Gao Shuchao
v
Tan Kok Quan and others

[2018] SGHC 115

High Court — District Court Appeal 16 of 2017
See Kee Oon J
19 February 2018

Tort — Defamation — Defamatory Statements

11 May 2018 Judgment reserved.

See Kee Oon J:

Introduction

1 The present appeal arises from a defamation claim by members of the Third management council ("MC") of the management corporation strata title number 3720 ("the MCST"). The MC was overseeing a residential strata development known as Duchess Residences at the material time.

2 The Appellant, Gao Shuchao, is the subsidiary proprietor ("SP") of a unit in Duchess Residences, No. 108 Duchess Avenue. He is an associate professor of law at the Singapore Management University.

3 The First Respondent, Tan Kok Quan, was the chairman of the MC at the material time. He is a practising lawyer and a Senior Counsel. He has been

a director of several banks and public-listed companies in Singapore and has served in prominent roles in the public sector. The Second Respondent, Kuah Kok Kim, was the treasurer of the MC at the material time and is presently its secretary. He is the chairman of a public company listed on the Singapore Exchange. The Third Respondent, Gn Hiang Meng, was the secretary of the MC at the material time and is presently its treasurer. He is an independent director of five public companies listed on the Singapore Exchange and a council member of the Teochew Federation (Singapore).

4 The Respondents brought the defamation claim against the Appellant in District Court Suit No 1361 of 2016 ("the Suit"). The Appellant responded with various counterclaims, namely misrepresentation, breach of statutory duty under the Building Maintenance and Strata Management Act (Cap 30C, 2008 Rev Ed) ("BMSMA"), breach of fiduciary duties as members and officers of the MCST, and defamation.

5 The matter proceeded to trial before a District Judge, who held that the Respondents' claim against the Appellant was valid. He also held that the Appellant's defences of justification, qualified privilege, and fair comment failed. The District Judge further held against the Appellant on all of his counterclaims. He ordered the Appellant to pay a sum of $40,000, inclusive of $10,000 in aggravated damages, to each Respondent. The decision of the District Judge is reported at *Tan Kok Quan & 2 Ors v Gao Shuchao* [2017] SGDC 152 (the "GD").

6 The Appellant appealed against the District Judge's decision in relation to the defences to defamation of qualified privilege, justification and fair comment, and in the event that the appeal on liability was unsuccessful, the quantum of damages. He did not appeal against the District Judge's dismissal

of the counterclaims.

Background to the Dispute

7 The Respondents' defamation claim stemmed from disagreements over a Special Levy imposed by the MCST on all SPs of Duchess Residences to alleviate the impending cash deficits caused by the failure of 13 SPs to pay contributions to the management and sinking funds ("contributions"). These disagreements culminated in an exchange between the Appellant and the MC at the 2016 Annual General Meeting ("AGM") where the alleged defamatory words were uttered. It is therefore appropriate to canvass the events that took place in late 2014 in relation to the failure of the 13 SPs to pay contributions to understand the entire context of the Suit.

Events prior to Annual General Meeting on 4 March 2016

8 In November 2014, the MCST commenced DC Suit No 3497 of 2014 against Duchess Walk Pte Ltd ("the Developer"), the developer of Duchess Residences, to recover arrears of contributions for 13 sub-divided lots in Duchess Residences. These 13 lots had been sold to various companies owned and/or controlled by Lee Tat Property Management (Pte) Ltd, and the SPs of these 13 lots (collectively referred to as "the 13 SPs") had failed to pay contributions. It should be noted that the Appellant was not one of these 13 SPs.

9 The arrears gave rise to certain cash flow problems for the MCST. The total projected cash deficits were $138,400 in July 2015, $158,255 in August 2015, $180,410 in September 2015 and $200,465 in October 2015. As a result, on 12 June 2015, the Second Extra-ordinary General Meeting ("EGM") of Duchess Residences was held and a special resolution ("the Special Levy resolution") was passed to impose a one-time Special Levy ("the Special Levy")

to alleviate the MCST's impending cash flow problems. The Special Levy was to be paid by all SPs in three instalments: one in July 2015, one in October 2015 and one in March 2016.

10 On 15 June 2015, the MCST sent the Appellant an invoice for the payment of the first Special Levy instalment. On 30 June 2015, the Appellant replied with an email to the MCST ("the June email") highlighting the procedural and substantive errors in the imposition of the Special Levy and demanding that the MCST re-issue a Tax Invoice removing the payment of the Special Levy.

11 On 3 July 2015, judgment was granted to the MCST against the Developer in DC Suit No 3497 of 2014 and in September 2015, the MCST received payment of $261,055 from the 13 SPs ("the judgment sum"). However, orders of costs remained in contention at that point in time.

12 On 1 October 2015, the second instalment of the Special Levy fell due. The Appellant failed to pay both the first and the second instalments.

13 On 12 November 2015, the MC held a meeting to discuss whether the MCST's receipt of the judgment sum should be disclosed to all the SPs. The First and Third Respondents were absent. At the meeting, the Second Respondent argued in favour of disclosure from the point of transparency and accountability.[1] The MC, on the other hand, considered the disadvantages of disclosure, including the cost of convening another EGM to revoke the Special Levy, the unresolved issue of costs in DC Suit No 3497 of 2014, the risk that

[1] RA at p 391.

some SPs might not want to pay for further instalments of the Special Levy, and the fact that the Special Levy resolution had legal effect in any event until revoked.[2] Eventually, the MC decided to withhold disclosure of the receipt of the judgment sum.

14 By a letter dated 2 December 2015 from the MCST's solicitors, Wong Thomas & Leong, to the Appellant, the MCST demanded payment of $2,050.73 in respect of the Special Levy. On 15 December 2015, the Appellant replied by way of an email to Wong Thomas & Leong ("the December email"), stating that the Special Levy was "invalid" due to its violations of the BMSMA. In response, the MCST filed the writ of summons against the Appellant on 23 December 2015 in MC Suit No 24066 of 2015 to claim the Special Levy of $2,050.73 with interest and costs. The MCST obtained judgment against the Appellant on 7 March 2017 and the trial judge's grounds of decision is found at *MCST Plan No. 3720 v Gao Shuchao* [2017] SGMC 10 ("*MCST Plan No. 3720*").

15 On 22 December 2015, a notice was sent by the MCST to the SPs to remind them about the payment of the last instalment of the Special Levy.

16 On 13 January 2016, the MCST received payment of costs of $40,728.48 in relation to DC Suit No 3497 of 2014 from the Developer. On 1 February 2016, the Management Council Report for 2015/16 ("MC Report") was released, disclosing the receipt of the judgment sum and the costs payment and indicating that the MC would be proposing a resolution at the March 2016 AGM to seek approval to revoke the payment of the final instalment of the Special Levy due in March 2016.

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[2] RA at pp 391–395.

