ABZ v Singapore Press Holdings Ltd
[2009] SGHC 182

Case Number : Suit 413/2008

Decision Date : 12 August 2009

Tribunal/Court : High Court

Coram : Lee Seiu Kin J

Counsel Name(s) : Anthony Leonard Netto (C H Chan & Co) for the plaintiff; Andrew Yeo, Ramesh s/o Selvaraj and Ramesh Kumar (Allen & Gledhill LLP) for the defendant

Parties : ABZ — Singapore Press Holdings Ltd

Tort – Defamation – Defamatory statements – Whether statements bore the defamatory meaning pleaded by plaintiff or some lesser defamatory meaning

Tort – Defamation – Justification – Whether defendant succeeded in its plea of justification

Tort – Defamation – Qualified privilege – Malice – Whether defendant could avail itself of defence of qualified privilege – Whether publication of article was actuated by malice such that defendant was precluded from this defence

12 August 2009 Judgment reserved.

Lee Seiu Kin J:

Introduction

1 In the 23 May 2008 edition of The Straits Times ("the Newspaper"), the defendant published an article entitled "*13-month-old boy critically ill in hospital*" ("the Article"). The 13-month-old boy in the Article, [B], had contracted hand, foot and mouth disease ("HFMD"). The Article appeared prominently on the first page of the Newspaper's Home section at a time when HFMD was prevalent in schools and kindergartens. The plaintiff was named in the Article. In this action, the plaintiff seeks general and aggravated damages for libel in respect of the Article, as well as an injunction to restrain the defendant from further publishing articles which are defamatory of the plaintiff.

Factual Background

2 The plaintiff is a Singapore company in the business of operating education centres at two locations in Singapore. In particular, the plaintiff is the owner of [xxx] ("the Centre"), which is a childcare centre. The defendant is a well-known Singapore company listed on the Singapore Exchange. It is the owner and publisher of the Newspaper.

3 For ease of reference, I set out the characters that feature in this suit:

(a) [B], the 13-month old boy who was critically ill from HFMD;

(b) [C], [B]'s mother;

(c) [D], [B]'s five-year old cousin who attended the Centre at the material time;

(d) [E], [D]'s mother who is also [C]'s cousin; and

(e) Salma Khalik ("Salma"), senior health correspondent of the Newspaper and the author of

the Article.

The plaintiff's case

4 The crux of the plaintiff's case against the defendant is for damages suffered as a result of the publication of certain words ("the Statements") in the Article. The main body of the Article is reproduced in full below (with the Statements italicised):

> A SECOND child in Singapore is critically ill following complications from hand, foot and mouth disease (HFMD). Doctors fear he may have encephalitis, or inflammation of the brain.
>
> [B], who turned 13 months old yesterday, was diagnosed with the childhood infection last Friday. He had a fever, no appetite and a rash.
>
> By Saturday, the normally active infant was refusing to eat or drink. That night, he woke up crying several times.
>
> The next day, his father, [F], 39, a technical officer with [xxx], took [B] to KK Women's and Children's Hospital (KKH), where he was warded.
>
> On Monday night, while his parents were with him, little [B] had a seizure and stopped breathing momentarily; his blood pressure plummeted and his heart rate raced up.
>
> Said his mother, [C], 29, an executive officer with the [xxx]: "It's a blessing that we took him to the hospital early. If it had happened at home, I wouldn't have known what to do."
>
> [B] was resuscitated and has been in intensive care since.
>
> Dr Chong Chia Yin, head and senior consultant of infectious diseases at KKH, said yesterday that it was too early to know how he will fare, though his blood pressure has improved and he is now less dependent on a ventilator for breathing.
>
> But she added: "He had a new seizure this morning."
>
> Dr Chong said [B] has fever, mouth ulcers and rashes on his palms, soles and buttocks. He throws up what he eats and is also drowsy.
>
> *[C], who is expecting her second child in October, said [B] probably caught the bug from his older cousin*.
>
> The cousin's mother, who looks after [B] while his parents are at work, called on Wednesday night last week to say that her son had HFMD. So [C] took leave the next day to look after her son at home. "But it was too late," she sighed.
>
> More than 13,000 children here have come down with HFMD this year, including 156 who have been hospitalised.
>
> While the epidemic seems to be tailing off – with a 25 per cent drop in cases from 1,246 for the week ending May 10 to 940 cases last week – the danger is not over yet.
>
> This is because the number of kids getting infected with the virulent EV71 virus is still on the rise. So far, 32 per cent of all children infected here were hit by the EV71 bug – up from

29 per cent a week ago.

This is the virus that infected [B].

Seven-year-old [G], the other child who suffered from encephalitis, was infected by one of the other 80 HFMD viruses. She has recovered fully and is back at school.

It was the spread of the EV71 bug that caused the Health Ministry to compel childcare centres to close if they have more than a certain number of children infected over 15 days or more.

So far, 24 schools have been told to close, and another 75 urged to do so. The school that [B]'s cousin goes to, [the Centre] in [address redacted], is not among them.

[C] was upset that the centre did not inform parents that it had some children down with this illness, so parents could keep their children away. The centre operator could not be reached for comment last night.

HFMD is usually a mild childhood illness which is passed from child to child through bodily fluids such as saliva or nasal mucus.

The number of HFMD cases here has been climbing steadily in recent years, from about 6,000 a year in 2003 to just over 20,000 last year.

[emphasis added]

5 In addition to the main body of the Article reproduced above, there were three headings, namely, "HAND, FOOT AND MOUTH DISEASE", "13-month-old critically ill in hospital", and "He suffered seizures and doctors fear he may have brain inflammation" (collectively "the Headings"). The second heading was printed in a larger font than the first and third headings. There were also two pictures of [B] in the Article ("the Pictures"). The larger picture depicted [B] lying on a hospital bed with tubes going into his nostrils and bandages covering his head, while the smaller one showed a smiling [B] in healthier times.

6 For ease of reference, I set out the Statements hereunder:

Statement 1: "[C], who is expecting her second child in October, said [B] probably caught the bug from his older cousin."

Statement 2: "So far, 24 schools have been told to close, and another 75 urged to do so. The school that [B]'s cousin goes to, [the Centre] in [address redacted], is not among them."

Statement 3: "[C] was upset that the centre did not inform parents that it had some children down with this illness, so parents could keep their children away. The centre operator could not be reached for comment last night."

7 The plaintiff's complaint is that the Statements are defamatory of it in its trade and/or business. The plaintiff pleaded that the Statements, in their natural and ordinary meaning, meant and/or were understood to mean that:

(a) The plaintiff did not take any, or any reasonable steps to protect their students from HFMD.

(b) The plaintiff did not take any, or any reasonable steps in the prevention and control of HFMD as was required of the plaintiff by the Ministry of Health.

(c) The Centre had some children infected with HFMD and the plaintiff did not take any reasonable steps to warn or notify parents of all children who attend the Centre.

