Ng Koo Kay Benedict and another *v* Zim Integrated Shipping Services Ltd [2010] SGHC 47

Case Number : Suit No 144 of 2008

Decision Date : 09 February 2010

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : Lee Hwee Khiam Anthony, Audrey Thng and Marina Chua (Bih Li & Lee) for the plaintiffs; Peter Cuthbert Low, See Tow Soo Ling and Han Lilin (Colin Ng & Partners LLP) for the defendant.

Parties : Ng Koo Kay Benedict and another — Zim Integrated Shipping Services Ltd

Tort – Defamation – Costs

9 February 2010 Judgment reserved.

Lai Siu Chiu J:

Introduction

1 Ng Koo Kay Benedict ("Benedict") and Rajathurai Suppiah ("Suppiah") (hereinafter referred to jointly as "the plaintiffs") commenced this action against Zim Integrated Shipping Services Ltd ("Zim" or "the defendant") for defamation arising out of a statement that the defendant published on the Internet. The facts are brief and are not in dispute.

The facts

2 Benedict was, at the material time, a director and/or shareholder of various companies in the shipping and shipping-related business around the world. Amongst these companies were Charter Shipping Agencies (S) Pte Ltd ("Charter Shipping Agencies") and Starship Agencies Sdn Bhd ("Starship Agencies"). Benedict was a shareholder and director of both companies at the material time. Suppiah is a qualified accountant and was, during the material time, involved in the business of a number of companies as a director, manager, consultant or owner. Alain Koh Hong Seng ("Alain") was the Assistant General Manager of Charter Shipping Agencies and was a witness in these proceedings.

3 The defendant is in the container-shipping business with operations around the world. It has four operational headquarters, with one of them being in charge of Asia and the Far East. The defendant owns a number of other companies including Gold Star Line Ltd ("GSL") and Seth Shipping Ltd ("Seth"). Dan Hoffman ("Hoffman") took over as the defendant's Area President for Asia in May 2006.

4 Dafni Igal ("Captain Dafni") was GSL's Managing Director from November 1995 to December 2004 and was the Area President of the defendant for the Asia region between December 2004 and November 2006. Captain Dafni resigned in May 2006, was placed on garden leave until November 2006 and subsequently joined Cheng Lie Navigation Co Ltd ("CNC Lines"), a competitor of the defendant.

5 On 3 December 2007, the defendant, together with other related companies, commenced Suit 755 of 2007 ("Suit 755") against (*inter alia*) Captain Dafni and the plaintiffs. In Suit 755, the

defendant argued that Captain Dafni was in breach of his fiduciary duties (under the common law and the Companies Act (Cap 50, 2008 Rev Ed)) and/or his employment contract by engaging in various alleged acts of impropriety. Similarly, the defendant argued in Suit 755 that the plaintiffs, together with various companies owned and/or controlled by them, were liable for inducing Captain Dafni to breach his employment contract and/or fiduciary duties. The detailed facts and holdings in Suit 755 can be found at *Zim Integrated Shipping Services Ltd v Dafni Igal* [2010] SGHC 8 (the "*Suit 755 Judgment*").

6 After Suit 755 was commenced, on 18 January 2008, the defendant sent an email to two salespersons from the HKSG Group Media Ltd ("HKSG"), enclosing a press release ("the Press Release") to be published in the "HK [Shipping] GAZETTE as [early] as possible". The email also sought confirmation of publication. The Press Release stated:

> [1] Zim Integrated Shipping Services Ltd. and her related companies had on 3 Dec 2007 issued a Writ of Summons in the Supreme Court in Singapore against their former Area President (Asia and Far East), Mr Dafni Igal. Dafni Igal is being charged together with Benedict Ng and Rajathurai Suppiah, who are the Directors and Shareholder [of] Starship Agencies Sdn. Bhd., the former Malaysian agent of Seth Shipping.
>
> [2] According to the Court documents, Benedict Ng and Rajathurai Suppiah are alleged to have made secret and undisclosed payment of salaries and benefits, to Dafni Igal, and the secret payment of salaries and benefits induced him (Dafni Igal) to breach his duties as the Area President to Zim.
>
> [3] Dafni Igal is presently the managing director of CNC Line with Benedict Ng and Rajathurai Suppiah as the directors and shareholders in Starship Agencies Sdn. Bhd., which is now the agent for CNC Line in Malaysia.

7 HKSG is a specialist provider of applications and database media for the shipping industry in Asia. HKSG publishes the Hong Kong Shipping Gazette in Hong Kong and China. HKSG has a number of companies under it, including Asian Shipper Publications Pte Ltd ("ASPL"), which is a company incorporated in Singapore. ASPL publishes the "Asian Shipper" magazine, a weekly specialist trade publication for the shipping and shipping-related industries. The Asian Shipper is published and distributed in Singapore. ASPL also publishes a daily newsletter, known as the "Asian Shipper e-News", which is sent by e-mail to various recipients in the shipping and related industries in Asia (including Singapore). Laurence Richard Scofield ("Scofield") is a director of ASPL.

8 The Press Release was available on the following websites from the stated dates:

> (a) On http://www.shippingazette.com (the "Shipping Gazette Website"), which is run by HKSG, on or about 24 January 2008;
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> (b) On http://www.asianshipper.com (the "Asian Shipper Website"), which is similarly run by HKSG, on or about 24 January 2008;
>
> (c) On http://www.shippingonline.cn, which is run by Shipping OnLine Corporation (a Chinese shipping e-commerce company), on or about 23 January 2008;
>
> (d) On http://www.thaishipper.com on or about 23 January 2008.

For convenience, I will henceforth refer to the above as the "Websites".

9 The Websites were accessible by any user of the Internet without charge. Further, the Press Release was also published on the Asian Shipper e-News dated 24 January 2008, which was sent by email to "undisclosed-recipients" ("the Email"). The Email contained a list of articles, with the third item on that list being "Zim Integrated Shipping issues statement to the shipping press". The "undisclosed-recipients" were the subscribers of the Asian Shipper e-News newsletter. Scofield provided to the court a document setting out the list of recipients (the "List of Recipients") who received the Asian Shipper e-News (including that sent on 24 January 2008 through the Email) with email addresses ending with the suffix ".sg". There were 1,776 names on the List of Recipients and these recipients were in the shipping industry. The relevant portion of the Email states (the "Statement"):

> [1] Zim Integrated Shipping Services Ltd. and her related companies had on 3 Dec 2007 issued a Writ of Summons in the Supreme Court in Singapore against their former Area President (Asia Pacific Region), Mr Dafni Igal. Mr Dafni is being charged together with Benedict Ng and Rajathurai Suppiah.
>
> [2] According to the Court documents, Benedict Ng and Rajathurai Suppiah are alleged to have made secret and undisclosed payment of salaries and benefits to Mr Dafni, and the secret payment of salaries and benefits induced him (Mr Dafni) to breach his duties as the Area President to Zim.
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> [3] Dafni Igal is presently the president and CEO of CNC Line with Benedict Ng and Rajathurai Suppiah as the directors and shareholders in Starship Agencies Sdn. Bhd., which is now the agent for CNC Line in Malaysia," the Zim statement concluded.

