ANB *v* ANF
[2010] SGHC 329

Case Number : Suit No 641 of 2009 (Registrar's Appeal No 470 of 2009)

Decision Date : 03 November 2010

Tribunal/Court : High Court

Coram : Steven Chong J

Counsel Name(s) : Tan Gim Hai Adrian, Ong Pei Ching and Joseph Yeo (Drew & Napier LLC) for the plaintiff; Michael Palmer and James Lin (Harry Elias Partnership LLP) for the defendant.

Parties : ANB — ANF

Tort

Civil Procedure

3 November 2010 Judgment reserved.

Steven Chong J:

Introduction

1 Increasingly, parties who claim to be defamed are resorting to preliminary determination under O 14 r 12 of the Rules of Court (Cap 322, R5, 2006 Rev Ed) on meaning of the offending words as a precursor to either summary judgment or the trial. In some cases, the determination has led to summary judgment while in others it has resulted in a bifurcation of the suit in that the trial judge who eventually heard the defamation action was required to decide the case based on a meaning pre-determined by another judge. The undesirability of such a practice in certain situations was noted in the recent decision of the Court of Appeal in *Basil Anthony Herman v Premier Security Co-operative Ltd and others* [2010] 3 SLR 110 ("*Basil Anthony*"). Essentially, the Court of Appeal observed that the court should refrain from giving an opinion on meaning where there are clearly triable defences.

2 The *raison d'etre* for the observations in *Basil Anthony* is simply the recognition that bifurcation of the trial process in situations where there are triable defences can only lead to multiple routes of appeal which would inevitably lead to more cost, expense and time. As such, this decision will trace the genesis of O 14 r 12 in order to determine when such a preliminary determination on meaning in defamation suits would be appropriate so as not to derogate from the objective and rationale behind its introduction.

3 The offending words, which formed the subject matter of the present defamation suit, were published in an article posted on a blog. The article sought to expose the practice of a particular teacher, the plaintiff, in extracting donations from foreign students to guarantee placement in a school in spite of the students failing the placement test. The article accused the plaintiff of several acts of improper conduct. Each of the alleged acts is linked to the practice of improper placement in the school.

4 The principal dispute on the pleaded meaning between the parties was whether the article had accused the plaintiff of improperly extracting donations on behalf of the school or had pocketed the

donations herself. It is apparent that both pleaded meanings are defamatory. The significance in the difference lies in the defence of justification. The defendant seeks to justify the former meaning but is admittedly unable to justify the latter. The Assistant Registrar ("the AR") determined that the article had accused the plaintiff of accepting *bribes* for her own benefit. The only remaining pleaded defence by the defendant was justification. However, the reference point for any justification defence must be the meaning of the offending words. It follows that in order to determine whether triable issues have been raised in relation to the justification defence, it is axiomatic that the court must first make a determination on meaning. This decision will therefore examine, *inter alia*, how such an approach is to be reconciled with the observations made in *Basil Anthony*.

Facts

5 On 23 July 2009, the plaintiff, [ANB] ("the plaintiff"), brought a defamation action against the defendant, [ANF] ("the defendant'), in respect of an article which the defendant had posted on her web blog ("the Article").

6 The Article was about two pages long, and read as follows:

> [ANB] was the HOD (English) at [B] Secondary School. She was also in charge of foreign students applying at the school. She wielded so much power. Can ask the school clerks [K] and [L], they know everything.
>
> She was sacked. But her successor told the students that she retired. The civil servant lied.
>
> I used to send my foreign students to take entrance tests in [B] Secondary School. So many years of sending them, only two got admitted. [ANB] demanded S$3000 cash for each student in donation. Cash ah, no cheques. Die die also must go ATM to withdraw cash.
>
> One particular guardian stood out, [M]. A Taiwanese married to an Indian. Co-incidentally the principal of [B] Secondary School then was a [N].
>
> Many of [M]'s foreign students were accepted in [B] Secondary School and [B] Primary School. Other foreign students have to register with so many schools to take entrance tests, her students only have to sit for test at these schools and sure to enter.
>
> I tutored one of her Taiwanese students once. Before his entrance test, he was given the essay topic and letter writing to practise with me!
>
> Later I learnt that the entrance tests were fixed. The foreign students of selected guardians would write their phone numbers on the test papers. This ensure the students would be given a place regardless of their results. Wow!
>
> [ANB] was sacked because of [M]. The Chinese proverb says, "Go up the hill too often, sure to meet a tiger."
>
> A Chinese failed her entrance test at [B] Secondary School. She was referred to [M] who not only got her a place in [B] Secondary School but a place in her homestay. That angered probably the guardian of the girl. That was how [ANB] was exposed.
>
> [ANB] was sacked, all retirement benefits vanished into thin air.
>
> [ANB] was mad, she called up other guardians to find out if they were the ones who made the

complaint. She was not remorseful and was looking for someone to blame.

[M] took her in as a tutor for her foreign students.

I'm surprised, no further investigations were done. MOE didn't refer her to CPIB. No mention of this in our papers. Blackout.

That's why the civil servants get bolder and bolder.

The things an educator will do for performance bonus. [ANB] is not the only bold one. There are plenty in our government schools. I'll have to expose them one by one.

7 The plaintiff contended that the ordinary meaning of the Article meant and was understood to mean that:

> [T]he Plaintiff was sacked as a teacher and lost her retirement benefits because the Plaintiff was corrupt in accepting bribes from the guardians of children applying for places in [B] Secondary School.

8 The defendant disagreed with the plaintiff that the ordinary meaning of the Article was that the plaintiff had accepted bribes from guardians of children applying for places in [B] Secondary School ("[B]SS"). In her Defence (Amendment No. 1) filed on 27 August 2010, the defendant pleaded that the Article meant:

> 8A(i) that the Plaintiff did not accord fair and equal treatment to all guardians who had attempted to register their foreign students at [B] Secondary school;
>
> 8A(ii) that the Plaintiff had on behalf of [B] Secondary School, improperly accepted cash donations of S$3000 each from some guardians of the foreign students. These donations were made to guarantee the admissions of these foreign students (whose guardians had made the said donations) into [B] Secondary School regardless of their placement test results;
>
> 8A(iii) that the Plaintiff's solicitation and collection of donations in exchange for the grant of limited publicly funded places in government schools to foreign students (regardless of their placement test results) amounts to an improper conduct on the part of a public servant; and
>
> 8A(iv) by her improper conduct of accepting donations (on behalf of [B] Secondary School) in exchange for guaranteed admissions of foreign students, the Plaintiff was hoping to secure a better performance bonus for herself.

Summons [xxx]/2009

9 On 2 October 2009, the plaintiff filed an application in Summons [xxx]/2009 ("SUM [xxx]") under O 14 r 12, for determination of the natural and ordinary meaning of the Article. SUM [xxx] also included an application for interlocutory judgment on the ground that the defendant had no defence to the plaintiff's claim.

10 The defendant's response to SUM [xxx] was that it was not appropriate for the Court to make a determination of meaning at this stage of the proceedings. In the event that the Court decided that determination of meaning was appropriate, the proper meaning of the Article was simply that the plaintiff had accepted cash donations of $3000 per student from guardians of foreign students who

were accepted into [B]SS regardless of the placement test results. Finally, the defendant also claimed that the plaintiff should not be granted summary judgment because there were triable defences.

11 SUM [xxx] was heard by the AR on 24 November 2009. The AR first found, as a preliminary point, that it was appropriate to make an O 14 r 12 determination on the meaning of the Article. During the hearing, the AR then raised the issue whether comments made by third parties on the blog on which the Article was posted could be taken into account in determining the natural and ordinary meaning of the Article. He then invited the parties to make further submissions on this issue, and indicated that he would give his decision on 8 December 2009.

12 On 8 December 2009, the AR delivered his decision. The AR first stated that he had not relied on the comments that had appeared on the blog because these comments had not been pleaded by the plaintiff, and were in any case extrinsic evidence. As to the natural and ordinary meaning of the Article, the AR found that:

> [T]he natural and ordinary meaning of the Article is that the Plaintiff was corrupt. She was corrupt because she had accepted cash bribes of S$3000 from guardians of foreign students. These bribes were made to guarantee acceptance of these foreign students into [B] Secondary School and were received by the Plaintiff herself.