(d) [B]'s cousin contracted HFMD from the Centre and as a result, infected [B] and caused him to contract HFMD.

(e) Like the 24 kindergartens that were told to close down and the other 75 that were urged to do the same, the Centre should be amongst the same category.

(f) The plaintiff tried to avoid the press intentionally because the plaintiff failed to take any or any reasonable steps or alert and warn parents of children who attend the Centre.

(g) It was the plaintiff's negligence in the management of HFMD amongst the children who attend the Centre that ultimately caused [B] to contract HFMD and suffer life-threatening conditions.

(h) The plaintiff was negligent in maintaining the health and hygiene standard of the Centre.

(i) But for the plaintiff's negligence, [B]'s illness could have been avoided.

8 The plaintiff submitted that the Statements read together with the Headings and the Pictures create the impression that the plaintiff caused [B]'s illness and predicament. The plaintiff argued that there is no evidence to suggest that [B] contracted HFMD from [D] (who, as mentioned above, attended the Centre). Further, there is also no proof that [D] caught HFMD whilst at the Centre. In addition, the plaintiff also contended that it was untrue that the plaintiff failed to notify parents that certain children who attended the Centre had taken ill with HFMD. The plaintiff asserted that it took all reasonable steps to notify the parents. In fact, the plaintiff maintained that it quarantined the children who fell ill during the material period until doctors had certified that they were free from the HFMD virus.

9 Further, the plaintiff took issue with Statement 3, which it submitted, suggested that the plaintiff was avoiding the press intentionally. It was not disputed that Salma (representing the defendant) attempted to contact the Centre at least twice in the evening via telephone but there was no one at the Centre to answer the calls. The plaintiff was aggrieved over the fact that the defendant reported in the Article that the plaintiff was unavailable for comment. According to the plaintiff, this gave an implication "by way of ominous conclusion that the Plaintiff was avoiding the press."[note: 1]

10 Finally, the plaintiff also contended that the publication of the Article was actuated by malice.

The defendant's case

11 The defendant submitted that, first and foremost, the Statements, in their natural and ordinary meaning, were not defamatory. Secondly and in the alternative, even if the Statements were defamatory, the defendant can avail itself of the defence of justification. Finally, and again in the

alternative, the defendant submitted that the Article was published on an occasion of qualified privilege.

12 Before I turn to address these issues, it would be helpful to first set out the background (as illustrated in the defendant's evidence) in relation to how both [D] and [B] contracted HFMD. In doing so, it will be revealed exactly what the impetus for the Article was.

Events relating to how both [D] and [B] contracted HFMD

13 [C] deposed that, at all material times, when she and her husband were away at work, [B] would spend the day at [E]'s house from 7.30am to about 6.00pm. [E] herself has three young children, who as at May 2008, were aged five, nine and 11 respectively. The youngest among [E]'s children is [D] who would usually play together with his cousin, [B], when [B] was at [E]'s house.

14 [E] also deposed that, at the material time, [D] attended the Centre every weekday from about 10.00am to 2.00pm. Further, [E] also stated that before and after [D] went to the Centre each weekday, [B] would usually be at her house.

15 On or around 14 May 2008, [D] was diagnosed with HFMD. On 16 May 2008, [B] himself developed a fever. The following day, [B]'s condition took a turn for the worse and on 18 May 2008, he was admitted to KK Women's and Children's Hospital ("KK Hospital"). On 19 May 2008, [B]'s blood pressure dropped and he fainted. He was then transferred to the Intensive Care Unit ("ICU"). There, [B] suffered a seizure and stopped breathing for about 15 minutes before he was resuscitated. [B] spent the next 11 days at the ICU.

16 On one of her visits to KK Hospital to see [B], [E] discussed [B]'s condition with [C]. The latter opined that "[B] probably contracted HFMD from [D] given that [B] had spent a significant part of the weekdays the previous week at [[E]'s] house and that [D] was diagnosed with HFMD just a few days before [B] was diagnosed with HFMD."[note: 2] In response, [E] told [C] that [D] himself "probably contracted HFMD from one of the children at the [Centre] but that the [Centre] had not informed [[E]] of any cases of children at the [Centre] with HFMD." [E] also gave evidence that she told [C] that had she been informed that "there were children at the [Centre] with HFMD, [she] would not have allowed [D] to attend the [Centre] until the [Centre] had no cases of children with HFMD."[note: 3]

How the Article came about

17 On 22 May 2008, Salma received an e-mail from one Miss Lim Jing Ting ("Miss Lim"), a media relations executive at the Ministry of Health ("MOH"). The e-mail was titled "MOH Press Release: Update on HFMD Situation", and was sent to a number of reporters and editors of various other newspapers and news media agencies. It read as follows:

> Dear Editors,
>
> Please see attached press release on the HFMD situation in Singapore, *for immediate release.* Thank you.
>
> [emphasis in original]

The press release ("Press Release") which was enclosed with the e-mail was titled "Update on Hand, Foot and Mouth Disease (HFMD) Situation in Singapore". At the top left hand corner of the Press

Release, there was an underlined notation in bold depicting that it was "For Immediate Release". The Press Release was one among a series of press releases that were posted on MOH's website between 27 March 2008 and 3 June 2008. These press releases were generally meant to be a source of information for the public on the HFMD situation.

18 I shall now set out the main body of the Press Release in full:

UPDATE ON HAND, FOOT AND MOUTH DISEASE (HFMD) SITUATION IN SINGAPORE

1 The number of HFMD cases notified to MOH decreased by 25% to 940 cases in the week ending 17 May 2008 from 1246 in the previous week. This brings the total number of notified HFMD cases in 2008 so far to 12,674. 10 (1.1%) cases required hospitalisation last week mainly because of poor feeding.

2 *A thirteen-month-old boy has been hospitalised for suspected encephalitis. The child was in contact with his cousin who had HFMD and attended a kindergarten with an active HFMD cluster.* He developed symptoms on 16 May and was seen by a general practitioner who made a diagnosis of HFMD. The child was taken to the Emergency Department on 18 May and admitted for poor feeding. The following day, he developed complications and has since been managed in the intensive care unit. Laboratory investigations were positive for EV71.

3 MOH's sentinel surveillance continues to show a high circulation of EV71 virus, with 32% of the samples tested positive for EV71 so far this year.

4 Last week, 2 preschools and childcare centres were ordered to close for a period of 10 days due to the extent of outbreak in these institutions, and 12 preschools and childcare centres with sustained transmission were advised to consider voluntary closure for 10 days. Closure of a centre will assist in breaking the transmission of HFMD cases and allow the centre to thoroughly clean the premises. Please see MOH website: http://www.moh.gov.sg for the latest update on daily number of cases and list of childcare centres/preschools that have reached mandatory or voluntary closure.

5 HFMD is generally a mild and self-limiting childhood disease. It is endemic in Singapore and there will be yearly seasonal outbreaks.

