T J Systems (S) Pte Ltd and Others v Ngow Kheong Shen
[2003] SGHC 73

Case Number : Suit 815/2002

Decision Date : 31 March 2003

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : Daniel Koh and Martin Lee (CTLC Law Corporation) for the plaintiffs; Peter Chua and Melissa Ann Yeoh (Peter Chua & Partners) for the defendant

Parties : T J Systems (S) Pte Ltd; Ting Siew Hood; Leow Chin Bee; Wang Yong Hong; Lo Ooi Yit; Foong Kok Seng; Leong Wai On; Yew Yeow Tiong; Seng Kong Keong — Ngow Kheong Shen

Tort – Defamation – Defamatory statements – Whether defamatory.

Tort – Defamation – Fair comment – Whether defence made out.

Tort – Defamation – Qualified privilege – Whether defence made out.

Tort – Defamation – Publication to restricted group only – Whether defence made out.

The facts

1 The first plaintiff (TJ) are a Singapore company (incorporated in 1996) and are in the business of supplying security systems (such as closed circuit television and metal detectors), fire-fighting equipment and other engineering activities. The second and third plaintiffs Ting Siew Hood (Ting) and Leow Chin Bee (Leow) are the managing-director and a director respectively, of TJ whilst the fourth to ninth plaintiffs are sales staff of TJ. Ting is also a major shareholder (45%) of the company. TJ counts amongst its customers the Ministry of Home Affairs, the Prisons Department, the Singapore Civil Defence Force, shopping malls and condominiums.

2 The defendant Ngow Kheong Shen (Ngow) was at the material time (and still is), the system sales manager of a company called Cisco Security Technology Pte Ltd (Cisco) which is in the same business as TJ and has a similar customer base.

3 On 3 June 2002, Ting was informed by Leow that the Corruption Practices Investigation Bureau (CPIB) wanted to interview Leow. Subsequently Ting himself received a call from the CPIB with a request that Ting and the fifth plaintiff Fiona Lo Ooi Yit (Lo), attend at their office. CPIB wanted to question Leow, Ting and Lo as part of their investigations concerning an officer Simon Sng from the Police Technology Department (PTD).

4. Ting knew Simon Sng as the latter was the officer from PTD who dealt with TJ, since the company was awarded (on 24 September 2001) a contract by the police force for the supply and delivery of walk-through metal detectors. The CPIB questioned Ting whether Simon Sng had requested for money or treats from TJ in their dealings; Ting gave a negative answer.

5 In the evening of 11 June 2002, Ngow (who calls himself Jonathan Ngow) sent an e-mail (the e-mail) to 15 persons within Cisco's organisation; his message (see1AB9) stated:-

> This is to share with you that TJ System (sales staff and directors) has been called up by CPIB for investigation on bribery made to a police officer from Police Technology Dept, on 6 June 2002.

> CPIB are reviewing all information relating to projects awarded to TJ System by PTD in the last 4 years. From a reliable source, PTD has internally debar TJ System for future projects, or any supplier/vendor who works with them to bid for police projects, as CPIB has possessed "strong" evidence against TJ.
>
> If you have any dealings with TJ, please restrain (sic) from doing it as TJ System is our competitor and we should not help our competitor to grow.
>
> Regards
>
> Jonathan Ngow
>
> Manager, System Sales
>
> Cisco Security Technology

Later that same month, TJ received from an anonymous sender through the post, a copy of the e-mail; the envelope containing the e-mail was marked for Ting's attention.

6 Ting complained the e-mail was malicious and untrue of TJ, its directors and sales staff; there were repercussions. In June-July 2002, Ting was asked by four (4) persons (including one Philip Lee from Cisco) in the industry whether there was any truth in the allegation — that TJ was in trouble with and that, CPIB had obtained evidence of the company's corruption with PTD. One of them had learnt of the e-mail from an unnamed Cisco employee. Ting was understandably upset by such grist from the rumour mill since TJ, its directors (himself included) and sales staff had never engaged in corrupt practices or offered bribes to officers from the PTD. Moreover, no one from TJ had been called up for further investigations by the CPIB after June 2002, no action had been taken by CPIB against TJ or anyone in the company and, Simon Sng still worked for the PTD. Neither had TJ been notified by PTD it was nor has it been, barred from police projects since June 2002. Indeed, in September 2002, TJ tendered to supply night vision binoculars to the PTD (which tender is still under consideration); the company continues to enjoy a good working relationship with the police. Further, Ngow (whom he had met 3-4 times) did not contact Ting (or any of TJ's sales staff) to verify the truth of the allegation/rumour of the company being investigated for corruption/bribery before the e-mail was sent/circulated.

7 Consequently, Ting contacted TJ's solicitors shortly after receipt of the e-mail and instructed them to demand an apology from Ngow together with a retraction of the defamatory allegations contained in the e-mail. Ngow refused to and did not, apologise. Instead, through his solicitors' letter dated 1 July 2002, Ngow contended that the words were published on an occasion of qualified privilege as, the e-mail contained a standard qualification stating the information contained therein was privileged and only meant for the intended addressees who were his colleagues, with whom Ngow shared a common and corresponding interest in the subject matter of the publication and, was sent to them in the ordinary course of business. The letter went on to deny that Ngow had acted maliciously in publishing the words.

