Premier Security Co-operative Ltd and Others v Basil Anthony Herman [2009] SGHC 214

Case Number : Suit 195/2007

Decision Date : 24 September 2009

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : Adrian Wong Soon Peng and Ho Hua Chyi (Rajah & Tann LLP) for the plaintiffs; Singa Retnam (Kertar & Co) and Patrick Chin Meng Liong (Chin Patrick & Co) for the defendant

Parties : Premier Security Co-operative Ltd; Saraj Din s/o Sher Mohamed; Leow Cher Kheng — Basil Anthony Herman

Tort – Defamation

24 September 2009 Judgment reserved.

Lai Siu Chiu J:

1 This was a claim in defamation by Premier Security Co-operative Limited ("Premier"), its managing-director Saraj Din s/o Sher Mohamed ("the second plaintiff") and by Premier's Manager (Administration and Finance) Leow Cher Kheng known as Annie Leow ("the third plaintiff") against Anthony Herman Basil ("the defendant") based on statements contained in the defendant's letters to various parties. (Hereinafter, the three plaintiffs will be referred to collectively as "the plaintiffs").

2 The trial before this court was only to determine whether the defendant had proved his defences of justification, fair comment and qualified privilege in relation to the statements as, by an order of another court dated 17 October 2007 ("the order of court"), the defendant's statements had been found to be defamatory of the plaintiffs.

The facts

3 Premier is a co-operative founded by the Singapore Police Co-operative Society ("the Police Co-operative") and the Singapore Government Staff Credit Co-operative Society Ltd ("the Co-operative Society"). It is a security agency and has been providing security and/or related services since its registration as a co-operative on 17 March 1984. The defendant was a former security executive of Premier and was in its employment for the period 13 April 2006 to 21 December 2006.

4 According to the second plaintiff, Premier was set up to create jobs for Singapore Police Force ("the police force") retirees as well as to provide security services to public and private institutions. Prior to his joining Premier, the second plaintiff was himself a senior officer in the police force, where he served for more than 36 years. As of the trial dates before this court, Premier had more than 500 guards in its employment providing security to more than 70 establishments in Singapore including Singapore Airport Terminal Services ("SATS") at Changi Airport, Singapore Bus Services ("SBS"), Singapore Mass Rapid Transit ("SMRT"), NTUC Income building, the Singapore National Eye Centre, the Tanglin Club and Pandan Valley Condominium.

5 In his affidavit of evidence-in-chief ("AEIC"), the second plaintiff deposed that Premier prided itself on providing security services of a high quality. It had received accolades not only from its clients and third parties but also from its peers, by way of an "**A**" grading (denoting excellence) from the Security Industry Regulatory Department ("SIRD") in the annual grading exercise of security

agencies for 2007 and 2008 (SIRD is part of the police force). Premier had also received an award from the Prime Minister as recognition for its efforts in creating better jobs with better pay for locals, as well as a May Day award in 2006.

6 The second plaintiff had also received personal recognition while he was in the police force by way of awards and medals for National Day. Besides being the managing-director of Premier, the second plaintiff is a council or committee member of various organisations as well as being a grassroots leader in his constituency.

7 The defendant was employed by Premier as a security executive by way of an employment contract dated 13 April 2006 ("the contract"). His duties and responsibilities were set out in a circular (which copy he received) dated 1 August 2005 issued by the second plaintiff on Premier's behalf.

8 Under the terms of the contract, the defendant had to serve a probationary period of three months until 12 July 2006. The second plaintiff described the defendant's performance as average. He was however confirmed as a permanent employee of Premier in a letter dated 12 July 2006 in which the second plaintiff (in order to motivate him) praised the defendant.

9 About a month after the defendant's confirmation, Premier received an anonymous letter dated 12 August 2006 ("the anonymous letter") that contained unfavourable comments of the defendant who was portrayed *inter alia* as a troublemaker. The second plaintiff did not inform the defendant of the anonymous letter as he was prepared to let the defendant prove himself. However, after his confirmation, the second plaintiff noticed that the defendant's performance and work attitude deteriorated. Amongst other failings, the defendant failed to provide Premier's management with the requisite reports on security assignments under the defendant's charge. He failed to keep the second plaintiff informed orally of his coverage at his assignments and often, the defendant was not contactable.

10 Over time, the defendant's work performance worsened further. He did not maintain Premier's standards and failed to submit weekly reports and incident reports at all or timeously, he would be absent during office hours without good reason and he could not be contacted.

11 The proverbial last straw for Premier/the second plaintiff was when the defendant deployed a relief guard called Casino Ong to an SBS assignment. Casino Ong walked with a limp and SBS considered him unsuitable. The defendant should have but failed to check the quality of the guards he deployed on various sites.

12 Consequently, the second plaintiff (together with Premier's project manager Jamaludin Malik bin Attan ("Jamaludin") saw the defendant on 14 December 2006. At the meeting, the second plaintiff sought clarification from the defendant on Casino Ong's deployment at the SBS site. The defendant did not explain but feigned ignorance claiming he did not know about Casino Ong's deployment. The second plaintiff pointed out that the defendant's performance had been below par since his confirmation. Besides the wrong deployment of Casino Ong, the second plaintiff cited the defendant's poorly written report for Pandan Valley Condominium. The second plaintiff then told the defendant his services would be terminated. The defendant was silent, left the second plaintiff's office and the premises of Premier never to return.

13 On the same day, Premier posted to the defendant the termination notice wherein the defendant was advised that his last day of service would be 21 December 2006. Although he well-knew that he should serve out his notice period, the defendant failed to show up at Premier's office for work between 14 and 21 December 2006.

14 Subsequent to the defendant's dismissal, the second plaintiff checked the defendant's field book. All security executives employed by Premier were required to record their visits to designated assignments in their field books. The second plaintiff discovered that the defendant had failed to record his daily activities and movements in his field book since 6 June 2006.

15 The plaintiffs alleged that subsequent to his dismissal, the defendant embarked on a hate and/or smear campaign. The defendant published or caused to be published maliciously the following:

(a) a letter (wrongly) dated 8 January 2006 to *inter alia* the Minister of Manpower ("MOM");

(b) a letter dated 24 January 2007 to *inter alia* the Commissioner of Police;

(c) a letter dated 8 February 2007 to *inter alia* the Deputy Prime Minister Wong Kan Seng;

(d) a letter dated 16 February 2007 to *inter alia* the Director of the SIRD and the police force.

16 The plaintiffs viewed the defendant's aforementioned letters as gravely defamatory, false and malicious. They alleged that the defendant was vindictive on the termination of his employment and that he wanted to injure the plaintiffs as his revenge. Although SIRD's reply to the defendant dated 7 February 2007 indicated his complaints were unfounded, the defendant persisted in his smear campaign by publishing further letters to various parties. The second plaintiff alleged that the defendant's conduct spoke volumes of his malice, spite and bad intent.

17 The plaintiffs' solicitors made a formal demand of the defendant by a letter dated 6 March 2007 to "cease and desist" his defamatory statements. The defendant refused to furnish the undertaking and/or apology requested. Instead, the defendant persisted in his conduct by publishing further letters in particular those dated 22 and 30 March 2007 to the SIRD, a letter dated 27 March 2007 to the Internal Security Department ("the ISD") and he even wrote to Premier's chairman on 5 April 2007, demanding that an independent body be appointed to conduct investigations into his allegations against the second and third plaintiffs.

18 In his letter dated 22 March 2007 to the SIRD, the defendant attached photographs purportedly showing Premier's guards at various assignments not discharging their duties. In the same letter, he included photographs that allegedly showed a security guard of Premier being improperly dressed and another guard allegedly sleeping, while both were on duty at an interchange of SBS. In his letter dated 30 March 2007 to SIRD, the defendant attached more photographs of Premier's security guards supposedly sleeping on the job. In his reply to SIRD dated 9 April 2007, the second plaintiff set the record straight. He pointed out that the security guards found sleeping in 2006 while on duty had been disciplined and dismissed.

The defamatory statements

19 As stated earlier (at [2]), some statements made by the defendant in his letters dated 8 January 2006, 24 January 2007 and 16 February 2007 had been held to be defamatory of the plaintiffs in their natural and ordinary meaning. It would be appropriate at this juncture to set out

those offending extracts.

(a) The defendant's letter (wrongly) dated 8 January 2006 ("the first letter").

20 In the first letter addressed to the MOM (at 1AB166-177) and copied to the Commissioner of Police, the Police Co-operative and the Co-operative Society, the defendant alleged he had been wrongfully terminated. Amongst his many allegations the defendant contended that in terminating his employment the second plaintiff:

> (i) …has got this impression that he is the sole proprietor of Premier Security and that he is an Indispensable Managing Director.
>
> (ii) I am not the first victim. There are many many more who were asked to go or resigned because of his and Ms Annie Leow's behaviour.

that the second and third plaintiffs were not aware of the

> (iii) …'Labour Laws' pertaining to employment nor are they running the Premier Co-operative Ltd. according to its rules and regulations laid down for he (sic) Security Industries.
>
> (iv) May be the authorities should call up all those ex-premier staff and enquire from them as to why they left, asked to leave or terminated. I promise you, you will actually open up a pandora's box. I know most of them and I assure you they are good, were very hard working and know the ropes in this industries. Unfortunately, they did not know how to crawl their way into the good books of the duo.

and questioned:

> (v) Why did Premier loose (sic) the assignment to provide guards for which this Security Co-operative was paid very handsomely?...No doubt, the quotation given by Premier Security was higher, but even with this high quotation, if Premier was really good and kept to its promise to provide suitable and medically fit guards, it could have retain (sic) the assignment.