The Statement and the Press Release are largely similar, except that the Press Release describes the plaintiffs as the directors and shareholders of Starship Agencies Sdn Bhd., the former Malaysian agent of Seth. Scofield testified that the Press Release was published on HKSG's websites for a few days before it was taken down as it was deemed to be sensitive.

10 On 4 February 2008, the plaintiffs' solicitors wrote to (*inter alios*) HKSG demanding that the Statement be withdrawn and that an apology be posted on its websites. On 5 February 2008, the plaintiffs' solicitors also wrote to the defendant's solicitors, demanding that the defendant furnish a copy of the statement that it had issued to the various international shipping press and media and the names of those who received the Statement. The defendant's solicitors responded on 14 February 2008 denying liability. Not surprisingly, the plaintiffs commenced this suit on 27 February 2008.

The issues to be determined

11 To succeed in an action for defamation, a plaintiff must show that a defendant has published, to a third person, matter containing an untrue imputation against the plaintiff's reputation (*Gatley on Libel and Slander* (Sweet & Maxwell, 11th Ed, 2008) ("*Gatley on Libel*") at para 1.6). The defendant here did not dispute that the Statement was made in relation to the plaintiffs, but argued that the defence of justification applied to some parts of the Statement or Press Release. As such, the plaintiffs will have to establish that: (a) the Statement was defamatory; and (b) that the Statement was published to a third person. In addition, the defendant will have to establish that it was entitled to rely on the defence of justification. I will turn to consider these issues *seriatim*.

Was the Statement defamatory?

12 The test for determining whether a statement is defamatory is a two-stage process. First, the

court will have to decide on the meaning of the statement. Next, the court will have to determine whether the meaning ascribed to the statement is defamatory (*Gatley on Libel* at para 2.1). Turning first to consider the meaning of the Statement, the plaintiffs pleaded that the ordinary and natural meaning of the Statement was as follow:

(a) the plaintiffs were being charged together with Captain Dafni for committing a crime or crimes;

(b) the plaintiffs had made secret and undisclosed payment of salaries and benefits to Captain Dafni;

(c) these secret and undisclosed payment of salaries and benefits induced Captain Dafni to breach his duties as the Area President of the defendant;

(d) the plaintiffs bribed Captain Dafni (as Area President of the defendant) to grant them favours in their businesses and/or companies;

(e) the plaintiffs bribed Captain Dafni (as Area President of the defendant) to corruptly procure favours from the latter at the defendant's expense and/or for the plaintiffs' (or their business' or company's) benefit;

(f) the plaintiffs and Captain Dafni continued with their illegal and/or improper relationship, resulting in Starship Agencies being appointed the agent of CNC Line in Malaysia;

(g) Starship Agencies was appointed as the agent for CNC Line in Malaysia because the plaintiffs had bribed Captain Dafni, who was at that time, the President and CEO of CNC Line;

(h) by reason of (b)-(g) above, the plaintiffs were guilty of the crime of bribery or corruption.

13 The test for determining the natural and ordinary meaning of the offending words in a defamatory action is well established. The court must ascertain what the words would convey to an ordinary reasonable person, using his general knowledge and common sense (*Review Publishing Co Ltd v Lee Hsien Loong* [2010] 1 SLR 52 ("*Review Publishing*") at [27]). The ordinary reasonable reader is an average rational layperson who can read between the lines, read in an implication more readily than a lawyer or indulge in a certain amount of loose thinking, but is not unduly suspicious or avid for scandal (*Review Publishing* at [27], [30] and [31]). The natural and ordinary meaning of the offending words is not confined to its strict or literal meaning. It can include inferences and implications that the ordinary reasonable person may draw in the light of his general knowledge, common sense and experience, but will not include those based on extrinsic evidence. (*Review Publishing* at [28]-[29]) The meaning intended by the defendant or actually understood by the plaintiff is irrelevant (*Review Publishing* at [27]).

14 The Statement made various allegations that were purportedly based on court documents that were filed. It would be apposite, at this juncture, to set out the rules relating to repetition and how it affects the meaning that the offending words convey. Under the repetition rule, where (for example) A writes "I am told by B that C has stolen funds", A will be treated as if he has alleged that C has stolen funds: see *Duncan and Neill on Defamation* (LexisNexis, 3rd Ed, 2009) at para 5.16. As Lord Devlin observed in *Rubber Improvement Ltd v Daily Telegraph Ltd* [1964] AC 234 ("*Rubber Improvement*") (at p 284):

> [One] cannot escape liability for defamation by putting the libel behind a prefix such as "I have been told that ..." or "It is rumoured that ...", and then asserting that it was true that you had been told or that it was in fact being rumoured. You have … "to prove that the subject-matter of the rumour was true." But this is not a case of repetition or rumour. I agree with the distinction drawn by Horridge J. on this point, though not necessarily with his limited view of the effect of the libel in that case. Anyway, even if this is to be treated as a rumour case, it is still necessary to find out what the rumour is. A rumour that a man is suspected of fraud is different from one that he is guilty of it. *For the purpose of the law of libel a hearsay statement is the same as a direct statement, and that is all there is to it*.
>
> [Emphasis added]

15 The repetition rule is grounded in policy and it recognises that the repetition of another's libellous statement is "just as bad as making the statement directly": see *Rubber Improvement* at p 260 (per Lord Reid). In *Shah v Standard Chartered Bank* [1999] QB 241 ("*Shah*"), Hirst LJ observed that the repetition rule (at p 263):

> reflects a fundamental canon of legal policy in the law of defamation dating back nearly 170 years, that words must be interpreted, and the imputations they contain justified, by reference to the underlying allegations of fact and not merely by reliance upon some second-hand report or assertion of them.

16 However, a defendant's obligation to prove the truth of a report or rumour will depend on the meaning that is conveyed by the report or rumour: see Lord Devlin's observations in *Rubber Improvement* (above at [14]) and *Duncan and Neill on Defamation* at para 12.41. The meaning that the court determines of the offending material will be of especial relevance towards the defence of justification, which I will turn to consider in greater detail below. In *Chase v News Group Newspapers* [2003] EMLR 218 ("*Chase*"), Brooke LJ outlined the three possible levels of involvement that could arise in every particular case in the following manner (at [45]):

> The sting of a libel may be capable of meaning that a claimant has in fact ***committed*** some serious act, such as murder. Alternatively, it may be suggested that the words mean that there are ***reasonable grounds to suspect*** that he/she has committed such an act. A third possibility is that they may mean that there are ***grounds for investigating*** whether he/she has been responsible for such an act. [Emphasis added in bold italics.]

17 The courts have since labelled these three possible meanings, as highlighted above (in bold italics), as being the "*Chase* Level One meaning" (i.e., the imputation of guilt), "*Chase* Level Two meaning" (i.e., that there were reasonable grounds for suspecting that the act was committed) and "*Chase* Level Three meaning" (i.e., that there were grounds for inquiring into whether the acts were committed). All three levels are generally regarded as being defamatory, though in varying degrees (see *Gatley on Libel* at para 3.27). These *Chase* categories are simply convenient labels and the court does not necessarily have to pigeonhole the offending material within one of the three *Chase* levels:

see *Curistan v Times Newspapers Ltd* [2008] 1 WLR 126 at [10].