13 After the AR's decision on meaning was delivered, the matter was stood down at the request of counsel for the defendant. Thereafter, the remaining application for summary judgment was scheduled for a half-day special hearing before the AR in the second week of January 2010. The AR, however, did not eventually hear the summary judgment application because the defendant proceeded with her appeal against the decision on meaning.

The Appeal

14 On 18 December 2009, the defendant filed a notice of appeal against the AR's decision both on the appropriateness of his determination on meaning as well as his actual determination of the natural and ordinary meaning of the Article.

15 I heard the appeal on 1 February 2010 and reserved judgment. In the course of drafting my decision, the Court of Appeal delivered its decision in *Basil Anthony* on 7 April 2010, which contained important dicta on the use of O14 r 12 in defamation cases and observed specifically that preliminary determination on meaning should not be made where there are triable defences. While I was considering whether to invite the parties to submit on the relevance of *Basil Anthony* and more specifically whether I should reconvene the hearing to consider the pleaded defences prior to arriving at my determination on meaning, counsel for the plaintiff, Mr Adrian Tan, commendably wrote in on 25 May 2010 to draw the court's attention to *Basil Anthony* and submitted that it would be appropriate for the court to hear the plaintiff's application for summary judgment before arriving at a decision on the defendant's appeal against the AR's decision on meaning. In the meantime, the defendant (by that time the defendant's solicitor and counsel had discharged themselves from further acting for the defendant) also wrote in to inform the court of the decision in *Basil Anthony*. On 23 June 2010, the parties appeared before me. The defendant appeared in person and informed the court that she was agreeable to the plaintiff's proposal for the summary judgment application to be heard in tandem with her appeal on the determination of meaning. This was in fact a course of action which was favourable to the defendant in that if I should find that there were triable defences, I should decline to make a determination on meaning in light of the guidance provided by the Court Of Appeal in *Basil Anthony*. The defendant requested for time to instruct a new lawyer to represent her.

I acceded to her request and was informed on 14 July 2010 that the defendant had instructed Mr Michael Palmer, who then requested to adjourn the appeal hearing in order to file an application to amend the defence. After obtaining leave, the amended defence was filed on 30 August 2010 in which the defendant deleted the defences of qualified privilege and fair comment leaving justification as the only remaining defence for consideration. The amendments which were introduced by Mr Palmer simplified the issues and certainly brought focus to the heart of the dispute between the parties. The plaintiff's application for summary judgment together with the defendant's appeal were eventually heard by me on 20 September 2010. To be fair to the defendant's previous counsel, Mr Yeo Hock Cheong, his submissions on meaning and the defence of justification were similar to the arguments which were emphasised by Mr Palmer during the reconvened hearing.

Issues on appeal

16 In this judgment, I will deal with the following issues which arose for determination following the path taken by the parties:

(a) When would a determination of the natural and ordinary meaning of offending words in a defamation action be appropriate under O 14 r 12?

(b) What is the natural and ordinary meaning of the Article?

(c) Has the defendant raised a triable defence of justification?

Use of O 14 r 12 in defamation actions

17 O 14 r 12 which is titled "Determination of questions of law or construction of documents" provides that:

> 12. —(1) The Court may, upon the application of a party or of its own motion, determine any *question of law* or construction of any document arising in any cause or matter where it appears to the Court that —
>
> (a) such *question* is suitable for determination without a full trial of the action; *and*
>
> (b) such determination will fully determine (subject only to any possible appeal) the entire cause or matter or any claim or *issue* therein.
>
> (2) Upon such determination, the Court may dismiss the cause or matter or make such order or judgment as it thinks just.
>
> (3) The Court shall not determine any question under this Order unless the parties have had an opportunity of being heard on the question.
>
> (4) Nothing in this Order shall limit the powers of the Court under Order 18, Rule 19, or any other provision of these Rules.
>
> [emphasis added]

18 Before examining the merits of the appeal, a few observations about the scope and ambit of O 14 r 12 should be noted:

(a) First, the rule is not intended to deal with any issue or question arising from the pleadings. Instead, from the wording of the rule itself, it is apparent that its purpose is restricted to determine questions of law and construction of documents.

(b) Secondly, unlike a typical summary judgment application under O 14 by the plaintiff, *any party* to the proceeding may invoke O 14 r 12. Indeed, there are several reported decisions in which the rule was invoked by the defendant to determine questions of law with the view to dismissing the action: see *Payna Chettiar v Maimoon bte Ismail* [1997] 1 SLR(R) 738 ("*Payna*"), *UCO Bank v Golden Shore Transportation Pte Ltd* [2006] 1 SLR(R) 1 and *Japura Development Pte Ltd v Singapore Telecommunications Ltd* [2000] 2 SLR(R) 1. O 14 r 12, when used in this manner, provides a defendant with an alternative way to bring about a summary dismissal of the claim which may not otherwise be available under the usual striking out regime under O 18 r 19.

(c) Thirdly, the rule is not limited to dealing only with defamation cases. This may appear to be stating the obvious but the preponderance of local reported decisions on the use of O 14 r 12 happen to deal with defamation cases.

19 It is perhaps apposite to begin my analysis by first considering the decision in Microsoft Corp and others v *SM Summit Holdings Ltd and another and other appeals* [1999] 3 SLR(R) 465 ("*SM Summit*") which was the first reported case where O 14 r 12 was used in a defamation action to determine the meaning of the offending words. *SM Summit* has been interpreted in subsequent decisions (See below, at [59]) as permitting a bifurcation of the trial process in defamation cases. However, as mentioned earlier, *Basil Anthony* expressed some doubt whether *SM Summit* has been properly applied. Following the decision in *Basil Anthony*, both parties agreed that the effect of the observations made in *Basil Anthony* is that it would no longer be appropriate for a court to give a preliminary determination of meaning under O 14 r 12 unless such determination leads to summary judgment. Accordingly, it was also agreed by both parties that the defendant's appeal should be considered in tandem with the plaintiff's application for summary judgment and that if I arrive at the conclusion that there are triable defences, I should allow the appeal. In light of these developments, it is perhaps timely to revisit the decision in *SM Summit* and the practice which grew up post- *SM Summit* of allowing pre-trial determinations of meaning under O 14 r 12 in defamation cases.

Genesis of O 14 r 12

20 O 14 r 12 was first introduced into our Rules of Court in 1994 as O 14A ("SG O 14A"). In 1996, SG O 14A was renamed as O 14 r 12 after the revamp of our Rules of Court in their present form. In turn, SG O 14A was adopted from the English Rules of Court and was in *pari materia* with O 14A of the English Rules of Court ("O 14A"), which was introduced in England in 1991.

21 To determine whether O 14 r 12 is suitable for pre-trial determination of meaning in defamation cases, it is useful to examine the reasons for its introduction in England, as well as its subsequent application by the English Courts from 1991 to 1999 (1999 was the year where the Civil Procedure Rules were introduced in England).

Introduction of O 14A in the UK

22 In Singapore (as well as in the UK prior to 1999), the Rules of Court are typically drafted and introduced by a Rules Committee set up specifically to determine how the machinery of the court

process should operate. However, the proceedings of the Rules Committee are confidential, and there is no equivalent of the Hansard or other preparatory materials that can be used to interpret any particular provision of the Rules of Court. The only sources we can look to for aid in interpreting O 14A are from English case law, as well as academic opinion.

