔心我受傷害，就叫我返入立案法團辦公室迴避，於是由警察同保安員在辦公室外保護我。我檢查自己身體，發現右腹有紅腫及擦損，左胸疼痛。

直致2013年4月21日，凌晨2時左右，班居民開始散，我先由警察保護去醫院治療。…”

1. He was informed by the police that triad element was involved in the incident:

“當晚，我獲其中一批到場警員告知 ，他們是反黑組的探員，原因是有線報指區內的黑勢力派人到場生事。事後，警方安排了反黑組的探員跟進法團的狀況，並在法團開會前，反黑組均與我保持聯絡，為時約1年。這次大規模的騷亂，令屋苑業戶都非常擔心及感到不安；…”[[72]](#footnote-72)

1. It is the defendant’s evidence that the 3rd Article served two purposes: to inform the owners of what happened on 20 April 2013 and to counter the various rumors spread against the 2nd MC at that time.

“… 第三篇由頭到尾冇講過佢㗎喎，最主要就話畀啲居民聽，喂，嗰晚係史上--即係好大件事，成個柴灣，咁啲居民真係要知㗎嘛，咁大件事，咁根本我都唔--即係你問我，我都唔明點解擺咗喺第三篇落嚟，由頭到尾冇mention過佢，最主要就話屘二嗰段，講緊就係話喂，好多人喺度亂噏嘢喇，咁然之後我哋會出啲通告，解釋番晒之前嘅嘢 …”[[73]](#footnote-73)

1. In closing argument, the plaintiff’s counsel submitted that:

“The context was that 4 days after this incident, D published the 3rd Article, plainly using the event as a basis to argue for his continued election as chairman of the IO. During cross-examination …, it was suggested to D that his real intention was to snatch for the IO (真正用心係爭奪法團). D agreed. His agreement comes from the fact that D did not believe in the allegations in the Article, and he published the same with reckless indifference as to the truthfulness or falsity of them. He did not see P, but chose to nonetheless say he did. He made the publication as a way to tarnish P’s reputation in order to secure his chairmanship and to resist the EGM request to remove him. D’s conduct fell beyond the scope of the QP Purpose, and the privilege was accordingly destroyed.”[[74]](#footnote-74)

1. To start with, it is inaccurate for the plaintiff’s counsel to say that the defendant agreed that “his real intention was to snatch for the IO (真正用心係爭奪法團)”. The evidence is that:

“問： 你唔止係回應4月20日裡面發生咩嘢事，你係借呢個場 合、借呢個機會講咗4月20日之後，其實你嘅真正用心係 愛嚟講，「有外來不明力量協助爭奪法團」，同唔同意 呀？

答： 同意，同意呀，因為一直以嚟，就係話有班人死心不息去 爭法團，而且我哋都好驚訝就係話點能夠可以動用到咁大 量嘅人力物力，有咁多孭晒斜袋嘅外來人士，坦白講，我 哋認為佢黑社會嘅人走入嚟搞，咁你諗下，為乜嘢啫其 實？”[[75]](#footnote-75)

So, the defendant was referring to “有外來不明力量協助爭奪法團” and not his own intention.

1. The defence counsel also pointed out that the plaintiff must have mixed up the evidence, as the 3rd Article made no reference to the plaintiff and the defendant only referred to her in his witness statement.
2. The defendant stated in his witness statement that the plaintiff was present during the incident (原告人及其同伙到場滋擾 [[76]](#footnote-76)). It is the plaintiff’s case that she could not have participated in the commotion as she was not in Hong Kong. The defendant confirmed at the re-trial that he did not in fact see the plaintiff and his witness statement was inaccurate. He said that if he had seen the plaintiff, he would have mentioned that in the article.
3. As to why he made a mistake in his witness statement, he explained:

“… 我再想補充就係話四年之後落口供，我真係講錯咗嘢嘅，即係個記憶--用個印象去講係錯咗嘅，但係--所以你見到第三份嘅文件裡面呢，因為當時啱啱發生，20號發生，我哋二十二/三號寫呢份文件，所以--如果坦白講吖，如果當時呀，當晚如果我見到佢在場，我冇可能呢份嘢--即係我哋--我同埋管委會冇可能唔拎佢出嚟，我一定拎佢出嚟，即係嗰份嘢寫錯我真係抱歉喇。”[[77]](#footnote-77)

1. I accept the defendant’s explanation of the misstatement in his witness statement. There is really nothing to show that the defendant did not believe that what he stated in the 3rd Article was true. If the defendant had been reckless or indifferent as suggested by the plaintiff, he could easily have mentioned the plaintiff in the article to drag her through the mud.
2. As to the defendant’s evidence as to his purposes in publishing this article:
3. The article ended with a plea to the owners to say no to violence (請大家一同以和平理性的原則，保護自己的家園，向暴力者說不。). This was an echo to the incident mentioned earlier in the section entitled “政治與黑勢力”. In my view, the internal consistency of the article confirms the first stated purpose of the defendant.
4. It was also stated in the section entitled “是非謠言滿園飛” that the 2nd MC would display the relevant information to dispel the rumors (為了讓街坊不被謠言困惑，我們將運作資料濃縮，並張貼出來，以白紙黑字的具體事實，令街坊了解真相。). In my view, that is evidence of the second stated purpose.
5. The statement relating to 118 Gate was put in quotation (「用200萬做118閘」) and meant to be an example of the rumors spread against the 2nd MC at the time. It was actually stated in the article that that (as well as other rumors) was not true (以上的當然不是事實).

They all related to the management and administration of the Estate.

1. The purpose suggested by the plaintiff (to secure chairmanship and to resist removal) would not have deprived the defendant of the protection of the privilege as it was still a communication between the IO or MC and the owners regarding the management and administration of the Estate. It is noted in para 18-008 of *Gatley on Libel and Slander* that:

“Although the contrary view was once held, it is not the law that the privilege is lost because one candidate makes the statement to draw votes away from the other and to ‘damage’ his reputation before the electorate.”