8 Not surprisingly, Ngow's solicitors (Peter Chua & Partners) were then asked by TJ's solicitors whether they had and upon their confirmation that they did have, his instructions to accept service, the writ of summons herein was served on the former.

The pleadings

9 In the statement of claim, the plaintiffs alleged that by their plain and ordinary meaning, the

allegations in the e-mail meant or were understood to mean, *inter alia* that:

(i) the plaintiffs had been investigated by the CPIB on the charge of bribing a police officer from the PTD and/or are guilty of bribing or attempting to bribe a police officer from the PTD;

(ii) CPIB is looking into the charges alleged very seriously;

(iii) CPIB is reviewing all information relating to projects awarded to TJ by the PTD in the last 4 years;

(iv) CPIB has done a thorough check on the projects awarded to TJ in the last 4 years and/or CPIB has already gathered 'strong' evidence in favour of the allegations of bribery;

(v) the plaintiffs have been dishonest in their business dealings and/or are unreliable business associates;

(vi) the first plaintiff, TJ has been awarded projects by the PTD over the last 4 years and/or the reason why TJ was ever awarded projects by the PTD was because of bribery;

(vii) PTD has internally debarred TJ and/or any supplier or vendor who works with TJ from future projects and/or from bidding for future police projects;

(viii) the plaintiffs have conspired with the suppliers and vendors in committing bribery;

(ix) the plaintiffs are guilty of corruption and/or corruptly procuring the withdrawal of tenders and/or bribery of a member of the public body and/or having attempted bribery of which all of the above alleged crimes are punishable with imprisonment; and or

(x) the plaintiffs possess the propensity to bribe people in order to garner projects, especially with respect to PTD projects in the last 4 years.

10 The plaintiffs alleged that by reason of the publication of the e-mail, the plaintiffs had been gravely injured in their professional standing, reputation and goodwill, have been exposed to public scandal, odium, contempt and ridicule and have suffered loss and damage.

11 In support of their claim for aggravated and exemplary damages, the plaintiffs relied on the fact that Ngow failed to make any or any proper, inquiry of them prior to publication, notwithstanding that Ngow knew or ought to have known, the gravity of the allegations and the width of publication they would achieve. They alleged that Ngow acted with reckless disregard as to whether the allegations in the e-mail were libellous, having calculated that the prospect to his material advantage or commercial benefit therefrom, far outweighed any compensation payable to the plaintiffs. His mode of publication (by e-mail) showed that Ngow intended the defamatory remarks to be republished as, it was foreseeable that there would be widespread republication of the e-mail by the recipients in Cisco, given the ease of transmission of such messages.

12 The plaintiffs next alleged that Ngow had refused to apologise for the offending allegations, despite being given an opportunity by the plaintiffs' solicitors.

13 Further, on or about 11 June 2002, Ngow had authored and published a further sentence contained in an e-mail and sent it to various persons, which sentence reads as follows:-

If you have any dealings with TJ, please restrain from doing it as TJ System is our competitor and we should

not help our competitor to grow.

The plaintiffs alleged that the above sentence showed that the e-mail was made with the dominant intention of causing injury to the plaintiffs, not Ngow's desire to perform a relevant duty or protect a relevant interest.

14 In the defence he filed, Ngow admitted sending the e-mail, he *inter alia*:-

(i) averred he had learnt from the market in early June 2002 that TJ, its sales staff and directors had been called up by CPIB on bribes made to a police officer from the PTD;

(ii) contended he wrote the e-mail to the addressees who were his office superiors, his peers or his subordinates, as fair comments on a matter of public interest;

(iii) alternatively, the occasion was one of qualified privilege as he acted in good faith and intended that only the addressees would be the recipients. He and the recipients had a common interest in the subject matter of the e-mail in the reasonable protection of his own legitimate interests and those of his colleagues;

(iv) asserted that the e-mail contained privileged/confidential information and was meant to be read by his colleagues only;

(v) denied the words in the e-mail bore the defamatory meanings alleged by the plaintiffs.

15 Ngow admitted the positions held by the second to ninth plaintiffs in TJ. Finally, he admitted that he had refused to apologise to the plaintiffs and to retract the allegations made in the e-mail.

The evidence

(i) the plaintiffs' case

16 Before I go on to consider the testimony of the plaintiffs' witnesses, I need to make one observation. Not all the individual plaintiffs filed their affidavits of evidence-in-chief nor testify; those who did not testify were Lo (the fifth plaintiff), the seventh, eighth and ninth plaintiffs. Ting testified for himself as well as for his company. When his cross-examination commenced, Ting testified that as the managing-director of TJ, he was *very sure* he had the authority to pursue this claim on behalf of his employees including the fifth, seventh, eight and ninth plaintiffs; he had not but could, ask them for their authorisation if counsel for Ngow insisted. Whilst he agreed that he and Leow were the prime movers behind this litigation, Ting disagreed with counsel that the other individuals were only nominal plaintiffs.