23 The authors of *The Supreme Court Practice* (London: Sweet and Maxwell, 1995 Ed), opined that O 14A was not meant to allow parties to obtain a determination of a standalone point law at the interlocutory stage, which would bind the trial judge should the case proceed to trial. Rather, O 14A was introduced to empower the court to dispose of complex issues of law to grant summary judgment in situations when the case might otherwise not have qualified for summary judgment under the existing O 14 procedure. As the authors noted:

> The underlying policy of this Order is to accelerate the final judicial disposal of an action at the interlocutory stage and thereby save the expense and delay which would otherwise arise not only if the action were to proceed to a full trial and also if the parties were be required to undertake the necessary pre-trial steps to prepare for such trial…
>
> This Order strengthens the powers of the Court when dealing with an application for summary judgment under O.14, since in an appropriate case the Court is able, instead of granting leave to defend on the basis that the defendant has raised an arguable defence on a question of law, to proceed directly to determine that question *and to give summary judgment*… (at 14A/1-2/1)
>
> The question of law or construction which appears to be suitable for determination without a full trial must also have the potential that its determination will finally determine the entire cause or matter or any claim or issue therein as, for example, the issue of liability, leaving the question of damage and interest therein to be assessed subject only to any possible appeal (para. 1(i)(h)). *Indeed the overall objective of this Order is the final disposal of actions at the interlocutory stage on the determination of a question of law or construction…*(at 14A/1-2/6)
>
> [emphasis added]

24 This need for O 14A stemmed from the conflicting and inconsistent manner in which the English courts had approached the summary judgment regime under O 14. Two divergent lines of authorities as regards the treatment of complex issues of law under O 14 had been developed by the English Court of Appeal. Under the first line of cases, the court adhered strictly to the words of O 14 r 1, which provides that the court should only grant summary judgment if:

> [T]he defendant has no defence to a claim included in the writ, or to a particular part of such a claim, or has no defence to such a claim or part except as to the amount of any damages claimed…

25 The effect of this approach was that summary judgment was denied as long as the defendant could raise a serious defence even though the defence was based solely on a point of law that could have been decided at the interlocutory stage without the need for further evidence. As Parker LJ stated in *Home and Overseas Insurance Co Ltd v Mentor Insurance Co (UK)* [1990] 1 WLR 153:

> The purpose of Order 14 is to enable a plaintiff to obtain a quick judgment where there is plainly no defence to the claim. If the defendant's only suggested defence is a point of law and the court can see at once that the point is misconceived the plaintiff is entitled to judgment. If at first sight the point appears to be arguable but with a relatively short argument can be shown to be plainly unsustainable the plaintiff is also entitled to judgment. But Order 14 proceedings should

not in my view be allowed to become a means for obtaining, in effect, an immediate trial of an action, which will be the case if the court lends itself to determining on Order 14 applications points of law which may take hours or even days and the citation of many authorities before the court is in a position to arrive at a final decision. (at 158)

If the point of law relied on by the defendant raises a serious question to be tried which calls for detailed argument and mature consideration the point is not suitable to be dealt with in Order 14 proceedings. (at 159)

26 The English Court of Appeal adopted a similar approach in *The Coral* [1993] 1 Lloyd's Rep 1. In that case, the plaintiff had applied for summary judgment against the defendants on the ground that the entire dispute turned on the construction of certain terms in the bills of lading, and that this was an issue of law that could be dealt with at the interlocutory stage without having to go to trial. Bedlam LJ rejected the plaintiff's argument and held at 9 that:

In the present case, it is true that no further evidence could affect the construction of the bills of lading but on the construction argued for by the defendant issues of fact would have to be determined.

In my judgment, the plaintiff has not shown that the defendant's construction of the bills of lading is so clearly unarguable that there is no defence to the plaintiff's claim. In these circumstances I consider it unnecessary and undesirable to express my opinion on the proper construction.

27 On the other hand, a second line of cases showed a greater readiness to deal with complex issues of law in an O 14 application where that issue of law was dispositive of the dispute in question. For example, in *European Asian Bank AG v Punjab & Sind Bank (No.2)* [1983] 1 WLR 642, Goff LJ held that summary judgment ought to be given in cases where the entire dispute turned on a point of law, even when that point of law was a difficult one and the defendant had raised a serious question as to how that point of law should be decided. This willingness to deal with complex issues of law was similarly demonstrated in *RG Carter Ltd v Clarke* [1990] 1 WLR 578, where Lord Donaldson MR stated at 584 as follows:

If a judge is satisfied that there are no issues of fact between the parties, it would be pointless for him to give leave to defend on the basis that there was a triable issue of law. The only result would be that another judge would have to consider the same arguments and decide that issue one way or another. Even if the issue of law is complex and highly arguable, it is far better if he then and there decides it himself, entering judgment for the plaintiff or the defendant as the case may be on the basis of his decision. The parties are then free to take the matter straight to this court, if so advised.

28 The divergent approaches to O 14 applications involving complex issues of law by the English Court of Appeal became a cause for concern because there was serious doubt among the lower courts as to which approach was the correct one. It was against this background that O 14A was introduced into the English Rules of Court in 1991 to enable the court to determine any *question of law*. In other words, it gave legislative effect to the robust approach adopted by Goff LJ and Lord Donaldson MR. O 14A mandated that where the court was of the opinion that the defendant had raised an arguable defence on a *question of law*, it could proceed to determine that issue of law in an interlocutory manner and grant summary judgment.

The application of O 14A by the UK Courts

29 The background history of O 14A is informative as to the purpose which it was intended to serve, and provides a rational basis from which we can infer how O 14 r 12 should be applied in Singapore. However, this only tells us half the story. There is still a need to examine how the English courts have applied O 14A to assist in determining the proper application of O 14 r 12. It is relevant to point out that no direct guidance can be obtained from the English courts on the use of O 14 r 12 in defamation cases simply because in England, unlike Singapore, defamation cases are tried before a judge and a jury. In fact, this salient distinction was highlighted in *SM Summit* at [45]–[48].

30 There are three threshold requirements stated in O 14A, namely:

(a) The question or issue for determination must involve a question of law

(b) The question must be suitable for determination without a full trial of the action; and

(c) The determination will fully determine (subject only to any possible appeal) the entire cause or matter or any claim or issue therein.

31 Beginning with the first threshold requirement – is determination of meaning of the offending words a question of fact or law? In all previous decisions where O 14 r 12 was used to determine meaning, it was assumed by the parties that determination of meaning involves a question of law. If such meaning can be determined without reference to extrinsic evidence or cross-examination of witnesses, the determination would typically involve a question of law for the judge to decide. The situation is however different if the plaintiff is relying on a true innuendo to determine the meaning: see *Lim Eng Hock Peter v Lin Jian Wei and another* [2008] 4 SLR(R) 444. In such an event, O 14 r 12 would not be appropriate since evidence would have to be led. However, in the case before me, innuendo has not been pleaded.

32 As regards the second requirement, the phrase "suitable for determination" has been interpreted to exclude all questions that can only be answered with reference to disputed facts. Hence, the interpretation of a contract will not be suitable for an O 14A determination if the context in which the contract was signed is relevant in its interpretation: see *Associated Dairies Ltd v Baines and Others*, Court of Appeal, 6 July 1995. Similarly, the question of whether there is a duty of care in tort is typically unsuitable for O 14A determination because such a question would usually involve a mixed question of law and fact: see *Cullin v London Fire and Civil Defence Authority* [1999] PIQR P314. On the other hand, if the question to be determined is a pure issue of law, it should usually be "suitable for determination", since by definition, a question of law can always be decided without a trial or any fact finding process.

33 The final requirement that the question of law must fully determine the "entire cause or matter or any claim or *issue*" offers the most challenge in the proper interpretation of O 14 r 12. Conceptually, it is possible to argue that there is no need for the "question", which has to be determined to dispose of the entire matter or cause of action. After all, the word "*issue*" suggests that O 14A can be used to determine a standalone legal issue that forms part of the wider case. Such an interpretation would mean that the "question" to be determined is equivalent to the "*issue*". However, it is important not to lose sight of the purpose of O 14A which is to save time, cost and expense. Accordingly, an approach without addressing the issue whether time and cost would be saved may undermine the efficacy of the operation of O 14A since the determination of the "question" will, in every case, determine the "*issue*" that is raised by the "question" itself. A review of some English decisions on the application of O 14A is therefore essential.