21 The order of court held that in their natural and ordinary meaning, the defendant's above comments meant that there was no basis for the plaintiffs to have dismissed him, the plaintiffs acted capriciously in doing so and other employees of Premier similarly had had their services wrongfully terminated. The plaintiffs were also ignorant of labour laws and they had breached employment laws and/or regulations when they dismissed the defendant.

(b) The defendant's letter dated 24 January 2007 ("the second letter").

22 The second letter was addressed to the Commissioner of Police and carbon-copied to: (i) the Chairman of the Police Co-operative; (ii) the Chairman of the Co-operative Society and (iii) the Head of the SIRD. It contained the following defamatory extracts:

(i) In the reason (sic) rating for Security Agencies, Premier Security was rated **'B'**. The management of **Premier Security should thank its lucky star and just jump in jubilation**, because, from the way it was managed and run, from the types of guards it has to service its customers, and from the amount of LDs (fines) it paid, in all honesty, Premier Security should actually be rated **'D'**.

(ii) The present Managing Director... a retired DSP and his 'Admin' and Finance Manager, Ms Annie Leow, are both presently managing the agency as though the agency belonged to them and that they are the sole-proprietors, not realizing they have actually to answer to the Chairman and the Board of Directors of Premier Security Co-operative Ltd, The Singapore Police Co-operative Society Ltd and the Singapore Government Staff Credit Co-operative Society Ltd.

23 According to the order of court at [2], the comment in (i) meant or was understood to mean that Premier was not deserving of the "**B**" grade it had received from SIRD while the allegation in (ii) meant and/or was understood to mean that the second and third plaintiffs had done something wrong in terminating the defendant's employment.

(c) The defendant's letter dated 16 February 2007 ("the third letter").

24 The third letter was written by the defendant to the Director of SIRD and was copied to (i) the Commissioner of Police; (ii) the Chairman of the Police Co-operative; (iii) the General Manager of SATS as well as to the officer-in-charge at SATS. The order of court held that the following comment therein was defamatory:

…it is believed, most of the guards have not gone through the 'Orientation Course' a requirement that is a must before one can start work at the Airport Cargo Complex.

The allegation directly or by innuendo meant and/or was understood to mean that Premier was fraudulent and/or dishonest in its operations and/or was cheating its clients.

The pleadings

The defence and counterclaim

25 Having set out the defamatory comments that formed the basis of the plaintiffs' claim, I turn my attention next to the defendant's pleadings to look at the defences that he raised, bearing in mind that it was no longer necessary for the plaintiffs to prove their case by reason of the order of court.

26 The defendant's defence (amendment no. 2) pleaded his employment was unlawfully terminated on 14 December 2006. He was summarily dismissed and no notice of termination was issued to him as alleged by the plaintiffs. He denied he was given seven days' notice expiring on 21 December 2006. The defendant alleged that the notice period was also unreasonable – as he had been employed for more than six months, he was entitled to at least two weeks' notice in accordance with Premier's usual practice. The defendant's pay in lieu of notice amounting to $1,800 was also not paid. Further, no inquiry was held to determine why the defendant's services as a security executive was unsatisfactory or that he had breached the terms of his employment prior to the defendant's termination of his employment by the second plaintiff.

27 The defendant asserted that he was not given written notice/warning of his shortcomings. Instead, in the second plaintiff's letter of appointment to him dated 12 July 2006, the defendant was praised for his good work and the defendant's salary was increased to $1,800. The defendant denied that he could not write proper English, had no proper work attitude and was absent from work.

28 As for the three letters referred to in [20], [22] and [24] above, the defendant denied he was actuated by malice when he wrote them. The defendant pleaded justification and qualified privilege; he contended that the same were sent to people who had to be notified of the lack in the provision of security services by Premier in key installations like SBS, SATS and SMRT. The letters stated facts which were true and justified and they were a fair comment on the type of security services provided by Premier under the management of the second and third plaintiffs. The defendant claimed he had a deep sense of public spiritedness inborn from 24 years service as a police officer.

29 The defendant pleaded that the extract from the first letter set out in [20(v)] was true. He averred that Premier provided poor services to SMRT, had to pay liquidated damages to SMRT on several occasions and was replaced by ADEMCO as the contractor for security services. He further asserted that Premier's poor standard of service and the poor quality of its guards caused it to have to pay liquidated damages to SATS and to the Tanglin Club. Premier was given a **B** grading which surprised the defendant, given the poor standard of its service.

30 As for the extract from the second letter set out in [22], the defendant maintained it was true as most of Premier's guards did not undergo the requisite orientation course before working at SATS, even though the course was compulsory.

31 The defendant prayed for the plaintiffs' claim to be dismissed and counterclaimed six months' salary as reasonable compensation for his wrongful dismissal. He further counterclaimed against the plaintiffs for defamation arising from comments made by the second plaintiff in Premier's reply to MOM dated 15 February 2007 when responding to MOM's letter of 2 February 2007.

32 The plaintiffs pleaded the defences of fair comment and/or qualified privilege in their reply and defence to the defendant's counterclaim.

The evidence

The defendant's case

33 As the trial was to determine whether the defendant had discharged his burden to prove his various defences, I shall focus on his evidence with specific reference to the three letters referred to in [20], [22] and [24] above. Thereafter, I will review the plaintiffs' testimony to determine if the defendant's evidence and/or defences have been rebutted.

34 The defendant called no less than eleven witnesses (including a representative from MOM) to support his various defences. Eight of his witnesses were former staff of Premier who either tendered their resignations or had had their services terminated by the company. Not surprisingly, none of these witnesses had a good word to say about Premier and/or the second/third plaintiffs.

35 The remaining two witnesses of the defendant were called for the specific purpose of refuting the adverse comments made against the defendant in the anonymous letter at [9] above, which text I have set out in full at [62] below. One of these two witnesses was an ex-police-officer Lionel De Souza ("De Souza") who now runs his own security firm. De Souza confirmed he had employed the defendant as a security executive and found the defendant's services satisfactory. De Souza (DW9)

had also worked with the defendant when both were with the police force and they were seconded to Civil Defence Force to start a detention centre; a project that was eventually shelved.

36 The other witness called to vouch for the defendant's character was Ponnosamy Kalastree ("Kalastree") who is the managing-director of a security company. The defendant had worked for Kalastree for several months previously and Kalastree attested to the defendant's good performance.

37 The representative from MOM who was subpoenaed to testify was Adeline Kong ("Kong"), who is a senior labour relations officer. Kong was the person in MOM who looked into the defendant's allegation that he had been wrongfully dismissed and who corresponded with Premier. Kong testified MOM could not/did not investigate the defendant's complaint for the reason that he was not covered by the Employment Act – the scope of his duties was supervisory in nature.

38 In the course of the trial, the following evidence emerged from the cross-examination and/or testimony adduced from the defendant, his witnesses as well as those of the plaintiffs:

(a) the defendant admitted that under the contract (at 1AB94) he was entitled to seven days' notice for termination of his services. As the defendant was dismissed on 14 December 2006, his notice period expired on 21 December 2006.

(b) although the defendant claimed he did not receive Premier's letter dated 14 December 2006 ("the termination letter") [at 1AB163] giving him seven days' notice, his own witness Jamaludin (at [12] above) had testified (at N/E 689-690) that he and the defendant waited at a nearby coffee shop on 14 December 2006 (after meeting the second plaintiff) for the termination letter to be prepared.

(c) the defendant was unconvincing in his contradictory testimony that he had informed the second plaintiff of the complaint by SBS over the deployment of Casino Ong (at [11] above) as a relief guard. He did not dispute that Casino Ong should not have been deployed at the (Bedok North) depot of SBS as the man walked with a limp. Jamaludin blamed Casino Ong's deployment on Khaka Singh ("Kahka") who was Premier's Senior Security Supervisor in charge of relief guards on the night shift. However, when Kahka (PW3) testified, he explained (at N/E 281) that it was the security executives who deployed the guards. It was only where there was a shortage of guards that security executives should inform Premier's control room (where Kahka was stationed) of the need and Kahka would then send relief guards directly to the assignments to cover the shortage. Kahka was emphatic that he did not receive any feedback from the defendant on the guards deployed for the SBS assignments.

(d) I should point out that in the first letter at [20], Casino Ong was the gravamen of the defendant's complaints against the plaintiffs. As added gall to the plaintiffs, the defendant alleged that he (and SBS) had repeatedly objected to Casino Ong's deployment but his complaints had fallen on deaf ears where the second plaintiff and Kahka were concerned.

(e) the testimony of the second plaintiff on the shortcomings in the defendant's work performance as set out in Premier's letter to MOM dated 15 February 2007 ("Premier's letter") was substantiated by evidence which will be elaborated upon below.

(f) photographs (see [18] above) that the defendant relied on to support his allegation that Premier's guards were sleeping on the job were misleading for the reason that the photographs were not contemporaneous and were not taken by the defendant but by a former security executive called Elangovan in early 2006, well before the defendant's employment by Premier. The defendant had apparently found the photographs in his locker. During cross-examination (see N/E 589-592), when he was questioned on his failure to disclose this fact, the defendant's repeated and unconvincing explanation was "I was just trying to say in the past they [the guards] were sleeping now also they are sleeping". (The "sleeping guards" in the past had in any event been dismissed by Premier).