18 It is clear, from the plaintiffs' pleaded case as to the meaning of the Statement, that there are two factual components to the Statement. The first generally relates to the bribes allegedly given by the plaintiffs to Captain Dafni as Area President of the defendant. The second generally relates to the bribes allegedly given to Captain Dafni as President and CEO of CNC Lines. For each component, the question arises as to what the ordinary reasonable reader would read the Statement as imputing.

19 The defendant did not deny, in its pleadings, that the Statement was capable of conveying the meaning that the plaintiffs had made secret payments to induce Captain Dafni to breach his duties as the defendant's Area President and that such secret payments constituted bribes by the plaintiffs to corruptly procure favours from Captain Dafni. In my view, such a meaning is plainly made out. The second paragraph of the Statement plainly alleged that the plaintiffs had made such secret payments to induce Captain Dafni to breach his duties as the Area President of the defendant. The sting of the Statement was that the plaintiffs had bribed Captain Dafni to procure benefits for their benefit. The more difficult issue is the level of imputation made under the Statement. Drawing from the *Chase* meanings, did the Statement convey the meaning that the plaintiffs were guilty of bribing Captain Dafni, that there were reasonable grounds to suspect that such bribes had been given, or simply that there were grounds for investigating whether such an act had been committed?

20 The difficulty that arises here is through the use of the qualifying words such as "charged", "Writ of Summons" and "alleged" in the first two paragraphs of the Statement. The defendant highlighted that in *Stern v Piper* [1996] 3 QB 123, Hirst LJ had made the following comments with respect to a statement concerning the commencement of a writ (at p 134):

> Cadam v. Beaverbrook Newspapers Ltd. [1959] 1 Q.B. 413 and Waters v. Sunday Pictorial Newspapers Ltd. [1961] 1 W.L.R. 967 are both decisions of this court, and the former to my mind does not create any difficulty, since I think it is acceptable that a statement that a writ or equivalent civil proceeding has been issued (or for that matter that an indictment or similar criminal proceeding has been laid) may be capable of conveying no more than the fact that the relevant proceedings have in fact been launched; moreover, and most important, there is no hearsay problem.
>
> Waters's case presents more difficulty, since there was a hearsay problem, and I think that case can only be explained, as Mr. Price suggested, on the basis that the statements reported were judicial pronouncements made in open court, and therefore fell into a special category. But I for my part regard Waters v. Sunday Pictorial Newspapers Ltd. as on the outer fringe of this class of case, and consider it should not be followed save on similar facts.

21 In *Cadam v Beaverbrook Newspapers Ltd* [1959] 1 QB 413 ("*Cadam*"), the defendant there had published the following words in its newspaper (at pp 414-415):

> ZENA DANIELS GETS A WRIT. Mr. Percy Oakley, 67-year-old former company director, of Sutton Coldfield, said last night that his solicitor had issued a writ claiming £350,000 damages for alleged conspiracy to deprive him of his interests in certain limited companies. He named Miss Zena Daniels, the racehorse owner and company director; her father, Mr David Daniels [other names removed]. Mr Oakley said: 'A writ has been issued, and I have been told by my solicitor that it has been served. The companies were: [there followed a list of four companies with their addresses]. I was originally managing director of those four companies. Mr Daniels and Miss Daniels took over by arrangement.

The newspaper sought leave to amend its pleadings to include particulars of justification that Mr Oakley did issue such a writ claiming damages for conspiracy to defraud. Cadam (the plaintiff in the action) objected on the basis of the repetition rule. The court, without making any determination on the merits, granted leave for the defendant there to amend its defence.

22 Similarly, in *Shah*, the UK Court of Appeal was concerned with various publications in which numerous qualifying words were used. Hirst LJ opined as follows (at p 257):

> Coming now to Mr. Rampton's meanings of no more than reasonable suspicion, his argument of course rests principally on the context in each of the publications, and in particular, the omitted words with their frequent use of qualifying words such as "alleged," "suggested," "apparently," "said to be," and the like, coupled with the reservations sometimes expressed, such as the statement in the last paragraph of the report that inquiries have so far failed to substantiate that Suresh Shah is the frontman for Dalal. I do not propose to go through these in detail; suffice it to say that I have come to the conclusion that in the case of each of the publications these miscellaneous qualifying words and reservations do render each set of the words complained of capable of bearing a meaning of no more than reasonable suspicion.

23 In light of the qualifying words used in the Statement, I am of the view that the Statement is not capable of conveying the meaning that the plaintiffs were *guilty* of bribing Captain Dafni. However, the Statement is, in my judgment, capable of conveying a *Chase* Level 2 meaning, that there were grounds to suspect that the plaintiffs had bribed Captain Dafni to procure favours, despite the presence of the qualifying words. The use of the word "charged" in the opening paragraph of the Statement conveys, to the ordinary reasonable reader, the meaning that criminal proceedings had been initiated against the plaintiffs. The defendant argued that the word "charge" is used in s 8 of the Defamation Act (Cap 75, 1985 Rev Ed) to mean "allegation" and that the court should therefore adopt the same definition in considering the Statement. I do not place any weight on the meaning of "charge" as used under the Defamation Act as its legal meaning would unlikely be known to the ordinary reasonable reader. An ordinary reasonable reader would, through his general knowledge or experience, know that criminal proceedings are initiated against a person only where there are reasonable grounds to suspect that the person had committed the offence in question. As a consequence of using the word "charged", I am unable to interpret the Statement as merely conveying the fact that proceedings have been launched and *Cadam* is therefore distinguishable. As a result, I find that the Statement conveys, to the ordinary reasonable reader, the meaning that there were reasonable grounds to suspect that the plaintiffs had bribed Captain Dafni to corruptly procure favours from the latter.

24 I now turn to consider the third paragraph of the Statement. The defendant denied that it bore the defamatory meaning that the plaintiffs had pleaded, *viz*, that Starship Agencies came to be appointed as agent for CNC Line in Malaysia as a result of bribes given by the plaintiffs to Captain Dafni. The defendant advocated for a factual interpretation of the third paragraph of the Statement and argued that the ordinary reasonable reader would not infer misconduct by association. If a strict and literal reading of the third paragraph of the Statement is adopted, it would arguably not be defamatory as it states, factually, the links that existed between Captain Dafni and the plaintiffs through their respective companies. However, the law does not confine the ordinary and natural meaning of the Statement to its literal meaning and allows for inferences or implications to be drawn: see above at [13] and *Goh Chok Tong v Jeyaretnam Joshua Benjamin* [1998] 2 SLR(R) 971 at [24]. Further, I am mindful of the need to read and consider the Statement as a whole. I accept that there was nothing in the Statement which suggested or implied that the plaintiffs had, in fact, given bribes to Captain Dafni so that the latter would appoint Starship Agencies the agent for CNC Lines in Malaysia. To that end, I do not think that the Statement conveys the meaning that the plaintiffs

were guilty in that respect. However, the Statement was arranged such that the above-mentioned links between Starship Agencies (being the plaintiffs' company) and CNC Lines (being Captain Dafni's employer) were highlighted immediately *after* allegations that the plaintiffs had bribed Captain Dafni whilst he was with his previous company, were made. To my mind, the sting of the Statement was that there were reasonable grounds to suspect that this agency relationship had been procured through bribes given by the plaintiffs to Captain Dafni.