Public advice

6 The Ministry would like to stress the importance of maintaining high standards of personal and environmental hygiene to minimise the risk of HFMD. Parents should ensure that their children adopt the following good practices:

- Wash hands with soap before eating and after going to the toilet;

- Cover mouth and nose when coughing or sneezing;

- Do not share eating utensils.

Parents should also ensure that toys or appliances that are contaminated by nasal or oral secretions should be cleaned before they are used again.

7 Parents should consult a doctor early if their child has fever, mouth ulcers and rashes on the palms, soles or buttocks. Children with HFMD should remain at home until all the blisters have dried up. During this period, contact with other children should be avoided until the child recovers. The child should not be brought to any public or crowded places. Proper hygiene should also be practiced at home so as to prevent transmission to other family members.

8 For more information on HFMD, please see the FAQs on MOH website at http://www.pqms.moh.gov.sg/apps/fcd_faqmain.aspx, or the guideline on Prevention and Control of Infectious Diseases in Child Care Centres/Kindergartens/Pre-School Centres at http://www.moh.gov.sg/mohcorp/publica-tions.aspx?id=2962.

[emphasis added]

19 Salma's evidence is that it was not uncommon for the defendant to receive such communication from MOH as the defendant, during the material period, was working with MOH in updating and alerting the general public on the HFMD situation in Singapore. After Salma saw the Press Release on 22 May 2008, she started her preparations (by using the information gathered in the Press Release) for the drafting of the Article. Salma intended to publish the Article the following day (ie 23 May 2008). To this end, Salma made arrangements to interview [B]'s parents at KK Hospital on 22 May 2008 itself (the very same day she received the Press Release).

20 During the interview on 22 May 2008 at KK Hospital ("the Interview"), [C] informed Salma that [B] probably contracted HFMD from [D], who himself was diagnosed with HFMD on 14 May 2008. The reason for [C]'s belief was that [B] had been playing with [D] at [E]'s house when [C] and her husband were at work, a point which I alluded to at [13] above. [C] also told Salma that she was upset over the fact that parents in general, and [E] in particular, were not informed that there were HFMD cases at the Centre. [C]'s position was that had [E] known of existing HFMD cases at the Centre, she would not have allowed [D] to attend the Centre.

21 After the Interview, Salma returned to her office at around 6.00pm. Salma's evidence is that at or around this time, she attempted to contact the Centre to seek its comment for the purposes of the Article which the defendant intended to publish in the following day's edition of the Newspaper. Salma said she made at least two attempts to contact the Centre by telephone. As it turned out, there was no one at the Centre to pick up Salma's calls.

22 Bearing in mind that the Press Release indicated that the information stated therein was "for immediate release" to the public (see above at [17]), Salma proceeded to draft the Article based on the information that she gathered from the Press Release itself and the Interview. The Article was published on 23 May 2008 in the Newspaper. Further, as the defendant usually did with most articles, an electronic copy of the Article was published online.

The issues in this action

23 There are three issues in this case, the first of which is, what is the natural and ordinary meaning of the Statements? Further, do the Statements (in their natural and ordinary meaning) bear the defamatory meaning (with respect to the plaintiff's trade and/or business) pleaded by the plaintiff or some lesser defamatory meaning? (collectively "Issue 1"). The second issue is whether the defence of justification is made out ("Issue 2"). The third issue is whether the defendant can avail itself of the defence of qualified privilege; in this regard, it is also necessary to consider whether the publication of the Article was actuated by malice such that the defendant is precluded from this defence

(collectively "Issue 3").

Issue 1: Is the natural and ordinary meaning of the Statements defamatory to the plaintiff's trade and/or business?

24 In respect of Issue 1, the plaintiff's submissions pertained only to the last meaning as pleaded in [8] of its Statement of Claim (see above at [7]). This stated that "but for the plaintiff's negligence, [B]'s illness could have been avoided". In other words, the last meaning is that [B]'s illness was caused by the plaintiff's negligence. I therefore proceed on the basis that the plaintiff has not made any submissions on the first eight meanings pleaded and only deal with the last pleaded meaning. I turn now to consider the natural and ordinary meaning of the Statements.

25 The general principles applicable in determining the natural and ordinary meaning of the alleged defamatory words were neatly summarised in the Court of Appeal decision of *Microsoft Corp v SM Summit Holdings Ltd* [1999] 4 SLR 529 ("*Microsoft Corporation*") as follows (at [53]):

> The court decides what meaning the words would have conveyed to an ordinary, reasonable person using his general knowledge and common sense: Jeyaretnam Joshua Benjamin v Goh Chok Tong [1984-1985] SLR 516; [1985] 1 MLJ 334 and Jeyaretnam Joshua Benjamin v Lee Kuan Yew [1992] 2 SLR 310. The test is an objective one: it is the natural and ordinary meaning as understood by an ordinary, reasonable person, not unduly suspicious or avid for scandal. The meaning intended by the maker of the defamatory statement is irrelevant. Similarly, the sense in which the words were actually understood by the party alleged to have been defamed is also irrelevant. Nor is extrinsic evidence admissible in construing the words. The meaning must be gathered from the words themselves and in the context of the entire passage in which they are set out. The court is not confined to the literal or strict meaning of the words, but takes into account what the ordinary, reasonable person may reasonably infer from the words. The ordinary, reasonable person reads between the lines … [emphasis added]

26 It bears emphasising that the natural and ordinary meaning of words is not confined to its literal or strict meaning, but *includes inferences or implications* that the ordinary man would draw from those words in light of his *general knowledge, common sense and experience* (see *Gatley* on *Libel & Slander* (Sweet & Maxwell, 11th Ed, 2008)) ("*Gatley*") at para 3.17 and Doris Chia and Rueben Mathiavaranam, *Evans on Defamation in Singapore and Malaysia* (LexisNexis, 3rd Ed, 2008) ("*Evans on Defamation*") at p 14; see also Lord Reid's comments in *Rubber Improvement Ltd v Daily Telegraph Ltd* [1964] AC 234 at 58 which was cited with approval in *Microsoft Corporation* at [54] and *Goh Chok Tong v Jeyaretnam Joshua Benjamin* [1998] 3 SLR 337 at 346).

27 Before proceeding to consider the meaning of the words in question, it is necessary to set out the state of the general knowledge possessed by an ordinary person at the relevant time. On 23 May 2008, the day the Article was published in the Newspaper, the following would be what an ordinary person in Singapore would be aware of:

(a) There was a prevailing HFMD scare in Singapore. I note that this is actually accepted and conceded by the defendant in its submissions[note: 4], albeit in a different context.

(b) Children were especially susceptible to HFMD.

(c) If a child suffered from some of the symptoms of HFMD, it is advisable that he/she sees a doctor, stays at home, and avoids going to school. This will obviously help prevent the spread of

the disease in the Singapore community.

(d) Some schools were temporarily closed because their students contracted HFMD.