Annual General Meeting on 4 March 2016

17 It was during the AGM on 4 March 2016 ("the Fourth AGM") that the Appellant said the words giving rise to the Suit. The Appellant attended the Fourth AGM but was not allowed to vote as he did not pay the two instalments of the Special Levy.[3]

18 According to the Statement of Claim, the words that the Respondents claimed to be defamatory ("the Defamatory Words") are contained in the following extract of the Appellant's statements during the Fourth AGM[4]:

> Well in the original justification which was listed in the er Chairman's message to the 2nd AGM er to the 2nd EGM, you said the er justification for er imposing the special levy was to make for the potential shortfall er created by the er arrears by the 13 units and the shortfall according to your calculation actually this include not only the shortfall of the arrears but also the legal fees in er pursuing the er owners to pay the arrears. It comes to a total of $303K. So what this means is that by September you have already received more than $260K which should cover more than enough of the arrears that would have occurred before October 2015. Now why didn't you notify the SPs of the receipt of the payment at that time? *Was the management council deliberately concealing the receipt of the payment or was the management council misrepresenting to the SPs that you have not received the payment?* …
>
> … based on the facts. *I could only draw possible 2 possible conclusions. One conclusion is there has been deliberate conceal. The other conclusion is that … There was a misrepresentation* …
>
> … Mr. Chairman, first of all. Regarding er the debate on whether or not this is a concealment or misrepresentation, I do not want to debate about this. I just want to … I just want to point out the fact that this was not disclosed immediately after you received … the payment in September …
>
> … As I said, as I said I do not want to debate on that I just want to point out the fact that it was not disclosed immediately … after you received the payment …

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3 [72] of GD.

4 RA at p 248 (Statement of Claim at para 3).

[emphasis added]

19 During the Fourth AGM itself, after hearing explanations from the MC members on the late disclosure, the Appellant withdrew his use of the wording of misrepresentation and deliberate concealment but refused to apologise:[5]

> Gao: First of all, I want to thank the gentleman for giving the much clearer explanation. This really help to provide us with a clear picture which I appreciate. I think had the management council been so forthcoming as this gentleman from the beginning, we wouldn't have this debate as to the choice of the wording. So, had you include this in page 25 of the documents, I wouldn't have raised this issue at all. But because what you included here clearly indicate the fact that you did receive the money in September, but you made no attempt to communicate with the SPs …
>
> …
>
> Gao: Ok, now after hearing this gentleman's explanation, I am prepared to withdraw my use of the wording …
>
> Tan: Stand up, and say so.
>
> …
>
> Tan: Stand up then apologise.
>
> Gao: I don't think there's any rule that would compel me to stand up.
>
> …
>
> Tan: Forget about it.
>
> …
>
> Gao: Ya, so after this gentleman's explanation, I will withdraw the wording of misrepresentation deliberate concealing, but 30 minute ago, before I walk into this room, I was not aware of these facts.
>
> Tan: What about your apology, what about your apology?
>
> …
>
> Gao: Apology for what?

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5 RA at pp 523–524 (Minutes of the 4th AGM).

> Tan: For saying that we deliberately concealed and misrepresented.
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> Gao: Ok, in that case, is the management council wish to issue an apology for not telling the SPs all these information six months ago?
>
> …
>
> Tan: Ok, let's go on with the meeting, we spent too much time on this.

Events after 4 March 2016

20 On 22 March 2016, the MCST sent a letter to the Appellant demanding that he withdraw his allegations that the MCST had "concealed", "deliberately concealed" and "misrepresented" the receipt of the judgment sum, admit that his allegations were untrue, unwarranted and without any basis and apologise for having made them.[6] The Appellant sent a letter to the First Respondent on 29 March 2016 explaining his position that he had made his remarks as an open question and not as a conclusive statement, and that he had been merely responding to the call by the MCST to contribute ideas and comments to further improve the management of the estate and exercising his rights as a SP.[7] In reply, the solicitors acting for the MCST sent the Appellant a letter on 7 April 2016 demanding that he publish an unreserved retraction and apology, give a written undertaking to the MCST that he would not repeat or publish similar allegations, and confirm in writing that he would agree to indemnify the MCST in respect of the costs they incurred in this matter.[8]

Decision below

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6 RA at p 508.

7 RA at p 512.

8 RA at p 514.

21 The District Judge found that the Appellant's statements were defamatory of the Respondents. He agreed with the Respondents that in their natural and ordinary meaning, the Defamatory Words (at [18] above) meant or were understood to mean that:[9]

(a) The Respondents, as members of the MC, had deliberately concealed from the SPs the MCST's receipt of monies from the 13 SPs;

(b) The Respondents, as members of the MC, had misrepresented the accounts of the MCST to the SPs;

(c) The Respondents, as members of the MC, had deceived the SPs;

(d) The Respondents had, by deliberately concealing information and/or misrepresenting facts to the SPs, acted in breach of the fiduciary duties that they owed, in their capacity as members of the MC, to the SPs;

(e) The Respondents had acted fraudulently in the discharge of their duties as members of the MC; and/or

(f) The Respondents had acted dishonestly in the discharge of their duties as members of the MC.

22 In considering the elements of the tort of defamation, the District Judge held that the above meanings would lower the Respondents in the estimation of right-thinking members of society and the words imputed dishonesty and deception on the part of the Respondents (at [21] of GD). The District Judge further found that there was publication of the Defamatory Words (at [23] of

9 RA at p 249 (Statement of Claim at para 4); [21] of GD.

GD), the words referred to the Respondents (at [28] of GD) and there was no need to prove special damage as the words suggested dishonesty or other misconduct in the discharge of office (at [33] of GD). The Appellant did not appeal against these findings.

23 After finding that the words were defamatory, the District Judge proceeded to consider the defences raised by the Appellant, namely justification, fair comment and qualified privilege. In relation to the defence of justification, he found that since the Appellant did not plead any alternative meanings to the Defamatory Words, the Appellant had to justify the sting of their meaning as pleaded by the Respondents. The District Judge found that the mere fact that the MC had not disclosed the receipt of the payment of the judgment sum and had sent out the invoices to the SPs for the second instalment payment of the Special Levy could not give rise to any suggestion of dishonesty or deception on the part of the Respondents (at [49] of GD). Therefore, the sting of the Defamatory Words could not be justified.

24 The District Judge also found that the defence of fair comment could not be supported on the facts. He held that the Defamatory Words were assertions of facts. But even if the words were comments, the words were not based on facts (at [53]–[54] of GD). Even with latitude given for prejudice and exaggeration, the words were not statements that a fair-minded person could honestly make on the facts (at [55] of GD). The issue was not a matter of public interest since it concerned a private matter relating to the internal affairs of a condominium (at [56] of GD). In any event, the District Judge found that any defence of fair comment would be defeated by malice, as the Appellant could not have believed in the truth of the words or was reckless as to the truth of the words as they lacked factual basis (at [57] of GD).