1. All in all, the plaintiff has failed to rebut the defence of qualified privilege for the 3rd Article.

*D4. The 4th Article*

1. The 4th Article, entitled “一夥人的出現，富怡就永無寧日”, was published by the defendant on 10 January 2014 in the name of the IO to the owners of the Estate. A copy of the article is at [A1/32].
2. The article was found to be defamatory of the plaintiff in that:
3. A reasonable reader would understand the article to mean that the plaintiff attempted (although ultimately failed) to benefit herself from the major renovation, and since then she attempted to regain control of the IO so as to have a “re-run”.[[78]](#footnote-78)
4. The article also referred to the plaintiff using deceptive means to obtain proxies and signatures in order to take control of the IO.[[79]](#footnote-79)
5. It would also be understood to mean that the plaintiff resorted to violence and verbal abuse to cause chaos and disturbances.[[80]](#footnote-80)
6. The DDJ also said:
7. “[I]n the 4th Article, the defendant contends that there were forged signatures when the plaintiff (and her team) pushed for a re-election. Leaving aside the plaintiff’s involvement in this election campaign (the plaintiff’s evidence was that she was merely assisting others to become members of the MC), there is simply no evidence to justify the very serious allegation of forging signatures, still less that the plaintiff was implicated in that process. Indeed, the police did not lay charges against anyone after the defendant reported the matter.”[[81]](#footnote-81)
8. “As to the statement ‘絕不能讓別有用心的人，掌管富怡法團，他們食髓知味，必定狠狠的斬殺富怡這塊肥豬肉，翻炒天價維修’ in the 4th Article, the defendant accepted in cross-examination that there was no evidence that anyone was bringing up the renovation proposal again. This defamatory statement is plainly uncalled for ...”[[82]](#footnote-82)
9. In closing argument, the plaintiff:
10. submitted that the defendant should know by the time of the 4th Article that the discussion over major renovation had ended in 2012 and that the plaintiff was no longer campaigning for renovation or any position in the MC;[[83]](#footnote-83) and
11. referred to LDBM 268/2013, which was an application by Tsang to the Lands Tribunal for an order to convene an owners’ meeting to discuss “議決改選富怡花園業主立案法團管理委員會”, and argued that “the 4th Article was clearly published by D with his mind being applied to the result of this litigation.”[[84]](#footnote-84)
12. It is the defendant’s evidence that he published the article to communicate with the owners about what was happening at the time which had adversely affected the Estate. According to him:
13. Between May 2013 and February 2014, there were at least 39 incidents of the plaintiff and others causing nuisance at the Estate in their campaign to unseat the 2nd MC.[[85]](#footnote-85) This is evidenced by the warning letter sent by Chevalier to the plaintiff (at [C5/1107]) which stated, “本處收到多名住戶投訴，閣下於2013年5月起，多次於富怡花園公眾地方擺放易拉架及橫額等宣傳物、派發宣傳單張，影響其他住戶享用公共設施及空間的權利和自由，本苑保安員及職員曾不斷作出勸止，惟閣下未有理會，繼續執意進行。”
14. On 27 June 2013, Tsang sent in signatures to request an EGM with the agenda to recall the 2nd MC (議決改選富怡花園業主立案法團管理委員會).[[86]](#footnote-86) Upon checking, the defendant suspected that some of the signatures tendered were forged and reported the matter to the police.[[87]](#footnote-87)
15. On 22 July 2013, the plaintiff and others disrupted the 8th meeting of the 2nd MC.[[88]](#footnote-88) According to the minutes of the meeting, representatives of the Home Affairs Department and the police were unable to attend the meeting because of the disruption.[[89]](#footnote-89) An owner later recalled, “… 當我一到會議室前面，已有一男一女向我咒罵 ... 開會時我只見班委員個個認認真真在討論 ... 但外面的暴民在不斷挑釁，敲打玻璃，粗言穢語的咒罵，到底他們居心何在？ …”.[[90]](#footnote-90)
16. On 8 November 2013, the plaintiff and others disrupted another meeting of the 2nd MC.[[91]](#footnote-91)
17. There were rumors spreading in the Estate against the 2nd MC, some of which were mentioned in the article (「…工程嘥錢，法團呃錢，業主要夾錢」).
18. The article began with a preamble about renovation (上任法團，管理法團事務一年，實事少幹，卻竟然在一眾反對聲中，硬推天價維修 ... 已經到口的肥肉溜走了，自此死心不息，一直千方百計搶奪法團，吵鬧生事). The defendant then wrote about the disruptions at the Estate (under the heading “橫行無忌”) and the rumors spread against the 2nd MC (under the heading “大話連篇”). It was suggested that there was a ploy to unseat the 2nd MC for personal benefits (有人為了搶奪法團，一年來（已經第三次）誤導業主簽名，說只是要求開會溝通，其實要改選法團 … 職業攪事份子，當然是為了爭奪法團。爭甚麼？當然是為了利益). The article ended with a plea to the owners to unite and pay attention to the affairs of the Estate to foil their attempt (請你與法團並肩一起，保衛自己財產；關心屋苑事務，同心協力建設富怡 … 絕不能讓別有用心的人，掌管富怡法團 ; 他們食髓知味，必定狠狠的斬殺富怡這塊肥肉，翻炒天價維修).
19. The defendant explained at the re-trial:

“我想補充就係話唔係因為佢係主席，係因為--應該嚴格嚟講，應該補充就話因為佢係主席，利用佢個職權帶動大維修、帶動圍標，然之後我哋講佢出嚟嘅啫。咁你亦都講咗囉，我哋之前有十六/七/八個，唔知幾多個，起碼十六/七個主席，咁點解個個主席大家都冇--即係都唔會有dispute呢？因為講嚟講去就話你攞個大維修去make money，呢個先係成件事嗰個key issue嚟㗎嘛。”[[92]](#footnote-92)

1. The Court of Appeal has said that all the relevant circumstances surrounding the making of the communication should be taken into account and that should include:
2. suspected price-rigging behind the proposed renovation and “mutual back-scratching” among the parties perceived to be acting in collusion;
3. upon the voting down of the proposed renovation, the plaintiff’s camp launched a campaign to remove the 2nd MC, to disturb the administration of the IO and to disrupt the day-to-day living of the residents of the Estate, by verbal and physical violence; and
4. the perception of some of the owners including the defendant that the plaintiff was involved in these events,

as they might have some bearing in shaping the defendant’s belief, intention and thinking at the time.[[93]](#footnote-93)