25 Having decided on what the natural and ordinary meaning of the Statement is, it remains for me to decide whether the Statement was defamatory. A statement is considered to be defamatory if it would "tend to lower the [plaintiffs] in the estimation of right-thinking members of society generally" (*Sim v Stretch* (1936) 52 TLR 669 at p 671, cited with approval by the Court of Appeal in *Aaron Anne Joseph and Ors v Cheong Yip Seng and Ors* [1996] 1 SLR(R) 258 at [51]). In my view, given the meanings that the Statement convey, it cannot be disputed that the Statement is defamatory. The defendant had made very serious allegations that there were reasonable grounds to suspect that the plaintiffs were involved in acts of corruption and bribery, and it is difficult to see how the Statement would not have adversely affected the plaintiffs' reputation. I therefore find that the plaintiffs have succeeded in proving that the Statement was defamatory.

Was the Statement published?

26 As a general principle, publication takes place where the defamatory material is published by the defendant and *communicated to a third party* (other than the claimant). At law, publication to even one person will suffice to make out a finding of liability, with the scale of publication affecting, instead, the quantum of damages: see *Gatley on Libel* at para 6.1 (citing *Capital and Counties Bank v Henty* (1882) 7 AC 741 at p 765). Whether this principle is subject to the doctrine of abuse of process is something that I need not consider in the light of my findings below. For materials that are made available on the Internet, publication takes place when the material is downloaded and accessed by the end user: see *Dow Jones and Company Inc v Gutnick* 210 CLR 575 at [44] and *Godfrey v Demon Internet Ltd* [2001] QB 201 at pp 208-209. The plaintiffs will therefore have to show that the Statement was downloaded and accessed in Singapore.

27 Despite the ubiquity and broad reach of the Internet, the law continues to require a plaintiff to show that publication has taken place within a jurisdiction. The law does not recognise that there is a rebuttable presumption of law that substantial publication takes place within a jurisdiction simply because the material is placed on an Internet website that is generally accessible: see *Al Amoudi v Bisard* [2007] 1 WLR 113 ("*Al Amoudi*") at [32] and [37]. However, the court can *infer* that substantial publication within the jurisdiction has taken place (*Al Amoudi* at [33]). In the book by M Collins, *The Law of Defamation and the Internet* (Oxford University Press, 2005) ("*Collins*"), the learned author succinctly summarised the law on the circumstances in which the court could infer substantial publication for materials that are made available on the Internet, as follow (at para 5.04):

> Proof that Internet communications have been published is therefore not usually a difficult task. Every e-mail message which has been received and seen by a recipient, other than the person defamed, who is capable of understanding it, has been published. So too has every message posted on a bulletin board and every web page which is accessible to computer users, if it can be proved that any third person capable of understanding it has displayed and seen the message or web page on a computer screen. The claimant bears the burden of proof. ***That burden will generally be discharged by proving that at least one other person, other than the claimant, saw, read, or heard the communication. In the case of generally accessible web pages and bulletin boards with many subscribers, it may be inferred that publication has occurred*** .

> Where, however, an email message has not been read by any person other than its author and the defamed person, or a web page, although technically accessible, has not been visited by any person other than its author and its defamed person, then publication will not have occurred… [Emphasis added]

28 In the present case, there are two ways through which the Statement could possibly be published: through the Websites and/or the Email.

Publication through the Websites

29 The plaintiffs highlighted that it was unchallenged evidence that the Press Release had been published on the Websites which were available to any user of the Internet, and that these publications had a far-reaching and worldwide scope of exposure. They argued that an inference ought to be drawn that publication had taken place through the Websites, relying on *John Roger Steinberg v Pritchard Englefield (a firm)* [2005] EWCA Civ 288 ("*Steinberg*") and *Gregg v O'Gara* [2008] EWHC 658 ("*Gregg*") in support. This was especially since Hoffman himself gave evidence that the Press Release was available on the Internet and that the Press Release could be found by doing a search on the plaintiffs' names through a search engine. In response, the defendant highlighted that the plaintiffs did not provide any evidence that publication had taken place through the Websites in Singapore.

30 I do not find that the Press Release had been substantially published through the Websites in Singapore. None of the plaintiffs' witnesses gave evidence that they had accessed those websites in Singapore during the material time. As a result, there is no direct evidence of substantial publication in Singapore. Neither do I draw an inference that such publication had taken place in Singapore. The law appears to permit the court to draw an inference of publication even in the absence of any direct evidence (see *Collins*, above at [27]). Indeed, this appeared to be the case in *Steinberg*, where the UK Court of Appeal upheld the finding of publication, taking the view that the inference of publication was irresistible even in the (apparent) absence of direct evidence. Sedley LJ opined as follow (at [21]):

> I have therefore looked again at the factual basis of the claim upon which summary judgment was given. It was a long way from the situation found in [*Jameel v Dow Jones & Co Incorporated* [2005] EWCA 75]. The copy letter from Mr Steinberg to Pritchard Englefield, suggesting in no uncertain terms that the latter artificially and unprofessionally inflated their solicitor and own client costs, was accessible to anyone, including in particular a potential client, who fed the claimant's name into a standard search engine. It was also readable by anyone who accessed the defendant's own professional website. The inference of substantial publication was, it seems to me, irresistible.

31 However, I do not think that an inference ought to be drawn in the present case for the following reasons: Scofield's evidence was that the Shipping Gazette Website was designed for subscribers in China and Hong Kong while the Asian Shipper Website was designed for Singapore and Malaysia subscribers. There was no evidence as to the number of Singapore-based subscribers for the Asian Shipper Website and its general viewership. As such, I do not think it would be safe to infer that the Press Release was published in Singapore through the Websites, as it would be tantamount to recognising a rebuttable presumption of publication (which, as I have already held, is not the case). I accept that Hoffman gave evidence that the Press Release could be found on the Internet by using both the plaintiffs' names as one search term. The plaintiffs further provided evidence that conducting a search using the search term "dafni, benedict ng, rajathurai suppiah" would reveal the Press Release on two major search engines. I think that it would be highly unusual for any person to

conduct a search by combining two or three names in the search field and, as such, I do not believe that such a fact warrants the inference that substantial publication had taken place in Singapore on the peculiar facts of this case. Neither does *Gregg* assist the plaintiffs' case in this respect. The court there opined that the jury would draw an irresistible inference of substantial publication as there were witnesses who had accessed the defendant's website in the jurisdiction and a search of the subject-matter of the defamatory material (viz, the "Yorkshire Ripper") would result in the defendant's website being the first to appear amongst the list of results (*Gregg* at [51]). There is no such evidence here. I therefore find that there is insufficient evidence to support the finding or inference of substantial publication of the Press Release through the Websites, in Singapore.

Was there publication through the Email?