(e) Schools were advised to monitor their students, and keep the parents informed of the latest developments on the HFMD front.

(f) High standards of hygiene were strongly encouraged.

28 Armed with the knowledge of an ordinary person at the material time, and reading the entire Article in context (together with the Pictures as described above at [5]), I am of the view that the Article is well capable of conveying the meaning that "but for the plaintiff's negligence, [B]'s illness could have been avoided".

29 I now turn to the question of whether the Statements are defamatory. Although it has been remarked that it is difficult to formulate a "comprehensive definition" of "defamation" (see in particular the comments made by Lord Atkin in *Sim v Stretch* (1936) 52 TLR 669; *Gatley* at para 2.1), the classic test of whether the words are defamatory has been authoritatively stated by the Court of Appeal in *Aaron v Cheong Yip Seng* [1996] 1 SLR 623 ("*Aaron*") at 641F as follows:

> whether words are defamatory must be determined by an objective test, being whether 'the words tend to lower the [appellants] in the estimation of right-thinking members of society generally'.

30 The plaintiff had alleged that the ordinary and natural meaning of the Statements is defamatory of it in its *trade and/or business* (see above at [7]). For the Statements to be defamatory of a plaintiff in its trade and/or business, the meaning derived from the Statements must impute to the plaintiff some quality which would be detrimental, or the absence of some quality which is essential, to the successful carrying on of its business (see *Gatley* at para 2.26). In this regard, it is instructive to refer to the remarks made in *Griffiths v Benn* (1911) 27 TLR 346 at 350 where Cozens-Hardy M R stated what a plaintiff has to show in order to prove that the words are defamatory of its trade and/or business:

> the words used convey to the mind of any reasonable man a personal imputation upon [the plaintiff], either upon [its] character or upon [its] mode in which [the plaintiff's] business is carried on.

31 In order for the Statements to be held to be defamatory of the plaintiff's trade and/or business, it must be shown that the Statements would ordinarily lead reasonable people to the opinion that it conducts its business in a dishonest, improper or inefficient manner. Having said that, it is my view that Statement 1 and Statement 2 are, by themselves, not defamatory. These two Statements, however, must be read in the context of the *entire Article*.

32 Statement 1, by itself, reveals a probable source of how [B] caught HFMD, *ie* from his older cousin, [D]. As I mentioned above, Statement 1 by itself is not defamatory. In this regard, I agree with the plaintiff[note: 5] that Statement 1 gives a reader the impression that [B] may have contracted HFMD from his older cousin, [D]. However, by itself, it does not convey the idea that the plaintiff had been *conducting its business in a dishonest, improper or inefficient manner*.

33 Statement 2 then discloses that [D] goes to "[the Centre] in [address redacted]". Statement 2 gives an ordinary and reasonable reader the impression that [B]'s cousin, [D], went to the Centre,

contracted HFMD whilst at the Centre, and then passed the virus to [B]. I formed this impression with Statement 1 (in particular) at the back of my mind. To this extent, I agree with the plaintiff. The plaintiff, however, went further and contended that Statement 2 conveys an ordinary and natural meaning to the reader that "[l]ike the 24 kindergartens that were told to close down and the other 75 that were urged to do the same, the Centre should be amongst the same category". I cannot agree with the plaintiff that Statement 2 gives an ordinary and reasonable reader the impression that the Centre should have also closed down like the other 24 kindergartens (that were closed down) and another 75 (which were urged to do so). In the Article (which I have set out in full above at [4]), there is this passage which *immediately precedes* Statement 2:

> It was the spread of the EV71 bug that caused the Health Ministry to compel childcare centres to close if they have more than a certain number of children infected over 15 days or more.

In light of the above, I am of the impression that the natural and ordinary meaning of Statement 2 is that the Centre did not have the requisite number of infected students to be compelled to close down. In this regard, I agree with the defendant.

34 I now turn to Statement 3 which says that "[C] [[B]'s mother] was upset that the centre did not inform parents that it had some children down with this illness, so parents could keep their children away." To my mind, Statement 3 is the bane of the entire Article. Read with Statement 3 in particular at the back of one's mind, the Article in general is capable of the meaning that "[b]ut for the plaintiff's negligence, [B]'s illness could have been avoided".

35 The Statements, taken as a whole, are defamatory of the plaintiff's trade and/or business because, read with the entire Article, they would ordinarily lead reasonable people to believe that the plaintiff conducted its business in an *improper and negligent* manner. It cannot be disputed that the Centre itself had the *responsibility and duty to inform and update* the parents of the latest developments on the HFMD situation at the Centre, and more importantly, whether there were any new cases of their students contracting HFMD. Reading the Article in its entirety, it appears that the meaning which is being portrayed is that the sole source of [B]'s predicament and illness appears to be the plaintiff's negligence in failing to inform the parents that the Centre had students who were ill with HFMD. To put it simply, the individual Statements were tainted by the context of the entire Article.

36 I have considered whether there is, in the Article, any antidote to the bane in Statement 3. In *De Souza Tay & Goh v Singapore Press Holdings Ltd* [2001] 3 SLR 380 ("*De Souza Tay & Goh*"), I had held at [33] that:

> … it is necessary to examine the Article as a whole and in the context in which the words were used. If there is anything in a part of it that is, of itself, defamatory of the plaintiffs, one must consider whether there is anything elsewhere that would put the Article in such a perspective that a reasonable reader would not reach the conclusion that it is defamatory of them.

In that case, I had referred to the House of Lords decision of *Charleston v News Group Newspapers* [1995] 2 AC 65 ("*Charleston*") where it was held that a publication must be considered in its *entirety* so as to determine whether it is defamatory, and stated the following at [32]:

In *Charleston v News Group Newspapers* [1995] 2 AC 65; [1995] 2 All ER 313, the House of Lords held that where a publication is not defamatory if considered as a whole, the plaintiff cannot succeed ([1995] 2 AC 65 at 69; [1995] 2 All ER 313 at 315–316):

> … on the ground that some readers will have read part only of the published matter and that this part, considered in isolation, is capable of bearing a defamatory meaning.

In arriving at this conclusion, Lord Bridge of Harwich said ([1995] 2 AC 65 at 70–71; [1995] 2 All ER 313 at 316–317) that there was:

> … a long and unbroken line of authority the effect of which is accurately summarised in *Duncan & Neill on Defamation*, 2nd ed. (1983), p. 13, para. 4.11 as follows:
>
> > In order to determine the natural and ordinary meaning of the words of which the plaintiff complains it is necessary to take into account the context in which the words were used and the mode of publication. Thus a plaintiff cannot select an isolated passage in an article and complain of that alone if other parts of the article throw a different light on that passage.
>
> The *locus classicus* is a passage from the judgment of Alderson B. in Chalmers v. Payne (1835) 2 C.M. & R. 156, 159, who said:
>
> > But the question here is, whether the matter be slanderous or not, which is a question for the jury; who are to take the whole together, and say whether the result of the whole is calculated to injure the plaintiff's character. In one part of this publication, something disreputable to the plaintiff is stated, but that is removed by the conclusion; the bane and antidote must be taken together.