1. Given the above, it was wrong for the plaintiff to contend that the renovation issue had subsided and the plaintiff was no longer campaigning for any position in the MC by the time of this article.
2. The defendant denied that the 4th Article was related to LDBM 268/2013. It is his evidence that:

“問： 喺呢份四份嘅誹謗性文件裡面，你從來都冇講呢個案件嘅 存在，LDBM 268/2013；啱唔啱？

答： 我呢度係冇講，但係《建築物條例》344裡面講咗㗎嘛，有 啲case我哋貼咗喺--喺管理處有個notice board㗎嘛，有一 case就已經貼咗出嚟㗎喇。

問： 咁講法呢，其實我冇話唔同意你喎，其實你出呢份嘅時 候， 你係有嗰個案件，你係諗緊嗰件案件，咪順便係應付埋 嗰 件案件嘅。

答： 我講咗唔係，我都講咗好多次唔係，其實答呢份嘢呢，我 哋最想reflect--即係反映番當時嘅實際情況，當時真係--真 係家無寧日，嘈到拆天，其實如果你睇過我哋submit嘅， 其實我哋submit上嚟嗰啲騷亂嘢、嗰啲咁嘅林沈嘢呢，只 不過其中一冰山一角嚟㗎咋。

…

問： … 出第四份呢個誹謗性文件嘅時候，你都知道你係見唔到 原告人係叫啲街坊幫曾志強簽名，去支持佢嗰個運動㗎 喇。

答： 我係見唔到，但係我想補充多一樣嘢就話其實呢，梁志貞 就好大力參與曾志強呢次嘅，佢「甚至無」呢，我哋當時 搵正話我哋講緊嗰場--嗰個小官司喇，「甚至無」梁志貞親 自出信畀禤氏，叫禤氏就話「你小心啲呀，我會mon住你 嘅使費呀，mon住你--即係睇住你嘅--做嘅嘢嘅。」咁禤氏 就畀番呢封信我哋，我都好驚訝。其實你咁樣睇呢件--你仲 夠膽話佢冇參與呢件事，唔係好熱心呢件事？

…

答： 同埋某程度，某程度我想話畀你聽，當時其實唔係佢係中 矢之的咁簡單，我都係中矢之的，因為佢哋都動用咁多 人， 其實譬如我或者我太太落街呢，佢哋喐到我飛起嘅，所 以 其實嗰段日子嘅時候，我哋基本上呢，基本上真係唔敢- -即係可以咁講，我哋係唔敢，或者我唔會落去，盡可能 唔落中央公園嘅 ...

問： 得喇，你 ...

答： ... 所以你猛問我見唔見到，我梗係見唔到喇。”

1. There is no basis for me to disbelieve the defendant’s evidence as to his intention in publishing the article. Even if the Lands Tribunal case were the dominant reason, that would not deprive the defendant of the protection as the defendant would still be communicating with the owners regarding the management and administration of the Estate, given the order that the meeting was to “議決改選富怡花園業主立案法團管理委員會”.
2. All in all, the plaintiff has failed to prove express malice in relation to the 4th Article to rebut the defence of qualified privilege.

*D5. The 5th Article*

1. The 5th Article was the minutes of the EGM of the IO held on 28 February 2014 (“2014 EGM”), a copy of which is at [A/33 to 37].
2. The DDJ found the article defamatory of the plaintiff because “a reasonable reader would understand the 5th Article to mean that the plaintiff forced through the renovation in complete disregard of the owners’ best interest and objections, that she harassed and disturbed the owners, and that she attempted to seize control of the IO in order to benefit herself from the major renovation”.
3. The DDJ also found:
4. Defamatory stings to the effect that the plaintiff attempted to force through the renovation despite owners’ objection (such as “強行上馬” in this article) were not based on true facts. [[94]](#footnote-94)

1. Defamatory stings that the plaintiff would derive a personal benefit from the renovation project (such as “業主才恍然大悟，都是源於大維修的強大吸引力” in this article) were not based on true facts.[[95]](#footnote-95)
2. “[O]nce the renovation project was voted against by the owners at the 2012 AGM, it has never re-surfaced as an issue for any subsequent owners’ meeting.”[[96]](#footnote-96)
3. In closing argument, the plaintiff submitted that:

“196. D knew that there was no major renovation project, but he still raised it in order to, plainly, sensationalise the matter, arouse residents’ feelings against P and vote in favour of him as chairman.

197. Knowing what D knew, and the complete absence of P from running for election, D’s sudden and persistent defamatory comments of P clearly fell beyond the scope of the QP Purpose, as his dominant motive was to secure his position in the upcoming re-election of the IO/MC.”

1. I begin by noting that the plaintiff’s pleaded claim in respect of this article is directed at both the words spoken by the defendant at the 2014 EGM and the minutes of the meeting.[[97]](#footnote-97)
2. The 2014 EGM was held pursuant to the order of the Lands Tribunal made upon Tsang’s application in LDBM 268/2013.[[98]](#footnote-98) According to section 6 of Schedule 3 to the *Building Management Ordinance*, Cap 344, the secretary of the management committee shall keep minutes of general meetings which shall be certified by the person presiding over the meeting as containing a true record of the proceedings. The certified minutes shall then be displayed in a prominent place within 28 days of the meeting.
3. As noted by the DDJ, there is no dispute that certain words were said by the defendant at the 2014 EGM and these words were reduced into writing in terms of the 5th Article and certified by the defendant.[[99]](#footnote-99) The publication of the 5th Article in pursuance of the statutory scheme served to inform the owners of the issues and debates at the meeting.[[100]](#footnote-100) It must be for the purpose of communicating with the owners regarding the management and administration of the Estate.
4. Turning to the spoken words, it is the defendant’s evidence that as the 2014 EGM drew closer, there were heightened activities in the Estate by the opposite camp to solicit support to unseat the 2nd MC.
5. The notices issued by the management office prior to the meeting is evidence of what had happened:
6. “本處近日收到多名業主投訴，有同一批人士不斷上門遊說及索取簽名，每當遇到業主質疑，就使用語言暴力及謾罵，造成滋擾。”[[101]](#footnote-101)
7. “過去兩天，相信是同一班人，為爭奪法團，而罔顧屋苑秩序，將有誹謗成份信件，放入居民信箱及張貼於各樓層。信件內容全是辱罵攻擊，其意圖只為搶奪法團，居民感到滋擾和厭煩，向管理處投訴。”[[102]](#footnote-102)
8. The defendant reiterated in re-examination at the re-trial that:

“問： … 第五份文件又係話 …「長年不休爭法團，只為咗大維 修」，即係點解你會將呢兩樣嘢拉埋一齊呢咁樣。

答： 因為佢哋長年不休去爭法團，都係做大維修，已經講咗喇。 佢哋做大維修嘅做法就係話，我哋已經講咗佢嘅價錢係超 高嘅，而且呢個係佢典型嘅圍標，去謀利嘅方法嚟嘅。咁 成件事具體睇得嘅，所以我哋其實都幾有把握、幾有信心 佢哋係做緊呢樣嘢。

問： 好。

答： 即係相反嚟講，如果唔係諗住去做大維修去搵食嘅話，其 實唔會做到咁--即係完全甩甩漏漏去違規去做嘅。個規矩其 實係大家心裡面會知嘅，應該係點樣做法。就算真係唔知 嘅時候，管理公司會協助你嘅，所以點解我哋會成日就話， 將佢--將個大維修會講成就話佢即係攞錢咋，因為如果正規 嘅人係唔會咁樣做嘅。”[[103]](#footnote-103)

1. Despite the DDJ’s objective findings (para 146 above), I accept that the defendant subjectively believed at the time that the plaintiff’s involvement in the renovation project and the attempt to unseat the 2nd MC were connected.
2. The 2014 EGM was called for the sole purpose of recalling the 2nd MC (議決改選富怡花園業主立案法團管理委員會). Words uttered by the defendant at the meeting in defence of his chairmanship and/or the 2nd MC must fall within the purpose of communicating with the owners regarding the management and administration of the Estate.[[104]](#footnote-104)
3. I specifically reject the plaintiff’s contention that it was within the defendant’s knowledge that the plaintiff was not running for election (para 147 above). The plaintiff’s name appeared on Tsang’s ticket (曾志強團隊名單) at [C5/1074] for the election. This is so notwithstanding the plaintiff’s denial that she had consented to join the election. As it turned out, no election was held because the motion to recall the 2nd MC was defeated (with 87.17% of the undivided shares of the Estate voted against re-election).
4. All in all, there is nothing to show that the defendant did not believe that what he said or wrote was true or that he was reckless. The plaintiff has failed to prove malice in the context of qualified privilege in the publication of the 5th Article.

*D6. The 6th Article*

1. The 6th Article comprises:
2. a covering letter dated 20 August 2015;
3. an enclosure in portrait orientation (“portrait enclosure”); and
4. an enclosure in landscape orientation (“landscape enclosure”).

The article was issued in the name of the defendant as the chairman of the MC, a copy of which is at [A/38 to 44].

1. It was the finding of the DDJ that the article was defamatory of the plaintiff in that:
2. “[T]he 6th Article, in particular the [horizontal] enclosure, was reasonably understood to mean that the plaintiff misled or deceived the owners in pushing through the renovation (including the use of the words “欺騙”, “誤導” and “蠱惑”).”[[105]](#footnote-105)
3. “There were other matters addressed in the [horizontal] enclosure, including the 118 Gate and the management service contract for the Estate.  In this regard, the 6th Article was reasonably understood to mean that the plaintiff was devious in dealing with these matters and she lacked integrity.  There was also a reference to the fact that the plaintiff colluded with the management company (“秘密串通供應商”).”[[106]](#footnote-106)
4. In making his findings, the DDJ commented that:
5. “[O]nce the renovation project was voted down by the owners at the 2012 AGM, it has never re-surfaced as an issue for any subsequent owners’ meeting (and this is confirmed by the defendant). As a consequence, I am unable to see any point or utility in repeating the issue … in August 2015 (when the 6th Article was published and when the renovation has been voted down for a full 3 years), as if it were an issue of ongoing interest”.[[107]](#footnote-107)
6. “Defamatory stings alleging the plaintiff to have misled owners or employed dirty tricks or ‘black box operations’ are also not based on true facts. Relevant defamatory statements include, for example: ‘並以通告作出種種，近乎欺騙居民的謊話’, ‘內容失實，誤導居民’, ‘再次欺騙業主，說大部份業主已經同意做大維修’” in this article.[[108]](#footnote-108)
7. “Defamatory stings suggesting that the plaintiff acted improperly or unfairly are not based on true facts. Relevant defamatory statements include ‘若說無古惑，肯定無人信’, ‘過程令人非議’, ‘荒謬兼離譜’, ‘簡直是欺騙’” in this article.[[109]](#footnote-109)
8. “[The] 118 Gate issue was not germane to the subject matter when the 6th Article was published in August 2015. The construction of the small gate was already completed at the time of the publication of the 6th Article. The defendant also agreed that, insofar as the 118 Gate issue was concerned, all matters were already settled (塵埃落定), and so there was no further need to discuss with the owners.”[[110]](#footnote-110)
9. Regarding this article, it is common ground that an annual general meeting of the IO was held on 23 April 2015 (“2015 AGM”). A copy of the minutes of the meeting with an attachment is at [C5/1075 to 1084]. As recorded in the minutes:
10. The plaintiff and others from her camp attended the meeting to debate with the defendant on (i) the major renovation, (ii) the 118 Gate, and (iii) the management services contract:

“前法團主席梁志貞（梁）到場，與現屆主席就三項有關屋苑的重大事件：（一）大維修、（二）118閘、（三）業主大會議決管理合約招標，作出討論…”[[111]](#footnote-111)

1. Much was discussed at the meeting. Eventually, the plaintiff was censured by the IO:

“- … 法團管委會披露了很多，業主不知情或被隱瞞的事實

* 主席明確指出，當中有很多不合理的過程細節，在梁任內發生，管理處存放所有文件佐證，業主是可以翻查
* 並於現場播放，揭露多份梁出任法團主席時，所發出的文件；包括通告、會議記錄和相片，都有失實成份
* 法團並首度公開指責，前法團主席梁其不當行徑及損害居民利益的事實