32 I now turn to consider whether publication had taken place, in Singapore, through dissemination of the Email. The plaintiffs relied on the evidence of Alain and one K. Cthembram ("Citi"), who was the Sales Manager at Forte Global Services Pte Ltd. Both Alain and Citi deposed that they received the Email containing the Statement. In addition, the plaintiffs sought to rely on the List of Recipients to establish that the Email had been sent to at least 1,776 persons in Singapore. The defendant argued that Alain's evidence was not relevant as he was a manager with Charter Shipping Agencies (of which Benedict was and Suppiah used to be a shareholder at the material time). Neither was the List of Recipients admissible as the plaintiffs had not complied with s 35(1)(b) or s 35(1)(c) of the Evidence Act (Cap 97, 1997 Rev Ed) (the "EA") by providing a certificate of the person responsible for the operation or management of the computer. The plaintiffs, in response, argued that the List of Recipients was not a computer output under the meaning of the EA. Even if it was computer output, the plaintiffs contended that the list satisfied the conditions required under s 35(1)(c) of the EA and was therefore admissible.

33 Section 35(1)(c) of the EA states:

> **Evidence of computer output**
>
> **35**. —(1) Unless otherwise provided in any other written law, where computer output is tendered in evidence for any purpose whatsoever, such output shall be admissible if it is relevant or otherwise admissible according to the other provisions of this Act or any other written law, and it is —
>
> (c) shown by the party tendering such output that —
>
> (i) there is no reasonable ground for believing that the output is inaccurate because of improper use of the computer and that no reason exists to doubt or suspect the truth or reliability of the output; and
>
> (ii) there is reasonable ground to believe that at all material times the computer was operating properly, or if not, that in any respect in which it was not operating properly or out of operation, the accuracy of the output was not affected by such circumstances.

34 In turn, s 3 of the EA defines "computer output" as:

> … a statement or representation (whether in audio, visual, graphical, multi-media, printed, pictorial, written or any other form) —

(a) produced by a computer; or

(b) accurately translated from a statement or representation so produced;

35 The List of Recipients comes in the form of a spreadsheet, with headings of "S/No", "Company Name", "Recipient Name" and "Email Addresses". According to Scofield, companies or persons who wished to receive shipping news from ASPL would have to fill up a registration form on its website by providing their names, company names and email addresses. The plaintiffs argued that the List of Recipients was not "computer output" as it was a statement produced by a person, with the aid of a computer, to answer Interrogatories that were ordered by the Court. They contended that the list would have been admissible if Scofield had chosen to write it by hand instead. However, Scofield did not give evidence as to how the List of Recipients spreadsheet was created. Given the large number of addressees on the list, together with the various inconsistencies throughout the list (*e.g.*, some names were entirely capitalised while others were entirely in small letters), it seemed more likely than not to me that the List of Recipients was produced or generated by the computer instead.

36 I will therefore proceed to consider whether the List of Recipients is admissible under s 35(1)(c) of the EA. Section 35(1)(c) of the EA is in *pari materia* with s 69(1) of the UK Police and Criminal Evidence Act 1984 ("PACE Act"), which has since been repealed in the UK. There is no dispute that the List of Recipients is relevant. I will first deal with the defendant's suggestion that s 35(1)(c) of the EA could only be satisfied by producing a certificate from the person responsible for the operation or management of the computer, as is permitted under s 35(6) of the EA. However, nothing in s 35 of the EA states or suggests that the production of the certificate is a mandatory condition: see *Lim Mong Hong v PP* [2003] 3 SLR(R) 88 at [41] and *R v Shepherd* [1993] AC 380 ("*Shephard*") at pp 386-387. Even if so, it is clear that the witness called to verify the reliability and accuracy of the computer will have to be someone fairly familiar with its operations. In *Shephard*, the House of Lords considered whether it was necessary for a person with responsibility for the operation of the computer to give evidence as to its reliability, under s 69(1) of the PACE Act. The House of Lords took the view that such a requirement was unnecessary. Lord Griffiths, delivering the judgment of the court, held as follows (at p 387):

> Documents produced by computers are an increasingly common feature of all business and more and more people are becoming familiar with their uses and operation. Computers vary immensely in their complexity and in the operations they perform. The nature of the evidence to discharge the burden of showing that there has been no improper use of the computer and that it was operating properly will inevitably vary from case to case. The evidence must be tailored to suit the needs of the case ***. I suspect that it will very rarely be necessary to call an expert and that in the vast majority of cases it will be possible to discharge the burden by calling a witness who is familiar with the operation of the computer in the sense of knowing what the computer is required to do and who can say that it is doing it properly*** .
>
> The computer in this case was of the simplest kind printing limited basic information on each till roll. The store detective was able to describe how the tills operated, what the computer did, that there had been no trouble with the computer and how she had also examined all the till rolls which showed no evidence of malfunction either by the tills or the central computer.
>
> In these circumstances I agree with the Court of Appeal … that she was fully qualified to give the evidence required by section 69 and that in the light of her evidence the till rolls were properly admitted as part of the prosecution case.
>
> [Emphasis in bold italics added]

37 The view espoused by Lord Griffiths in *Shephard* applies with equal force here. The computer in use here would only have to collate information typed in by a subscriber and would not be complex in nature. I am of the view that Scofield satisfies the requirement of being someone familiar with the operations of the computer. Scofield was able to describe how the entire subscription process took place and gave unchallenged evidence that the appropriate procedure for inserting the Statement into the e-news bulletin had been followed. I therefore find that Scofield was qualified to give evidence on the computer's reliability and accuracy under s 35(1)(c) of the EA.

38 The plaintiffs on their part needed to satisfy three requirements under s 35(1)(c) of the EA, *viz*:

(a) there was no reasonable ground for believing that the output is inaccurate because of improper use of the computer;

(b) no reason existed to doubt or suspect the truth or reliability of the output; and

(c) there was reasonable ground to believe that the computer was operating properly at all material times.

39 The plaintiffs suggested that a presumption of regularity applied to the List of Recipients, citing *R v Governor of Pentonville Prison*, e*x parte Osman* [1990] 1 WLR 277 in which Lloyd LJ observed, in relation to s 69(1) of the PACE Act, that (at p 306):

> Mr. Ross-Munro had a subsidiary argument in relation to computer records and whether, under section 69 [of the PACE Act], the prosecution had proved that the computers were operating properly before the deponent took up his employment. Nor had the deponent stated the source of his information and belief. There is nothing in either of these points. ***Where a lengthy computer printout contains no internal evidence of malfunction, and is retained, e.g. by a bank or a stockbroker as part of its records, it may be legitimate to infer that the computer which made the record was functioning correctly*** . [Emphasis added in bold italics.]

40 Further, the plaintiffs cited the decision of *R v Blackburn* (The Times, 1 December 1992), where Henry J held that:

> As will be apparent, there was nothing on the face of these invoices to throw any doubt on the accuracy of the serial numbers set out thereon, nor had the appellants any grounds, reasonable or otherwise, which they were able to put forward to suggest that there had been some computer malfunction. The trial judge in the event correctly held that the prosecution had discharged the initial evidential burden put on them under section 69(1) of the Act by the presumption of regularity: see The Governor of Pentonville Prison ex parte Osman 90 Cr App Rep 281, and by the more recent decision of another court in this division, R v Shephard 93 Cr App Rep 139 [not to be confused with the House of Lords' decision in *Shephard*].