This passage has been so often quoted that it has become almost conventional jargon among libel lawyers to speak of the bane and the antidote. It is often a debatable question which the jury must resolve whether the antidote is effective to neutralise the bane and in determining this question the jury may certainly consider the mode of publication and the relative prominence given to different parts of it. I can well envisage also that questions might arise in some circumstances as to whether different items of published material relating to the same subject matter were sufficiently closely connected as to be regarded as a single publication. But no such questions arise in the instant case …

37 Returning to the present case, I could find nothing in the Article that may be considered to be an antidote to the bane contained in it.

Issue 2: Justification

38 I turn now to consider the second issue, whether the defendant can avail itself of the defence of justification. The defendant pleaded in its defence at para 13 that the defamatory meaning of the Statements is that "the Plaintiff did not take due care in the prevention and control of HFMD, including taking reasonable steps in warning parents of the children under their charge, and that as a result [B]'s cousin contracted HFMD". The defendant contended that such meaning is "derived solely from Statement 3"[note: 6]. The accompanying particulars state as follows:

PARTICULARS
OF
JUSTIFICATION

a. Paragraph 7 herein is repeated.

b. At the material time, the Plaintiff knew or ought to have known that there was a cluster of HFMD infections amongst the children under the charge of their childcare centre.

c. Despite being cognizant of the highly contagious nature of HFMD, the severity of the danger posed by HFMD to children of a young age, and the specific risk of putting these children in close proximity to each other, as in a childcare centre; the Plaintiff failed to keep the parents of the children under their charge, in particular the parents of [B]'s cousin, updated on the HFMD situation at its premises.

d. As a result, the parents, including [B]'s cousin's parents, were not made aware of the risk of their children contracting HFMD at the Plaintiff's premises should their children continue to attend the childcare centre run by the Plaintiff.

e. [B]'s cousin contracted HFMD after being exposed to the HFMD cluster at the Plaintiff's premises.

f. [B] contracted HFMD from his cousin.

39 The applicable legal principles for the defence of justification have been summarised in *Aaron* ([29] *supra*) at 647D:

> On this issue it is necessary to consider first what precisely the respondents sought to justify. The law on this point is now quite clear. Where a defendant in a defamation action pleads justification, he *must* do so in such a way as to *inform the plaintiff and the court precisely what meaning or meanings he seeks to justify*: see *Lucas-Box v News Group Newspapers Ltd* [1986] 1 WLR 147, at p 153; *Viscount De L'Isle v Times Newspaper Ltd* [1988] 1 WLR 49, at p 60 and *Prager v Times Newspapers Ltd* [1988] 1 WLR 77, at p 86. All these three cases were decided by the English Court of Appeal and the relevant passages of the judgments of various members of the court were set out and commented on in *Lee Kuan Yew v Derek Gwyn Davies & Ors* [1990] 1 MLJ 390 at p 403, and it is unnecessary to repeat them here. [emphasis added]

40 To succeed in a plea of justification, the defendant need not prove the truth of every detail of the words published. He need only prove the truth of the "sting of the charge"; see *Lim Eng Hock Peter v Lim Jian Wei* [2009] SGHC 31 at [127]. I have held in [28] above that the Statements bore the meaning pleaded by the plaintiff, namely that "[b]ut for the plaintiff's negligence, [B]'s illness could have been avoided". In my view this is essentially the same as the meaning pleaded in the defence that the defendant sought to justify, namely that "the Plaintiff did not take due care in the prevention and control of HFMD, including taking reasonable steps in warning parents of the children under their charge, and that as a result [B]'s cousin contracted HFMD". However I do not find that the defendant had proved its case of justification as there was no evidence to prove that [D] contracted HFMD whilst at the Centre, and that in turn, [B] himself contracted HFMD from [D]. Consequently, the defence of justification clearly fails.

Issue 3: Qualified Privilege

41 I note at the outset that the plaintiff, in both its opening and closing statements, submitted that I should consider the defence of qualified privilege in the light of the House of Lords decision in *Reynolds v Times Newspaper Ltd* [2001] 2 AC 127 ("*Reynolds*"). This is somewhat puzzling as the test in *Reynolds* sets a threshold for the defendant that is lower than the traditional common law test. It has been observed by Lord Hoffmann in *Jameel (Mohammed) v Wall Street Journal Europe Sprl* [2007] 1 AC 359 ("*Jameel*") at [50] that:

> The *Reynolds* defence is very different from the privilege discussed by the Court of Appeal in *Blackshaw v Lord* [1984] QB 1, where it was contemplated that in exceptional circumstances there could be a privileged occasion in the classic sense, arising out of a duty to communicate information to the public generally and a corresponding interest in receiving it. The Court of Appeal there contemplated a traditional privilege, liable to be defeated only by proof of malice. But the *Reynolds* defence does not employ this two-stage process. *It is not as narrow as traditional privilege nor is there a burden upon the claimant to show malice to defeat it*. [emphasis added]

42 Furthermore, *Reynolds* has been expressly rejected on a number of occasions by this court (see for instance *Lee Hsien Loong v Singapore Democratic Party* [2007] 1 SLR 675 ("*LHL v SDP*") and *Lee Hsien Loong v Review Publishing Co Ltd* [2009] 1 SLR 177 ("*Review Publishing*")). In *LHL v SDP*, this court observed at [75] as follows:

A *Reynolds*-type defence does not require the existence of "special facts" so long as "responsible journalism" is practised in the publication. As stated at [73] above, that is not the law in Singapore. In *Reynolds*, the publishers of a newspaper were sued by the former Prime Minster of Ireland on the grounds that the article in question imputed that the latter had deliberately and dishonestly misled the Irish House of Representatives and his coalition cabinet colleagues, especially the Deputy Prime Minister. The defendant argued that a new category of privilege for the discussion of "political information" ought to be recognised. The House of Lords rejected this proposition and held that no generic privilege attached to publications of "political information" or other matters of "serious public concern", as such a generic privilege would not provide adequate protection of reputation. The House of Lords in *Reynolds* was, however, influenced by Art 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (4 November 1950), Eur TS No 5, 213 UNTS 221, 1953 UKTS No 71 (entered into force 3 September 1953) ("the European Convention") and s 12 of the UK Human Rights Act 1998 (c 42), which was then about to come into effect in England, into giving the media more latitude in its reporting provided "responsible journalism" was practised, consistent with the principles of freedom of expression: see *Gatley on Libel and Slander* (Sweet & Maxwell, 10th Ed, 2004) at para 14.84. It is to be noted that Art 10 of the European Convention is by its terms distinguishable from Art 14 of the Constitution of the Republic of Singapore (1999 Rev Ed). The Court of Appeal in *Jeyaretnam Joshua Benjamin v Lee Kuan Yew* ([73] *supra*) noted at 330–331, [56] and [58] that:

> [56] … The terms of art 14 of our Constitution differ materially from … art 10 of the European Convention on Human Rights. … [T]he right of free speech and expression under cl 1(a) of art 14 is expressly subject to cl 2(a) of the same article, and the latter provides that Parliament may by law impose on the rights of free speech and expression conferred by cl 1(a) two categories of restrictions: first, such restrictions as it considers *necessary and expedient* in the interest of the security of Singapore or any part thereof, friendly relations with other countries, public order or morality; and second, *restrictions designed* to protect the privileges of Parliament or *to provide against* contempt of court, *defamation* or incitement to any offence. While the first category of restrictions must satisfy the test of necessity and expediency in the interest of the various matters specified therein, the second category of restrictions is not required to satisfy any such test. Thus, Parliament is empowered to make laws to impose on the right of free speech restriction designed to provide against defamation. … [I]t is true that the wording in para 1 [of art 10 of the European Convention of Human Rights] is similar to cl 1(a) of art 14. However, para 2 of art 10 is in no way similar to cl (2) of art 14: para 2 provides that the exercise of the freedom under para 1 is subject to 'restrictions or penalties as are prescribed by law and are *necessary* in a democratic society … for the protection of the reputation or rights of others …'. Clearly, the terms allowing restrictions to be imposed under art 10(2) are not as wide as those under art 14(2).
>
> …
>
> [58] [I]t is implicit that the right of free speech under art 14 is subject to the common law of defamation as modified by the Defamation Ordinance, now the Defamation Act (Cap 75) …
>
> [emphasis in original]

43 In any event, the party interested in the *Reynolds* defence, *viz* the defendant, did not rely on it and I do not propose to take this matter any further.

44 The law of libel has long recognised various occasions of qualified privilege which exist for the "common convenience and welfare of society" (see *Toogood v Spyring* (1834) 1 C M & R 181 ("*Toogood*") at 193). Indeed Bankes LJ in *Gerhold v Baker* [1918] WN 368 held at 369 that:

> It was in the public interest that the rules of our law relating to privileged occasions and privileged communications were introduced, because it is in the public interest that persons should be allowed to speak freely on occasions when it is their duty to speak, and to tell all they know or believe, or on occasions when it is necessary to speak in protection of some common interest.

Further, it is also helpful to refer to Parke B's classic formulation in *Toogood* at [193]:

> In general, an action lies for the malicious publication of statements which are false in fact, and injurious to the character of another (within the well-known limits as to verbal slander), and the law considers such publication as malicious, *unless it is fairly made by a person in the discharge of some public or private duty whether legal or moral, or in the conduct of his own affairs, in matters where his interest is concerned*. In such cases, the occasion prevents the inference of malice, which the law draws from unauthorized communications, and affords a qualified defence depending upon the absence of actual malice. If fairly warranted by any reasonable occasion or exigency, and honestly made, such communications are protected for the common convenience and welfare of society … [emphasis added]

45 The categories of qualified privilege "can never be catalogued and rendered exact" (*Bashford v Information Australia (Newsletters)* Pty Ltd (2004) 204 ALR 193 at [10]), but they commonly arise out of some existing relationship between the maker of a statement and the recipient (see *Gatley* at para 14.1). The foundation of such privilege is the existence of a duty (whether legal, social or moral) or interest on the part of the defendant to make the statement and a corresponding duty or interest on the part of the recipient to receive it (see *Evans on Defamation* at p 118). In this regard, I would gratefully adopt the following summary of the common law position prepared by the learned authors of *Gatley* at para 14.6:

> [T]he tendency of the courts has been to regard most privileged occasions under the common law as very broadly classifiable into two categories: first, where the maker of the statement has a duty (whether legal, social or moral) to make the statement and the recipient has a corresponding interest to receive it; or secondly, where the maker of the statement is acting in pursuance of an interest of his and the recipient has such a corresponding interest or duty in relation to the statement, or where he is acting in a matter in which he has a common interest with the recipient.

(See also the observation made by Lord Atkinson in *Adam v Ward* [1917] AC 309 at 334 to the same effect as above).

46 The general legal principles with regard to the defence of qualified privilege concerning newspapers has been set out in *Aaron* ([29] *supra*)(at 651C–652H) as follows:

Generally, qualified privilege is available to newspapers as much as to any other person. Privilege for publication in the press of information of general public interest is *limited to cases where the publisher has a legal, social or moral duty to communicate*. The law does not recognize an interest in the public strong enough to give rise generally to a duty to communicate in the press*; such a duty has been held to exist on special facts,* and there is no general 'media privilege at common law' …

Along with the duty to communicate is a corresponding interest to receive such information on the part of the public …

In addition, *the duty must be a duty to publish to the public at large and the interest must exist in the public at large to receive the publication.* It is insufficient if only a section of the public is concerned with the subject matter of the publication …

The relevant factors are by whom and to whom, when, why and in what circumstances the publication is made, and whether these things establish a relation between the parties which gives rise to a social or moral duty, and the consideration of these things may involve the consideration of questions of public policy. *It does not follow that publication of all matters of public interest is in the public interest such that it would give rise to a duty to publish them.* The right of a publisher of a newspaper to report truthfully and comment fairly on matters of public interest must not be confused with a duty of the sort that gives rise to an occasion of qualified privilege: per Cartwright J in *The Globe And Mail Ltd v Boland* (1960) 22 DLR (2d) 277 at pp 280–281.

The onus was on the respondents to establish the circumstances which will support a plea of qualified privilege. The respondents have only shown that the publication of the information was in the interest of a section of the public, namely, members of the Christian community. That is sectional rather than general interest of the public at large. On the authorities, such sectional interest does not give rise to a moral or social duty to publish the report. The respondents have, therefore, not succeeded on the defence of qualified privilege.

[emphasis added]

47 In light of the foregoing legal principles, the question which I have to address now is whether qualified privilege extends to an occasion where the publication relates to information concerning *public health*. In this regard, the defendant has drawn my attention to two cases namely, *Allbutt v The General Council of Medical Education and Registration* [1889] 23 QBD 400 ("*Allbutt*") and *Camporese v Parton* (1984) 150 DLR (3d) 208 ("*Camporese*"). In *Allbutt*, it was held that the medical council had a social or moral duty to publish the name of a doctor who had been taken off the medical register. Consequently, the medical council could avail itself of the defence of qualified privilege. In *Camporese*, it was held that a published warning of possible food contamination from canning lids in a newspaper article fell within the ambit of the defence of qualified privilege.

48 As I have noted earlier, the categories of qualified privilege are not closed. It is important, in my view, to note that there is no magic formula (comprising of a standard assortment of criteria) that would enable the court to ascertain whether an article is published on an occasion of qualified privilege. In the final analysis, the actual decision as to whether the defence of qualified privilege is applicable is largely dependent on the precise factual matrix of the case itself.