25 With regard to the defence of qualified privilege, the District Judge held that the Defamatory Words were published on an occasion of qualified privilege because the Appellant and the Respondents shared a common interest and concern in the issue of the Special Levy (at [63] of GD). However, the defence was defeated by malice. The District Judge found malice based on the antagonistic stance that the Appellant had taken in the June email, the December email and during the Fourth AGM, his refusal to apologise and his failure to verify the facts before saying the Defamatory Words (at [67]–[79] of GD). The District Judge further found that the Appellant acted out of a dominant improper motive to gain a private advantage unconnected with the duty or interest constituting the occasion of qualified privilege, which was to avoid paying the Special Levy (at [80] of GD).

26 In determining the quantum of damages to be awarded, the District Judge took into account the following considerations: that the Respondents were men of standing with prominent professional or business backgrounds; that the Defamatory Words carried greater weight spoken by the Appellant as he was an associate professor of law; that the extent of publication was limited; that the words impacted the Respondents as a group and not individually; and that the Appellant was driven by malice and refused to apologise. The District Judge awarded $40,000 to each Respondent, inclusive of $10,000 in aggravated damages (at [82]–[96] of GD).

27 Lastly, the District Judge dismissed all of the Appellant's counterclaims in misrepresentation, breach of statutory duty, breach of duty under BMSMA, breach of fiduciary duty, and defamation (at [97]–[114] of the GD).

The appeal

28 The Appellant appealed against the District Judge's finding that all of the defences to defamation failed, and in the event that his appeal on the defences failed, against the quantum of damages.

29 The Appellant argued that the defence of qualified privilege was not defeated by malice. He submitted that he did have a genuine or honest belief in the truth of the Defamatory Words; the District Judge had wrongly conflated recklessness as to the truth with carelessness, impulsiveness or irrationality, and that his behaviour at most constituted the latter and not recklessness as to the truth. The failure to verify the information and his refusal to apologise did not in themselves warrant an inference of malice. Further, the District Judge had also erroneously imputed a dominant improper motive to him; he was merely trying to seek answers from the MCST about the delayed disclosure of the receipt of the judgment sum.

30 The Appellant also submitted that the District Judge was wrong in finding that the defence of justification failed on the facts. The correct meaning of the words that he had to justify was that there were reasonable grounds for suspecting that there had been deliberate concealment or misrepresentation by the MCST. He argued that the facts did indeed support the allegation that there were such reasonable grounds. In relation to the defence of fair comment, the Appellant submitted that it was established on the facts because the Defamatory Words constituted comments on a matter of public interest that a fair-minded person could honestly make based on the facts. It was submitted that the defence was not defeated by malice, as the Appellant held a genuine belief in the Defamatory Words, inferred from his willingness to withdraw the words after hearing explanations from some MC members during the Fourth AGM itself.

31 In the event that the substantive appeal failed, the Appellant submitted

that the District Judge erred in assessing the quantum of damages. Firstly, the District Judge wrongly found that the general social standing of the Respondents was a factor in attracting a higher quantum of damages, because the Respondents had limited their claims to damage to their reputation and standing in the MCST as members of the MC. Secondly, the District Judge was wrong to consider that the Appellant's standing as an associate professor of law should attract a higher quantum of damages, because there was no factual basis to assume that all or any of the SPs present at the Fourth AGM knew that he was an associate professor of law. Thirdly, the District Judge wrongly failed to take into account the Appellant's withdrawal of the Defamatory Words during the Fourth AGM in assessing the quantum of damages. In the circumstances, the Appellant submitted that an award of $15,000 to each Respondent was reasonable.

32 The Respondents submitted that the District Judge's decision was correct. It was submitted that the defence of qualified privilege was defeated by malice, inferred from the antagonistic tone adopted by the Appellant in the June and December emails and during the Fourth AGM, his refusal to apologise and his failure to conduct any inquiries at all. In the alternative, he was driven by a dominant improper motive to pressure the MCST into dropping its claim against him for payment of the Special Levy. The Respondents also submitted that the defence of justification was not made out; the meaning of the Defamatory Words that the Appellant attempted to justify on appeal was not pleaded by him to begin with. In relation to the defence of fair comment, the Respondents agreed with the findings of the District Judge.

33 The Respondents further submitted that the District Judge's assessment of damages was reasonable. The District Judge was correct to take into account the general standing of the Respondents and the Appellant's profession in

determining the quantum of the damages. The Respondents also agreed with the District Judge's decision to order aggravated damages on the basis that the Appellant was driven by malice, having repeated the Defamatory Words during the Fourth AGM, refused to apologise, and was unrepentant in the conduct of his defence. Lastly, the Respondents also highlighted that the quantum of damages was in line with precedents.

My decision

34 The substantive appeal relates to whether the three defences to defamation of qualified privilege, fair comment and justification are established.

Defence of qualified privilege

35 The District Judge found that the Defamatory Words were published by the Appellant on an occasion of qualified privilege (at [63] of GD). The following passage from *Gatley on Libel & Slander* (Sweet & Maxwell, 12th Ed, 2013) at para 14.9 succinctly captures the common law position of the defence of qualified privilege:

> … [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.

36 The District Judge found that the Appellant and the other SPs shared a common interest and concern in respect of the issue of the Special Levy (at [63] of GD). The District Judge came to this conclusion upon reliance on *Hytech Builders Pte Ltd v Goh Teng Poh Karen* [2008] 3 SLR(R) 236 ("*Hytech*

Builders"). In that case, the defendant sent an email to the developer concerning the financial status of the contractor who built a certain condominium which had water seepage problems. It was held that the defendant, as a subsidiary proprietor of the condominium, shared a common interest and concern with other subsidiary proprietors, the developer and the managing agent in wanting to solve the water seepage problem in the condominium. I agree with the District Judge's finding that the Defamatory Words were indeed published on an occasion of qualified privilege. This aspect was also not challenged by the Respondents in the proceedings below and on appeal.

Did the judge err in finding that there was malice?

37 The nub of the appeal on the defence of qualified privilege lies in whether the Appellant was malicious in his alleged aspersions. Malice, if proven, can defeat a defence of qualified privilege (*Lim Eng Hock Peter v Lin Jian Wei and another and another appeal* [2010] 4 SLR 331 ("*Lim Eng Hock Peter*") at [36]). In this regard, the District Judge held that the defence of qualified privilege was defeated by the Appellant's malice. Malice can be found in two instances: (a) where it can be shown that the defendant had knowledge of falsity or was reckless as to the truth of the defamatory statement; or (b) where although the defendant may have a genuine or honest belief in the truth of the defamatory statement, he had the dominant intention of injuring the plaintiff or some other improper motive (*Lim Eng Hock Peter* at [38]; *Golden Season Pte Ltd and others v Kairos Singapore Holdings Pte Ltd and another* [2015] 2 SLR 751 at [92]).