17 I turn now to other aspects of Ting's cross-examination. Ting testified he barely knew Ngow, having last met the latter at a security show in October 2000. He did not know whether Ngow had a grudge against him, whether CPIB investigations on TJ and its staff (including himself) were still pending, nor whether the copy of the e-mail he received in the post was an unauthorised republication. He accepted that Ngow did not intend to republish the e-mail to the plaintiffs and, the message was not meant for him/other plaintiffs. In his written testimony, Ting had deposed that he had faced awkward situations by which he meant, that he faced difficulties in explaining when his customers called him. He candidly admitted that he did not know whether the e-mail was the source of what his customers had heard, about TJ's alleged problems with CPIB.

18 Ting (PW1) was questioned on the contents of the e-mail; he denied they were substantially correct. On para 1, he pointed out that the date (6 June 2002) was incorrect; he and the others were called for interview by CPIB on 3 June 2002. Paragraph 2 was also incorrect — the plaintiffs were only assisting the CPIB in investigations whereas the e-mail stated that CPIB was reviewing all information relating to the projects awarded to TJ by PTD in the last four years. What made it worse was Ngow's statement that PTD had internally debarred TJ from future projects together with suppliers/vendors who works with TJ to bid for police projects and his use of the words *'strong evidence'* when TJ had not been charged with let alone convicted of, any offence. Counsel suggested to Ting the statement meant the opposite — that Ngow had heard from reliable sources that PTD had not officially debarred TJ from future projects and were adopting a 'wait and see' attitude. Not surprisingly, Ting disagreed. As for para 3, Ting explained that malice was to be found in Ngow's use of the words *'we should not help our competitor to grow*' even though it was a request which Ngow addressed to his colleagues. Ting however agreed that TJ and Cisco are competitors. Even so, when re-examined, Ting complained Ngow's intention in the e-mail was to ensure that TJ did not grow.

19 Of the four (4) persons who had asked Ting about the allegations in the e-mail, only one (Darrell Lim) was willing to be a witness for the plaintiffs; I shall refer to his evidence later. Ting explained that the others whom he had named were reluctant to testify for the plaintiffs because it affected their rice-bowl, not that they did not exist or would not have supported the plaintiffs' case, as counsel suggested. However, none of them were subpoenaed to testify for the plaintiffs. Ting was certain the source of the rumours on his company and staff could not have been other than the e-mail because, only three (3) persons knew of the CPIB investigations, namely himself, Leow and the fifth plaintiff. None of TJ's staff would have wanted the world to know about the investigations. However, Ting could not say whether PTD was the source of the leak.

20 I move next to the testimony of Leow (who is also known as Jimmy Leow). Leow (PW3) testified he was very upset when in early July 2002, he was contacted by an acquaintance (Jimmy Tan) from Cisco who said Cisco's sales department had told the latter that TJ was being investigated for corrupt practices and CPIB had obtained evidence of such corruption; however there was no mention of the e-mail. Leow deposed that there was absolutely no truth in the rumour as neither he, nor any of his sales staff, had been involved in or engaged in, corrupt practices in tendering for projects from PTD. Like Ting, Leow pointed out that Ngow never contacted him to verify whether, TJ was really being investigated, CPIB had obtained evidence of TJ's corruption or if TJ had in fact been barred from all future police projects. Neither did Ngow contact any of the company's sales staff to verify the contents in the e-mail. He had immediately reported to Ting what was told to him by Jimmy Tan. Subsequently, he was shown by Ting the e-mail which came in the post. Although he was not acquainted with Ngow, Leow testified that TJ's customers, its competitors and business associates all knew he was/is a director of the company as, he had distributed his name cards showing his designation, in the course of his business dealings.

21 When Leow took the stand, he produced further documents (see 1AB113-115) which showed that as late as 22 November 2002, TJ had been invited by PTD to tender for the supply of portable handheld explosive vapour and particle detectors. The company had submitted its tender on 9 December 2002 and on 16 December 2002, PTD had made a written request of TJ to provide a sample unit for the department's evaluation. Further, on 3 January 2003, the company through the fourth, sixth and eight plaintiffs, had accepted an invitation from PTD to attend a briefing, for the purpose of a new tender exercise for the supply, testing and commissioning of camera surveillance systems for three (3) locations in Singapore.

22 I turn now to the testimony of the reluctant witness Darrell Lim (Lim). I describe him as reluctant because when he took the stand, he requested the court to lift the subpoena which had been issued

against him, which request I rejected. Lim (PW2) clarified that Jimmy Tan, the source who conveyed information regarding the alleged investigation of TJ for corruption, did not/does not work for Cisco but was/is a director of Cisco's Indonesian company called Ciscomas. Lim said Jimmy Tan returns to Singapore from Indonesia once a month and would go to Cisco's office upon his return. Lim was told that Jimmy Tan had heard the rumours from staff in Cisco's sales or other departments. I should point out at this juncture that Jimmy Tan was not a witness for either party.

23 The testimony of the fourth plaintiff Wang Yong Hong (Wang) touched on a conversation he had with one Teo Lian Chye (Teo) of Secure Tech Engineering, who he understood, was a subcontractor of Cisco. Like Leow's testimony concerning what Jimmy Tan said, Wang's evidence concerning what was told to him by Teo in Hokkien (concerning CPIB's investigation on TJ for corruption) was hearsay as, Teo did not testify. In any event, no names from Cisco were mentioned by Teo.