(上述內容摘要，參閱附件)”[[112]](#footnote-112)

1. An election was held and 李允韶 and 江耀權 failed to get elected to the 3rd MC.[[113]](#footnote-113) It should be noted that they both appeared on Tsang’s ticket for the 2014 EGM to replace the incumbent MC together with the plaintiff.[[114]](#footnote-114) As held by the Court of Appeal, the fact that there was a campaign to remove the 2nd MC and the perception of some of the owners including the defendant that the plaintiff was involved cannot be ignored.[[115]](#footnote-115)
2. The defendant reiterated at the re-trial that the campaign to unseat the defendant or the 2nd MC had continued.[[116]](#footnote-116) This is evidenced by:
   1. The letter dated 12 March 2014 from Chevalier to the plaintiff urging her to desist her nuisance:

“本處收到多名住戶投訴，閣下於2013年5月起，多次於富怡花園公眾地方擺放易拉架及橫額等宣傳物、派發宣傳單張，影響其他住戶享用公用設施及空間的權利和自由，本苑保安員及職員曾不斷作出勸止，惟閣下未有理會，繼續執意進行。”[[117]](#footnote-117)

* 1. The anonymous letter mailed to the owners of the Estate in which very serious allegations were made against the defendant and/or the 2nd MC, such as the following: [[118]](#footnote-118)

“點解要加管理費？＜比牠們冚數！＞”

“點解又無公開核數報告？＜有好多數唔見得光！＞”

“是否因貪不遂而惹官非？有動物曾向前任X紀保安公司攞著數，被拒後，竟唔知醜仲寫大字報通告誹謗人地，無耐便被ICAC落案起訴”

“是否因濫用儲備誣告業主、將大型工程偷偷斬件上馬避開招標法規而加管理費來填數？”

“是否牠們想獨攬財政大權，將所有儲備全部私吞？”

1. The defendant also said:

“我永遠都強調一次就係話，佢哋唔出嚟、佢哋唔搞，其實都係佢哋撩，即係都係對家撩起呢啲嘢之嘛，有乜必要隔咗咁耐仲講啲咁，即係我都認同。但係佢唔出嚟，咁我哋就唔使咁同佢，係咪呀？佢出嚟叫陣咁，咁我答咗你喇，啲街坊又要睇喇，咁咪擺番出嚟囉。雖然其實寫呢份嘢，你睇下，大家如果細--肯細心睇，其實係唔過份嘅，係合理嘅，同埋表達咗，即係我哋同管委會同街坊嘅意見。”[[119]](#footnote-119)

1. Thus, despite the DDJ’s comments (based on an objective analysis), the defendant was merely responding to the issues brought up by the plaintiff at the 2015 AGM. The plaintiff and the defendant each rehearsed their arguments in the meeting. Given the discussion above, I accept that the defendant subjectively believed that the plaintiff had acted improperly.
2. After the 2015 AGM, there were requests from owners to disclose information about the matters discussed at the 2015 AGM and the 3rd MC issued the 6th Article pursuant to such requests. As stated in the covering letter:

“日前在法團委員改選的業主大會上，前主席及委員出席，就多項關乎業主重大利益的事件作出辯論。過程中，反被揭發很多鮮為人知的不當行為，業主聞之譁然。

其後，有業主要求，將當晚内容公開，認爲其他業主也有知情權。…

法團應業主要求，公開有關事實。…”

I accept the defendant’s case that the 6th Article was issued at the requests of the owners to cover the discussion at the 2015 AGM.

1. The statement in the horizontal enclosure that the plaintiff “秘密串通供應商” referred to an incident before the 2014 EGM. According to the defendant:

“… 原告人與其伙伴在2014年8月26日，在其士安排的律師陪同下，到屋苑的管理處意圖挑戰業戶作出的委任代表文書的有效性。而在2014年8月28日業主大會上的其中一個議程，就是要議決取消屋苑管理合約中自動續約條款，其士在此事明顯存在有極大的利益衝突。”[[120]](#footnote-120)

1. Given all the above (which I accept), there is nothing to show that the defendant either did not believe that what he wrote in the 6th Article was true or was reckless as to the truth of what he wrote.
2. Much time was spent in the re-trial on the horizontal enclosure. It is not disputed that the horizontal enclosure was based on the attachment to the minutes of the 2015 AGM. According to the defendant:

“… 所以你問我點解，有乜必要寫呢份嘢，我哋覺得有必要嘅，因為最主要就話係業主大會係disclose，同埋嗰份會議紀錄係出過嘅，我哋攞番呢份嘢個藍本、個基礎我哋寫番出嚟，變成一份文件交畀街坊。不--你可以咁講喇，我哋真係唔夠小心囉，如果我劃咗，就我即係劃咗係業主大會嘅attachment，咁變咗已經唔係問題囉。咁但係我哋覺得就係話，成個藍本係跟住呢份嘢寫出嚟㗎嘛，而整個內容，如果大家細心睇，即係你當一個第三者、一個客觀嘅人，或者你當你你一個居民、一個業主咁睇，其實我哋都係state番個事實之嘛，同埋啲字眼你見到係精準咗，係同埋有時我哋覺得未必需要咁--針對性咁大囉。”[[121]](#footnote-121)

1. The defence counsel have placed the horizontal enclosure and the attachment side-by-side in Exhibit P1 and identified their differences for easy reference (enumerated as #1 to #20).
2. The DDJ said that, “on a proper reading, the revisions reinforces rather than reduces the defamatory effect of the statements. The natural inference of making these changes (which aggravates the defamatory effect of the statements) is consistent with the fact that the defendant did not publish (at least) the 6th Article for a proper purpose.”[[122]](#footnote-122)
3. The plaintiff’s counsel also submitted in closing argument that:

“198. It is of note that D himself made over 20 changes in order to ‘spice up’ the language and comments in the enclosure.

…

200. D’s explanation that he changed the wordings to ensure better accuracy is incredible. The words chosen by D clearly revealed that he intended the words to have a sensational effect and to launch an *ad hominem* attack at P.