34 In *Korso Finance Establishment Anstalt v Wedge & others*, Court of Appeal, 15 February 1994

("*Korso*"), the English Court of Appeal was faced with the question of whether it should make an O 14A determination on the construction of certain documents. There was no dispute that if the court construed the documents in the plaintiff's favour, the plaintiff would be entitled to summary judgment. On the other hand, if the court construed it in the defendant's favour, the dispute would have to proceed to trial. At first instance, the English High Court held that the matter was not suitable for an O 14A determination because, if it had found for the defendants on the construction issue, the matter would not have been "fully determined" and would have to proceed to trial. The English Court of Appeal overturned this decision. Leggatt LJ held that:

> [T]he question of construction is well capable of constituting an issue in the cause or matter. An issue may be said to be a disputed point of fact or law relied on by way of claim or defence. In the present case the determination of the question of construction one way or the other will finally determine an important issue, namely whether the respondents are primarily liable under the agreement. If the determination is in favour of the appellant it will finally determine the entire matter.
>
> ...
>
> In my judgment, having rightly decided that the issue could properly be disposed of without evidence and discovery, if he decided on the side of the plaintiffs, it would determine the action. In any event the question of construction was a dominant feature of the case, and the Judge ought to have proceeded to determine that issue.

3 5 *Korso* raises two interesting points about the proper construction of O 14A. First, it suggests that an O 14A determination is appropriate even if it would only "finally determine" the cause of action if it is decided in favour of one party, usually the plaintiff. In such circumstances, if the question is determined in favour of the other party, the result is simply that the other party is given leave to defend. Second, *Korso* acknowledged in dicta that the word "*issue*" in O 14A could be defined widely to include any legal issue in the dispute. However, it is important to note that the actual ratio in *Korso* did not go so far, since the effect of determining the proper construction of the documents in that case in fact resulted in the plaintiff obtaining summary judgment. As mentioned above at [28], this result is entirely in line with the underlying purpose of O 14A. Furthermore, the court emphasised that O 14A was appropriate because it would decide a "dominant feature" of the case. This suggests there are at least some standalone legal issues that may not be appropriate for O 14A determination if they are not "dominant features" of the case. Unfortunately, the English Court of Appeal did not provide any further guidance as to what it meant by "dominant feature", and we are left none the clearer as to when O 14A should be used to determine a standalone question of law. In my view, the introduction of a requirement that the issue must be a dominant feature of the case in order to be suitable for O14A determination is likely to cause more uncertainty and confusion.

36 In *State Bank of India v Murjani Marketing Group Limited and Others*, English Court of Appeal, 27 March 1991 ["*Murjani*"], the plaintiff sought summary judgment to enforce a New York judgment against the defendant. In order to succeed, the plaintiff had to succeed on three broad issues. The first issue in turn involved two questions, namely:

> (a) To found jurisdiction in the New York Court other than by agreement or submission, did Mr Murjani need to be present or to reside in New York or both, at the time the proceedings were issued or served?

(b) If residence was necessary, was he, on the facts, resident at the relevant time?

37 The plaintiff argued that the first question was a pure issue of law that the court could decide under O 14A, and leave the second question to be answered by the trial judge, if necessary. This approach was however rejected by the English Court of Appeal. Taylor LJ held as follows:

> Mr Keenan referred to O 14A rule 1 which came into force only on 1st Ferbuary [*sic*] 1991, after the judgment in this case. It is headed "Disposal of Case on Point of Law" and provides as follows, so far as is relevant:
>
> > "The Court may upon the application of a party or of its own motion determine any question of law . . . in any cause . . . at any stage of the proceedings where it appears to the Court that
> >
> > (a) such question is suitable for determination without a full trial of the action, and
> >
> > (b) such determination will finally determine (subject only to any possible appeal) the entire cause . . . or any claim or issue therein".
>
> Even under that rule, it could not be said here that to decide the issues of law would determine the whole cause or indeed the issue as to residence. In my judgment, the issues of fact concerning residence are so interwoven with the legal issues raised in this case as to make it undesirable for the court to split the legal and factual determinations. To do so would in effect be to give legal rulings in vacuo or in a hypothetical footing which the court will no do [*sic*].

38 In *Murjani*, the English Court of Appeal therefore declined to use O 14A to decide a standalone issue of law because it would not have "finally determined" the dispute or even the issue of residence between the parties.

39 In contrast to *Murjani* and *Korso*, the English High Court in *Neptune (Vehicle Washing Equipment) Ltd v Fitzgerald* [1996] Ch 274 ("*Neptune*") adopted a converse position. In that case, the plaintiff company had commenced an action against the defendant who was previously the sole director of the company. The plaintiff claimed that the defendant had breached s 317 of the UK Companies Act 1985 ("Companies Act (UK)") by failing to declare his interest before making certain decisions. The plaintiff could only succeed if he proved that:

(a) section 317 of the Companies Act applied even to cases where a company only had a single director; and

(b) the defendant had not made the declaration of interest

40 Lightman J held that the first question involved a pure issue of statutory interpretation that was amenable to an O 14A determination. He found that s 317 of the Companies Act (UK) indeed applied to cases where the company had a single director, and that the defendant would be in breach of this provision if he had not made the declaration. Accordingly, Lightman J answered the O 14A issue of law and left it to the trial judge to determine whether the defendant had in fact made the declaration.

41 *Neptune* is a significant case in the O 14A jurisprudence because it suggests that O 14A could be used to decide a free-standing point of law that will bind the trial judge when the case proceeds to trial. This substantially widens the scope of O 14A from its original purpose of affording greater avenues for litigants to obtain summary judgment in cases involving disputes on complex issues of law. However, it seems that generally, the judicial trend in the UK was actually against the use of O 14A in such a manner. Two reasons may be given for this. The first is general in nature, namely that all procedures which have the effect of bifurcating the judicial process should not be encouraged. The second is specific to O 14A itself.

42 English case-law has cautioned against the bifurcation of the court process into issues of law and fact, regardless of whether the mechanism used is O 14A, O 33 r 2, or some other provision in the Rules of Court. In *Morris and Another v. Sanders Universal Products* [1954] 1 WLR 67 ("*Morris*"), the defendant in a defamation case had sought an order under O 25 r 2 of the English Rules of Court to determine, as a preliminary issue of law, whether the allegedly defamatory article had any defamatory meaning. The first instance judge held that the article had a defamatory meaning, and the defendant promptly appealed. The English Court of Appeal dismissed the appeal on the merits, but expressed its discomfort with the way the parties had used the Rules of Court to obtain a bifurcation of a defamation case without any regard whether it would save time and costs. Jenkins LJ stated at 73–74:

> [B]ut I cannot part with this case without saying that, in my judgment, the procedure under Ord. 25, r. 2, is a most unsuitable procedure for the purpose for which it has been used in this case. *If recourse is to be had to that rule on the question whether the words complained of in a libel action are capable of a defamatory meaning, it seems to me the practice may grow up of splitting libel actions into two stages, the first being concerned with the aspect of the case with which we have been occupied today, and the second being the trial of the case itself in the event of the defendants failing to put a summary end to the proceedings on the preliminary issue with which we are now dealing. It seems to me that this would be a most undesirable practice and that a question such as that now raised is not a proper subject for an application under the procedure prescribed by Ord. 25, r. 2*.
>
> [emphasis added]

43 In similar vein, the House of Lords has also criticized the practice of using the Rules of Court to obtain a bifurcation of the judicial process. In *Tilling v Whiteman* [1980] AC 1 ("*Tilling*"), the plaintiff owner of a property had commenced proceedings to recover the property from the defendant tenants. The plaintiff then applied to have a particular provision of the UK Rent Act 1968 interpreted as a preliminary issue of law under O 33 r 2. On appeal to the House of Lords, Lord Scarman observed at [25] that the use of O 33 r 2 had resulted in more cost and delay for the parties.