24 In cross-examination, Wang agreed that Teo could have heard the rumour from sources other than Cisco, which in itself is a big organisation (with more than 3,000 staff). Counsel then suggested to Wang who agreed, that there is a tendency for such information to snowball during which process it becomes less and less accurate. Wang was shown the e-mail 1-3 weeks after he conveyed to Ting what Teo had said.

25 Wang clarified that although he was supposed to attend the tender briefing of PTD on 6 January 2003 with the sixth and eighth plaintiffs, he was substituted at the last minute by a representative of a subcontractor (Vector Infotech) of TJ.

26 The last witness of the plaintiffs was the sixth plaintiff. Foong Kok Seng (Foong) is a sales engineer who has been with TJ since 1999. Foong (PW5) focussed on a conversation he had with his company's subcontractor Tok Teck Bee (Tok) of Trit Engineering and Services (who had in turn heard it from Teo) wherein the latter said that TJ was being investigated by the CPIB and, that TJ was strongly suspected of having committed corruption. He did not know the source of the rumour. Foong disagreed with counsel that there was no connotation of guilt from what Tok said; he understood the words to mean that TJ was guilty of corruption. He denied he thought the words were defamatory only because Ting told him they were so. Subsequently, Foong had sight of the e-mail together with other staff, at a meeting called by Ting.

(ii) the defendant's case

27. I start with Ngow's evidence. Ngow (DW1) is the senior manager for direct sales at Cisco, having risen through the ranks since he joined Cisco as sales executive in May 1994. His company is part of the Cisco group in Singapore which comprises of seven (7) other companies. In his written testimony, Ngow explained how he came to know of the investigations by CPIB of TJ. One Tay Ko Khee (Tay) his course-mate at Ngee Ann Polytechnic was, until 1996, a project officer of the PTD. Tay was aware that Cisco had business dealings with and was a competitor of, TJ. On or about 10 June 2002, Tay informed Ngow (probably at a social meeting one evening) that:-

a. on or about 6 June 2002, some if not all, the plaintiffs had been called up by CPIB for investigations into bribery of a police officer in the PTD;

b. CPIB was reviewing all information relating to projects awarded to TJ by PTD in the last few years;

c. pending CPIB's investigation, he assumed that PTD would be very careful with awarding any future police projects for a period of time to TJ or any supplier/vendor of the company, until the investigations reveal no offence has been committed.

28 Following on the information he received from Tay, Ngow sent out the e-mail on the evening (6.38pm) of 11 June 2002. He justified his action on the basis that the e-mail was sent in the ordinary course of business, the recipients had an interest in the subject matter and an interest in receiving the e-mail; the e-mail was also confidential. In that regard he and other employees of Cisco had signed declarations, which drew their attention to s 5 of the Official Secrets Act (Cap 213) and s 10 of The Commercial & Industrial Security Corporation Act (Cap 47). In his Declaration made on 16 May 1994 he had stated:-

I understand and agree that all official information, no matter what its security grading may be, acquired by me in the course of my duties is to be treated as of a strictly confidential nature, and is not to be published or communicated by me, either during or after my service, to any person in any form whatsoever, except in the course of my official duties.

I further understand that any breach or neglect of this responsibility is a disciplinary offence, and may also render me liable to prosecution under the Official Secrets Act or The Commercial & Industry Security Corporation Act.

As such, employees of Cisco understood that all internal e-mails should not be republished in any form whatsoever, to anyone outside the Cisco group. To reinforce his argument, Ngow had two (2) addressees of the e-mail to testify for him, one was his superior and general manager Teo Beng Lee (DW4), while the other was his colleague Lian Mei Yuan (DW3) who is a project officer.

29 Ngow pointed out he had included in the last paragraph of the e-mail, the following standard qualification:-

Privileged/confidential information may be contained in this message. If you are not the intended addressee (or responsible for delivery to such person), you must not copy or deliver this message to anyone. Any use of its contents is strictly prohibited. Please destroy the message and notify the sender of this error.

Consequently, he did not expect or foresee that recipients of the e-mail would republish the same, as it was not meant to be read by anyone outside the Cisco group. In cross-examination, he modified this statement further to say that it was alright to distribute the e-mail within his company, but not to the Cisco group at large.

30 Ngow deposed in his affidavit (of evidence-in-chief) that he understood the e-mail to have the following meanings:-

a. some if not all, the plaintiffs had been called up by CPIB for investigation on bribery made to a police officer on 6 June 2002;

b. the CPIB were reviewing all information relating to projects awarded to TJ by PTD in the last four (4) years;

c. it was natural and logical that the PTD would not award any future projects to TJ or any supplier/vendor who works with TJ to bid for police projects as CPIB possessed strong evidence against TJ with respect to allegations of bribery;

d. if any of his colleagues at Cisco, namely the recipients of the e-mail had dealings with TJ, they should refrain from starting new projects with the company;

e. TJ was identified as a competitor of Cisco who could affect the success of Cisco's business.

He did not intend to nor did his e-mail, mean what the plaintiffs alleged in their statement of claim; neither was he actuated by malice. His desire was to perform his duties (as the senior manager of direct sales) and to protect his own legitimate interests by giving information to his colleagues (hence his use of the word *share* in the opening words of the e-mail) which he deemed relevant to them to succeed in their business. Re-examined, Ngow explained that TJ was a supplier of Cisco and sometimes, quotations for jobs by his company would include equipment supplied by TJ. This aspect of his testimony was confirmed by his general manager Teo Beng Lee, who produced various purchase orders (see 3AB8-12) issued by Cisco to TJ in 2002 in support thereof.