201. … The Court is entitled to infer that D made the changes to arouse distrust in P so that D could maintain his position as chairman. This fell beyond the scope of the QP Purpose and the privilege is accordingly destroyed.

202. For all the circumstances and reasons discussed in the other articles, the inference is that D was abusing his position as chairman to repeat these defamatory statements to arouse controversies against P (as the only other chairperson of the IO/MC) in order to retain his throne to the chairmanship. He scapegoated P to achieve this. This was clearly an improper motive which destroys the privilege.

203. Upon a holistic review of all the circumstances, it is beyond doubt that D’s dominant motive was to injure P’s reputation, and in doing so, it carried with it a primary benefit of securing his position in the IO, which would assist his election in the District Council. This motive fell plainly outside the QP Purpose, and would accordingly disentitle D from relying on the defence of qualified privilege.”

1. Out of the 20 changes identified on Exhibit P1, only 9 are significant in my view (marked #1 to #9 in the table below).

|  |  |  |
| --- | --- | --- |
|  | *From* | *To* |
| #1 | 大維修 | 天價大維修 |
| #2 | 其實問卷統計，是不能代表業主意願 | 問卷作決定，真假無人知 |
| #3 | 118閘 | 取締118閘 |
| #4 | 也未有顧及居民的安全 | deleted |
| #5 | 明顯是為做而做 | deleted |
| #6 | no such statement | （另加3萬元顧問費） |
| #7 | 大升10萬 | 勁升13萬 |
| #8 | 暗中銀碼 | 建造費 |
| #9 | 野心大、心術歪 | deleted |

1. I accept that some changes refined the meaning (eg #3) and some served to moderate the tone (eg #4, #5, #8 and #9) as suggested by the defendant.
2. As regard #1, the defendant explained in his witness statement:

“按法團管委會2012年6月18日的會議紀錄所示118閘的工程承建商收費為14萬3千元，而在管委會2013年3月31日的會議紀錄中所提及，在上述工程費之中亦另加3萬元顧問費，故總額為17萬3千元，這比當初原告人在法團通過內指118閘工程只需4萬便可完成，之間相差的約為13萬。該修改是為令文件內所載的資訊更為準確而已。”[[123]](#footnote-123)

1. As regard #2, there were these exchanges in the defendant’s cross-examination at the first trial:

“問： … 你話「問卷作決定，真假無人知」，咁亦都唔係咁公平喎，因為基於呢張通告，亦都真係話咗畀大家所有嘅居民聽，問卷發咗出去喇，返嚟嘅結果係點呢，咁係冇任何造假嘅成份㗎喎，你同唔同意呀，楊生？

答： 同意。

問： 咁即係你認同呢句「問卷作決定，真假無人知」係唔啱㗎 喇喎？

答： 唔同意。

問： 你冇任何嘅證據或者基礎去話做呢個問卷嘅調查嘅時候， 係有做假㗎嘛，係咪？

答： 因為其實呢份問卷嚟㗎嘛，其實嗰個真實性有幾大呢，其 實大家唔知㗎嘛，如果做一個維修過程應該係開個業主大 會去做㗎嘛，係。

問： 係，但係就住呢個問卷，你係冇任何嘅證據或者基礎會話 呢一個問卷調查嘅結果係有做假嘅成份㗎嘛，係咪？

答： 我冇證據，我冇實質證據，係。”[[124]](#footnote-124)

1. As regard #6, the defendant said under cross-examination:

“問： 所以我個問題係問你呢，你加咗括弧，另加30,000元顧問 費，個目的係乜嘢呀？

答： 咁咪話畀啲街坊知總共嗰個total costs of即係呢個case係 個建造費，承建費用加埋顧問費囉，咁加埋咪變咗十七萬 幾囉，因為造價係十四萬三吖嘛，咁另外仲有30,000鈫顧 問費要加番上去㗎嘛。”[[125]](#footnote-125)

1. As regard #7, the defendant explained in his witness statement that:

“當原告人上任後，便立即取消了原定的閘門設計及工程，改為建議在118閘旁邊開一道小閘門供業戶出入，並指稱費用只為HK$40,000。原告人最終於補選管委會2012年3月31日及6月18日的會議上披露，小閘的實際造價為HK$143,000另加HK$15,000顧問費。”[[126]](#footnote-126)

His counsel submitted that the change from “大升” to “勁升” was to reflect the degree of discrepancy which was about 3 to 4 times of the HK$40,000 claimed in the plaintiff’s letter dated 21 April 2012.[[127]](#footnote-127)

1. The DDJ’s comment was objective in nature, as it was based on his “proper reading” of the statements and the “natural inference” he made of the changes. Having regard to the defendant’s explanations (which reveal his subjective thoughts at the time), I accept the defendant’s case that he intended to make those changes to refine the meaning and to moderate the tone. Had the defendant intended to aggravate the defamatory effect, he would not have deleted the sharp criticisms at #4, #5 and #9. As reminded by the Court of Appeal, “Judges and juries should, however, be very slow to draw the inference that a defendant was so far actuated by improper motives as to deprive him of the protection of the privilege…”.[[128]](#footnote-128)
2. As to the suggestions of the plaintiff’s counsel that the defendant issued the article to “retain his throne to the chairmanship” or “assist his election in the District Council”, I repeat the discussions in para 130 and paras 91 to 101 above.
3. All in all, the plaintiff has failed to prove malice in the context of qualified privilege in the publication of the 6th Article.

*E. Conclusion*

1. By reason of the above, the plaintiff has failed to prove malice on the part of the defendant to rebut the defence of qualified privilege for all six articles. The plaintiff’s claim is therefore dismissed.
2. Costs normally follow the event. I make an order *nisi* that the plaintiff do pay the defendant’s costs of this re-trial with certificate for one counsel to be taxed if not agreed.
3. There is one more matter to deal with. In para 93 of CA Judgment, the Court of Appeal said:

“We set aside the order made by the judge of the costs of the trial and replace this with an order that the costs of the trial before Deputy District Judge Lung be reserved to the judge hearing the new trial. We decline to order the costs of the trial to be in the cause of the re-trial, as proposed by Mr Chan [the defence counsel].  In light of quite a number of issues found in the plaintiff’s favour in the Judgment, it seems to us there ought to be an apportionment of costs, irrespective of the outcome of the new trial.”