> The case presents two disturbing features. First, the decision in the B county court was upon a preliminary point of law. Had an extra half-hour or so been used to hear the evidence, one of two consequences would have ensued. Either Mrs. Tilling would have been believed when she said she required the house as a residence, or she would not. If the latter, that would have been the end of the case. If the former, your Lordships' decision allowing the appeal would now be final. As it is, the case has to go back to the county court to be tried. *Preliminary points of law are too often treacherous short cuts. Their price can be, as here, delay, anxiety, and expense*.
>
> [emphasis added]

44 The second, and more specific judicial reluctance to use O 14A to determine a standalone point

of law was explained by the English Court of Appeal in *Brain v Ingledew, Brown, Bennison & Garrett (No.1)* [1996] FSR 341 ("*Brain*"). In *Brain*, the plaintiff had commenced a suit against the defendants under s 70 of the Patents Act 1977 (UK) in respect of certain threats made by the defendants against the plaintiff. The English court made certain declarations in favour of the plaintiff under O 14A, and the defendants appealed. The English Court of Appeal allowed the appeal in respect of some of the declarations, and further held that O 14A should not usually be used to determine an issue of law that would not finally determine the claim. Aldous LJ stated,

> The judge only had jurisdiction under Ord. 14A to determine a question of law or construction of a document which arose, *providing that it was suitable for determination without a trial and it would finally determine an issue*. That rule is a useful weapon in the court's armoury, but should not be used unless the proper factual background is in evidence. *Generally a party who wishes an issue of law to be decided prior to trial should make an application for the issue to be tried under Ord. 33 r. 2 so that the court has the opportunity to decide whether the issue is suitable to be determined as a preliminary issue and the best way to do so*.
>
> [emphasis added]

A similar view was echoed by Hobhouse LJ, who opined that:

> There are various methods which a judge can adopt to bring about the simplification of litigation. Ord. 14A is only one of them and its scope does not extend to the summary trial of questions which include issues of fact. Where there are issues of fact which also need to be resolved, other methods must be adopted, for example, ordering particulars or statements on oath so as to obtain admissions, or directing the trial of preliminary issues. I say nothing about whether any such course would have been appropriate at this stage in the present case, nor do I wish in any way to discourage judges from adopting such methods in appropriate cases, but the course which Jacob J. adopted in the present case was not one which was open to him.

45 The English Court of Appeal in *Brain* appeared to have taken the view that insofar as determination of preliminary issue is deemed desirable, the preferred route to deal with it is perhaps under O 33 r 2 rather than under O 14A. Unfortunately, it did not explain its preference for the O 33 r 2 mechanism over O 14A. Perhaps one advantage that O 33 r 2 is perceived to have over O 14A in dealing with preliminary issues of law is that it seldom leads to a situation of two different judges deciding the issues of law and fact, since the judge who makes an O 33 r 2 order usually decides the issues of law and fact in two different stages during the same trial.

46 In conclusion, the approach of English courts with regard to the use of O 14A may be broadly summarized as follows:

(a) First, O 14A is broad enough to be used to determine a standalone issue of law.

(b) Second, notwithstanding this, the courts are slow to use it in such a manner because bifurcation of the trial process has the potential to lead to greater expense and delay for the parties.

(c) Third, insofar as it is desirable to have an issue of law determined before the trial, it may be preferable to use other procedures such as O 33 r 2 rather than resort to O 14A.

The Singapore Position

47 Although SG O 14A was introduced into the Singapore Rules of Court as early as 1994, it received little attention even after the 1996 reforms when it was redrafted as O 14 r 12. In fact, it was only in 1997 when O 14 r 12 first became the subject of attention in the case of *Payna*.

48 In *Payna*, the first defendant had obtained judgment against the plaintiff for ownership of certain parcels of land. Subsequently, the land was conveyed to the second to ninth defendants, and the conveyance was duly registered in the land registry. The plaintiff then started an action against the defendants to set aside the judgment on the ground that the first defendant had obtained it by fraud. It was not alleged that the second to ninth defendants knew or ought to have known of the purported fraud by the first defendant. The second to ninth defendants then made an application under O 14 r 12 for a determination of law as to whether the plaintiff was entitled to the relief sought. Chao J held that this was a matter suitable for O 14 r 12. He stated at [34] and [35] as follows:

> 34 It does not follow that an application under O 14 r 12 should only be made if the decision would finally determine the entire cause or matter. This is clear from the express wording of r 12(1)(*b*) itself — "such determination will fully determine (subject only to any possible appeal) the entire cause or matter or *any* claim or *issue therein*".
>
> 35 The English Court of Appeal had the opportunity to review the scope of O 14A in the unreported 1994 case *Korso Finance Establishment Anstalt v John Wedge*. The principles which it laid down are set out in para 14A/1-2/4 of the *Supreme Court Practice* and they are as follows:
>
> 1 An issue is a disputed point of fact or law relied on byway of claim or defence.
>
> 2 A question of construction is well capable of constituting an issue.
>
> 3 If a question of construction will finally determine whether an important issue is suitable for determination under O 14A and where it is a dominant feature of the case a Court ought to proceed to so determine such issue.
>
> 4 Respondents to an application under O 14A are not entitled to contend they should be allowed to hunt around for evidence or something that might turn up on discovery which could be relied upon to explain or modify the meaning of the relevant document. If there were material circumstances of which the Court should take account in construing the document they must be taken to have been known, and could only be such as were known, to the parties when the agreement was made. In the absence of such evidence the Court should not refrain from dealing with the application.

49 It must be noted that although Chao J had observed that O 14 r 12 could be used to determine issues of law even when such determination would not finally determine the entire dispute, he ultimately allowed its use in *Payna* because it resulted in summary dismissal of the claim against the second to ninth defendants. As Chao J stated at [31] and [36]:

> 31 For all the above reasons, the plaintiff's claim against the second to ninth defendants must be dismissed with costs.
>
> 36 In my view, the present case is eminently suitable for an application under O 14 r 12 because a decision in favour of the defendants *would have finally disposed of the action* between them and the plaintiff. The procedure could result in substantial savings of time and costs. Rule 12 would permit a full hearing, involving prolonged arguments on points of law.

[emphasis added]

50 Furthermore, Chao J's observation that O 14 r 12 could be used for determining standalone issues of law seems to have been based solely on the authority of *Korso*. As observed at [35] above, *Korso* itself (consistent with *Payna*) was a case where the English Court of Appeal had allowed the O 14A application because it in fact resulted in summary judgment in favour of the plaintiffs, and as such determined the entire dispute between the parties.

51 Accordingly, notwithstanding Chao J's dicta that O 14 r 12 could be used to decide standalone issues of law, the true ratio of *Payna* is, as it appears to me, that its application is most appropriate when it would have the effect of deciding the entire dispute between the parties.

52 I turn now to the decision in *SM Summit*, which was the first case where the court allowed O 14 r 12 to be used to determine the meaning of an allegedly defamatory article even though such determination did not in fact dispose of the entire action. The plaintiff in *SM Summit* had brought a defamation action against the defendants for publishing an allegedly defamatory press release at a press conference. Shortly after the commencement of the action, the plaintiff applied for summary judgment seeking an order under O 14 r 12 for determination of the natural and ordinary meaning of the alleged defamatory words. The Court of Appeal referred to *Payna* for the proposition that O 14 r 12 could be used to determine the meaning of an article even though such determination did not dispose of the entire action. Following that, it held that O 14 r 12 could be used to determine the meaning of the press release because the plaintiff was not relying on any extrinsic evidence to prove the ordinary meaning of the press release. It stated at [49] and [50] as follows:

> 49 Leaving aside for the moment the argument on para (*a*) of O 14 r 12(1), it is clear from a plain reading of the words of O 14 r 12(1) itself that that provision may be employed where the determination of a question would "fully determine" the entire cause or matter or any claim or any issue in the cause or matter…In our opinion, there is no impediment to the application of O 14 r 12 in the present case, as the determination of the meaning (or meanings) of the words complained of would fully resolve the issue as to the meaning of the words in the action.
>
> 50 As for the argument that the meaning of the words complained of is not "suitable for determination" without a full trial of the action because such determination requires the hearing of evidence, we find that such an argument is completely misplaced. The plaintiffs claim that the words complained of in their natural and ordinary meaning are defamatory of them. It is settled law that in determining the natural and ordinary meaning of the words, no extrinsic evidence is admissible to determine their meaning or the sense in which they were understood: *Bank of China v Asiaweek Ltd* [1991] 1 SLR(R) 230 at [13] and *Jeyaretnam Joshua Benjamin v Lee Kuan Yew* [1992] 1 SLR(R) 791 at [19]. A judge in determining this issue at this stage stands in exactly the same position as the trial judge, when what is relied on in this action is the natural and ordinary meaning of the words said to be defamatory of the plaintiffs.