39 I shall now elaborate on my observations in [38(d) and (e)]. A convenient starting point would be Premier's letter (at 1AB215-218) signed by the second plaintiff; it was a reply to MOM's letter dated 2 February 2007 (at 1AB194A) to the second plaintiff stating the defendant had lodged a complaint that he had been dismissed without just cause. As Premier's letter was the basis (together with the anonymous letter at [9] above) for the defendant's counterclaim in defamation against the plaintiffs, it would be necessary at this juncture to set out the extracts therefrom that allegedly defamed the defendant:

He [the defendant] made many mistakes in the report such as:

(vi) Putting the Company in bad light due to his unprofessional behaviour.

(2) He did not submit to the MD his weekly reports on his checkings at assignments.

(3) He did not maintain a proper record of his work performed i.e. field work.

(4) He often disappeared from office claiming he is visiting assignments. Check at assignments disclosed he did not check the assignments regularly or as often as required. Please see photo copied records from 1 assignment Annex "E". (We can provide check books records on all assignments to MOM for verifications).

(5) He did not report on incidents or irregularities at the assignment or on shortfalls in deployment of manpower.

(6) He often refused to answer calls from Control Room and the clients after office hours and also refused to assist in solving in manpower shortfalls at his assignments.

(7) The final straw was when he failed to report to the Managing Director the continued deployment of "non-approved" guards (Guards not accepted by SBS) for a particular assignment (SBS Bedok North Depot) for 14 days. When asked to explain he blamed others for it. When told his service will be terminated he walked out of the office and defiantly refused to turn up for work for the 7 days notice period.

…

We also wish to point out that in his dealings with the security officers, he was racially biased against Chinese officers. For example in his complaint letter he had quoted the 2 Chinese officers for their short-comings but had never reported to the management any short coming of Indian or Malay Officers. He will try his best to defend short-comings of Indian Officers. A good example of this is in his report as per Annex "H" where he strongly defended an Indian guard who was reported to be rude to a pedestrian.

40 One of the criticisms levelled against the defendant was his poorly drafted monthly report for November 2006 dated 4 December 2006 ("the defendant's report") addressed to the manager of Pandan Valley Condominium. The defendant's report (at 1AB221-225) was riddled with spelling and factual mistakes, contained the wrong data (for June 2006 instead of November 2006) and created a poor impression of Premier. The defendant should have first submitted the report to the second plaintiff for vetting and approval before sending it out; he did not. When the second plaintiff came to know of the defendant's report, he recalled and rewrote the same before submitting it to Pandan Valley's management corporation.

41 In the second letter at [22], the defendant sought to explain the mistakes in the defendant's report with the excuse that he was told to put up the same at the eleventh hour without any materials whatsoever. During cross-examination (at N/E 411) he came up with a new explanation – he could not find the second plaintiff on 4 November 2006 to vet his draft. Pressed further, the defendant changed his testimony again – he said the second plaintiff was around but he was in a hurry to submit his report as the client's management corporation was meeting in less than 24 hours on the afternoon of Saturday 4 December 2006 (which was incorrect as 4 December was not a

Saturday). The excuse could not be true in any event as the defendant's report was dated 4 December 2006 which meant that he had 4 days from the end of November 2006 to prepare and submit the same. If he was rushed, it must mean that the defendant's report was left to the last minute to prepare. The defendant only had himself to blame for the sloppy and unprofessional quality of the defendant's report, which included spelling the word "security" as "secruity".

42 The defendant's lawyer had put to the second plaintiff during cross-examination (at N/E 110) that he rewrote the defendant's report in order to withhold information on manpower shortage from Pandan Valley's management corporation. Questioned on this allegation, the defendant prevaricated and after lengthy cross-examination finally confirmed that he had so instructed his lawyer. This allegation was rebutted in the second plaintiff's revision of the defendant's report as the second plaintiff specifically included in paragraph (2) the issue of manpower shortage in Singapore generally and specified the actual shortfall (one security guard for seven days) at Pandan Valley.

43 It was clear from [20(v)] and [22(i)] that grammar, usage of the correct tense and even spelling were not the defendant's forte. The defendant had spelt "lose" as "loose" whilst "retain" should have been in the past tense. At page four of the first letter, the defendant wrote he was fighting a "loosing" battle. In the second letter, the defendant used the word 'reason" when he meant "recent" and used "crabs' at page 2 for "craps". There were similar mistakes in the third letter at [24].

44 One of the reasons for the defendant's dismissal was his failure to conduct field work at the assignments under his charge. Despite the defendant's denials to the contrary, his omissions were substantiated by the defendant's field book produced by the plaintiffs (exhibit P1). The defendant was required to make daily entries but the book (which was in a pristine condition) only contained entries for barely two months (13 April 2006 to 6 June 2006) although the defendant worked for Premier until 14 December 2006. The defendant's lame explanation (at N/E 360-361) was that he had recorded entries after 6 June 2006 in a "bigger" book or perhaps in a smaller pocket book both of which he left behind in Premier's operations room and cabinet respectively when he left. The defendant's explanation was unconvincing and hardly credible. If the two books existed, the defendant would have said so earlier and his solicitors would have requested the plaintiffs for their discovery and production. This new testimony emerged for the first time when the defendant was in the witness stand; it was neither pleaded in his defence nor stated in his AEIC.

45 Consequently, there was no supporting evidence to corroborate the defendant's claim that he informed the second plaintiff and/or Kahka that Casino Ong should not be deployed for SBS assignments. I would add that if indeed the services Premier provided to SBS were as unsatisfactory as the picture painted by defendant, it was surprising that SBS (according to the second plaintiff at N/E 43) chose to renew Premier's contract in October 2008 at a much higher price.

46 Although he was remiss in his duty to make daily entries in his field book while in Premier's employment, the defendant was incredibly diligent after his dismissal. In his letter dated 22 March 2007 ("the fourth letter") to the SIRD, he had enclosed photographs showing a security officer (Mohd Hanis) allegedly improperly attired while on duty at SBS Bedok interchange and another security officer Kumar allegedly sleeping while on duty at SBS Toa Payoh interchange.

47 The defendant had staked out the two interchanges in the early hours (between midnight and 3am) on 16 March 2007 and on 15 March 2007 respectively, to take those photographs. Premier explained the circumstances surrounding the incidents to SBS (Mohd Hanis took off his uniform when he washed his face and hands while Kumar was having his 15 minutes rest break) which explanations were accepted. The defendant's post-termination diligence was to be contrasted with his employment

history with Premier. He did not then raise with the second plaintiff even once, any issues relating to the conduct/performance of any security officer under his charge let alone that they were sleeping, which he was duty-bound to do as a security executive. According to the second plaintiff, the much maligned 50-51 year old Casino Ong was approved by the police as a security guard and apart from his limp, there was nothing wrong with him or with his performance.

48 Next, I turn to the defendant's allegation in [20(v)] that Premier lost their 'lucrative assignment" with SMRT to ADEMCO because of its poor service and/or mismanagement. It was obvious from the defendant's cross-examination that he was unaware of the reasons behind the change of security firms at SMRT. It was the second plaintiff's testimony (which the defendant could not challenge) that ADEMCO was chosen as it submitted the lowest bid. If indeed SMRT found Premier's services unsatisfactory, the second plaintiff pointed out that SMRT would not have written to Premier on 14 June 2006 thanking Premier for the 18 years of excellent and professional service that it had rendered to SMRT (see exhibit SD-34 in the second plaintiff's AEIC). Further, SMRT would not have invited Premier in an email dated 11 September 2007 to participate in its 2007 tender for increased security coverage at MRT stations.

49 The defendant's allegations in the first and second letters that the second and third plaintiffs hired and fired as they pleased thinking they were not accountable to anyone were proven to be untrue. It would be unnecessary to delve further into the defendant's termination by the second plaintiff since there was ample evidence adduced that the latter had every right to dismiss him as can be seen from [38(a)(c)] and [39] above.

50 Any doubts that the defendant did discharge his duties satisfactorily and did not merit dismissal were removed by the second plaintiff's circular dated 1 August 2005 on the duties and responsibilities of security executives (which the defendant did not deny). The circular set out the following duties (see 1AB 219):-

1 Ensure effective operation deployment at the assignments under his charge and draw up monthly duty roster of the staff at each assignment.

2. Liaise with clients of assignments under his charge on all security matters and staff deployment.

3. Oversees the supervision of security officers deployed to ensure good quality service is provided to clients.

4. Responsible for briefing and motivating security officers, particularly new officers to promote higher standard of security services.

5. Conduct recruitment of security staff for his assignments.

6. Investigate into complaints and security lapses at his assignments and submit investigation reports to MD and OM.

7. Take disciplinary action on complaints from clients.

8. Conduct regular visits to assignments and once a week night checking at his assignments.

9. Look after welfare of staff under his charge ie counselling and hospital visit to his sick staff.

10. Check payroll submission for accuracy at his assignments.

11. Cary out duties and tasks as assigned by MD and OM and keep them informed on all incidents of security interest.

The defendant's assertion (and that of Jamaludin) that Kahka not he was responsible for the deployment of Casino Ong went against the clear wording of item 1 in the above circular.

51 Apart from his contention that it was "common sense", there was nothing in the contract that entitled the defendant to a warning letter and to have an inquiry conducted prior to his dismissal. Presumably, he had confused his rights as an employee in the private sector with that of a public servant as a police officer in his previous occupation.