31 In cross-examination, Ngow :-

a. said the addressees of the e-mail included, his senior manager of the installation department (Low Eng Thai), his maintenance department manager (James Ler), senior projects manager of the installation department (Lim Bon Kee) and senior sales executives from his department who were in the commercial segment;

b. said although he had no proof other departments had dealings with TJ, nevertheless he disagreed those departments had no interest in the information contained in the e-mail;

c. gave the total staff in the departments of all the recipients as about 60;

d. said he had no regrets about sending the e-mail, maintaining he had chosen his words carefully;

e. contended the contents were true to the best of his knowledge (save for the period in para 2 which should read *'for the last few years*' instead of *'the last 4 years'* which mistake was due to his *oversight*);

f. felt he was making an important announcement in his capacity as a senior staff member when he wrote the e-mail;

g. disagreed that his choice of the words *'share with you*' instead of *'this is to inform you'* meant that he was not obliged to pass on the information he heard from Tay but he wanted to;

h. said it did not occur to him to call a meeting of interested colleagues to inform them of what Tay had said instead of sending the e-mail, nor did it occur to him that Tay's information may not be completely accurate, given that Tay had left PTD for 6 years;

i. said he did not think the five (5) recipients from his department would pass on the e-mail because of the Official Secrets Act;

j. said he was unaware that TJ supplied security systems to both commercial and residential projects;

k. said on his inquiry of Tay, he was told that the information *came from the horse's mouth* — the person at PTD who was being investigated;

l. agreed that police officers are also bound by the Official Secrets Act;

m. deleted the word *'any'* before *supplier/vendor'* in para 2 line 2 of the e-mail and said he meant Cisco by the words *'supplier/vendor*'.

n. he meant *refrain* when he used the word *restrain* in the last paragraph/sentence;

o. disagreed that the e-mail did not accurately reflect what Tay said even though he (but not Tay) had used the words *strong evidence*.

32 When he received the plaintiffs' solicitors letter (dated 21 June 2002) demanding a retraction and an apology, Ngow's immediate reaction was that the security of his company had been breached, so he raised the matter with his superiors. He left it to his company's internal security department to check the e-mail logs at the office for the source of the leak. He had handed the plaintiffs' solicitors' letter to his solicitors, telling them the contents of the e-mail were true. However, he acknowledged that this was not reflected in their reply dated 1 July 2002. Instead, his solicitors claimed qualified privilege for the offending words and relied on the confidentiality clause appended at the end of the e-mail to say the e-mail was only intended for the addressees. Ngow denied his main intention after receipt of the plaintiffs' solicitors' letter of demand was to find out who had passed on the e-mail to and cause inconvenience, to TJ.

33 Counsel drew Ngow's attention to the fact that Tay's reason for informing him about the CPIB investigation differed from Ngow's. Whereas Ngow claimed he disseminated the information to notify/warn his colleagues who had business dealings with TJ (see para 16 of his affidavit), Tay had in his affidavit (para 6), deposed that he gave the information to Ngow out of concern that any future collaboration or joint efforts between Cisco and TJ would be stuck or delayed, because of the CPIB investigation. Ngow explained the discrepancy as arising from a different *choice of words* disagreeing with counsel's suggestion that his explanation was an afterthought, after these proceedings were commenced. Ngow also disagreed with counsel that with less competition from rivals (be it from TJ or other parties), Cisco's market share would increase. He denied he had not taken reasonable steps to verify the truth before he sent out the e-mail.

34 Tay testified for Ngow and I now turn to his evidence. Tay (DW2) described himself as a security equipment dealer, who had worked as a project officer with PTD between 1990-96. Tay testified he passed on to Ngow the information on CPIB investigation as he knew Ngow's company had business dealings with TJ; he confirmed he conveyed to Ngow what was set out in para 30 (a) and (b) above. He had also told Ngow:-

> pending the CPIB investigation, he presumed that PTD would be very careful with awarding any future police projects to [TJ] or any supplier/vendor who works with [TJ] for a period of time or until the investigation reveals no offence has been committed.

35 Cross-examined, Tay explained that when he was with the PTD, his duties included evaluating and awarding, tenders. Although six (6) years had lapsed since his departure from the PTD, Tay still had many contacts (30-40) in the department including one Simon Sng, the officer who was under investigation by the CPIB; hence, the information he was able to obtain and pass on to, Ngow.

36 Shown a copy of the e-mail by counsel for the plaintiffs, Tay agreed it went beyond what he had told Ngow, in particular the following sentence in para 2:-

> From a reliable source, PTD had internally debarred TJ System for future projects, or any supplier/vendor who works with them to bid for police projects as CPIB has possessed "strong" evidence against TJ.

He had sight of the e-mail for the first time when it was shown to him by Ngow at the time (September 2002) he was approached to be a witness. When he was re-examined, Tay said it was *possible* he may have used the words *strong evidence* when he spoke to Ngow.

The issues

37 The following two (2) issues need to be determined in this case:-

(i) are the words in the e-mail complained of by the plaintiffs defamatory?