38 The inquiry as to the statement-maker's state of mind under instance (a) is a subjective rather than an objective exercise and the threshold to be met is high (*Ezion Holdings Ltd v Credit Suisse AG* [2017] SGHC 137 ("*Ezion*") at

[25]). The high threshold has been explained by Lord Diplock in *Horrocks v Lowe* [1975] AC 135 at 150 ("*Horrocks v Lowe*"), as approved in *Maidstone Pte Ltd v Takenaka Corp* [1992] 1 SLR(R) 752 ("*Maidstone*") at [48]:

> … In ordinary life it is rare indeed for people to form their beliefs by a process of logical deduction from facts ascertained by a rigorous search for all available evidence and a judicious assessment of its probative value. In greater or in less degree according to their temperaments, their training, their intelligence, they are swayed by prejudice, rely on intuition instead of reasoning, leap to conclusions on inadequate evidence and fail to recognise the cogency of material which might cast doubt on the validity of the conclusions they reach. But despite the imperfection of the mental process by which the belief is arrived at it may still be 'honest', that is, a positive belief that the conclusions that they have reached are true. The law demands no more.

39 Malice would not be present where the defendant was merely careless, impulsive or irrational (but not reckless) in believing the statement to be true (*Maidstone* at [50]; *ABZ v Singapore Press Holdings Ltd* [2009] 4 SLR(R) 648 ("*ABZ*") at [63(c)]; *Ezion* at [25]). It has to be proven that the defendant knew that the defamatory statement was false or was "reckless to the point of wilful blindness" for malice to be found (*Lim Eng Hock Peter* at [40] citing *Roberts v Bass* at [98]). If the defendant chooses to delude himself and disregard obvious and pertinent facts in coming to his defamatory statement, this constitutes wilful blindness, an instance of recklessness as to the truth rather than a *bona fide* positive belief that his statement is true. Another possible instance of a defendant being reckless as to the truth would be an unyielding antagonistic insistence on his own version of conclusions even after knowing the irrefutable true state of things.

40 The high threshold for finding malice is in line with the rationale underpinning the privilege, *ie*, that the defendant has a moral, social or legal duty to disclose the information and the recipient has an interest in receiving it.

A defendant should not be penalised for making an honest mistake, where he published statements that he genuinely believed to be true. On the other hand, a defendant cannot claim the protection of qualified privilege if he knows his statement is untrue or is reckless as to the truth, notwithstanding what his dominant motive may be (*Lim Eng Hock Peter* at [41]).

41 In finding that the Appellant knew that the Defamatory Words were untrue or was reckless as to their truth, the District Judge agreed with the Respondents' arguments in the court below and placed weight on the following factors (at [74]–[78] of GD):

(a) The Appellant's antagonistic stance in the two strongly worded emails sent to the MCST (at [10] and [14] above), and during the Fourth AGM, where the Defamatory Words constituted a robust and antagonistic attack;

(b) The Appellant's refusal to apologise; and

(c) The Appellant's failure to verify the facts before he said the words at the Fourth AGM.

42 The District Judge also found that even if the Appellant held a genuine belief in the truth of the Defamatory Words, he was motivated by a dominant improper motive, which was to avoid payment of the Special Levy (at [80] of the GD).

43 Evidence of a defendant's conduct and action prior to the publication of a defamatory statement, at the time of the publication and after the publication including the entire surrounding circumstances, must be viewed in totality in determining whether there was malice (*Arul Chandran v Chew Chin Aik Victor*

JP [2000] SGHC 111 ("*Arul*") at [301]). In the present case, a consideration of all the circumstances fails to show that the Appellant was driven by malice in saying the Defamatory Words at the Fourth AGM.

(1) Antagonistic tone adopted by the Appellant

44 From the outset, mere evidence of an antagonistic tone taken by the Appellant in the emails and during the Fourth AGM is, without more, insufficient to prove that he knew that the Defamatory Words were untrue or was reckless as to their truth. On the other hand, antagonism may instead be evidence of a strong belief in the truth of the defamatory statements made, albeit it could be one rooted in carelessness, impulsiveness or irrationality. The fact that he had signed off the emails with his professional designation as an associate professor at the School of Law was similarly insufficient to show recklessness as to the truth of the defamatory statements, that he was pressurising the MCST by a mere display of his legal accreditation without actually having a genuine belief in the Defamatory Words.

45 The fact that the Appellant published the Defamatory Words despite the judgment in *MCST Plan No. 3720* also does not show that he was wilfully blind to the truth of the Defamatory Words. It was held by the trial judge in *MCST Plan No. 3720* (at [29]) that the Appellant's refusal to pay the Special Levy was "plainly unmeritorious and without any basis". However, this decision was only handed down on 7 March 2017, well after the Fourth AGM. The Appellant did not have the benefit of reference to this judgment before coming to the conclusions he reached during the Fourth AGM. Furthermore, the contents of the Defamatory Word in the Fourth AGM were different from the issues decided in *MCST Plan No. 3720*: the tenor of the Defamatory Words was that the Respondents had wrongfully decided not to disclose the receipt of the judgment

sum prior to the October instalment of the Special Levy, while *MCST Plan No. 3720* concerned whether the Special Levy resolution was procedurally and substantially invalid.

46 I note further that in the Appellant's two emails, there was no mention of the allegation that the MCST was either deliberately concealing or misrepresenting the situation by failing to disclose the receipt of the judgment sum promptly. But this is unsurprising given that the MCST only disclosed the receipt of the judgment sum to the SPs sometime after the emails were sent. It cannot be said that the different allegations made (in the emails and during the Fourth AGM) evidenced the Appellant's recklessness as to the truth of the defamatory statements on the basis that he merely wanted to attack the imposition of the Special Levy with little regard for the truth. The allegation made by the Appellant against the MCST during the Fourth AGM was in response to the newly-disclosed information.

(2) Failure to verify information

47 The District Judge, in finding malice, placed considerable emphasis on the Appellant's failure to verify the information before publishing the Defamatory Words. However, whether malice can be inferred from a defendant's failure to verify information depends on the context of the omission. Where it was not unreasonable for a defendant to accept the information obtained as true, the fact that he did not conduct an independent check to verify the truth of the information obtained from a particular source does not necessarily mean that he was reckless or indifferent as to the truth (*ABZ* at [66]). In *ABZ*, the defendant had published information it had received from a parent regarding a kindergarten failing to give notice about the presence of hand, foot and mouth disease among some of its students, and the court held that it was not

unreasonable for the defendant to accept the information as true. Similarly, in *Price Waterhouse Intrust Ltd v Wee Choo Keong and others* [1994] 2 SLR(R) 1070 ("*Price Waterhouse*"), the Court of Appeal held that "a failure to obtain independent verification of [information] could not amount to evidence of any malice on the part of the [defendant], for … whilst such failure might suggest a certain amount of carelessness or imprudence, it did not in itself demonstrate a lack of honest belief" nor did it warrant "any inference of malice" (at [45]). The context of the case was that the defendant-solicitors published an inaccurate sale price that was obtained from their clients, who were shareholders of the company in question. In that situation, the defendant-solicitors were not put on notice as to the accuracy of the sale price and thus the court held that the failure to obtain independent verification could not amount to evidence of malice.