49 Having said that, in accordance with the legal principles as set out in *Aaron* (see above at [46]), there are two indispensable elements that must be present *together* before an article in a newspaper can be said to be published on an occasion of qualified privilege. First, that article must pertain to a subject and contain information of *prima facie general public interest*. That is the minimum threshold; a mere general public interest in the information published is however never enough to found the defence of qualified privilege (see further *Evans on Defamation* at pp 120 and 131; *Gatley* at para 14.1). Secondly, and equally as important, the publisher must have a *legal, social or moral duty* to communicate the information to the general public. Coupled with this duty to communicate is a *corresponding interest* (on the part of the public) to receive the information. Therefore a general public interest by itself is not sufficient to give rise generally to a duty to communicate. In this regard, such a duty has been held to exist only on *special facts* (see *Aaron* at 651–652). With these legal principles in mind, I shall now discuss whether these two elements are in fact present in this case.

50 It cannot be disputed that the Article conveyed information on the HFMD situation in Singapore, which at the material time was plainly an issue of public health of great concern to the public at large and in particular to parents of young children. In this regard, the defendant had also drawn my attention to the fact that the Press Release was one among a series of press releases (ten in total) that had been posted on MOH's online website between 27 March 2008 and 3 June 2008 informing the public of the HFMD situation in Singapore.

51 Further, according to the "Weekly Infectious Disease Bulletin" (for the week starting 23 March 2008) which is published by the MOH, the epidemic threshold for HFMD is surpassed when the total number of active HFMD cases exceeds 600. In the week ending 24 May 2008, the total number of HFMD cases notified to MOH was 729 (see in this regard the MOH press release dated 27 May 2008), and was clearly past the epidemic threshold. Consequently, as at 23 May 2008 when the Article was published, there was in fact an HFMD epidemic in Singapore.

52 I note that the plaintiff had also made certain concessions relating to the seriousness of HFMD. First, at para 4 of its statement of claim, it acknowledged that:

> On 1 October 2000, [HFMD] became legally notifiable in Singapore. Outbreaks of this infectious disease occurred across childcare centres, kindergartens and schools throughout Singapore. It is generally a mild and self-limiting childhood disease but has been associated with fatalities usually due to complications involving the heart and nervous system.

Secondly, at para 3 of its reply, the plaintiff admitted to para 4 of the defendant's defence which states as follows:

> HFMD is spread by direct contact and that children under 5 years of age are especially susceptible to HFMD. Infected children are contagious all through their illness. The spread of HFMD in childcare centres in Singapore ... is closely monitored by [MOH] …

Finally, at para 3 of the plaintiff's reply, it accepted that:

> HFMD can be spread by direct contact with nasal discharge, saliva, faeces and fluids from the rash of an infected person *as well as* through the air. [emphasis in original]

53 There are two facets of HFMD which made it a very worrying concern for the public at the material time. First, as acknowledged by the plaintiff itself, HFMD is an infectious disease and

although mild and self-limiting, it has nevertheless been associated with deaths due to heart and nervous system complications. Second, as again accepted by the plaintiff itself, children under five years of age are especially susceptible to HFMD. This is the reason why outbreaks of this infectious disease occurred across childcare centres, kindergartens and schools throughout Singapore.

54 In the circumstances, it is clear that, at the time the Article was published, it was in the public interest for information pertaining to the HFMD situation in Singapore to be disseminated. It cannot be disputed that HFMD is a subject of public health which, in my view, is a subject of *general public interest*. Consequently, in view of the fact that the Article was published so as to alert and update the public on the HFMD situation in Singapore, the first element of general public interest is indeed present in this case.

55 With regard to the second element of the publisher having a *duty* to communicate the information to the general public who, in turn, must have a corresponding *interest* to receive the information, this is essentially a question of fact that must be determined based on the evidence before me.

56 In this regard, the defendant's evidence is that the Article was one of many articles published in the Newspaper between April 2008 and May 2008 reporting on the HFMD situation in Singapore. During this period, the health team of the Newspaper ("the Health team") was working intimately with MOH in updating and alerting the public on the HFMD situation in Singapore. To this end, the Health team would regularly receive from MOH important updates and information on the HFMD situation for dissemination to the general public. An example of such an update is the Press Release received by Salma via an e-mail from Miss Lim on 22 May 2008 (see above at [17]–[18]).

57 It bears emphasising that the Press Release was titled "Update on Hand Foot and Mouth Disease (HFMD) Situation in Singapore". It is also apposite to reiterate that there was an underlined notation in bold (at the top left hand corner of the Press Release) depicting that it was "*For Immediate Release*". The Press Release has been set out in full above at [18], and the material parts therein emphasised accordingly in italics. In particular, the Press Release made a specific reference to a 13-month old boy ("the boy") who had been hospitalised for suspected encephalitis. As it turned out, the boy is [B] himself. The Press Release also mentioned that the boy was in contact with his cousin who had HFMD and attended a kindergarten with an active HFMD cluster. Seen in this light, there is no doubt in my mind that the Press Release in fact formed the impetus for the Article.

58 Taking into account the fact that MOH had conspicuously and intentionally denoted (in underlined bold font) that the Press Release (pursuant to which the Article was written and published in the Newspaper) was "for immediate release", it is clear to me that MOH itself was of the view that the Press Release contained information which the public should be informed of *immediately* (or at least on an *urgent* basis). As alluded to earlier at [53], HFMD is a disease which is not only infectious but one that young children are especially susceptible to. Further, there was also in fact an HFMD epidemic at or around the time of the publication of the Article. In the circumstances, I would accept that parents and schools responsible for the care and well-being of young children must be kept well-informed of the HFMD situation and the possibly dire consequences of contracting this potentially fatal disease. In this regard, I am of the view that the Newspaper and therefore, the defendant (as the owner and publisher of the Newspaper) has a *duty* to publish the Article on an urgent basis (in this case, the Article was published on the very next day following the receipt of the Press Release by Salma) to the general public who in turn have an *interest* in receiving the information contained in the Article.

59 In light of the legal principles as set out above from [46] to [47], and my decision as to

whether the two elements of the defence of qualified privilege are present in this case (see above at [54]–[58]), it is my view that the Article was in fact published on an occasion of qualified privilege.

60 However, this is not an end to the matter as the plaintiff also alleged that the publication of the Article was actuated by malice. Indeed, it is a well-settled principle of law that a plaintiff can defeat the defence of qualified privilege by proving that the publication of the alleged defamatory words was actuated by malice, *ie* with some improper or indirect motive, which the plaintiff usually proves by way of evidence that the defendant knew the statement to be untrue, or was recklessly indifferent as to the truth (see further this court's decision in *Hytech Builders Pte Ltd v Goh Teng Poh Karen* ("*Hytech Builders*") [2008] 3 SLR 236 at [35]–[39]).