(ii) if the words are defamatory, do they refer to or are capable of referring to, each of the other eight (8) plaintiffs, besides TJ?

Before the issues can be determined, it is necessary to look at some basic principles in the law of defamation.

The law

38 I note that counsel in their closing submissions proceeded on the premise that the offending words were indeed defamatory; both parties had focused on the second issue and on whether the defences raised in the pleadings had been made out. For the first issue, I turn to *Gatley on Libel and Slander* (9 ed) where (at p 7 para 1.5) the learned authors state:

> **What is defamatory? There is no wholly satisfactory definition of a defamatory imputation. Three formulae have been particularly influential:**
>
> **(1) Would the imputation tend to "lower the plaintiff in the estimation of right-thinking members of society generally?" [1]**
>
> **(2) Would the imputation tend to cause others to shun or avoid the plaintiff? [2]**
>
> **(3) Would the words tend to expose the plaintiff to "hatred, contempt and ridicule" [3]**
>
> **The question "what is defamatory?" relates to the nature of the statement made by the defendant; words may be defamatory even if they are believed by no one and even if they are true, though in the latter case they are not of course actionable.**

39 There is little doubt that the following extract in the e-mail is defamatory of TJ

> …CPIB has possessed strong evidence against TJ.

Read in their context the words (reinforced by the words *internally debar TJ Systems for future projects*) impute the possible commission of a criminal offence (bribery) by the company or, TJ's imminent prosecution for corrupting a police officer/public servant. Giving those words the most innocuous interpretation, they meant that the company was suspected of having bribed PTD staff to procure projects. The sting of the defamation was in Ngow's use of the words (i) *investigation for bribery*, (ii) *internally debar from future projects* and (iii) *strong evidence*, the logical conclusion following upon (iii) being that ultimately, charges for abetting corruption would be preferred against TJ under s 109 read with s 161 of the Penal Code Cap 224 or, the company would be charged with corruption under ss 5(b) or 6 of the Prevention of Corruption Act Cap 241.

40 What then of the other plaintiffs? Their counsel relied on *Lee Kuan Yew v Davies & Others* [1989] SLR 1063 for his submission that Ngow's statements, taken in the context of the whole of the e-mail, defamed TJ's two (2) directors and six (6) sales staff as particularised in para 9 above. Ngow had stated (in parentheses) in the e-mail *sales staff and directors*. It is not disputed that the second and

third plaintiffs are directors of TJ whereas the remaining plaintiffs are sales staff of TJ. Their respective positions were in fact admitted by Ngow in his Defence. It cannot be seriously disputed that a legal entity like TJ can only act through its human organs namely, its directors and staff. If TJ indeed attempted to bribe some police officer(s) in the PTD, the company could only have done so through its directors and other representatives. Sales personnel would logically be the department of TJ which would be involved in such bribery or attempts as, the company's sales staff are the ones who sell/market the company's security systems to the PTD.

41 The question that follows is, would the defamatory words, in their context lead reasonable persons acquainted with these plaintiffs to believe they were being referred to in the e-mail? To answer that question, I refer to a case cited by the plaintiffs.

42 In *Knupffer v London Express Newspaper Ltd* [1944] 1 ALL ER 495, the House of Lords had to determine whether the defendants' publication of the following words in their newspaper on 1 July 1941

> But the quislings on whom Hitler flatters himself he can build a pro-German movement within the Soviet Union are an émigré group called Mlado Russ or Young Russia.

They are a minute body professing a pure Fascist ideology who have long sought a suitable fuehrer -- I know with what success. Established in France and the United States they claim to have secret agents able to enter or leave the Soviet Union at will.

could refer to the plaintiff, who was not specifically mentioned at all in the article. Evidence was adduced at the trial that the plaintiff had joined the Young Russia Party in 1928, that he became assistant representative of the Young Russia Movement in Great Britain in 1935, and representative of the Movement in Great Britain in 1938 and then head of the British branch of the Movement. The headquarters of the Movement were in Paris until June 1940, when they were removed to America. The trial judge had held that the words of the libel did refer to the plaintiff whereas the Court of Appeal decided otherwise and dismissed the plaintiff's action. Their lordships (Viscount Simon LC) held that when defamatory words are written or spoken of a class of persons, it is not open to a member of that class to say that the words were spoken of him unless there was something to show that the words about the class refer to him as an individual. As there was nothing to show that the words referred to the appellant as an individual, his claim/appeal failed.

43 The following passage from the judgment of Viscount Simon LC (at 497F) is particularly relevant to our case:

> There are two questions involved in the attempt to identify the appellant as the person defamed. The first question is a question of law – can the article having regard to its language, be regarded as capable of referring to the appellant? The second question is a question of fact, namely, does the article in fact lead reasonable people who know the appellant to the conclusion that it does refer to him? Unless the first question can be answered in favour of the appellant, the second question does not arise, and where the trial judge went wrong was in treating evidence to support the identification in fact as governing the matter, when the first question is necessarily, as a matter of law, to be answered in the negative.

44 Counsel for the plaintiffs submitted that the defamatory words indeed referred to the second to ninth plaintiffs as, the court can take into account all relevant circumstances which might lead persons reading the libel and who are acquainted with these plaintiffs, to believe they were being referred to, citing inter alia *Vlasic v Federal Capital Press of Australia* [1976] 9 ACTR 1, *DHKW*

Marketing v Nature's Farm Pte Ltd [1999] 2 SLR 400 and, my decision in *Mohd Hussein v Chew How Yang Eddie* [1995] 3 SLR 177 to support his proposition.