53 It is clear that the Court of Appeal in *SM Summit* had adopted Chao J's reasoning in *Payna* that O 14 r 12 can indeed be used to determine an issue of law that did not finally determine the entire dispute. This much is uncontroversial. It is also clear from *SM Summit* that the meaning of an allegedly defamatory article is an issue that can be determined under O 14 r 12, if neither the plaintiff nor the defendant is relying on extrinsic evidence to prove their respective meanings of the article.

54 However, it bears repeating that the procedure under O 14 r 12 is discretionary in nature and this is clearly borne out by the opening lines of O 14 r 12 itself *viz* "The Court may". An analysis of the decision in *SM Summit* would not be complete without understanding its procedural history. When

the O 14 r 12 application was first made in *SM Summit*, the Assistant Registrar determined the meaning of the press release but granted the defendants unconditional leave to defend. The defendant then appealed to overturn the Assistant Registrar's determination of the meaning of the press release but the plaintiff did not appeal against the decision granting unconditional leave to defend. In the event, the High Court affirmed the Assistant Registrar's determination of the meaning of the press release. There was no consideration whether summary judgment should be allowed as there was no appeal by the plaintiff. Therefore when the matter came before the Court of Appeal, the only live issue was whether the determination on meaning should be upheld.

55 Given the procedural history, the Court of Appeal decided that it was perhaps best not to disturb the exercise of procedural discretion by the courts below since reversing the decision would have rendered the entire process a nullity. From the Court of Appeal's perspective, in upholding the Assistant Registrar's determination on meaning, it would in fact save costs and time for the parties in light of the specific circumstances of that case.

56 Therefore, *SM Summit* should not be taken as standing for the proposition that O 14 r 12 can always be used in every defamation case to determine meaning of the offending words irrespective of whether such determination would lead to summary judgment. As VK Rajah JA pointed out in *Basil Anthony* at [69], the Court of Appeal was very careful in S*M Summit* in emphasizing (at [51]) that:

> In our judgment, *in this case*, the natural and ordinary meaning of the alleged defamatory words is a question which is suitable for determination under O 14 r 12(1).
>
> [emphasis added]

57 The Court of Appeal's restrictive interpretation of *SM Summit* in *Basil Anthony* is entirely in line with its general attitude towards the bifurcation of the court process in dealing with issues of law and fact, which is one of caution. In *Federal Insurance Co v Nakano Singapore (Pte) Ltd* [1991] 2 SLR(R) 982 ("*Federal Insurance")*, the Court of Appeal had the opportunity to lay down the circumstances in which it would be appropriate to determine a preliminary issue of law under O 33 r 2 before trying the issues of fact. Chan Sek Keong J stated at [25]:

> Taking all the points made by counsel for the appellants, we may state as a general rule that the court will not exercise its power under O 33 r 2 to order a preliminary point of law to be tried, whether or not that point involves the prior determination of factual disputes affecting that point, unless the trial of that issue will result in a substantial saving of time and expenditure in respect of the trial of the action as a whole (including any counterclaim).

58 The Court of Appeal reiterated its cautious approach in *San International Pte Ltd v Keppel Engineering Pte Ltd* [1998] 3 SLR(R) 447 ("*San International*") where it stated at [30] as follows:

> All too often counsel are eager to take short cuts by taking preliminary points of law on inadequate agreed facts. This trend which is prevalent in building contract disputes is not to be encouraged. As it has been seen in this case it is counter productive and wasteful of time, expense and effort.

59 After *SM Summit*, a practice appeared to have developed in some defamation cases whereby the court would grant determination of meaning under O 14 r 12 as long as the parties were not relying on any extrinsic evidence to determine the meaning of the allegedly defamatory words irrespective whether such determination led to summary judgment. Some of these applications resulted directly in summary judgments for the plaintiffs, thus fulfilling the underlying purpose of O 14

r 12, *ie* saving time and cost for the parties: see *Lee Kuan Yew v Chee Soon Juan* [2003] 3 SLR(R) 8; *Lee Hsien Loong* v *Singapore Democratic Party and others and another suit* [2007] 1 SLR(R) 675; *Lee Hsien Loong v Review Publishing Co Ltd and another and another suit* [2009] 1 SLR(R) 177. On the other hand, there were some cases where the court made determination of meaning even though it was clear that the cases would still have to proceed to trial due to triable issues of fact. For example in Hytech *Builders Pte Ltd v Goh Teng Poh Karen* [2008] 3 SLR(R) 236 *("Hytech")*, the defendant had sent an email containing an allegation that the plaintiff was on the verge of collapse. The plaintiff then sued the defendant for defamation. The plaintiff applied, and obtained an O 14 r 12 determination of the natural and ordinary meaning of the offending words. As a result, when the matter came to trial, the only issue to be dealt with by the trial judge was whether the defendant had succeeded in establishing either of her pleaded defences of fair comment and qualified privilege. There was no discussion in the decision how such a determination would save time and cost for the parties. Similarly in *Basil Anthony*, the plaintiff had obtained an O 14 r 12 determination of the meaning of the words before the trial and more significantly before a different judge even though it was clear that the defendant had triable defences to the defamation suit.

60 The trend, as represented by cases like *Hytech* and the High Court's decision in *Basil Anthony*, appeared to have supported the use of O 14 r 12 to bifurcate a defamation suit whenever this can be done. The assumption seems to be that such bifurcation would always lead to the saving of time and cost for the parties. While I agree that O 14 r 12 can be used in such a manner, it is imperative to always bear in mind that the proper use of O 14 r 12 is directed at saving cost and time in each particular case.

61 In my judgment, the question of whether O 14 r 12 should be used to determine a free standing issue of law or construction of a document cannot be divorced from its underlying purpose, namely the saving of time and cost for the parties. More specifically, there should not be any assumption that the use of O 14 r 12 will always be cost and time efficient. This was precisely the approach taken by the Court of Appeal in *Basil Anthony*, where VK Rajah JA stated at [69] and [70] that:

> 69 [A] segmented approach is not likely to be cost or time efficient, both in terms of the time it takes for the case to be steered through the various stages and the possibility of an appeal at each stage …
>
> 70 [T]he plaintiff in a defamation action ought to apply for an O 14 r 12 determination of the natural and ordinary meaning of allegedly defamatory words/statements only where there are clearly no triable defences (see, *eg, Bank of Chia v Asiaweek* [1991] 1 SLR(R) 230; *Chee Siok Chin and another v AG* [2006] 4 SLR(R) 541; *Review Publishing v Lee* ([58] *supra*)). Ordinarily, if there clearly are triable defences, the court should refrain from giving an opinion on the natural and ordinary meaning of the alleged defamatory words/statements concerned in the O 14 r 12 proceedings.

62 Accordingly, O 14 r 12 should be used in defamation cases for determination on meaning in tandem with a plaintiff's application for summary judgment. If the court is satisfied that there are triable defences, it should decline to make a ruling on meaning. Any other interpretation is likely to lead to increase in cost, expense and time which would run counter to the underlying purpose behind the introduction of O 14 r 12. However, if it is more expedient to conduct the defamation trial with meaning determined in advance of the examination of the witnesses, such determination should be done by the trial judge under O 33 r 2. In this way, it would ensure that the determination on meaning is not made by a different judge which was one of the main objections observed in *Basil Anthony*. It leaves me now to deal with the plaintiff's application for summary judgment to see if there are triable defences before deciding whether the determination of meaning of the Article by the AR should be

upheld. In any event, both parties agreed that this is the correct approach to take.

The ordinary and natural meaning of the Article

63 The main point of contention between the parties was over the type of misconduct that the Article would convey to a reasonable person reading it. Mr Tan claimed that the ordinary person reading the Article would conclude that the plaintiff had received $3000 in cash for herself in return for a guaranteed place at [B]SS. On the other hand, Mr Palmer contended that the ordinary person reading the Article would only conclude that the plaintiff had solicited $3000 in cash as a donation for [B]SS in return for a guaranteed place at [B]SS.