41 However, the notion of the presumption of regularity was rejected by the House of Lords in *Shephard*. Lord Griffith explained (at p 384):

> The object of section 69 of the Act is clear enough. *It requires anyone who wishes to introduce computer evidence to produce evidence that will establish that it is safe to rely on the documents produced by the computer*. This is an affirmative duty emphatically stated:
>
> > "a statement in a document produced by a computer shall not be admissible as evidence of any fact stated therein unless it is shown." (Emphasis added.)

> Such a duty cannot be discharged without evidence by the application of the presumption that the computer is working correctly expressed in the maxim omnia praesumuntur rite esse acta as appears to be suggested in some of the cases. Nor does it make any difference whether the computer document has been produced with or without the input of information provided by the human mind and thus may or may not be hearsay.
>
> [Emphasis added]

42 Be that as it may, while the plaintiffs will have to provide evidence as to the reliability and accuracy of the List of Recipients, the burden imposed on them may not always be an onerous one. Much will have to depend on the facts of the case and the nature and complexity of the computer system involved: see *Shephard* at p 387 (cited above at [36]). In addition, the first two requirements as listed above at [38] (*i.e.*, those required under s 35(1)(c)(i) of the EA) were deliberately phrased in the negative to facilitate proof: see the Explanatory Statement to the Evidence (Amendment) Bill (Bill No 45 of 1995).

43 I have already found that the computer system in place here was not complex in nature. Scofield gave evidence that he had no knowledge that the proper procedure for releasing such a press release through the e-mail bulletin had not been followed, and that he believed those on the List of Recipients would have received the Email. As such, there was no reasonable ground for me to believe that the output was inaccurate due to improper use of the computer. As for the truth or reliability of the output, the Email was successfully sent to Alain and his name was on the List of Recipients. I do not accept the defendant's contention that Alain's evidence should be disregarded simply because he was an employee in one of Benedict's companies. It bears noting that Alain attended court on a subpoena issued by the plaintiffs, not voluntarily.

44 The case of *Jameel v Dow Jones & Co* [2005] QB 946 ("*Jameel*") does not assist the defendant's case in this respect. The fact that persons in the plaintiff's camp in *Jameel* had accessed the defamatory material knowing what they would find on it appeared to go towards the issue of damages rather than publication (*Jameel* at [68]). In certain instances, it may be the case that internal circulation of documents does not constitute publication where such acts are considered acts of the companies (see *Gatley on Libel* at para 6.9), but this does not apply in the present case. There was also no evidence of any complaint or feedback to ASPL that any of the subscribers, for one reason or another, did not receive the Asian Shipper e-News publication on 24 January 2008. Neither was there any evidence that the computer had malfunctioned. Instead, Scofield's evidence was that he had no knowledge that it had not been sent to the List of Recipients. I am satisfied, taking the evidence as a whole, that there was no reason to doubt the truth or reliability of the computer output and that there was reasonable ground to believe that the computer was operating properly at all material times. I will therefore admit the List of Recipients as evidence.

45 With the List of Recipients, I hold that the plaintiffs have established that there was substantial publication of the Statement within Singapore. I note that Scofield could not positively aver that every person on the List of Recipients had downloaded and accessed the Email in Singapore. However, given the large number of persons and email addresses on the List of Recipients, it seems more likely than not that a not insubstantial number of persons would have downloaded and read the Email in Singapore. In addition, Citi (whose name was not even on the List of Recipients) and Alain testified they had downloaded and accessed the Email in Singapore. As such, I would infer that substantial publication of the Statement had taken place in Singapore through dissemination of the Email, applying the test suggested by *Collins* (as quoted above at [27]).

The defence of justification

46 The defendant sought to rely on the defence of justification in relation to the plaintiffs' pleaded case that the Statement meant that they (the plaintiffs) had made secret payments to induce Captain Dafni to breach his duties as its Area President, and that such secret payment constituted bribes by the plaintiffs to corruptly procure favours from Captain Dafni (see [12(b)] to [12(e)] above).

47 The defence of justification requires a defendant to justify the imputation contained in the words and not the literal truth of the words: *Gatley on Libel* at para 11.8 and *Chase* at [35]. In the light of my findings above, I need to consider whether the imputation that there was *reason to suspect* that the plaintiffs had made secret payments to induce Captain Dafni to breach his duties, and that such payments constituted bribes to corruptly procure favours from Captain Dafni, was justified. The law requires a defendant to prove that the "main charge or gist of the libel" is true and a slight inaccuracy will not prevent a defendant from succeeding in his defence: *Chase* at [34] and *Gatley on Libel* at para 11.10. Furthermore, as the court in *Chase* observed (at [35]):

> Although the standard of proof is the balance of probabilities, the more improbable an allegation the stronger must be the evidence that it did occur before, on the balance of probabilities, its occurrence will be established.

48 Although I dismissed all of the defendant's claims in Suit 755, in the light of my finding on the meaning of the Statement, it is theoretically possible for the defendant to succeed in its defence of justification here. The defendant can rely on strong circumstantial evidence implicating the claimant that might objectively amount to reasonable grounds for suspicion: see *Chase* at [51]. However, the defendant cannot rely on facts arising after the publication to establish the existence of reasonable grounds, though it can rely on facts subsisting at the time of publication, even if he was unaware of them at that time: *Masa King v Telegraph Group Ltd* [2004] EMLR 23 at [22] and *Chase* at [52].

49 The defendant highlighted the following facts to support its defence of justification:

(a) it had issued a Writ of Summons in Suit 755 on 3 December 2007 against Captain Dafni and the plaintiffs;

(b) The plaintiffs, whether directly or through their companies, made secret and undisclosed payment of salaries and benefits to Captain Dafni. In support, the defendant highlighted that:

(i) There was no dispute that Charter Shipping Agencies had paid Central Provident Fund ("CPF") contributions and income tax for Captain Dafni;

(ii) Starship Carriers had paid US$80,000 to Captain Dafni *via* Maxwin International Development Ltd (which was partly-owned by Captain Dafni);

(iii) The documents submitted by Captain Dafni to the Immigration & Checkpoint Authority, the CPF Board and the Inland Revenue Authority of Singapore indicated that Captain Dafni had drawn a salary of $15,000 from Charter Shipping Agencies;

(c) These secret payments had induced Captain Dafni to breach his duty as its Area President. In support, the defendant highlighted that:

(i) Captain Dafni became an employee of Charter Shipping Agencies, played a vital role in helping it to develop some of Charter Shipping Agencies' projects and thereby put himself in a position of conflict vis-à-vis his position as the Managing Director of GSL;

(ii) Captain Dafni failed to disclose and ensure that payments (the "Rebates and Waivers") made by the Port Klang port authority ("Westports") to Starship Agencies were paid over to GSL and Seth as was intended;

(iii) Captain Dafni failed to ensure that the most competitive rates were obtained for depot and trucking services, for freight carried on board the defendant's vessels calling at Port Klang;

(d) Captain Dafni was induced by the plaintiffs to commit the above breaches. Benedict gave evidence that he needed Captain Dafni's contacts and expertise, and further, knew that Captain Dafni was being employed by GSL and/or the defendant. The plaintiffs wanted to take advantage of Captain Dafni's position and contacts and thereby continued to induce him to commit the above breaches of duties to GSL and the defendant;

(e) Bribe(s) were given, as secret payments had been made to induce Captain Dafni to act in the plaintiffs' favour.