45 *Gatley on Libel and Slander* (supra) at pp 161 and 163 contains the following passages:-

> 7.2 Plaintiff need not be referred to by name
>
> The test is whether the plaintiff may reasonably be understood to be referred to by words.
>
> 7.3 Statement capable of referring to the plaintiff
>
> The statement must 'identify' the plaintiff, that is to say, it must be capable of referring to him. The issue of identification is to be decided on principles similar to those which govern the question of whether the words are capable of a defamatory meaning…The question is not whether anyone *did* identify the plaintiff but whether persons who were acquainted with the plaintiff *could* identify him from the words used.

46 Applying the test culled from the cases and from the textbook authority, it would be reasonable for anyone acquainted with the fourth to ninth plaintiffs to associate them with the allegation in the e-mail, more so in the case of the second and third plaintiffs, who are known in the security systems industry as directors of the first plaintiff. Consequently, I answer the first question of law as well as the second question of fact posed by Viscount Simon, in the positive.

47 I pause to make certain observations at this juncture. Firstly, in para 2 of his Defence, Ngow admitted sending out the e-mail but denied, para 5 of the statement of claim. Does his denial of that paragraph relate to the allegation that the e-mail was defamatory of the plaintiffs? If so, why did he go on to plead that the words were fair comment on a matter of public interest as a defence and not in the alternative? Implicit in the plea is an admission that the e-mail did defame the plaintiffs. My impression is reinforced by Ngow's further defences of qualified privilege, justification and, his counsel's closing submissions wherein he submitted there was lack of publication of the e-mail to sustain the plaintiffs' action. Yet, in paras 9 to 18 of his Defence, Ngow denied that the e-mail contained the defamatory meanings ascribed to the words by the plaintiffs.

48 I now turn my attention to the defences raised by Ngow. Before the defence of fair comment on a matter of public interest can succeed, the law requires that the words are comment and not a statement of fact (see *Gatley on Libel and Slander* p 248 para 12.2). Based on the definition alone, this defence fails *in limine*. I agree with the plaintiffs' closing submission that by no stretch of the imagination, can Ngow's assertions of fact regarding TJ, its directors and sales staff, be construed as comments, bearing in mind that this defence is normally raised by the press and broadcasters. One can even question what public interest was being served by Ngow's statements relating to the alleged misconduct of a competitor of his company, when the latter had yet to be charged.

49 According to *Gatley on Libel and Slander* (p 328 para 14.4), the main classes of statements which come under the defence of qualified privilege at common law are:-

> (i) statements made in the discharge of a public or private duty;
>
> (ii) statements made on a subject matter in which the defendant has a legitimate interest;
>
> (iii) statements made by way of complaint about those with public authority or responsibility;

(iv) reports of parliamentary proceedings;

(v) copies of or extracts from public registers;

(vi) reports of judicial proceedings.

Only (i) and (ii) can possibly apply in Ngow's defence. In this regard, I can do no better than to rely on an authority cited by his counsel namely *Chen Chang v Central Christian Church* [1999] 1 SLR 94 where our appellate court (at p 113 para 56) adopted Lord Atkinson's definition (at 334) of qualified privilege in *Adam v Ward* [1971] AC 309:

> A privileged occasion is….an occasion where the person who makes a communication has an interest, or a duty, legal, social or moral, to make it to the person to whom it is made and the person to whom it is so made has a corresponding interest or duty to receive it. This reciprocity is essential.

The plaintiffs submitted that this defence also failed because (some of) the recipients had no interest to receive the e-mail. This was because nine (9) of the 15 recipients came from departments other than Ngow's; the e-mail was also forwarded to his general manager Teo Beng Lee and 5 sales staff, one of whom (Lian Mei Yuan) testified that she had no dealings or contact with TJ, as she was from the residential not the commercial, segment of the sales department. No evidence was led on the need for the general manager to know the contents of the e-mail. I note that none of the other recipients testified on why they needed to be informed by Ngow on the contents of the e-mail. Consequently, Ngow has not discharged the burden of proof to succeed on this defence.

50 Moving next to the issue of publication, it was Ngow's contention as part of his defence, that the e-mail was meant for circulation to the 15 addressees only, relying on the concluding paragraph on confidentiality (para 29 *supra*), in the e-mail. Consequently, if there was further publication or circulation of the e-mail, he should not be held responsible or liable, as that was not his intention. Ngow's counsel relied on a passage from the 8th edition of *Gatley on Libel and Slander* (at p 84) to support this argument; it reads:-

> 231 Publication: Intention and foresight
>
> As a general rule, when a letter is addressed to a particular person, the writer is not responsible except for a publication to that person. If A addresses to B a letter defamatory of him, and B shows, or reads, the letter to C, the publication of the letter to C, the publication of the letter by B to C is his own act, for which A will not be liable.

However the 9th edition of the same textbook also contains the following passage (at p 136)

> 6.12 Loss of defamatory document and mistake at common law
>
> The defendant is liable for unintentional publication of defamatory matter to a third person unless he can show that it was not due to any want of care on his part.