64 Mr Tan advanced two arguments as to why a reasonable person reading the Article would have understood it as meaning that the plaintiff had demanded $3000 in cash for herself in return for a guaranteed place at [B]SS. First, the phrase "cash ah, no cheques" at paragraph three of the Article conveyed the impression that the plaintiff did not want to leave a paper trail because she knew she was doing something wrong. Since it is well known that schools do take donations made in cheque, the only possible inference that a reasonable person would make of this was the plaintiff intended to keep the money for herself and hence she did not want to leave any paper trail. Second, the phrase "MOE didn't refer her to CPIB" suggests that the plaintiff was corrupt because she took bribes for herself, and that this was something that the Corrupt Practices Investigation Bureau ("CPIB") should have investigated.

65 On the other hand, Mr Palmer responded with two principal arguments to explain why a reasonable person reading the Article would regard it as meaning that the plaintiff had solicited $3000 in cash as donation for [B]SS in return for a guaranteed place at [B]SS. First, the exact words used in the Article were that "[ANB] demanded $3000 cash for each student in donation." There was no indication that the defendant had used the word "donation" in a sarcastic or cryptic manner such that a reasonable person would regard it as a euphemism for a personal bribe, for example if the word donation was placed within inverted commas or italicised or in bold for effect. Coupled with the fact that the word "bribe" was not used even once in the Article, it was wrong to assume that a reasonable person would regard the Article as meaning that the plaintiff had taken a personal bribe for herself. Secondly, the phrase "the things an educator will do for performance bonus" in the last paragraph of the Article made it very clear that whatever wrongdoing the defendant had accused the plaintiff of committing was done in the hope that this would give her a high performance bonus. It was therefore entirely illogical for a reasonable reader to suppose that the plaintiff would get a higher performance bonus from the school by taking personal bribes surreptitiously for herself. Hence, the only way in which the Article could be reconciled with this phrase would be to read it to mean that the plaintiff had demanded $3000 in cash donations for [B]SS in exchange for a guaranteed place, and that she had done it in the hope that her achievement in securing more donations for [B]SS would earn her a higher performance bonus.

66 After considering the parties' respective arguments, I arrived at the conclusion that it was more probable that a reasonable person would read the Article as meaning that the plaintiff had demanded $3000 in cash donations on behalf of [B]SS. Although the Article's portrayal of the plaintiff's demands on payment in cash could suggest an inference that she did not want to leave a paper trail, this was not the only legitimate inference that could be drawn. A reasonable reader could also infer that the plaintiff's demand to be paid in cash was motivated by the concern that the cheque could possibly be dishonoured, and by then it would be too late to retract her offer of a guaranteed place in [B]SS. As for the reference to CPIB, this did not necessarily refer to personal corruption on the plaintiff's part. It could just as well refer to the plaintiff's conduct of "*selling*" guaranteed places in [B]SS in return for $3000 donations to [B]SS. In this regard, there is no dispute that it is the clear policy of the Ministry

of Education that schools are not permitted to solicit donations in exchange for school places. At this point, it is important to remember that the ordinary reasonable reader is "not unduly suspicious or avid for scandal" (*SM Summit* at [53]), and neither does he "select one bad meaning where other non-defamatory meanings are available": see *Skuse v Granada Television Ltd* [1996] EMLR 278 at 285 ("*Skuse*"). In the same vein, it would be overly cynical to assume that a reasonable reader would always read the Article in a way that portrayed the plaintiff in the worst possible light (*ie* taking personal bribes for herself) when a reasonable alternative interpretation (*ie* improperly soliciting donations for [B]SS) exists.

67 Furthermore, I agree with Mr Palmer that the reference to "performance bonus" in the Article was inconsistent with the plaintiff's contended meaning of the Article. Although Mr Tan attempted to play down this inconsistency by suggesting that it was completely disconnected with the rest of the Article and that it made no reference to the plaintiff, I found his argument on this point to be tenuous. In my opinion, although the reasonable reader is not blessed with the analytical attention of a lawyer (*Skuse* at 285), he or she is certainly able to select an interpretation of an article that makes the most logical sense as a whole. It is clear from the context that the reference to "an educator" in the singular could only refer to the plaintiff. Further, the sensible way in which the Article can be reconciled with the reference to performance bonus is by reading it to mean that the plaintiff had demanded $3000 in cash for [B]SS. Even if a reasonable reader had, after reading the initial part of the Article, formed an initial impression that the plaintiff had taken personal bribes, he would likely revise his views upon noticing the logical inconsistency between that initial impression and the reference to the performance bonus at the end of the Article. In legal terms, the reference to the performance bonus is the "antidote" that counters the "bane" (the impression that the plaintiff had taken personal bribes).

68 For the above reasons, I find that the Article meant and was understood to mean that the plaintiff was sacked as a teacher, because she had demanded $3000 in cash donations for [B]SS from the guardians of foreign students applying for places in [B]SS. These donations were made to guarantee acceptance of these foreign students into [B]SS regardless of their results in the placement test.

The defence of justification

69 It was common ground between the parties that the Article was defamatory (regardless of whether it had the meaning contended by the plaintiff or the defendant), and that the plaintiff was entitled to summary judgment unless the defendant could show the existence of a triable defence of justification. Mr Palmer further conceded that if the meaning of the Article was similar to the one advanced by the plaintiff, the defendant would have no triable defence based on justification and that the plaintiff would therefore be entitled to summary judgment. Accordingly, Mr Palmer's submissions on justification were advanced with reference to the meaning contended by the defendant.

70 There was no dispute between the parties on the law relating to the defence of justification. The defendant would succeed in proving the defence if she is able to prove that the main gist of the defamatory statement is true. There is no need for her to justify statements or comments which do not add to the *sting* of the charge. This was so held by the Court of Appeal in *Aaron Anne Joseph and others v Cheong Yip Seng and others* [1996] 1 SLR(R) 258 at [73]:

> It is true that the parts of the article which the respondents have not pleaded and justified were Van Leen's comments that the control exercised by a leader of a sect could be dangerous, that it could lead to a tragedy like the Jonestown incident, and that if things were to go wrong the lives

of the leader and the members could be at risk. Such statements of Van Leen were no more than a warning of the extreme results which could ensue. But the substance or gist of the libel contained in the article has been proved, *ie* the nature and extent of the control exercised by the first appellant over the members of the House of Israel resulting in their loss of self-will and dignity. *Gatley on Libel and Slander* (8th Ed, 1981) in para 361 states:

> **Substantial justification sufficient**. It is not necessary to prove the truth of every word of the libel. If the defendant proves that 'the main charge, or gist, of the libel' is true, he need not justify statements or comments which do not add to the sting of the charge or introduce any matter by itself actionable. 'It is sufficient if the substance of the libellous statement be justified; it is unnecessary to repeat every word which might have been the subject of the original comment. As much must be justified as meets the sting of the charge, and if anything be contained in a charge which does not add to the sting of it, that need not be justified' (per Burrough J in *Edwards v Bell* (1824) 1 Bing 403 at p 409)."

71 The defence of justification was based on four alleged incidents where the plaintiff was said to have offered guaranteed places in [B]SS to students who had failed the placement tests in return for $3000 cash donations to [B]SS:

(a) The first incident concerned a student of the defendant called [CD]. According to the defendant, the plaintiff informed her that [CD] had performed badly in the English component of the placement test. The plaintiff further requested a cash donation of $3000 to the [B]SS school committee fund as a prior condition for admission into [B]SS. Although [CD] initially agreed to make the $3000 donation, he eventually did not do so after a dispute with the plaintiff. In the event, [CD] was not admitted to [B]SS.

(b) The second and third incidents related to two foreign students, [EF] and [GH], who were under the charge of the defendant's husband. Both students had failed the [B]SS placement test and had been informed by the plaintiff that they had to make a cash donation of $3000 to the [B]SS school committee fund as a prior condition for their admission. In both cases, the defendant's husband pleaded with the plaintiff to accept cheque donations instead, and they were eventually accepted by the plaintiff. Thereafter both [EF] and [GH] were accepted into [B]SS.

(c) The final incident concerned another foreign student named [IJ] who was tutored by the defendant. [M] was [IJ]'s guardian. Before [IJ] sat for the [B]SS placement test, he came to the defendant's house with a copy of the [B]SS English Test Paper 1 and asked the defendant for assistance. Subsequently, [IJ] informed the defendant that the English placement test which he sat for at [B]SS was the same English Test Paper 1 which [M] had provided to him.