1. The plaintiff took an issue approach. Her counsel submitted that since the defendant had lost 5.5 issues out of the 6 issues enumerated in the Statement of Issues for the first trial, the costs of the first trial should be apportioned on that basis.
2. On the other hand, the defendant suggested apportionment on time basis: 55% on the underlying events; 15% on justification; 15% on honest comment; and 15% on qualified privilege.
3. I basically agree with the defendant that it would be fairer to apportion on a time basis as the time taken to debate each issue was different. I accept the time apportionment suggested by the defendant. Both sides have to an extent won and lost in terms of establishing the underlying events. Taking a broad-brush approach and having regard to the result of the re-trial, I order the plaintiff to pay 50% of the defendant’s costs of the first trial with certificate for counsel to be taxed if not agreed.

( Justin Ko )

Chief District Judge

Mr Andrew Mak and Mr Abel Lam, instructed by K.B. Chau & Co, for the plaintiff

Ms Audrey Eu SC leading Mr Ken To and Mr Matthew Choi, instructed by Liu, Chan & Lam, for the defendant

1. [2019] HKDC 1428. [↑](#footnote-ref-1)
2. [2021] 5 HKLRD 684, [2021] HKCA 1778. [↑](#footnote-ref-2)
3. Para 68 of DC Judgment. [↑](#footnote-ref-3)
4. Para 124 of DC Judgment. [↑](#footnote-ref-4)
5. Paras 125-130 of DC Judgment. [↑](#footnote-ref-5)
6. [2020] HKDC 343. [↑](#footnote-ref-6)
7. They were not the plaintiff’s trial counsel in the first trial. [↑](#footnote-ref-7)
8. Mr To represented the defendant in the first trial. [↑](#footnote-ref-8)
9. Para 2 of the order dated 23 January 2024 at [A2/323-1]. [↑](#footnote-ref-9)
10. Para 2 of D’s Note of Non-Binding Findings dated 8 April 2024. [↑](#footnote-ref-10)
11. Section C6 of D’s closing submissions. [↑](#footnote-ref-11)
12. Section C5 of D’s closing submissions. [↑](#footnote-ref-12)
13. Para 22 of P’s closing submissions. [↑](#footnote-ref-13)
14. Para 15 of P’s opening submissions. [↑](#footnote-ref-14)
15. Para 54 of D’s closing submissions. [↑](#footnote-ref-15)
16. Para 69 of CA Judgment. [↑](#footnote-ref-16)
17. Para 70 of CA Judgment. [↑](#footnote-ref-17)
18. Paras 72-73 of CA Judgment. [↑](#footnote-ref-18)
19. Paras 69, 72-73 of CA Judgment. [↑](#footnote-ref-19)
20. Para 2 and footnote 9 of CA Judgment. [↑](#footnote-ref-20)
21. Para 29 of CA Judgment. [↑](#footnote-ref-21)
22. Para 37 of CA Judgment. [↑](#footnote-ref-22)
23. Para 76 of CA Judgment. [↑](#footnote-ref-23)
24. Paras 15(d), 25(d), 33(d), 41(d), 49(d) and 60(d) of the Amended Defence. [↑](#footnote-ref-24)
25. Paras 14, 23, 30, 37, 45 and 53 of the Amended Reply. [↑](#footnote-ref-25)
26. Para 68 of DC Judgment and para 32 of CA Judgment. [↑](#footnote-ref-26)
27. Para 30 of CA Judgment. [↑](#footnote-ref-27)
28. Para 124 of DC Judgment. [↑](#footnote-ref-28)
29. Para 72 of CA Judgment. [↑](#footnote-ref-29)
30. The reminder of the Court of Appeal in para 36 of CA judgment that “knowledge of falsity, or indifference as to truth or falsity, is not itself the test of malice: it is merely evidence from which an improper motive can often, but not always, be inferred” is reiterated. [↑](#footnote-ref-30)
31. In para 22 of *Jonathan Lu*, the Court of Final Appeal said: “‘Recklessness’, in this context, is to be understood in the sense described by Lord Diplock in *Horrocks v Lowe*: that is to say, ‘without considering or caring whether it be true or not’ (at 150; see also 151, 152 and 153).” [↑](#footnote-ref-31)
32. Para 40 of D’s closing submissions. [↑](#footnote-ref-32)
33. [D2/203 Q-T]. [↑](#footnote-ref-33)
34. [D2/264/L]. [↑](#footnote-ref-34)
35. Para 116 of P’s closing submissions. [↑](#footnote-ref-35)
36. [A2/318]. [↑](#footnote-ref-36)
37. Paras 48-51 of the Reasons at [A2/285-317]. [↑](#footnote-ref-37)
38. [D1/201]. [↑](#footnote-ref-38)
39. [D1/202]. [↑](#footnote-ref-39)
40. At [B/78/68], the defendant stated, “後來管委會成員葛清珠女士告知我，原告人雖然在7月22 日大會上棄選，但在該會議結束後，她便立即於屋苑內開街站收集業戶簽署，希望發動特別 業主大會推翻在2012年7月22日大會上獲選的第二屆管委會。” (underline added). [↑](#footnote-ref-40)
41. [D3/507 B-G]. [↑](#footnote-ref-41)
42. Para 9 of DC Judgment. [↑](#footnote-ref-42)
43. See para 99(a) of the defendant’s witness statement at [B/99] and his cross-examination at [D2/264 L]. [↑](#footnote-ref-43)
44. Para 57(3) of DC Judgment. [↑](#footnote-ref-44)
45. Para 117(3) of DC Judgment. [↑](#footnote-ref-45)
46. Para 57(4) of DC Judgment. [↑](#footnote-ref-46)
47. The transcript of hearing on 19 April 2024, p 25 at Q-T. [↑](#footnote-ref-47)