61 The starting position of any analysis of the defence of qualified privilege must be the House of Lords decision in *Horrocks v Lowe* [I975] AC 135 ("*Horrocks*"), which has recently been adopted and applied by this court in *Hytech Builders*. In *Horrocks*, Lord Diplock observed that the defendant's *motive* in publishing the defamatory statements plays a critical role in the court's decision of whether the defendant can avail itself of the defence of qualified privilege in the following manner at 149F:

> So, the motive with which the defendant on a privileged occasion made a statement defamatory of the plaintiff becomes crucial. The protection might, however, be illusory if the onus lay on him to prove that he was actuated solely by a sense of the relevant duty or a desire to protect the relevant interest. So he is entitled to be protected by the privilege unless *some other dominant and improper motive* on his part is proved. "Express malice" is the term of art descriptive of such a motive. Broadly speaking, it means *malice in the popular sense of a desire to injure the person who is defamed* and this is generally the motive which the plaintiff sets out to prove. But to destroy the privilege the desire to injure must be the dominant motive for the defamatory publication; *knowledge that it will have that effect is not enough if the defendant is nevertheless acting in accordance with a sense of duty or in bona fide protection of his own* legitimate *interests.* [emphasis added]

62 As was observed in *Hytech Builders*, Lord Diplock also (very helpfully) in *Horrocks* considered not only how *motive* can be proven but also emphasised the important role that *honesty of belief* in the truth of the defamatory statements plays in determining whether *malice* is present (at 149H–151B):

The motive with which a person published defamatory matter can only be inferred from what he did or said or knew. If it be proved that he did not believe that what he published was true this is generally conclusive evidence of express malice, for no sense of duty or desire to protect his own legitimate interests can justify a man in telling deliberate and injurious falsehoods about another, save in the exceptional case where a person may be under a duty to pass on, without endorsing, defamatory reports made by some other person.

Apart from those exceptional cases, what is required on the part of the defamer to entitle him to the protection of the privilege is *positive belief in the truth of what he published or,* as it is generally though tautologously termed, *"honest belief."* If he publishes untrue defamatory matter recklessly, without considering or caring whether it be true or not, he is in this, as in other branches of the law, treated as if he knew it to be false. But *indifference to the truth of what he publishes is not to be equated with carelessness, impulsiveness or irrationality in arriving at a positive belief that it is true*. …

Even a positive belief in the truth of what is published on a privileged occasion—which is presumed unless the contrary is proved—may not be sufficient to negative express malice if it can be proved that the defendant misused the occasion for some purpose other than that for which the privilege is accorded by the law. …

Judges and juries should, however, be very slow to draw the inference that a defendant was so far actuated by improper motives as to deprive him of the protection of the privilege unless they are satisfied that he did not believe that what he said or wrote was true or that he was indifferent to its truth or falsity. The motives with which human beings act are mixed. They find it difficult to hate the sin but love the sinner. Qualified privilege would be illusory, and the public interest that it is meant to serve defeated, if the protection which it affords were lost merely because a person, although acting in compliance with a duty or in protection of a legitimate interest, disliked the person whom he defamed or was indignant at what he believed to be that person's conduct and welcomed the opportunity of exposing it. It is only where his desire to comply with the relevant duty or to protect the relevant interest plays no significant part in his motives for publishing what he believes to be true that "express malice" can properly be found.

[emphasis added]

63 For easy reference, the principles stated in *Horrocks* can be summarised (very broadly) as follows:

(a) A defendant is entitled to the defence of qualified privilege unless some *dominant and improper motive* on its part is proved. In general, *motive* here equates to the use of a privileged occasion for some purpose other than that for which the privilege is accorded by law. It bears emphasising that in order for the defence to be defeated, the desire to injure the plaintiff must be the *dominant* motive for the defamatory publication.

(b) As long as the defendant is acting in accordance with a sense of duty or in *bona fide* protection of his own legitimate interests, its knowledge that a statement will injure the plaintiff does *not* destroy the defence.

(c) If the defendant publishes untrue defamatory statements *recklessly*, *ie* without considering or caring whether these statements are true or not, it will be deemed to have known that they

are false. In this regard, carelessness, impulsiveness or even irrationality in arriving at a belief that the statements are true is *not* to be equated with recklessness.

(d) Notwithstanding a positive belief in the truth of what is published, the defence will be defeated if it can be proved that the defendant misused the occasion for some purpose other than that for which the privilege is accorded by law.

64 In my view, there is no evidence to suggest that the publication of the Article was actuated by malice. Indeed Salma testified that she positively believed in the truth of what [C] told her during the Interview (*ie* that the Centre failed to inform the parents on the HFMD cases at the Centre). This can be seen from Salma's evidence as adduced under her cross-examination:

Q: [D]o you think that [[E]] was telling the truth to [[C]] when she said that she never received any notice from the kindergarten?

A: When I spoke to [[C]], we were talking about what was happening in May. I---yes, and I still believe that she told the truth that they did not receive any notice in May about hand, foot and mouth disease cluster in the kindergarten at that time.

65 Further, counsel for the plaintiff, in the course of cross-examining Salma, sought to establish the *present* state of Salma's belief as to the truth of the Statements. This, however, is irrelevant in my view. It is obvious that, in determining whether there was any malice present in the publication of the Article, the mental state of Salma must be determined *at the time the Statements were published* and not at trial (almost 11 months after the Article was published in the Newspaper).

66 I also accept that the defendant was not reckless or indifferent as to the truth of the Statements, and that Salma did believe in the veracity of the Statements on the basis of the information provided by [C] during the Interview even though she did not conduct an independent check to verify it. In my view it was not unreasonable for Salma, in the circumstances, to accept as true information provided by [C]. In this regard, I also note that Salma attempted to contact the plaintiff by telephone for its comment as soon as she returned to her office following the Interview. It was unfortunate that there was no one at the Centre to take the calls. In the circumstances, the Article duly reflected the fact that the plaintiff could not be contacted the night before the Article was published. It was not unreasonable, given the urgency of the matter to publish the article the following day without the benefit of the plaintiff's response.

67 The plaintiff's assertion that the publication of the Article was "a tactic to increase the sales of the Newspaper by naming a Centre and creating drama that [the plaintiff] tried to avoid the press" is therefore a bald one which is unsupported by any evidence. In my view, there is nothing to show that the true impetus for the publication of the Article was anything other than the urgent need to alert and inform the public of the latest developments on the HFMD situation in Singapore.

Conclusion

68 For the reasons set out above, the plaintiff fails in its claim against the defendant and its action must be dismissed. I will hear parties on the question of costs.

[note: 1]plaintiff's opening statement, p 7, para 14

[note: 2][E]'s affidavit evidence-in-chief ("AEIC"), tab D, para 18

[note: 3][E]'s AEIC, tab D, para 19

[note: 4]Para 19 of defendant's closing submissions ("DCS")

[note: 5]see bundle of pleading, p 6

[note: 6]para 34 of DCS