48 On the other hand, where the context puts a defendant on notice as to the truth or accuracy of the information, a failure to verify the information may imply malice. *Lee Kuan Yew v Davies Derek Gwyn and ors* [1989] 2 SLR(R) 544 ("*Davies Gwyn*") is a case in point. In *Davies Gwyn*, the first two defendants, an editor and an author, must have known that the source from whom they received information, one Mr D'Souza, had "a deep grievance against the Government" and that the information were sent to them "with a view to their writing and publishing a counter-attack on the Government" (at [118]). Thus, the information "would not be objective or impartial and might well be materially untrue or inaccurate". In those circumstances, "it would have been incumbent on [the defendants] to verify" the information (at [118]). The defendants were put on notice as to the truth or accuracy of the information, yet made no attempt to verify it before publication. The court held that it could be inferred that the defendants published the Defamatory Words "without

considering or caring whether they were true or not; they were indifferent to the truth", *ie*, that they acted recklessly and with malice (at [119]).

49 The present case does not concern the failure to verify the information that formed the basis of the Appellant's Defamatory Words, *ie*, information regarding when the judgment sum was received, the non-disclosure of this receipt and the demand for payment of the Special Levy, but rather the failure of the Appellant to inquire further before forming his conclusions about the conduct of the MCST. He did not inquire further into the context surrounding the non-disclosure of the receipt of the judgment sum before saying his Defamatory Words during the Fourth AGM. He did withdraw his words after hearing explanations from the MC during the Fourth AGM, so it might have very well been that he would not have said those words if he had sought explanations prior. This case is different from cases such as *ABZ*, *Price Waterhouse* and *Gwyn Davies*, which concerned the failure to verify the very pieces of information published instead of a failure to inquire further. Nevertheless, the legal position applicable to the failure to verify information and the failure to inquire further should be the same. The question is whether the context made it incumbent on a defendant to verify the information or to inquire further. This in turn depends on whether a defendant was put on notice as to the truthfulness or accuracy of the information or the existence of further information necessary to form a genuine belief as to the truthfulness of the alleged defamatory statement. Whether a defendant is reckless as to the truth of the defamatory statements can be inferred from these circumstances.

50 It was through the MC Report issued on 1 February 2016 that the Appellant gathered his information, *ie*, that the MCST received the judgment sum in September 2015 but it did not inform the SPs of this and continued to demand the collection of the second instalment of the Special Levy on 1 October

2015. There is no dispute that these pieces of information are accurate and correct, but the Respondents argue that the Appellant should have inquired into the reasons for non-disclosure. Any information regarding Duchess Residences that the Appellant, a SP, would have had access to would be from the MC. Sources of information would include MC reports, general meetings and newsletters. The Appellant did rely on such a report and the MC Report that he had relied on was the first time the receipt of the judgment sum was disclosed to the SPs. However, there was no explanation given for the prior non-disclosure. It is apposite to set out the paragraph in the MC Report relating to the collection of the Special Levy and the receipt of the judgment sum here:

> 6.0 Special Levy
>
> …
>
> With the subsidiary proprietors' approval obtained at the EGM, the levy was collected in July 2015 and October 2015. The last instalment of the levy was due to be collected in March 2016. In September 2015, the MC received payment of $261,055 from the purchasers of the 13 units and on 13 January 2016, the MC received another payment of $40,728.48 from them. With these payments, the MC's cash flow position improved and the MC felt that it would not be necessary to continue with the collection of the levy in March 2016. Hence, a resolution would be proposed in the forthcoming Annual General Meeting (AGM) to seek approval for the revocation of the last instalment of levy due in March 2016.
>
> …

51 In these circumstances, I find that the Appellant was not put on notice as to the existence of further information necessary for him to form a genuine belief as to the truthfulness of his Defamatory Words. The Appellant might have been careless, impulsive or irrational in coming to the conclusion that the MCST was deliberately concealing the fact that the judgment sum was received and misrepresenting the situation, but it cannot be said that he was reckless in his belief that the Defamatory Words spoken were true. The threshold for finding

malice is not crossed. It is appropriate to reiterate Lord Diplock's words that people "leap to conclusions on inadequate evidence and fail to recognise the cogency of material which might cast doubt on the validity of the conclusions they reach. But despite the imperfection of the mental process by which the belief is arrived at, the belief may still be 'honest'".

52 Before I conclude this section, I note that the District Judge referred to the case of *Davies Gwyn* at [77] of the GD. That case can be distinguished from the present one. The defendants in *Davies Gwyn*, as explained at [48] above, were put on notice as to the truthfulness and accuracy of the information they had published. The circumstances differ in the present case and as I have explained, the Appellant was not put on notice.

(3) Refusal to apologise

53 The Appellant's refusal to apologise also does not show that he was reckless as to his belief or had a lack of belief in the defamatory statement. A failure by a defendant to apologise or retract his statement(s) even when it is clear that he was mistaken, though unwise, may be evidence of stubbornness rather than of malice at the time of the original publication (*Duncan and Neill on Defamation*, (LexisNexis, 9th Edition, 2015) at para 19.21). In *Ezion*, after analysing *DHKW Marketing and another v Nature's Farm Pte Ltd* [1998] 3 SLR(R) 774 ("*DHKW*") and *Roberts and another v Bass* (2002) 212 CLR 1, the court held at [48] that "while post-publication conduct may be relevant to the question of malice in certain situations, the case authorities presented by the parties illustrate that it is highly unlikely for recklessness and malice to be made out based on a defendant's unwillingness to make an apology or a retraction". Even in *DHKW*, where the court held that malice could be inferred if a defendant refused to apologise even after he was aware that the statement was false, a

refusal to apologise was only one factor that confirmed the court's finding that the defendant had a dominant improper motive (at [33]–[37]).

54 The Appellant's refusal to apologise appears to be underpinned by his perception that he was justified in saying the Defamatory Words prior to obtaining explanations from the MC members for the delayed disclosure of the receipt of the judgment sum. In this regard, his repetition of the Defamatory Words during the Fourth AGM does not mean that he was reckless as to the truth of the words. His conduct has to be viewed in proper context, particularly having regard to his withdrawal of the statement during the Fourth AGM itself. The explicit withdrawal of the Defamatory Words after the MC members eventually offered explanations for the delayed disclosure shows that the Appellant was amenable to retraction and not reckless as to the truth of his statements.