52 As for the third defendant, she was not present at the meeting on 14 December 2006 when the defendant's services were terminated. As Premier's manager in charge of finance and administration, the third plaintiff (PW2) was not involved in the operational side of Premier's business relating to deployment of guards. However, as her job scope included managing payments (incoming and outgoing), the third plaintiff deposed in her AEIC that she had to keep an eye on operational aspects so as to monitor any liquidated damages imposed by clients for their assignments, since the imposition of liquidated damages would affect Premier's profitability. She was acquainted with many of Premier's customers who updated her with feedback on Premier's services which she would then convey to the second plaintiff with a view to improvement.

53 It was the third plaintiff who received feedback from SBS on their unhappiness over Casino Ong's deployment at the Bedok interchange. She then passed the information onto the second

plaintiff.

54 To rebut the defendant's allegation (and that of his witnesses) that Premier suffered manpower shortage, the third plaintiff produced (at 3AB1-160) the records pertaining to Premier's Central Provident Fund ("CPF") contributions for all its security guards from October 2006 to December 2006 together with lists of the security guards it employed in 2007-2008 as well as a list of the sites where Premier deployed its security personnel. There was little doubt that Premier had excess manpower (about 108 guards) as of end-December 2006, thereby refuting the contrary claim of the defendant's witnesses in [100] and [103] below.

55 The third plaintiff deposed she had very limited dealings with the defendant while he was employed by Premier and she was therefore surprised and aggrieved that he defamed her in his first and second letters. She took issue with the defendant's derogatory comments on Premier's **B** grade in 2006 (in the second letter at [22]) pointing out that thereafter Premier obtained **A** grades for 2007 and 2008.

56 No less than the defendant's own witness Gerard Sanjay ("Sanjay") corroborated the third plaintiff's testimony. In cross-examination, Sanjay (DW10) described his relationship with the third plaintiff (when he was with Premier) as a love-hate relationship. She would help him when she was in a good mood but when he did not do his job properly, she would tell him off (at N/E 895-896). Sanjay however agreed that an employer was entitled to take an employee to task if the latter was not doing his job. I did not think that amounted to interference as the defendant had alleged against the third plaintiff or that she had acted in the unreasonable manner the defendant had insinuated, in the first and second letters.

57 The defendant had alleged in the second letter at [22(i)] that Premier did not even deserve the **B** rating that it received, it should have been **D** rating in view of the liquidated damages that it paid. The second plaintiff pointed out that subsequent to its **B** rating, Premier not only was rated **A** by SIRD in 2007 and 2008 in its annual grading exercise but was one of 19 security agencies that obtained this grade out of 184 that participated in the audit exercise. He added that over the years, Premier had received other awards from the government as set out in [5] above.

58 Apart from hearsay evidence from the defendant's witnesses who were ex-employees of Premier, the defendant had no evidence of liquidated damages having been paid by Premier let alone the huge sums they alleged (see [95] below). In his examination-in-chief (at N/E 5) however, the second plaintiff candidly testified that liquidated damages were common in the security industry and were imposed by clients for any shortage in manpower supplied by the security company. In Premier's case, the client would not pay the company when guards were not deployed as scheduled. Premier would issue credit notes for guards not provided which would be deducted from the month's invoice when rendered to the client. If the client did impose a penalty, it would have to be in the contract.

59 The defamatory statement (at [24]) in the third letter was the defendant's allegation that most of Premier's guards deployed at SATS' had not undergone the compulsory orientation course. I turn to the evidence adduced this regard.

60 In his AEIC, the second plaintiff deposed that Premier's security officers underwent an orientation course as part of their on-the-job-training before they sat for a basic aviation security course provided by SATS (comprising of a 30 question multiple choice test). The second plaintiff confirmed that all security guards of Premier deployed at SATS' assignments underwent orientation and had passed SATS' security course. He pointed out that despite the allegation in the third letter (and SATS' receipt of a copy of the same), SATS continued to employ Premier to provide security

services. The second plaintiff added that the third letter was tainted with malice as the defendant was never involved in SATS' assignments while employed by Premier and he would have had no personal knowledge of the same.

61 On his part, the defendant admitted during cross-examination (at N/E 570) that the defamatory statement was based entirely on what he heard from Andrew Lee ("Andrew") and Raihan bin Supat ("Raihan"). Andrew had had his services as a trainer terminated by Premier because he was found to be incompetent (see [99] below). When he testified, Andrew (DW5) claimed he had no personal knowledge of the SATS' assignment (N/E 776) – he was told of the lack of orientation for SATS' assignments by Raihan (see N/E 773) who did not testify. So it was a case of hearsay upon hearsay evidence. The plaintiffs on the other hand had adduced evidence from the defendant's own witness Sanjay (at N/E 898) that Sanjay had briefed new security officers using course materials provided by SATS. SIRD had replied on 13 March 2007 (at 1AB276A) to the defendant's allegation in the third letter (copied to SATS) to say that the requirement of an orientation course was a contractual matter between SATS and Premier. The defendant did not disclose this reply which copy produced in court was obtained from SATS by the plaintiffs.

The defendant's counterclaim

62 Before I deal with the defendant's counterclaim, I need to revert to the anonymous letter (see above [9]) as that was also the basis of the defendant's cross-claim against the plaintiffs for defamation. The full text of the anonymous letter reads as follows:

CONFIDENTIAL

12th August 2006

The Chairman
Premier Security Co-operative Ltd
18 Verdun Road
#04-01
Singapore

ANTHONY H BASIL (EX POLICE SERGEANT)

Recently, I am shocked to learnt that the above is working with your Co-operative as an C Executive.

Allow me to give you 10 reasons as to why your Co-operative should not use him.

1ST REASON When he was in the Police force, he used to write petitions against his superior compl all sort of things that he disliked. That is why he retired as a Sergeant ONLY.

2ND REASON After retiring from the Police Force, he joined Great Eastern to sell insurance. As aware, whenever any policy is about to mature or up for renewal, the agent will sometimes pay u client first to renew the policy. He wrote to CPIB and complain about these activities. As a resu agents were called up by CPIB. Eventually, he was sacked by Great Eastern.

3RD REASON He joined Suntec City as its Assistant Security Manager. He could not perform. So his pressured him to perform. Instead of doing his job, he wrote no less that 50 petitions to the Man

of Suntec City complaining against his bosses. Eventually, he was terminated.

4TH REASON He joined Mainguard Security Services Pte Ltd as an Operations Executive. Many c were received from Management of assignments that he could not perform. Security Officers were because of his terror way of handling them. He was asked to leave by the Managing Director Po Klastree.

5TH REASON He was out of job for more than 6 months. The reason being agencies belonging to e officers know him too **WELL** AND **DARE NOT** give him a job in their Company.

6TH REASON Luckily for him, Charlie Angel came to his help. He was employed but was asked t later.

7TH REASON When he was working with the Charlie Angel, he even brought his so call girl friend ar her in the office and at assignments.

8TH REASON He also chalked up a bill of a few thousands dollars for surfing the internet with his g in the office of Charlie Angel.

9TH REASON Even after quoting for an assignment and he did not get it, he would write to CPIB cor that the Management of the assignment is on the take.

10TH REASON After leaving his former employers, he will try all means to get even with them by w various authorities to try his luck.

AFTER KNOWING ALL ABOUT HIM, DO Y0U STILL WANT TO KEEP HIM?

FELLOW INDUSTRY PLAYER

Copy to:-

Managing Director

63 In their final submissions, the plaintiffs had argued (at para 174) that the purpose of including the anonymous letter in Premier's letter was to prove to MOM that the second plaintiff kept an open mind and judged the defendant objectively based on his actual performance working for Premier, ignoring the damaging allegations made against the defendant in the anonymous letter. The plea of qualified privilege was asserted as the plaintiffs were also responding to an official request for information relating to the defendant's dismissal from Premier's employment.

64 Similarly, the plaintiffs relied on qualified privilege for their statement in Premier's letter (at [39]) that the defendant was racially biased against Chinese officers – it related to the defendant's work performance and/or behaviour when he worked for Premier.

65 As the defendant wrote further/other letters over and above the three in [20], [22] and [24], it would be appropriate at this juncture to look into them briefly as the second plaintiff relied on the same in his AEIC and the plaintiffs relied on them in their submissions to contend that the defendant was actuated by malice when he wrote the three letters.

66 The defendant wrote to the head of the SIRD on 18 January 2007 (the letter was wrongly

dated 18 January 2006) referring again to the issues of (i) Premier's provision of security services to SBS depots and (ii) his wrongful termination. On 8 February 2007 the defendant wrote to the Minister of Home Affairs stating he was forced to resign from SecureGuard Security Services Cooperative Ltd ("Secureguard") because he brought to light malpractices by the company's general manager. He then repeated his allegation that Premier failed to provide able-bodied security guards for the assignments of SBS and when he complained, the second plaintiff terminated his services without notice.

67 On 22 March 2007 (at 1AB283-285), the defendant wrote to a law firm Murthy & Company copied to (i) the Commissioner of Police; (ii) the Chairman of the Police Cooperative; (iii) the Director of SIRD and (iv) John Kung, the Manager of SBS Transit.

68 On 27 March 2007 (at 1AB287-288) the defendant wrote to the Director of the ISD complaining of the second plaintiff's comment that he (the defendant) was racially biased. The defendant accused the second plaintiff of stirring up trouble between him and Chinese security officers.