72 Mr Palmer claimed that the first, second and third incidents showed that for $3000, the plaintiff secured places in [B]SS for students who had failed their placement tests. This justified the defendant's allegation against the plaintiff that she had in fact solicited cash donations in exchange for guaranteed places in [B]SS. In addition, the fourth incident showed that the plaintiff had leaked out the [B]SS test papers to the students of selected guardians.

73 In response, Mr Tan submitted that there was no admissible evidence that the incidents had taken place as alleged. Furthermore, he proffered three main reasons why they did not afford a defence of justification even if the incidents did occur. First, in relation to the fourth incident, Mr Tan pointed out that there was no link whatsoever to the plaintiff since the defendant had not even alleged the plaintiff was the one who had leaked the test papers to [IJ]. Second, the defendant's own

version of the first, second and third incidents revealed that no cash donations were in fact received by the plaintiff on behalf of [B]SS. At the very most, they only showed that the plaintiff had, on behalf of [B]SS, received cheque donations from the defendant's husband. This was to be contrasted with the defendant's pleaded meaning of the Article that the plaintiff had accepted cash donations. Finally, Mr Tan pointed out that the defendant's particulars of justification dealt only with the plaintiff's alleged acts of accepting *cash* donations from the guardians of foreign students, and was conspicuously silent on the defendant's comments that the plaintiff had been sacked for her improper actions. Since an allegation that someone has been sacked is defamatory if that is not true, the plaintiff was entitled to summary judgment on this point alone.

74 I agree with Mr Tan that the final incident relied on by the defendant was irrelevant since it did not even purport to identify the plaintiff as the one who had leaked the test papers to [IJ] or to [M]. However, I did not agree with his argument that the second and third incidents were irrelevant to the defence of justification merely because, on the defendant's own version of events, the plaintiff had accepted cheque donations to [B]SS instead of cash donations as alleged. It is pertinent to point out that the plaintiff has not denied that both [EF] and [GH] were accepted by [B]SS in spite of failing the placement tests. Further, there was likewise no denial by the plaintiff that donations, albeit by cheques, were accepted by [B]SS from [EF] and [GH] through their guardian. In my opinion, the sting of the Article lay in the allegation that the plaintiff had demanded $3000 in donations from guardians of foreign students in return for guaranteed places in [B]SS even though the students had failed the placement tests. The second and third incidents clearly met the sting of the Article since they show (if proved to be true at the trial) that the plaintiff did demand $3000 in cash donations to [B]SS from the defendant's husband, though she was eventually persuaded to accept donations by cheques instead. It showed that [EF] and [GH] were thereafter accepted into [B]SS after cheque donations were made, despite failing the placement tests.

75 However, the defendant's defence of justification did not attempt to justify the allegation that the plaintiff had been sacked from her job because of her improper actions. Mr Tan was clearly correct in pointing out that an allegation that someone has been sacked from her job is defamatory since it connotes either incompetence or wrongdoing on the person's part. However, in a case where the allegation of sacking is merely one of a few allegations in a defamatory article, and the defendant is able to justify the other allegations, the inability to justify the allegation of sacking does not *ipso facto* mean that the defence of justification fails.

76 In this regard, there are a number of English cases which held that the defence of justification may succeed notwithstanding the fact that the defendant is unable to justify all the defamatory allegations made against the plaintiff. These cases followed a similar script whereby the plaintiff would sue the defendant for defamation only in respect of some of the allegations contained in a single defamatory statement. When the defendant tries to justify some of the allegations not complained of by the plaintiff, the plaintiff would then apply to strike out those justifications as being irrelevant to the defamation that is complained off: see *S and K Holdings Ltd v Throgmorton Publications Ltd and another* [1972] 1 WLR 1036 *("Throgmorton")* and *Polly Peck (Holdings) Plc and Others v Trelford and Others* [1986] QB 1000. The judicial response to this approach is to examine the defamatory material in its entirety to determine if it contained a common sting. If the separate allegations in the defamatory had a common sting, then the defendant may succeed on his defence of justification by proving the truth of the sting, notwithstanding his failure to prove each of the specific allegations complained of by the plaintiff. This is the case even if the common sting does not involve a general allegation of wrongdoing. In *Carlton Communications Plc v News Group Newspapers Ltd* [2002] EMLR 16, Simon Brown LJ explained the operation of this principle (at [47]):

> As I understand Mr Milmo's argument, it is that a second allegation cannot properly be introduced

> for the purposes of justification under the common sting principle unless, taken together, the allegations can be said to advance a wholly general charge — in Khashoggi of promiscuity, here of fakery. That argument, to my mind, unnecessarily glosses the authorities and would too narrowly circumscribe the scope of the substantive defence of justification. It would, for example, prevent a defendant who alleged of a claimant that he had committed three murders, in the event that the claimant chose to sue only in respect of one, relying by way of justification on the other two. Mr Milmo would, I think, submit that nothing short of an allegation that the claimant is a serial killer could found a defence on this basis. I would reject the argument.

The reasoning of the English courts on this issue cannot be faulted.

77 In the present case, the plaintiff had complained of two allegations in the Article, namely, that she had requested $3000 in donations for [B]SS in return for a guaranteed place; and that she had been sacked. Although these two allegations were seemingly separate, in my view, an ordinary reasonable person who read the Article would conclude that the plaintiff had been sacked *because* of her improper conduct in obtaining donations by guaranteeing places in [B]SS to students regardless of the placement test results. The sacking of the plaintiff was the mere consequence of such misconduct, and did not constitute an independent smear on her competence or character. The common sting behind the two allegations remained the same: that the plaintiff had acted improperly by requesting $3000 in donation for [B]SS in return for a guaranteed place in the school.

78 The mere fact that the two allegations contained a common sting did not, however, mean that the defendant was freed of the need to justify the allegation of sacking. There are varying degrees of misconduct, and it would be anomalous if a defendant who alleged a plaintiff of gross misconduct could escape liability merely by justifying a lower level of misconduct on the plaintiff's part. In this respect, reference should be made to the case of *Weaver v Lloyd* (1824) 2 B&C 678, where the defendant had charged the plaintiff with various acts of cruelty to a house, including, amongst other acts, knocking out one of the horse's eyes. He was able to justify all the acts of cruelty charged except the part about knocking out the horse's eyes. The court held that the defendant was liable because:

> The statement that he knocked out the horse's eye imputed a much greater of cruelty than a charge of beating him on other parts of the body. If we were to hold this a sufficient justification, exaggerated accounts of any transaction might always be given with impunity.

79 Accordingly, the question is whether the Article would be any less damaging to the plaintiff if the portion concerning the plaintiff's sacking was deleted from it. I considered the answer to be possibly yes, not because the sacking connoted a higher degree of moral shortcoming on the plaintiff's part, but rather because the fact of sacking might, in the eyes of some readers, provide some independent verification that the plaintiff had indeed committed the improper acts that the defendant had accused her of committing. In other words, the allegation of sacking had the effect of increasing the veracity of the defendant's allegation that the plaintiff had requested $3000 in donations for [B]SS in return for a guaranteed place in the school. This, however, is very different from saying that the allegation of sacking made the Article more defamatory than it would have been otherwise. Furthermore, the question of veracity becomes largely irrelevant when the defence is based on justification, since the defence requires the defendant to establish the truth of the allegations in any event.

80 For the above reasons, I hold that the defendant has raised a triable defence of justification and the plaintiff is therefore not entitled to summary judgment.

Conclusion

Conclusion

81 In the light of my findings, I made the following orders:

(a) The defendant is therefore granted unconditional leave to defend; and

(b) Consequently, I allow the defendant's appeal against the AR's determination on meaning of the Article.

82 For avoidance of any doubt, my finding on the meaning of the Article at [68] above was specifically for the purpose of arriving at my decision that the defence of justification is triable, and therefore should the matter proceed to trial, my determination on meaning of the Article would not bind the trial judge.

83 Finally, as regards costs, given the unusual route which this appeal has taken as well as the interposition of the Court of Appeal's decision in *Basil Anthony* after the appeal was first heard by me, it is only fair to both parties that costs of the appeal and the hearing below should be costs in the cause and I so order.