Granted, it may have been Ngow's intention to limit circulation of the e-mail to only the 15 recipients but, it was also naïve of him to expect the supposedly privileged communication clause he appended to the e-mail to be respected, in a large organisation like Cisco. It should have been foreseeable, as the plaintiffs submitted, that the e-mail could be easily re-published. However, there was no evidence either way, to prove that the e-mail was/was not further circulated by one or more of the 15 addressees, or whether one such recipient was prompted to post a hard copy to TJ. It could also

have been the case that one of the 15 (original) addressees was the anonymous sender of the e-mail to TJ.

51 Ngow's reliance in this regard on s 5 of the Official Secrets Act Cap 213 is misconceived. The relevant extracts of section reads as follows:-

> (1) If any person having in his possession or control any secret official code word, countersign or password, or any photograph, drawing, plan, model article, note, document or information which —
>
> (a) ……
>
> (b) …….
>
> (c) …….
>
> (d) ……
>
> (e) he has obtained, or to which he has had access, owing to his position as a person who holds or has held office under the Government, or as a person who holds, or has held a contract made on behalf of the Government or any specified organisation, or as a person who is or has been employed under a person who holds or has held such an office or contract,
>
> does any of the following:
>
> (i) communicates directly or indirectly any such information or thing as aforesaid to any foreign Power other than a foreign Power to whom he is duly authorised to communicate it, or to any person other than a person to whom he is authorised to communicate it or to whom it is his duty to communicate it;
>
> (ii) uses any such information or thing as aforesaid for the benefit of any foreign Power other than a foreign Power for whose benefit he is authorised to use it, or in any manner prejudicial to the safety or interests of Singapore;
>
> (iii) ……
>
> (iv) …….
>
> that person shall be guilty of an offence.

Clearly, s 5 of The Official Secrets Act Cap 213 affords no defence to Ngow; it has no application to the e-mail, which did not even state the facts correctly.

52 Reliance on The Commercial & Industrial Security Corporation Act (Cap 47) does not help to advance Ngow's case any further either, as can be seen from s 10 which reads:-

> (1) Except for the purpose of the performance of his duties or the exercise of his functions or when lawfully required to do so by any court or under the provisions of any written law, no member, officer or employee of the Corporation shall disclose to any person any information relating to the affairs of the Corporation or of any other person which he has acquired in the performance of his duties or the exercise of his functions.
>
> (2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000 or to imprisonment for a term not exceeding 12 months or to

both.

It would be straining the language of the section to say that, in relaying to the 15 addressees of the e-mail what he had heard from Tay, Ngow was *disclosing information relating to the affairs of the Corporation…in the performance of his duties or the exercise of his functions* when, what he circulated had nothing to do with his company save that it was a competitor of TJ, the subject of the e-mail.

53 Ngow's counsel had argued that (Darrell) Lim's testimony was hearsay, as was Ting's vis a vis what they both had heard, since the sources of their information did not testify. In fact, Lim had testified that he did not know about the e-mail at the material time, until shown a copy much later. I agree that Lim's testimony was founded on hearsay, so was Ting's, where he referred to other persons asking him about the allegations contained in the e-mail. However, it is highly unlikely (as Ting pointed out) that he or Leow or the fifth plaintiff (Lo Ooi Yit) could have been the source of the allegations; these three (3) would be the last persons to want the world to know they, and or their company, were being investigated for corruption. The only other source of the leak would have been the PTD, on which there was no evidence as, no representative from the department testified. As was the case with Lim's evidence, Tay's testimony was based on hearsay as Simon Sng, the police officer who allegedly informed Tay he was the subject of CPIB investigations, did not take the stand.

54 Consequently, the defences raised by Ngow have not been made out. What I found to be reprehensible conduct on his part was Ngow's total lack of regret/remorse for what can only be said to be an irresponsible act — sending out an e-mail containing such serious allegations without taking steps to verify what he had heard; even worse, embellishing the allegations in the process. He had also refused to apologise for and to retract, the allegations made in the e-mail. Whilst I do not agree with the closing submission of the plaintiffs that Ngow had published the e-mail maliciously, I would agree that he had done so recklessly. It is of course no defence at law for Ngow to say that he did not mean the e-mail to have the defamatory meanings ascribed by the plaintiffs since, according to *Gatley on Libel and Slander* (9 ed p 78 para 3.12):

> What imputation is conveyed by any particular words is to be determined on an objective test, that is, by the meaning in which the ordinary reasonable person would understand them, and is not to be determined by what the defendant intended to convey.

Conclusion

55 Consequently, I find that Ngow had indeed defamed the first, second, third, fourth and sixth plaintiffs by the statements contained in the e-mail. However, as they did not testify, the claims of the fifth, seventh, eighth and ninth plaintiffs are dismissed with costs. Ting's perception that he could testify on their behalf is misconceived. Defamation is an actionable tort, not a representative action. It is for each plaintiff to inform the court how the defamatory statements had affected him/her and caused each of them grief; their feelings cannot be conveyed on their behalf by the managing-director or any other representative from their employer.

56 Accordingly, there will be interlocutory judgment for the five (5) abovenamed plaintiffs on their claims with costs, damages will be assessed by the Registrar with the costs of such assessment reserved to the Registrar.