69 On 30 March 2007 (at 1AB289), the defendant wrote to Murthy & Company copied to (i) the Permanent Secretary of the Ministry of Home Affairs; (ii) the Commissioner of Police; (iii) the Chairman of the Police Co-operative and (iv) the Director of the SIRD. The letter alleged Premier's security officers had been caught sleeping by the defendant.

70 On 5 April 2007 (at 1AB295) the defendant wrote to the Chairman of the Board of Directors of Premier (referring to this suit) and requested that an independent body be appointed to conduct an internal inquiry on his complaints and/or allegations against the second and third plaintiffs.

71 The defendant wrote the letters in [66] to [70] despite his receipt of the plaintiffs' solicitors' "cease and desist" letter dated 6 March 2007 (at 1AB266-272). Even after the commencement of this suit (on 28 March 2007) and after being served with the writ, the defendant persisted in his conduct by writing to the Attorney-General on 25 May 2007(at 1AB528) wherein he demanded a finding on his written complaint to MOM and to the Commissioner of Police. He even urged the Attorney-General to instruct the Registrar of the High Court to strike out the plaintiffs' action against him because he had been "gravely prejudiced".

72 Evidence was led at the trial on the circumstances surrounding the defendant's departure from Secureguard (referred to in the defendant's letter at [66]). It was the plaintiffs' case that after he left Secureguard's employment, the defendant's actions against the latter mirrored his subsequent conduct towards the plaintiffs. For this reason, the evidence relating to Secureguard is relevant to my finding as to whether the defendant was actuated by malice against the plaintiffs (as they alleged).

73 The defendant had worked for two years at Secureguard as operations manager. He testified (at N/E 441) that he resigned therefrom because he could not get along with its general manager Tang Seng Koong ("Tang"). However, he did not disclose this to the chairman of Secureguard when Tang recommended his termination. This resignation was at odds with the defendant's letter to the Minister of Home Affairs at [66] where he said he was sacked. It also departed from what the defendant said in his letter to SBS dated 7 February 2007 (at 1AB201) where (in the footnote) he stated he was sacked because he blew the whistle on Tang's misdeeds (which included cheating, forging and doctoring government documents). Pressed during cross-examination, the defendant admitted he had lied in his letter to SBS.

74 After the defendant left Secureguard, he exacted his revenge on the company and on Tang's treatment of him by reporting Tang's misdeeds to SIRD. His actions were picked up by the press in a

report in The New Paper dated 26 January 2007 (see 1AB187). Notwithstanding his claim in court that he kept quiet because he did not want to get involved, the defendant subsequently alerted SIRD that Tang employed security officers who had failed compulsory police screening for criminal records. The defendant further alleged that Tang had also altered the screening test results of some guards from "Rejected" to "Approved". As a result of his whistle-blowing, Secureguard was fined $3,000 while Tang was fined $13,600.

75 In their closing submissions (at paras 129-130), the plaintiffs alleged that the defendant was emboldened by his success against Secureguard and decided to get even with the plaintiffs after they terminated his employment. The defendant plotted an even more extensive revenge plan than the Secureguard incident with the help of "his band of brothers" (ex-employees of Premier). Hence, he wrote no less than 15 letters to various parties in Singapore including the SIRD, after the termination of his employment. The extent he went to try to get the plaintiffs into trouble demonstrated the deep-seated anger and hatred he had for the plaintiffs arising from his loss of employment. The plaintiffs submitted this was improper motive which would defeat any defence of qualified privilege.

The law

76 As all the relevant evidence relating to the various defences of the defendant and his counterclaim has been reviewed, I turn now to the law and to some of the authorities cited by the parties.

Justification

77 The plaintiffs relied on *Halsbury's Laws of Singapore* Vol 18 (Butterworths Asia, 2004 Reissue) which states at p 88 para 240.132:

> The defence of justification is that the words complained of were true in substance and in fact. Since the law presumes that every person is of good repute until the contrary is proved, it is for the defendant to plead and prove affirmatively that the defamatory words are true or substantially true.

78 A similar statement of the law is to be found in *Evans on Defamation in Singapore and Malaysia* ("*Evans*") (LexisNexis, 3rd Ed, 2008) at p 87.

> The defendant must prove the truth of the very imputation that arises from the statements made and not simply the literal truth of the words, nor other meanings not contained in, or not capable of being reasonably borne out by the defamatory words.

79 An illustration of the above statement of law from *Evans* is to be found in the following passage from *Gatley on Libel and Slander* ("*Gatley*") 11th Edition (Sweet & Maxwell, 11th Ed, 2008) at p 312 para 11.4 under the heading **Repetition and rumour**:

> If D states, 'C murdered X" then if D pleads justification he is required to show that C did murder X and if he cannot do that the plea fails even if D believed on very good evidence that C murdered X. But suppose D states, "A told me that C murdered X". Literally that statement is true if D was told that by A. However, in order to establish justification D is still required to prove that C did murder X. So also if D says that there is a rumour that C murdered X. "If you repeat a rumour, you cannot say it is true by proving that the rumour in fact existed; you have to prove that the subject matter of the rumour is true" [per Greer LJ in *Cookson v Harewood* [1932] 2 KB 478 at 485, approved by Lord Devlin in *Lewis v Daily Telegraph* [1964] AC. 234 at 283-284]…
>
> This is because "repeating someone else's libellous statement is just as bad as making the statement directly" [per Lord Reid in *Lewis v Daily Telegraph* [1964] AC 234 at 260].

80 One other requirement of the plea of justification is to be found in another extract from Gatley at p 319 para 11.8:

> The general rule is that the imputation must be justified by reference to the facts *as they were at the time when it was published. A defendant may not rely on matters which occurred after the date of publication* complained of in order to support a plea that there were, objectively speaking, reasonable grounds for suspecting that the claimant performed the actions attributed to him in that publication…[emphasis added].

Fair Comment

81 According to the various textbooks and *Evans* in particular at [78] above, for the defence of fair comment to succeed, the four elements required are:

(a) the words complained of must be comment and not assertions of facts;

(b) the comment must be based on true facts;

(c) the comment or opinion expressed must be fair; and

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

For a defence of fair comment to succeed, a defendant must show that the words complained of were comments which might fairly be made on the facts referred to in the comment. To determine if the defendant's comment was fair, it must also be done within the four corners of the publication in question. No reference can be made to any outside document or facts, unless the facts in question were a matter of common or public knowledge.

Qualified privilege

82 As for qualified privilege, *Evans* (at p 118) states:

> A qualified privilege exists at common law where the defendant makes a statement in pursuance of a legal, social or moral duty or in the protection or furtherance of a legitimate interest, to a person with a corresponding duty or interest to receive it, thereby giving rise to a reciprocity of duty or interest.

83 *Evans* then gave the following categories as examples when the defence can be invoked:

(a) statements made between parties who share a common or mutual interest in the subject matter of the communication;

(b) statements made in the discharge of a legal, social or moral duty;

(c) statements made in the protection of one's own self interest and

(d) fair and accurate reports of certain proceedings.

Common examples of category (b) defences (described by *Gatley* as "off the peg categories" at p 449 para 14.9) are the writing of an employment reference and the making of a complaint to the proper authority. In this case, the defendant relied on categories (a) and (b) for his defence of qualified privilege.

84 However, there are qualifications to this defence. *Gatley* states at p 505 para 14.66:

> Publication must be proportionate to the necessity of the occasion…If the defendant is attacked in the public media and responds in the same manner the response is privileged. Otherwise, however, it follows from the fundamental requirement of reciprocity of duty and interest that publication to a person who does not share in this reciprocity is not generally privileged. As a general rule therefore the defendant should be careful to make his communication only to those persons who have a legitimate interest or duty in relation to the subject-matter.

85 The defences of qualified privilege and justification are defeated if the plaintiff proves there was malice on the part of the defendant. According to *Evans* (at pp 159 and 160) malice arises in situations where the defendant is either motivated by feelings of resentment, spite or ill-will towards the plaintiff or where he does not use the occasion honestly for the purpose for which the law gave it, in the sense of being actuated by an indirect or ulterior motive, or for the purpose of self gain. If the defendant had a genuine and honest belief that his statements were true, the plaintiff will not have succeeded in showing malice while demonstration of the lack of that belief will lead to a finding of malice. The belief must be positive and honest. Proof that the defendant knew that the statement is false is enough to show that the statement was made with a dominant intent to injure the plaintiff, and hence, sufficient to show malice.

86 Other relevant extracts from *Evans* (at p 163) are the following:

> Malice can be inferred from matters intrinsic to the statement itself such as the exaggerated nature of the statements made, the scurrilous and venomous nature of a letter written or by the slant given by the entire published article…
>
> ...
>
> The insertion of extraneous matter within the statement itself can also be intrinsic evidence of express malice. The court does not look at these inclusions from the point of view of whether they are logically relevant. Instead, it looks to determine whether the inclusion of that matter leads to an inference that the defendant either did not believe his statements to be true, or though believing them to be true, realised the matter was not relevant to the occasion at hand, but nonetheless seized the opportunity to drag in irrelevant defamatory matter to vent personal spite or for some other improper motive…

87 As the defendant's closing submissions referred to ss 8 and 9 of The Defamation Act (Cap 75, 1985 Rev Ed), I shall for completeness set out the sections below:

> **Justification**
>
> **8** In an action for libel or slander in respect of words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges.
>
> **Fair comment**
>
> **9** In an action for libel or slander in respect of words consisting partly of allegations of fact and partly of expression of opinion, a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if the expression of opinion is fair comment having regard to such of the facts alleged or referred to in the words complained of as are proved.