55 The Appellant withdrew the Defamatory Words after hearing the explanation provided by a MC member, Mr Chai, and the explanation provided by the Second Respondent to the effect that the judgment sum and future instalment payments from the 13 SPs were not guaranteed at the point the judgment sum was paid in September 2015. However, ironically, Mr Chai's explanation was actually completely erroneous. He had explained that the judgment sum was paid under protest and therefore the MCST might have to return that sum at any time.[10] Further, he said that as of October 2015, the MCST was unsure if the 13 SPs would pay the October instalment, and it was only in January 2016 that they paid up. The First Respondent had apparently similarly mentioned during the Fourth AGM, before Mr Chai spoke, that the judgment

[10] RA at pp 522–523.

sum was paid into the MCST's account under protest (which appeared to have been missed by the Appellant).[11] However, counsel for the Respondents clarified at the hearing before me that the judgment sum was actually *not* paid under protest. The First Respondent and Mr Chai had unfortunately mixed up the payment of the judgment sum from the 13 SPs (which was made unconditionally) with pre-judgment payments of contributions that were made under protest. This erroneous explanation had no doubt contributed in a large part to the Appellant withdrawing his Defamatory Words.

56 Furthermore, the MC itself appeared uncertain of the reasons for the eventual decision to withhold disclosure. Various explanations were proffered during the MC meeting on 12 November 2015 and the Fourth AGM by the MC members, including the Respondents, as to the non-disclosure of the receipt of the judgment sum. The explanations included the uncertainty over the resolution of the dispute as the costs orders of DC Suit No 3497 of 2014 remained unsettled at the time the judgment sum was received[12] and the payment of the judgment sum was made under protest[13] (which was erroneous); the complexity of the issue;[14] the inconvenience, unviability and cost implications of convening another Extraordinary General Meeting in a short time;[15] and the possibility of SPs resisting future payments after knowing that the judgment sum had been received.[16] The First Respondent took a legalistic view of the position that there

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11 RA at p 520.

12 RA at pp 391–392, 518, 523.

13 RA at p 520 (TKQ) and at p 522 (CCK).

14 RA at pp 520 and 523.

15 RA at p 392, p 518

16 RA at p 393.

was "no necessity" for the MC to disclose the receipt of the judgment sum, and further that the MC had "no right" to stop receiving the Special Levy without a proper revocation in an EGM.[17] This admittedly is different from a conscious and deliberate decision to conceal the receipt of the judgment sum. Even so, the MC members failed to clarify the facts even among themselves and had instead confused the issues as to why there was non-disclosure. Regrettably, the SPs were not updated and the MCST instead adopted the legalistic position that the issue could simply be "closed"[18] once the judgment sum and costs orders were paid and disclosed in the MC Report released in February 2016.

57 In the circumstances, I find that the Appellant neither knew the Defamatory Words were untrue nor was he reckless as to their truth.

(4) Whether the Appellant was driven by an improper motive

58 Turning to the question of whether the Appellant harboured an improper motive, the District Judge found that the strong words used in the two emails sent by the Appellant contained a "veiled threat" to pressure the MCST into withdrawing the demand for payment of the Special Levy (at [79] of GD). The Appellant similarly used the occasion of the Fourth AGM to question and pressure the MCST to withdraw its claim on the Special Levy. The District Judge found that the Appellant was driven by a dominant improper motive to obtain a private advantage of not having to pay the Special Levy, especially in the light of the fact that all the rest of the SPs had agreed to pay.

59 The Appellant was correct in pointing out that the improper motive found by the District Judge was never put to him in cross-examination during

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17 RA at p 519–520.

18 RA at p 518 (TKQ).

the trial. During cross-examination, the Appellant was questioned about whether he was annoyed and angry at the MCST, but never about whether he was pressuring the MCST to withdraw the demand for payment of the Special Levy.[19] It is a trite principle, as set out in *Browne v Dunn* (1893) 6 R 67 ("*Browne*"), that it is "absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that that imputation is intended to be made" (*per* Lord Herschell at 70). The rationale of the rule in *Browne* is to give the witness an opportunity to respond to allegations made and to explain himself (*Hong Leong Singapore Finance Ltd v United Overseas Bank Ltd* [2007] 1 SLR(R) 292 at [42]). In the present case, the failure to question the Appellant on the alleged dominant improper motive denied him a chance to respond to the allegation, and fell afoul of the rule in *Browne*.

60 Even if the case had been properly put to the Appellant, the course of his actions does not show that he started the disagreement with the MCST just so as to avoid paying the Special Levy. In this regard, I bear in mind the caution voiced by Lord Diplock in *Horrocks v Lowe* at 150–151 that "[j]udges and juries should … be very slow to draw the inference that a defendant was so far actuated by improper motives". On the facts, the main tenor of the Appellant's actions is that he had refused to pay the Special Levy because he believed that it was illegal or wrongful, and had been attempting to persuade the MCST to correct this illegality or wrong. Firstly, this is evident in the two emails sent by the Appellant. In the June email, the Appellant stated that he hoped "the explanation

[19] RA at pp 226–227, Notes of Evidence (23 Jan 2017) at p 177, lines 21–32, p 178, lines 1–9.

[given was] sufficient to set the record straight and help you choose the right course of action. To rectify your mistakes, please re-issue the Tax Invoice by removing the special levy".[20] In the December email, the Appellant stated that "the said resolution is invalid due to its many violations of the relevant sections under the Building Maintenance and Strata Management Act" and that "the proper course of action for the MCST should be a formal apology, and the removal of the illegal special levy from all current and future tax invoices".[21]

61 Secondly, the Appellant's belief that the collection of the Special Levy was wrongful was also similarly evident during the Fourth AGM. The tenor of the Appellant's allegations during the Fourth AGM was that the collection of the Special Levy was wrongful as the original justification for imposing the Special Levy had disappeared, and the MCST's failure to inform the SPs of this implied dishonest concealment. This can be discerned from what the Appellant said during the Fourth AGM:[22]

> … [the MCST] said the justification for imposing the special levy was to make for the potential shortfall created by … the 13 units … [B]y September [the MCST has] already received more than [the shortfall] … Now why didn't you notify the SPs of the receipt of the payment at that time? …
>
> …
>
> … actually the collection of the special levy, is not an obligation of the management council, it's the right of the management council, and the management council can definitely decide not to exercise this right, because the original justification was already gone.
>
> …

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20 [67] of GD.

21 [69] of GD.

22 RA at pp 518 and 520.

> … According to the regulations of the law, I think that you don't have the right continue [*sic*] collecting payment once you have collected the overdue payment.

62 I also note at this juncture that the difference in the allegations made in the two emails compared to those made during the Fourth AGM does not mean that the Appellant was driven by the improper motive to try all possible arguments to avoid paying the Special Levy. The two emails alleging the procedural and substantive irregularities surrounding the Special Levy were sent before the Appellant found out, on 1 February 2016, that the MCST had already received the judgment sum in September 2015. Thus, the Appellant could not have included the allegation made during the Fourth AGM in his previous two emails.