48. [D2/290 H-M]. [↑](#footnote-ref-48)
49. [B/114/22(a)]. [↑](#footnote-ref-49)
50. [D2/292 C-L]. [↑](#footnote-ref-50)
51. [D2/293 N-T]. [↑](#footnote-ref-51)
52. [D2/297 M-S]. [↑](#footnote-ref-52)
53. [D2/296 F-L]. [↑](#footnote-ref-53)
54. [D2/295 I-M]. [↑](#footnote-ref-54)
55. [D2/286 K-R]. [↑](#footnote-ref-55)
56. [D2/271 H-J]. [↑](#footnote-ref-56)
57. [B/70/45, 46 & 52]. [↑](#footnote-ref-57)
58. Para 35(c) of D’s speaking note for closing submissions. See also section J of D’s closing submissions. [↑](#footnote-ref-58)
59. Para 91 of P’s closing submissions. [↑](#footnote-ref-59)
60. [D2/394 I-U]. [↑](#footnote-ref-60)
61. Para 105 of P’s closing submissions at [A3/385]. [↑](#footnote-ref-61)
62. [D3/508 G-L]. [↑](#footnote-ref-62)
63. Para 58(2) of DC Judgment. [↑](#footnote-ref-63)
64. Para 58(2) of DC Judgment. [↑](#footnote-ref-64)
65. Para 58(3) of DC Judgment. [↑](#footnote-ref-65)
66. Para 135 of DC Judgment. [↑](#footnote-ref-66)
67. [D2/315 M-V]. [↑](#footnote-ref-67)
68. [D2/312 M-V]. [↑](#footnote-ref-68)
69. Para 54 of DC Judgment. [↑](#footnote-ref-69)
70. Para 55 of DC Judgment. [↑](#footnote-ref-70)
71. Para 59(2) of DC Judgment. [↑](#footnote-ref-71)
72. [B/88/79(g)]. [↑](#footnote-ref-72)
73. The transcript of hearing on 22 April 2024, p 89 at C-E. [↑](#footnote-ref-73)
74. Para 190 of P’s closing submissions. [↑](#footnote-ref-74)
75. The transcript of hearing on 22 April 2024, p 96 at H-Q. [↑](#footnote-ref-75)
76. [B/88/79(g)]. [↑](#footnote-ref-76)
77. The transcript of hearing on 22 April 2024, at p 91V-92B. [↑](#footnote-ref-77)
78. Para 60(2) of DC Judgment. [↑](#footnote-ref-78)
79. Para 60(3) of DC Judgment. [↑](#footnote-ref-79)
80. Para 60(4) of DC Judgment. [↑](#footnote-ref-80)
81. Para 158 of DC Judgment. [↑](#footnote-ref-81)
82. Para 160 of DC Judgment. [↑](#footnote-ref-82)
83. Paras 192 & 194 of P’s closing submissions. [↑](#footnote-ref-83)
84. Para 193 of P’s closing submissions. [↑](#footnote-ref-84)
85. [B/89/79(h)]. [↑](#footnote-ref-85)
86. [C5/1006]. [↑](#footnote-ref-86)
87. [B/89/79(i)] & [C5/1001-1002]. [↑](#footnote-ref-87)
88. [B/89/79(i)]. [↑](#footnote-ref-88)
89. [C5/1094]. [↑](#footnote-ref-89)
90. [C5/1093]. [↑](#footnote-ref-90)
91. [B/89/79(i)]. [↑](#footnote-ref-91)
92. The transcript of hearing on 22 April 2024, p 77 at C-F. [↑](#footnote-ref-92)
93. Paras 74 & 52(1), (3) & (5) of the CA Judgment. [↑](#footnote-ref-93)
94. Para 117(1) of DC Judgment. [↑](#footnote-ref-94)
95. Para 117(3) of DC Judgment. [↑](#footnote-ref-95)
96. Para 126 of DC Judgment. [↑](#footnote-ref-96)
97. Paras 24-26 of the Statement of Claim at [A/16-18]. [↑](#footnote-ref-97)
98. The order is at [C1/49]. [↑](#footnote-ref-98)
99. Para 45 of DC Judgment. [↑](#footnote-ref-99)
100. Para 72 of D’s speaking notes for closing submissions. [↑](#footnote-ref-100)
101. The notice dated 6 February 2014 at [C5/1105]. [↑](#footnote-ref-101)
102. The notice dated 25 February 2014 at [C5/1106]. [↑](#footnote-ref-102)
103. The transcript of hearing on 23 April 2024, p 185 at M-S. [↑](#footnote-ref-103)
104. See para 18-008 of *Gatley on Libel and Slander* quoted above. [↑](#footnote-ref-104)
105. Para 62(2) of DC Judgment. [↑](#footnote-ref-105)
106. Para 62(3) of DC Judgment. [↑](#footnote-ref-106)
107. Para 126 of DC Judgment. [↑](#footnote-ref-107)
108. Para 117(2) of DC Judgment. [↑](#footnote-ref-108)
109. Para 117(4) of DC Judgment. [↑](#footnote-ref-109)
110. Para 155 of DC Judgment. [↑](#footnote-ref-110)
111. [C5/1076]. [↑](#footnote-ref-111)
112. [C5/1076]. The “附件” mentioned therein is the attachment to the minutes of the 2015 AGM mentioned in para 164 below. [↑](#footnote-ref-112)
113. [C5/1079]. [↑](#footnote-ref-113)
114. [C5/1074]. [↑](#footnote-ref-114)
115. Para 52(3) & (5) of CA Judgment. [↑](#footnote-ref-115)
116. See also Ma’s evidence at [D2/419K-420H]. [↑](#footnote-ref-116)
117. [C5/1107]. [↑](#footnote-ref-117)
118. [C5/1109]. [↑](#footnote-ref-118)
119. The transcript of hearing on 23 April 2024, p 149 at G-I. [↑](#footnote-ref-119)
120. [B/101/99(j)]. [↑](#footnote-ref-120)
121. The transcript of hearing on 23 April 2024, p 149 at C-F. [↑](#footnote-ref-121)
122. Paras 128 and 129 of DC Judgment. [↑](#footnote-ref-122)
123. [B/119/36]. [↑](#footnote-ref-123)
124. [D2/230 I-N]. [↑](#footnote-ref-124)
125. [D3/448 E-G]. [↑](#footnote-ref-125)
126. [B/85/76(f)]. [↑](#footnote-ref-126)
127. Para 447 of D’s closing submissions. [↑](#footnote-ref-127)
128. Para 41 of CA Judgment. [↑](#footnote-ref-128)