The findings

88 The common theme in the defendant's closing submissions was his argument that he sent the three (and other) letters to the various addressees because they were "interested parties". It was further submitted that the defendant's plea of justification was substantiated by the testimony of the defendant's witnesses who were former employees of Premier.

89 In his Further and Better Particulars of the Defence filed on 1 April and 24 April 2008, the defendant had identified Dzulkarnain, Andrew, Zainal bin Ebin ('Zainal"), Sarjit Singh ("Singh") and Sanjay as other employees who had resigned or who had had their employment terminated by Premier/the second plaintiff and that there were others besides those he had named. Earlier [34], I had commented on the adverse testimony these witnesses gave of the plaintiffs. It would be appropriate at this juncture to review the evidence of the defendant's "band of brothers" (as the plaintiffs' counsel called them) and compare their testimony with that of the plaintiffs.

90 Singh (DW7) was Premier's former patrol, welfare and training officer. In his AEIC, he deposed he resigned from Premier in April 2007 because he was unhappy with the way the second and third plaintiffs ran the company. Singh claimed that although he was in the day shift, he had to take on the

duties of the night patrol officer when the latter resigned. He could not take the long hours (12 hours during the day and 5 hours at night) so he only did night duty. He alleged that the third plaintiff screamed and shouted at him for not doing his job properly which he denied.

91 The plaintiffs on the other hand produced a warning letter that Singh had received (but which he did not disclose) from the second plaintiff dated 5 April 2007 (at 1AB296A); it *inter alia* stated:

> …you have been displaying poor working attitude by not obeying instructions from our Control Room Officers. Your attendance in office has been rather irregular.
>
> ….Apparently you have not been doing your designated duties and I have not receive any written reports from you on the jobs you are required to do.
>
> You are hereby served this written warning to improve the work performance and attendance. If there is no improvement on your working attitude and performance within the next 14 days then we would have no alternative but to discontinue your services.

Singh chose to resign after receipt of the above letter instead of heeding the second plaintiff's warning to improve his work performance.

92 Singh's testimony in any case did not really assist the defendant as, during cross-examination (at N/E 815), he said that the duty of a security executive was to ensure assignments ran smoothly with proper deployment of men. He agreed with counsel for the plaintiffs that in the case of Casino Ong, if SBS complained and Casino Ong's security executive was aware of the complaint but did not inform Premier's management, then the security executive was at fault.

93 Dzulkarnain bin Amat Sanwan ("Dzulkarnain") was in Premier's employment as a senior operatives executive and deployment officer between January and June 2006. Dzulkarnain (DW2) too alleged that the third plaintiff interfered with his duties and in the deployment of security officers and accused her of screaming at the Control Room officers. He claimed that he found it increasingly difficult to work with her whenever he deployed a guard to a particular assignment and she disagreed with his decision. He alleged he was asked to leave Premier and was told to tender his resignation without any reasons being given to him. He also claimed that Premier's guards deployed at SBS depots used to sleep while on duty.

94 The second plaintiff on the other hand described Dzulkarnain as incompetent and when he counselled Dzulkarnain, the latter indicated he wanted to resign to pursue his degree in Master of Business Administration, as stated in Dzulkarnain's letter of resignation dated 1 July 2006 (at 1AB118). Dzulkarnain requested his salary for July 2007 (which he received) saying he needed the money for his sister's wedding and would work for Premier during that month while looking for alternative employment. Dzulkarnain did not turn up at all to work for Premier in July 2007 nor did he carry out a proper handing over of his duties and documents to his successor; this was reflected in the second plaintiff's letter to him dated 25 July 2007 (1AB123).

95 Jamaludin (DW3) joined Premier in December 2005 and resigned in February 2007. He blamed the third plaintiff for his resignation alleging she had accused him of conspiring with another operations executive (Kenny Kow) to topple her, which accusation was unfounded. Kenny Kow subsequently also resigned from Premier's service. Like the defendant's other witnesses, Jamaludin alleged that the third plaintiff interfered in operation matters of Premier despite her lack of skills in manpower management. Jamaludin also alleged that Premier rendered poor guard services to SBS and had to pay $5,000 per month as liquidated damages to SBS. Liquidated damages ranging from $50,000 to $100,000 were also

paid to SATS according to what Jamaludin heard from the second plaintiff at a security executives meeting he attended.

96 Jamaludin added that whatever the defendant stated in his three letters was based on facts. He himself was surprised by the defendant's dismissal as the second plaintiff had praised the defendant for being a good and thorough investigator. Jamaludin confirmed that when the defendant left Premier, the defendant had informed Jamaludin about a field book which the defendant had used to record his investigations and movements. Jamaludin looked for the field book a few days after the defendant's departure from Premier but he could not find the same.

97 Jamaludin had earlier filed an affidavit on the defendant's behalf to resist the plaintiffs' application for summary judgment. He had there alleged that the second plaintiff not the third plaintiff was the cause of his resignation. In cross-examination he was unable to explain why he changed his testimony (see N/E 686). Jamaludin effectively undermined the defendant's case in regard to the second letter when he agreed that SIRD's grading of **B** for Premier was correct.

98 According to the second plaintiff, Jamaludin resigned of his own accord for "personal reasons" when he realised that his work performance was unsatisfactory. He revealed that Jamaludin wanted to rejoin Premier in July 2007 after leaving four months earlier. The second plaintiff said he was not keen to re-employ Jamaludin because the latter's performance was not up to par.

99 The second plaintiff said he terminated the services of Andrew (DW5) as, despite attending the course for seven months (as opposed to other trainers who passed the course after attending for two months) and being employed as a senior trainer by Premier's subsidiary Premier Training Centre, Andrew could not pass the trainer's course conducted by the Workforce Development Agency even after submitting his work assignment twice. He was rated "not yet competent" by the assessor from the Singapore Training and Development Association ("STADA") in an email to Premier dated 27 February 2007 (at 1AB260); STADA was where Andrew did his training. During cross-examination (N/E 760), Andrew agreed that Premier was entitled to terminate his services by a letter dated 1 March 2007 (at 1AB262) for that reason.

100 Zainal was Premier's former security executive in charge of Port of Singapore Authority ("PSA") assignments as well as the Orchid Country Club. Zainal (DW8) repeated the same allegations of manpower shortage on Premier's part and interference in assignments on the part of the third plaintiff who he claimed also shouted at him. Zainal alleged that the guards at PSA were badly dressed, had poor work attitude and showed up late for work. The second plaintiff wanted to demote him to a security supervisor and deploy him at The Tanglin Club but Zainal refused and tendered his resignation.

101 The second plaintiff testified that Zainal could not adapt to working life outside the police force. He demoted Zainal to a security supervisor due to poor performance. (Zainal had been recruited by Jamaludin who was his good friend). Zainal admitted during cross-examination (at N/E848) that he had no passion for working in Premier or in security agencies.

102 Sanjay was employed as a security executive by Premier between February 2005 and November 2006. Sanjay was in charge of SATS and other assignments. He claimed Premier suffered severe manpower shortage particularly at SATS which shortage he brought up to the third plaintiff who instead of helping him to solve the problem, shouted at him. Sanjay accused the third plaintiff of interfering in deployment of guards, with the second plaintiff's approval. He further alleged that the third plaintiff did not want to pay liquidated damages to SATS for the manpower shortage. Instead of finding a solution, the second and third plaintiffs blamed him for the manpower shortage, the poor

deployment of guards and the payment of liquidated damages to SATS.

103 Sanjay also alleged that Premier deployed as guards at SATS those who had not undergone the mandatory SATS orientation course, in order to overcome the manpower shortage. He claimed he tendered his resignation on 1 November 2006 because he felt demoralised and unappreciated. Even then, he was asked by Premier to leave in mid-November 2006 without reason and without serving out his one month's notice period.

104 The second plaintiff however had a completely different version of Sanjay's employment record. The second plaintiff described Sanjay as lazy and incompetent, as one who spent a considerable amount of time ferrying his wife to and from work (SIA Training Centre) instead of covering his SATS assignments where over 50 guards were deployed. Sanjay was supposed to check his guards daily at 8am but failed to do so because he sent his wife to work at 9am. Sanjay would fetch his wife from work at 5pm and again did not monitor his assignments in the evening.

105 The second plaintiff revealed he employed Sanjay on two separate occasions: the first at the request of Sanjay's mother-in-law (who was a staff member of the ISD where the second plaintiff worked for 33 years). On the second occasion (a few months after Sanjay had resigned from Premier), Sanjay and his mother-in-law appealed to the second plaintiff to re-employ Sanjay, whose wife had been a schoolmate of the second plaintiff's daughter. The second plaintiff agreed and Sanjay worked at Premier until he resigned at end 2006.

106 Mohd Masudi bin Haji Masuri ("Masudi") was the last of the defendant's witnesses. Masudi (DW11) worked as Premier's senior security supervisor at SMRT's Ang Mo Kio depot until 31 July 2006. When ADEMCO won the tender for providing security services at the depot with effect from 1 August 2006, Masudi joined ADEMCO as he wanted to continue to work at the depot. Masudi alleged that SMRT had complained of the low quality of Premier's guards sent to the depot – they were improperly attired, had poor work attitude, failed to check incoming and outgoing vehicles as well as visitors to the depot and most of them were not permanent but relief guards. He claimed he had raised to Kahka the subject of the deployment of relief guards at SMRT to no avail. He was therefore not surprised that Premier lost the SMRT contract to ADEMCO. He disagreed that SMRT accepted the lowest quotation as the second plaintiff had said – SMRT wanted ADEMCO for its quality.