63 Moreover, the antagonistic and defiant stance taken by the Appellant in his emails and during the Fourth AGM does not go to prove that he was motivated by an improper purpose. In this regard, the comments made by Lord Atkinson in *Adam v Ward* [1917] AC 309 at 339 bear reiteration:

> … a person making a communication on a privileged occasion is not restricted to the use of such language merely as is reasonably necessary to protect the interest or discharge the duty which is the foundation of his privilege; but that, on the contrary, he will be protected, even though his language should be violent or excessively strong, if, having regard to all the circumstances of the case, he might have honestly and on reasonable grounds believed that what he wrote or said was true …

64 This is not to say that the kind of language used and the ways the issues have been presented – whether the person has been deliberately provocative, sarcastic, antagonistic and unduly personal – are totally irrelevant to the issue of the defendant's predominant motive (*Arul* at [304]). Evidence of strong language and an antagonistic tone is especially pertinent to a finding of an improper purpose to injure the plaintiff. In such a case, the question is whether

the mannerism of the defendant had gone beyond being critical to being vindictive and spiteful towards the defendant. In *Arul*, the court placed weight on the mannerism of the defendant in finding that the defendant's dominant motive was to destroy the character and reputation of the plaintiff out of personal spite and vengeance towards the plaintiff (at [304]–[309]). Similarly, in *Goh Lay Khim v Isabel Redrup Agency Pte Ltd* [2017] 1 SLR 546 ("*Goh Lay Khim*"), the court analysed the correspondence between the parties, finding that the messages sent by the defendant painted "an overwhelming picture of spite, ill will and vicious intent", to infer that the dominant motive was to injure the plaintiff (at [87]). On the other hand, where the alleged improper purpose is not to cause injury to the plaintiff, the choice of words and tone of the defendant may not be pertinent. In all cases, the weight to be placed on a factor depends very much on the kind of improper purpose alleged.

65 In the present case, the words and the tone used by the Appellant were accusatory and antagonistic but they do not show that he was driven by the motive to gain an improper personal advantage to avoid paying the Special Levy. The tone and words used in the emails, along with the explanations the Appellant had provided supporting his legal position, show his firm (though misconceived) belief that the imposition of the Special Levy was procedurally and substantially flawed, and that he was correct and justified in demanding that the MCST "rectify" its mistakes by removing its demand for payment of the Special Levy. The inclusion of his professional designation as an associate law professor in the emails was officious, and in all probability, done on purpose to lend a veneer of authoritativeness to the legal position he had adopted.

66 The words that he had used during the Fourth AGM were also antagonistic, but they do not betray an improper motive. At the beginning of the AGM, he phrased his allegation in the form of a question: "Was the

management council deliberately concealing the receipt of the payment, or was the management council misrepresenting to the SPs that you have not received the payment?" His antagonistic tone intensified when he concluded that "based on the facts, I can only draw two possible conclusions, one conclusion is that it has been deliberately concealed, the other is that…there is a misrepresentation". The heightened antagonism in the Appellant's tone during the Fourth AGM could have been in part due to the repeated attempts by the MC members to shut him off. A short extract of the exchange at the very start of the AGM suffices to illustrate the repeated rejection of the Appellant's attempts to seek explanations:[23]

> Gao: Well in the original justification, which was listed in the chairman's message to the second AGM, to the second AGM, you said that justification for imposing the special levy was to make for the potential shortfall created the areas, by the 13 units. And the shortfall, according to your calculation, actually this includes not only the shortfall of the areas, but also the legal fees in pursuing the owners to pay the areas, it comes to a total of 303k. So what this means is, by September you have already received more than 260k, which should cover more than enough of the areas that would have occur before 2015. Now why didn't you notify the SPs of the receipt of the payment at that time? Was the management council deliberately concealing the receipt of the payment, or was the management council misrepresenting to the SPs that you have not received the payment?
>
> Tan: Ok, firstly I think, we have to pay some respect to the management council, that words like concealing is a really not a matter for you to raise on this thing. By the time we collected this in September 2015, the resolution had already been passed. The only we could, if we wanted to at that time, was to call for another special resolution, special meeting, which costs money, to revoke the resolution. And we had just collected it, there was still a court case going on, we don't know what is going to happen, and if we say yes, we have collected enough, then what do we do? How do we therefore, as you say, conceal the collection, or we want to hide the collection, when our accounts are all audited, it went into the bank and there is no way this management council is going to conceal this collection.

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[23] RA at p 518.

> Why should we? Of what benefit is it to us? *So can we move on please?*
>
> Gao: Chairman, if I may respond?
>
> Tan: *No, I don't think this is, first thing, I don't think this is an issue for you to raise in this meeting. Right? We have collected it…*
>
> Gao: It is an important issue, because it is us SPs who are asked to pay this special levy, and we have every right to know when the original justifications for the special levy were gone, we should be informed the earliest, right?
>
> Tan: Not necessarily, because, as I said to you, that issue was still alive. We don't know whether eventually if these 13 units is going to pay anymore, and whether the court case is still on. As I said to you Mr. Gao, it's up to you, *but we are saying, let's move on. This issue has been closed.*
>
> [emphasis added]

67 The insistence of the MC members on moving away from the Appellant's question was also picked up by another SP who attended the AGM. This SP, an unidentified woman, spoke up on the side of the Appellant and said "we have questions about this issue, then you should provide an explanation" when the First Respondent tried repeatedly to move away from the issue of the Special Levy.[24] The continued rejection of the Appellant's attempts to seek an explanation from the MCST in no small part fuelled the increase in antagonism of the Appellant. It cannot be said in the circumstances that the antagonistic tone adopted by the Appellant implied that he was driven by the dominant improper purpose to gain the private advantage of not having to pay the Special Levy.

68 The Appellant's course of conduct viewed in its entire context shows that he was bringing the wrongfulness (in his opinion) of the demand for the Special Levy to the attention of the MCST. This is similar to the case of *Hytech Builders*, where no malice was found to defeat the defence of qualified

[24] RA at p 519.

privilege. There, the court found that the motive of the defendant in making the defamatory statements was to obtain redress for her grievances arising from the water seepage problems, and not to spite or injure the plaintiff. Similarly in the present case, the Appellant's objective was to obtain redress and explanations for the perceived wrongdoing of the MCST.

69 For the above reasons, I conclude that there is no malice. The Appellant is thus entitled to rely on the defence of qualified privilege.

Fair comment and Justification

70 Although my findings above are sufficient to dispose of this appeal, for completeness, I go on to consider the remaining defences. I find that the defences of fair comment and justification would fail.

71 The court has to first identify whether a defamatory statement is one of fact or comment (*Basil Anthony Herman v Premier Security Co-operative Ltd and others* [2010] 3 SLR 110 ("*Basil Herman*") at [59]). The defence of justification applies to statements of facts, and is not defeated by malice. On the other hand, the defence of fair comment applies to comments, and is defeated by malice (*Basil Herman* at [59]). The test to determine whether a statement is one of fact or comment is an objective one: whether an ordinary reasonable reader on reading the whole article would understand the words as comments or as statements of fact (*Gwyn Davies* at [53]–[54]).