50 Under s 8 of the Defamation Act, where there are two distinct charges made against the plaintiff, the defence of justification shall not fail because the truth of every charge is not proved, if the words not proved to be true do not materially injure the plaintiff's reputation. Since the sting of the Statement was that the plaintiffs had bribed Captain Dafni to breach the duties he owed, it was necessary for the defendant to prove the truth of such matters only.

51 While a Writ of Summons was, in fact, issued against the plaintiffs in Suit 755, given my earlier finding that the sting of the Statement was that there were *grounds to suspect* that the plaintiffs had committed those alleged acts, this fact is not relevant towards the defence of justification.

52 I accept that payments were indeed made by Charter Shipping Agencies to Captain Dafni, and that there were documents which stated that Captain Dafni had drawn a salary from the company. However, I also accept that Captain Dafni had informed Mr Strammer (former Vice-President of the defendant in Israel) about his employment with Charter Shipping and that Mr Strammer had consented to the same (see the *Suit 755Judgment* at [69]). Therefore, it did not lie in the defendant's mouth to now allege that Captain Dafni was in breach of his duties by becoming an employee of Charter Shipping Agencies.

53 Further, Captain Dafni started receiving payments from Charter Shipping Agencies from March 2003 onwards. The plaintiffs rightly pointed out that some of the alleged breaches of duties took place before that. In respect of the allegation that the Rebates and Waivers were known to Captain

Dafni but was not disclosed to the defendant, the evidence that the defendant relied on were the letters sent between 1999 and 2001. Similarly, for the allegedly inflated trucking and depot charges, the defendant's claim was that such charges were inflated from 2002 onwards. Both alleged breaches of duties pre-dated the alleged secret payments. In the circumstances, it is difficult to see how the defendant can say that the payments induced the breach of duties, or that the payments were bribes to procure such favours.

54 Furthermore, the evidence which the defendant relied on to substantiate its claim that breaches of duties had taken place did not, in my view, amount to reasonable grounds to suspect that the plaintiffs had committed such acts. In respect of the Rebates and Waivers, there was no evidence that the letters sent in 1999 were known to Captain Dafni or binding on the parties involved (see the *Suit 755 Judgment* at [39]-[40]). The letter from Westports dated 30 April 2007 also did not assist the defendant's case for reasons already explained (see the *Suit 755 Judgment* at [42]). Furthermore, the new rates in 2001 were made known to the defendant by Captain Dafni (see the *Suit 755 Judgment* at [44]). Hoffman himself admitted that he did not know whether Captain Dafni had known about the Rebates and Waivers and allowed Starship Agencies to keep them. The documentation relied on by the defendant to purportedly show that the Rebates and Waivers had been paid over to the plaintiffs' company (Starship Agencies) was not reliable for reasons explained in the *Suit 755 Judgment* (at [46]-[49]).

55 In respect of the trucking and depot charges that were allegedly inflated, the evidence which the defendant relied on did not show what the prevailing market rates were at the material time (*Suit 755 Judgment* at [52]). There was also no proof that the defendant could obtain substantially lower rates thereafter. For the above reasons, it is difficult to see how there were reasonable grounds to suspect that Captain Dafni was in breach of his duties to Zim, let alone to suspect that the undisclosed payments or bribes had induced Captain Dafni to breach his duties.

56 As for the payment to Maxwin, the defendant did not have any evidence to show how this payment was linked to any alleged breaches of duties (see the *Suit 755Judgment* at [75]). Neither did the payment to Maxwin involve Suppiah. In a similar vein, the payment to Maxwin took place in 2005 and it is difficult to see how it could cause or was related to any of the alleged breaches of duties by Captain Dafni. As a result, I do not see how the defendant can use the payment to Maxwin to support its defence of justification.

57 To summarise, in my view, the defendant did not have any evidence that the payments that Captain Dafni received (or allegedly received) from the plaintiffs had induced, or was for the purpose of inducing him to breach his duties owed to the defendant or to corruptly procure favours from him. The fact that Captain Dafni might have received payments from the plaintiffs or their companies could not, each on its own, give rise to any reasonable suspicion that the plaintiffs had bribed Captain Dafni to procure favours. Neither did I, for the same reasons, think that there was strong circumstantial evidence indicating such reasonable grounds for suspicion. Consequently, I dismiss the defendant's defence of justification.

Damages

58 In the light of my findings, the plaintiffs have successfully made out its case of defamation against the defendant. I will now turn to consider the damages which the plaintiffs should be entitled to.

59 The plaintiffs' claim for damages was twofold: compensatory damages and aggravated damages. To support their claim for compensatory damages, the plaintiffs highlighted that they were

both involved in the business of various companies in various capacities. The Statement, coming from the defendant (which they submitted were a large and well-known company in the shipping industry) and being published on the Internet, inflicted grave damage to both their reputations within the shipping industry as well as their livelihood.

60 The defendant argued that the plaintiffs were only entitled to nominal damages as they were confined to claiming damages arising from publication of the Statement to Citi and those who might have read the Email in Singapore only. There was no evidence of publication vis-à-vis the websites in Singapore; in any case, the Statement was removed from the websites within a few days. There was also no evidence that the plaintiffs or their companies had suffered losses as a result of publication of the Statement. Further, Suppiah had admitted during the Suit 755 trial that he was a nominee director for a number of companies and did not take an active role in managing companies.

61 The plaintiffs argued they were also entitled to aggravated damages for three reasons. First, they submitted that the defendant had acted with malice in publishing the Statement as its intention was to stain the reputation of Captain Dafni and the plaintiffs, especially since CNC Lines was, during the material time, a "formidable competitor" of the defendant. Second, the defendant did not, at any time, apologise to the plaintiffs. Third, the defendant persisted and failed in its defence of justification despite the lack of evidence against the plaintiffs.

62 The defendant contended that the plaintiffs were not entitled to aggravated damages as it did not issue the Statement maliciously to maximise damage to the plaintiffs and had merely stated the matters contained in the Writ of Summons for Suit 755 and no more. The defendant highlighted that the allegations raised were the result of investigations that it had conducted and were not without basis. Further, the defendants claimed that they released the Statement to refute rumours about GSL's future, which it thought had been started by Captain Dafni.

63 The purpose of compensatory damage is to restore the plaintiff(s), as far as money can do so, to the position that he would have been in if the tort had not been committed: see *Duncan and Neill on Defamation* at para 23.04. The three factors that have to be taken into account in determining the award for damages are the damage to reputation, vindication of reputation and injury to feelings: *id* at para 23.07. Other factors that the court may take into consideration in determining the amount of damages include (*Gatley on Libel* at para 9.2):

> … the conduct of the claimant, his position and standing, the nature of the libel, the mode and extent of publication, the absence or refusal of any retraction or apology, and the conduct of the defendant from the time when the libel was published down to the verdict. The conduct of the claimant is relevant not only in respect of matters which go to "partial justification" of the libel but also to his conduct in the course of the litigation, as where he engages in an elaborate and long-lasting attempt to pervert the course of justice involving making and procuring false testimony and making the most damaging allegations of corruption and lying against innocent third parties.