107 Masudi was equally critical of Premier's manpower shortage claiming it resulted in "a tremendous amount of liquidated damages being paid to SMRT" (see para 10(a) of his AEIC) as told to him by the second plaintiff in the presence of other security supervisors during monthly meetings.

108 Not surprisingly, Masudi spoke highly of the defendant whom he described (in para 14 of his AEIC) as having carried out his duties at SMRT efficiently with regular visits (on his motorcycle) and with proper entries being entered in an A-4 size field book that the defendant always carried with him.

109 In their closing submissions (at para 72), the plaintiffs pointed out that Masudi had been friends with the defendant since the 1960s and accused him of giving false testimony to help bolster the defendant's case. I note that in cross-examination (at N/E 922) Masudi was unable to give any satisfactory explanation why, when ADEMCO took over from Premier to provide security at SMRT's depot, ADEMCO agreed to employ Premier's guards, if indeed they were of such poor quality as he claimed.

110 Cross-examination of the defendant took almost four days (12, 13, 16 and 17 March 2009) because of his inability and/or reluctance to give direct answers to counsel's questions not to mention his constant shifts in position. I was not impressed with the defendant's veracity and I entertained

grave doubts as to the reliability of his testimony due to his many contradictions and inconsistencies.

111 My review of the testimony of the defendant's witnesses in [90] to [109] above showed that they were unlikely to be unbiased or truthful; they had an axe to grind with the plaintiffs. All of them had had their services terminated by Premier/the second plaintiff due to poor work performance or they left of their own accord to avoid being dismissed.

112 The defendant had also admitted under cross-examination (at N/E 562-563) that he had no personal knowledge of the circumstances under which Zainal, Masudi and Dzulkarnain left Premier's employment save for what he heard from them.

113 The defendant's testimony (and that of his witnesses) was a stark contrast to the evidence of the plaintiffs' witnesses in particular that of their main witness the second plaintiff; he came across as professional, honest and dignified albeit angry at having been maliciously maligned repeatedly (according to him) by the defendant.

The decision

(i) The defences

114 I turn now to deal with each of the specific defences pleaded by the defendant starting with that of justification. Bearing in mind the requirements at law of this defence (at [77] to [78] above), the defendant cannot succeed as he was unable to substantiate the truth of his defamatory statements in any of the three letters.

115 To recapitulate, the defendant's defence as regards the first letter was, he had been wrongfully terminated without any warning. Hence, he complained to the MOM to say that Premier and the second plaintiff must account for their actions. He raised the issue of other employees whose services had been terminated or who had resigned because the second and third plaintiffs were similarly responsible for their terminations or resignations. All employees were governed by labour laws and the plaintiffs' action in terminating his services showed they had no knowledge of such labour laws.

116 In the light of Premier's letter in [39] above and the evidence adduced in court, the defendant had failed to prove he had been wrongfully terminated by Premier. Indeed, Premier/the second plaintiff were justified in dismissing him.

117 The first letter had further alleged that Premier lost the SMRT contract to ADEMCO because they did not provide suitable and medically fit guards (see [20(v)] above) and it had to pay liquidated damages to SMRT on several occasions.

118 Again the plea of justification fails in this regard as the defendant and his witnesses were unable to prove the truth of the allegation; all they had was hearsay evidence referred to in [95] and [107] and which supposedly emanated from the second plaintiff. In this regard, it was incumbent upon the defendant to call the relevant representative from SMRT to testify that liquidated damages were indeed paid by Premier to the former. The defendant called no such witness. Instead, at the commencement of trial, counsel for the defendant applied to this court (by way of summons 1018 of 2009) for leave to issue subpoenas to various persons (including a representative of SMRT called Sarip Bin Osman) who were all strangers to and had nothing to do with the issues raised in, this suit. I upheld the plaintiffs' counsel's objections that the subpoenas were being used for the purpose of obtaining discovery and dismissed the application.

119 I would add that s 8 of the Defamation Act (see [87]) would not assist the defendant since he was unable to prove any of the defamatory statements were true, not that he could not prove the truth of *some part* of the offending statements.

120 I turn next to the defence of qualified privilege, bearing in mind the qualification to the defence in [82] above. While I agree that the defendant was entitled to write to the MOM to complain that he had been wrongfully terminated by Premier and/or by the second plaintiff, the contents of the first letter went far beyond the scope of the defendant's legitimate grievance. The defendant accused the second and the third plaintiffs of acting capriciously and alleged that they fired employees without basis. Worst, he insinuated that the second and third plaintiffs were unaware of labour laws when they terminated his employment.

121 Even if the defendant was justified in casting aspersions on the second plaintiff (as the latter dismissed him), there was no reason for the defendant to include the third defendant in his defamatory comments as she played no part whatsoever in his dismissal. She was not even present at the meeting on 14 December 2006 when the defendant was told to leave.

122 The evidence of his ex-colleagues that the third plaintiff interfered in Premier's deployment of security guards did not help the defendant's case. First, the testimony of his band of brothers had been largely discredited by the second plaintiff's testimony (supported by documentary evidence) on why they were dismissed or left Premier's employment. Second, there was not one iota of evidence to substantiate their testimony of the third plaintiff's interference.

123 Even if I am wrong and the defendant was justified in making the statements he did, the defendant was still subject to another qualification for the defence of qualified privilege to apply *viz* that the publication must be proportionate to the necessity of the occasion (see [84] above). The defence does not apply if publication is made to a person who does not share in the reciprocity of interest or duty.

124 Earlier at [66] to [71], I had referred to additional letters the defendant had written subsequent to the three letters in question, addressed or copied to SIRD, the Commissioner of Police, the Permanent Secretary to the Ministry of Home Affairs, the Chairman of the Police Co-operative, the ISD, the Attorney-General's Chambers and even to the Chairman of the Board of Directors of Premier. Without the plaintiffs' knowledge, he even wrote to SBS on 7 February 2007 (at 1AB 201) enclosing the letter of SIRD dated 25 February 2007 (at 1AB186) and The New Paper's report dated 26 January 2006 at [74] above. SIRD's substantive reply dated 7 February 2007 (at 1AB200) to the defendant's letter (wrongly) dated 18 January 2006 at [66] stated (at para 2):

> SIRD conducted surprise audit checks and inspections on Premier Security officers deployed at bus depots and interchanges during the day and night. The officers were observed to be properly attired, vigilant and knowledgeable in their work. We also found that there was adequate supervision of the security officers on the ground.

Any doubts on the veracity of the second plaintiff's testimony in refuting the allegation of the defendant and his witnesses on the quality of Premier's security guards and services were removed by the above paragraph.

125 During cross-examination and when questioned by the court (N/E 459-465), the defendant was unable to offer any satisfactory or credible explanation as to why he had written to the parties in [124] in regard to Premier when he did not do so in the case of Secureguard (at [74]). While his letters (despite their wide scope) to MOM and SIRD could possibly be justified due to his termination

by Premier which came under the supervision of SIRD, there was neither reason nor justification for the defendant to write to the Minister of Home Affairs and others. The defendant's absurd explanation (at N/E 463) that the Commissioner of Police would be interested because Premier was/is a big company was unconvincing and clearly an untruth. As counsel for the plaintiffs rightly pointed out, if the defendant really wanted the shareholders of Premier to know of the goings-on and deficiencies in the running of the company by the second/third plaintiffs, he only needed to write to Premier's board of directors.

126 In fact, it would be straining the meaning of the phrase "interested parties" (as the defendant's closing submissions sought to argue) to say that the defendant could air his grievances not only on his alleged wrongful dismissal but on Premier's performance to: (i) the Commissioner of Police; (ii) Chairman of the Police Co-operative (shareholder of Premier), (iii) the ISD, (iv) the Attorney-General's Chambers and (v) the Chairman of the Board of Directors of Premier. These parties shared no common interest with the defendant.

127 As for the defence of fair comment, it fails *in limine* as none of the defendant's assertions and/or statements could be said to be comments, let alone that they were fair comments based on true facts as set out in [81] above. Above all, there was nothing of common or public interest in the first letter that warranted the defendant's comments if indeed they were comments which they were not (see *Lee Hsien Loong v Review Publishing Co Ltd and Another and Another Suit* [2009] 1 SLR 177). Section 9 of the Defamation Act at [87] would not help the defendant either.

128 Turning to the second letter, the statement in [22(i)] was that Premier did not deserve its **B** grade and it should have been graded **D** instead. Yet, Jamaludin, the defendant's witness agreed the **B** grade was correct while both the second and third plaintiffs testified that instead of a grade lower than **B**, Premier subsequently obtained an **A** grade from SIRD for both 2007 and 2008. Again, the defence of justification is not made out.

129 Finally, in the third letter at [24] the defendant's allegation there was that Premier was dishonest in its operations and cheated its clients as its security guards for SATS' assignments did not undergo orientation courses. Again this allegation was not proven. Indeed, the defendant's own witness Sanjay testified contrary to the allegation.

130 This case is reminiscent of *Arul Chandran v Chew Chin Aik Victor JP* [2001] 1 SLR 505 ("*Arul Chandran*"). In that case, the plaintiff (a lawyer) and the defendant (an architect) were both members of the Tanglin Club ("the Club"). The defendant campaigned for himself and his son in the elections for the new General Committee ("GC") at the forthcoming Annual General Meeting ("the AGM"). In the process, he circulated a flyer entitled "A layman's guide to the AGM" ("the flyer") in which he urged members not to vote for the incumbent committee. The flyer was not signed but bore the defendant's membership number C642. At the AGM, some of the incumbents were elected including the plaintiff who was elected Vice-President.