72 In finding that the defence of fair comment did not apply, the District Judge found that the Defamatory Words constituted facts and not comments. He found that, at best, it was not reasonably clear whether the Appellant was stating facts or making comments, so he should be denied the benefit of the defence of fair comment (following *Review Publishing Co Ltd & another v Lee Hsien*

Loong [2010] 1 SLR 52 ("*Review Publishing Co Ltd*") at [140]). I beg to differ from the District Judge in this regard. Having regard to the whole context of what was said by the Appellant, the Defamatory Words constitute his own conclusions drawn from the facts he first set out, *ie*, that the MCST received the judgment sum but did not inform the SPs of such receipt and instead, continued to demand the payment of the Special Levy. His allegation that the MCST either deliberately concealed the receipt of the judgment sum or misrepresented the position was his own deduction and conclusion. An ordinary reasonable reader would understand the Defamatory Words to be the Appellant's own comments. Therefore, the defence of fair comment, and not the defence of justification, applies.

Fair comment

73 To succeed in the defence of fair comment, a defendant has to satisfy *all* of the following criteria (see *Loh Siew Hock and others v Lang Chin Ngau* [2014] 4 SLR 1117 at [85]):

(a) the words complained of are comments;

(b) the comment is based on facts;

(c) the comment is one which a fair-minded person can honestly make on the facts provided; and

(d) the comment is on a matter of public interest.

74 In determining whether the defence of fair comment succeeds, "[t]he essential thing is the honest opinion of a fair-minded man, and in this connection every allowance or latitude is to be given for any prejudice and exaggeration entertained by such a fair-minded man" (*Gwyn Davies* at [70]).

75 As explained in [72] above, the Defamatory Words are comments. Further, they are based on facts, *ie*, that the SPs were not informed about the judgment sum received and the MCST continued to demand payment of the Special Levy.

76 However, these are not comments which a fair-minded person can honestly make on the facts. There is a significant leap between the facts and the conclusion reached by the Appellant, since the failure to disclose the receipt of the judgment sum did not necessarily mean that the MCST had deliberately concealed the information or that it had misrepresented the situation to the SPs. The Defamatory Words are more than just mere exaggeration – the only two explanations said by the Appellant to be possible, that the MCST was either deliberately concealing or misrepresenting the facts, represented a blinkered foregone conclusion, closed off to any other plausible explanations of the MCST's conduct.

77 The Court of Appeal has held in *Aaron Anne Joseph & Ors v Cheong Yip Seng & Ors* [1996] 1 SLR(R) 258 at [75] (citing *London Artists Ltd v Littler* [1969] 2 QB 375 at 391) that any matter affecting people at large so that they may be legitimately interested in what is going on or how they may be affected constitutes matters of public interest. The Appellant argues that the receipt of payments and collection of the Special Levy were matters of concern to other MCSTs and SPs. Nevertheless, the issues at hand only pertain to the specific circumstances of this MCST and the SPs in question. In the premises, the comments are not on a matter of public interest.

78 Thus, the defence of fair comment cannot be established.

Justification

79 In the event that I am wrong to find that the Defamatory Words constituted comments, I shall also analyse the application of the defence of justification. To establish the defence of justification, the Appellant need only prove that the substance or gist of the offending words (as opposed to those parts of the offending words which do not add to the sting of the alleged defamation) is true (*Review Publishing Co Ltd* at [134]; *Chan Cheng Wah* at [43]).

80 From the outset, the defence of justification fails because the Appellant had failed to plead precisely the meaning of the words that he sought to justify. Such pleading is necessary, as set out in *Gwyn Davies* at [51]:

> A defendant in a defamation action … must show in his pleadings either in a specific averment or in the particulars relied on the meaning he seeks to justify.

In that case, the High Court held that the defendants were bound by their pleading, and for this reason disallowed their counsel from cross-examining the plaintiff on matters with a view to establishing justification of a meaning distinct from that which they have pleaded (at [51]). The necessity of pleading the specific meaning of the defamatory statement by the defendant has also been affirmed in *Review Publishing Co Ltd* at [133].

81 The Appellant sought to argue on appeal that the Defamatory Words meant that there were reasonable grounds to suspect that there had been deliberate concealment or misrepresentation by the MCST, rather than actual deliberate concealment or misrepresentation by the MCST. Based on the three types of statements established in *Chase v News Group Newspapers Ltd* [2003] EMLR 11 at [45] ("*Chase*") as followed in *Goh Lay Khim* at [91], the Appellant sought to plead a *Chase* Level 2 type of statement, *ie*, that there were reasonable

grounds for suspecting that the acts had been committed. However, the Appellant had failed to plead this precise meaning which he sought to justify. I am not persuaded by the Appellant's arguments that he did refer to such a meaning by referring to the "reasonable person" in his Defence. I reproduce the parts of the Defence containing the phrase "reasonable person" as follows:

> 13. … In response, the Defendant explained that, as the receipt of the payment was not disclosed until 6 months after without any explanations, *a reasonable person*, based on the information available at the time, could only conclude either the information has been concealed, or that the Management Council has misrepresented to the SPs that they have not received the payment when they sent out another invoice for the collection of the 2nd installment of the Special Levy …
>
> …
>
> 16. As to the second quoted paragraph … it was made in response to a question by the Chairman, where the Defendant explained that, before the Council gave the explanations at the meeting, *a reasonable person*, with the limited information he had, could only conclude that the information on the payment has been concealed or misrepresented…
>
> [emphasis added]

I fail to see how the above paragraphs show that the Appellant had pleaded precisely the meaning of the Defamatory Words he sought to justify, *ie*, that there were reasonable grounds to suspect that there had been deliberate concealment or misrepresentation by the MCST. The paragraphs merely state that a reasonable person would have come to the same conclusion as the Appellant did, that there was either deliberate concealment or misrepresentation.

82 In any case, I agree with the District Judge that the sting of the Defamatory Words could not be justified. The MCST had not disclosed the receipt of the judgment sum and had sent out invoices to the SPs for the payment of the second instalment of the Special Levy but it could not be said from these

facts alone that there was dishonesty or deception on the part of the Respondents.

Conclusion

83 The appeal is allowed and the District Judge's decision allowing the Respondents' claim is set aside. The Appellant has only succeeded on one defence out of the three defences argued during the appeal. Furthermore, he did not appeal against the finding of the District Judge that the words said by him were defamatory of the Respondents and against the finding that all of his counterclaims were without merit. I will hear the parties' submissions on the appropriate quantum of costs for the appeal and the proceedings below.

See Kee Oon
Judge

Lee Ee Yang and Charis Wong (Covenant Chambers LLC) for the appellant;
Raymond Wong and Rachel Ang (Wong Thomas & Leong) for the respondents.