64 Aggravated damages may be awarded by the court, taking the conduct of the defendant and his state of mind into account (*Gatley on Libel* at para 9.14). In *Sutcliffe v Pressdram Ltd* [1991] 1 QB 153, Nourse LJ observed (at p 184):

> The conduct of a defendant which may often be regarded as aggravating the injury to the plaintiff's feelings, so as to support a claim for "aggravated" damages, includes a failure to make any or any sufficient apology and withdrawal; a repetition of the libel; conduct calculated to deter the plaintiff from proceeding; persistence, by way of a prolonged or hostile cross-

examination of the plaintiff or in turgid speeches to the jury, in a plea of justification which is bound to fail; the general conduct either of the preliminaries or of the trial itself in a manner calculated to attract further wide publicity; and persecution of the plaintiff by other means….

65 I recognise that the gravity of the defamation involved here was fairly serious as it impugned the personal integrity of the plaintiffs. Hoffman admitted that publication of the Statement would have adversely affected the plaintiffs' reputation, causing the plaintiffs' potential business partners to have doubts about appointing them as their agent. However, I am of the view that based on the evidence, the Statement, while published substantially within Singapore, was not widely disseminated. This was especially since the only evidence of publication from which an inference was drawn, was through sending the Email to the 1,776 recipients. I accept that some may not have read the offending Statement and/or did not read it in Singapore.

66 On the one hand, I had to take into account the fact that the Email was sent to recipients who were operating in the same industry as the plaintiffs (the shipping industry). On the other hand, I do not think that the defendant had acted with malice in publishing the Statement. Hoffman's evidence was that the defendant had published the statement to quell rumours in the market about GSL and there is nothing in the evidence which suggested that the publication was made with malice. I do however, accept that the lack of an apology and the failed justification defence constitute valid grounds for claiming aggravated damages. Finally, I took into account the fact that there was no evidence that the defendant had repeated the defamatory Statement subsequently.

67 In my view, an award of $25,000 would be adequate to compensate each of the plaintiffs for the damage suffered as well as to vindicate their reputations. In addition, I grant each of them $10,000 by way of aggravated damages.

Exemplary Damages and Injunction

68 For the same reasons given above, I do not accept the plaintiffs' submission that exemplary damages should be awarded on the facts of this case.

69 As for the plaintiffs' argument that an injunction ought to be granted to restrain further publication by the defendant, I am of the view that an injunction would not be appropriate or necessary as there was no evidence to suggest that the defendant intended to repeat the defamatory allegations: see *Duncan and Neill on Defamation* at para 24.14.

Conclusion

70 I therefore award judgment to each of the plaintiffs in the sum of $35,000. In the light of the quantum of damages awarded, I need to and will hear further arguments from the parties on a later date on the issue of costs. In that regard, the parties are to write in to the Registrar to fix a hearing date.

Supplemental Judgment

10 March 2010

Lai Siu Chiu J:

71 Pursuant to the direction contained at [70] of the judgment dated 9 February 2010, counsel for the plaintiffs wrote to the Registrar to fix a hearing date before me to address the issue of costs.

Having heard the parties' submissions, I awarded costs to the plaintiffs on the High Court scale to be taxed on a standard basis unless otherwise agreed together with costs of attendance fixed at $500.

72 Counsel for the plaintiffs rightly pointed out that this court has the discretion under s 39(4) of the Subordinate Courts Act (Cap 321, 2007 Rev Ed) ("the Sub-Courts Act") to award costs on the High Court scale notwithstanding s 39(1) of the Sub-Courts Act and the fact that the plaintiffs were each awarded damages totalling $35,000 only. In support of his arguments, counsel for the plaintiffs referred to *Arul Chandran v Chew Chin Aik Victor JP* [2000] SGHC 111 where the plaintiff was awarded costs on the High Court scale even though the damages awarded arising out of defamatory remarks made by the defendant there against him were $150,000. The trial judge's award of costs on the High Court scale was affirmed by the Court of Appeal (see *Arul Chandran v Chew Chin Aik Victor* [2001] 1 SLR(R) 86 at [62]). Counsel for the plaintiffs also referred to the judgment of this court in *Premier Security Co-Operative Ltd and others v Basil Anthony Herman* [2009] SGHC 214 ("*Premier*") where costs on the High Court scale were allowed even though the damages awarded to the three plaintiffs in their defamation action totalled $150,000.

73 Another submission from counsel for the plaintiffs was that unlike the aforementioned cases, there was an additional factor here that justified the award of costs on the High Court scale to his clients, *viz* this suit was heard by this court immediately after Suit 755. He pointed out that the plaintiffs initiated this suit after Suit 755 was filed.

74 The court's attention was then drawn by counsel for the plaintiffs to an affidavit filed by Zim's District Manager Edward Collins Patrick ("Edward") on 20 May 2009, to support Zim's application for consolidation of this action with Suit 755. Edward had deposed that the factual circumstances of both suits were largely identical and the evidence (both documentary as well as oral to be adduced from witnesses) would be substantially the same. Edward had further deposed that both suits had a common link due to the overlap of factual issues to be determined.

75 Not surprisingly, counsel for Zim took a contrary stand and argued that the plaintiffs should only be awarded costs on the Subordinate Courts scale for three reasons, namely:

a this trial lasted barely three days;

b there was an overlap of evidence in relation to Zim's defence of justification. Counsel drew to the court's attention that Zim raised only this defence unlike the defendant in *Premier* who raised every conceivable defence possible on the defamatory statements he had made, all of which failed, and the fact that the defendant there was actuated by malice in making those statements;

c the number of witnesses for this case was substantially reduced because of the overlap with Suit 755.

76 In reply, counsel for the plaintiffs pointed out that had this suit not been heard in the High Court, trial dates would have taken a considerably longer time than three days as some of the issues in Suit 755 would need to be canvassed in this action.

77 I accepted the arguments of counsel for the plaintiffs. I was of the view that the plaintiffs' commencement of this suit in the High Court was fully justified by Zim's filing of Suit 755. Indeed, I pointed out to both counsel that had these proceedings been commenced in the Subordinate Courts, the action would very likely had been transferred to the High Court to be heard with Suit 755 in any case, for reasons of expediency and costs savings. It did not make sense for Suit 755 to be tried in

the High Court and for this suit to be dealt with in the Subordinate Courts when the facts of both suits were intrinsically linked and overlapped to a considerable extent.

78 Further, it did not lie in Zim's mouth to argue that the plaintiffs were only entitled to costs on the Subordinate Courts scale when it was Zim that had applied to court on 20 May 2009 (in Summons No. 2673 of 2009) to consolidate this suit with Suit 755, alternatively, that this action be tried at the same time as Suit 755. In the event, the court below ordered that trial of the present action be fixed before the same trial judge as Suit 755 and that the evidence adduced in Suit 755 be admitted as evidence in this action.

79 Consequently, I allowed the plaintiffs costs on the High Court scale.