131 The plaintiff saw the flyer a day after the AGM. On 27 May 1998, the plaintiff wrote the first of many letters to the defendant to verify if the latter was the author of the flyer. Instead of answering the plaintiff's query, the defendant referred the plaintiff to a newspaper which reported that the High Court in the Malaysian state of Johore had sentenced three lawyers including the plaintiff to jail for two years for contempt of court after passing judgment against them for fraud in relation to the purchase of a property in Johore. On 24 June and 10 July 1998, the defendant wrote to the plaintiff making these statements:

> Am I supposed to believe then that the Members who voted for you in the last elections knew of the report of your conviction for fraud and breach of trust against the housewife in Johore?
>
> Are you saying that someone who has been called 'a most vicious and dangerous fraud' by a High Court Judge is now the Vice-President of the Club is something of no relevance to the Members?"

132 By the time he wrote the letter dated 10 July 1998, the defendant (whose wife and son were/are practising lawyers) had read the entire judgment of the Johore High Court (see *Tara Rajaratnam v Datuk Jagindar Singh & Ors* [1983] 2 MLJ 127). The defendant knew that the plaintiff's appeal against his summary conviction and sentence for contempt was allowed. In fact, all three defendants in the case succeeded in their appeal against the sentence of imprisonment and all three appealed to the Judicial Committee of the Privy Council. The plaintiff's appeal to the Privy Council was allowed with the consent of Tara Rajaratnam, who informed the Privy Council that she had withdrawn all her allegations of fraud against him.

133 On 4 August 1998, the defendant wrote to the president of the Club enclosing all the correspondence between himself and the plaintiff and said:

> Would you say that leaving us 5,000 members at the mercy of who a High Court Judge described as 'a most vicious and dangerous fraud' to administer Club Justice is your way of keeping faith with the Membership who elected you President?

134 The plaintiff sued the defendant for defamation when the plaintiff's solicitors' demand for a withdrawal of and an apology for the alleged defamatory remarks plus a sum by way of damages were not acceded to.

135 The trial judge held (see *Arul Chandran v Chew Chin Aik Victor JP* [2000] SGHC 111) that the sting of the above defamatory comments was that the plaintiff was a most vicious and dangerous fraud. He found (at [302]) that malice was the predominant actuating force behind all three publications complained of because of the personal spite, ill will and vengeance the defendant harboured against the plaintiff whom he perceived (from the plaintiff's repeated queries) to be on a relentless witch hunt in finding out if the defendant was the author of the flyer. Consequently, the defendant failed in his defences of fair comment and qualified privilege as well as in his plea of justification.

136 The defendant's appeal (see [130] above) was dismissed by the appellate court who found no basis for overturning the trial judge's finding of malice.

137 I am of the view that the defendant's conduct draws many parallels with that of the defendant in *Arul Chandran* ([130] *supra*). From the evidence adduced, there is little doubt that the three letters as well as the subsequent letters that the defendant wrote to all and sundry were actuated by malice and by his desire for revenge against the plaintiffs for his dismissal from Premier's employment. His motive was to ruin the reputation of Premier and cause the second and third plaintiffs to be dismissed from Premier's employment just as he was dismissed. There was nothing altruistic about the defendant's actions and his smear campaign. He was not (as pleaded in para 31 of his defence) actuated by "a deep sense of public spiritedness inborn from 24 years as a public servant in the capacity of a police officer".

138 The cases cited by the defendant *Hytech Builders Pte Ltd v Goh Teng Poh Karen* [2008] 3 SLR 236 and *Lim Eng Hock Peter v Lin Jian Wei & Another* [2009] 2 SLR 1004 (where the courts held that defamation was proven by the plaintiffs but held that the defendants had succeeded in their defences of fair comment, qualified privilege and justification) were not relevant and would not help the defendant as the facts were entirely different.

139 Consequently, even if I am wrong in my findings and the defendant succeeds in his defences of justification and qualified privilege, malice defeats those defences (see [85] above).

(ii) The counterclaim

140 I turn now to the plaintiffs' defences to the defendant's counterclaim. The plaintiffs were able to substantiate their case that the defendant was dismissed for good cause. Premier's letter in [39] to MOM was a response to MOM's query for an explanation on the defendant's termination of employment. It was written on an occasion of qualified privilege and the contents were substantially true (see *John Lee & Anor v Henry Wong Jan Fook* [1981] 1 MLJ 108).

141 As for the anonymous letter, the defence of qualified privilege is equally applicable. I accept the plaintiffs' submission that it was enclosed with Premier's letter to MOM to show that Premier and the second plaintiff kept an open mind, they were willing to give the benefit of the doubt to the defendant and assess his work performance objectively.

Conclusion

142 In the event, the defendant does not succeed in any of the three defences he had raised to the plaintiffs' claim and he fails in his counterclaim as well. The plaintiffs are awarded judgment on their claim with costs on a standard basis and an injunction is granted against the defendant as prayed for in the statement of claim.

143 In the light of the defendant's conduct and his malice towards the plaintiffs I accept the plaintiffs' submissions (in paras 162 to 169) and hold that they are entitled to aggravated damages as follows:

(i)	Premier	$80,000;
(ii)	Second plaintiff	$50,000; and
(iii)	Third plaintiff	$20,000.

144 Finally, the counterclaim is dismissed with costs on a standard basis.

23 November 2009

Lai Siu Chiu J:

145 After the Judgment dated 24 September 2009 was released, counsel for the plaintiffs (Adrian Wong) wrote to this court on 7 October 2009 to request clarification on the issue of costs awarded in [142]. Despite the objections of counsel for the defendant (who argued that this court was *functus officio*), I heard submissions on the issue of costs on 6 November 2009 and awarded costs to the plaintiffs on the High Court scale, notwithstanding that the amount of damages awarded to the plaintiffs were below $250,000.

146 The starting point for costs in this case would be s 39(1) of the Subordinate Courts Act (Cap 321, 2007 Rev Ed) ("the Act") which states:

> Where an action founded on contract or tort or any written law to recover a sum of money is commenced in the High Courtwhich could have been commenced in a subordinate court, then, subject to subsections (3) and (4), the plaintiff —
>
> (a) if he recovers a sum not exceeding the District Court limit, shall not be entitled to any more costs of the action than those to which he would have been entitled if the action had been brought in a District Court.

147 Relying on the above provision, counsel for the defendant argued that the plaintiffs were only entitled to standard costs on the District Court scale as the total damages payable to the plaintiffs at [143] only amounted to $150,000. Even in the plaintiffs' closing submissions, the aggravated damages claimed were only $210,000 for all the plaintiffs. Moreover, the plaintiffs failed to obtain a certificate from this court under O59 r 27(5) of the Rules of Court ("the Rules") that there was sufficient reason for bringing the action in the High Court. Counsel also cited *Cheong Ghim Fah v Murugian s/o Rangasamy* (No 2) [2004] 3 SLR 193 ("*Cheong Ghim Fah*") to support his arguments. However, counsel did not pursue his earlier contention that this court was *functus officio*.

148 Counsel for the plaintiffs on the other hand relied on s 39(4) of the Act for his contention that this court had an inherent jurisdiction to award costs on the High Court scale notwithstanding s 39(1)(a); s 39(4) states:

> In any action, the High Court, if satisfied —
>
> (a) that there was sufficient reason for bringing the action in the High Court;
>
> ...
>
> may make an order allowing the costs or any part of the costs thereof on the High Court scale or on the subordinate courts scale as it may direct.

149 Counsel for the plaintiffs pointed out that in *Arul Chandran* (at [135]), although the damages and aggravated damages awarded to the plaintiff totalled $150,000, the trial judge nonetheless awarded costs on the High Court scale to the plaintiff. The trial judge's order of costs was not disturbed by the Court of Appeal ([130] *supra*) at [62]. He pointed out that in *Cheong Ghim Fah*, the court held that the determination of whether proceedings should be filed in the High Court or the Subordinate Courts is done at the outset, when proceedings are commenced.

150 Counsel for the plaintiffs submitted no limits were imposed on the meaning of "sufficient reason" in s 39(4) of the Act by the trial judge in *Cheong Ghim Fah*. Indeed, in that case, the court awarded costs on the High Court scale even though the damages assessed by the assistant registrar totalled $216,523.60.

The decision on costs

151 I awarded costs to the plaintiffs on the High Court scale for a number of reasons. Granted (as the defendant's counsel pointed out), the plaintiffs did not have to prove their case on liability because of the order of court in [2]. However, the defendant took every conceivable defence possible on the defamatory statements contained in the three letters at [20], [22] and [24] above,

viz justification, fair comment and qualified privilege. He failed in all the defences he had pleaded because the defamatory statements were found to be untrue and/or were actuated by malice. Because of the finding of malice in [137], the damages awarded to the plaintiffs were double what this court would have otherwise awarded to each of the plaintiffs.

152 In addition to his inability to prove the defences he had raised, the defendant also failed in his counterclaim against the plaintiffs for wrongful dismissal and defamation. The trial lasted nine days during which the defendant called eleven witnesses. Cross-examination of the defendant alone took almost three days.

153 Taking all the factors set out above into account, I was of the view that the plaintiffs should have their costs of the action and of the counterclaim on the High Court scale and I so ordered.

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