IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 292

Suit No 647 of 2018

Between

Continental Steel Pte Ltd

… *Plaintiff*

And

(1) Nippon Steel & Sumitomo Metal Southeast Asia Pte Ltd
(2) Nippon Steel & Sumitomo Metal Corporation

… *Defendants*

JUDGMENT

[Tort — Defamation — Defamatory statements — Innuendo]
[Tort — Defamation — Damages — Publication — Grapevine effect]
[Tort — Defamation — Justification — Unpleaded]
[Tort — Defamation — Damages — General damages for corporate claimant — Special damages and causation]
[Tort — Defamation — Malicious falsehood]

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Continental Steel Pte Ltd
v
Nippon Steel & Sumitomo Metal Southeast Asia Pte Ltd and another

[2022] SGHC 292

General Division of the High Court — Suit No 647 of 2018
Dedar Singh Gill J
22, 26–29 January, 1–2 February, 26 April 2021, 22 August 2022

23 November 2022 Judgment reserved.

Dedar Singh Gill J:

1 This action features a dispute between two trade rivals in the steel and construction industry in Singapore. The plaintiff, Continental Steel Pte Ltd ("CS"), accuses the defendants of libel, slander and malicious falsehood in relation to a new steel column that it debuted in the Singapore market in 2014 – the HISTAR 460 ("the Product"). Among the pleaded meanings of the defendants' communications in question, CS is aggrieved by the suggestion that the Product fails to comply with design standards under an industry guideline promulgated by the Building and Construction Authority of Singapore ("BCA") called the "BC1: 2012 'Design Guide on use of Alternative Steel Materials to BS 5950 and Eurocode 3'" ("BC1:2012"). CS claims that the defendants' words lowered its repute and caused it loss of profits.

Facts

The parties

2 CS is a Singapore incorporated company. It is in the business of processing and distributing metal and engineering products, and specialises in the supply of steel products for the building and construction industry.[1]

3 The first defendant, Nippon Steel & Sumitomo Metal Southeast Asia Pte Ltd ("Nippon Steel Singapore") is a Singapore incorporated company. It is a wholly-owned subsidiary of the second defendant, Nippon Steel & Sumitomo Metal Corporation ("Nippon Steel Japan"), which is a company incorporated under the laws of Japan.[2] Nippon Steel Japan is in the business of steelmaking and steel fabrication.[3] According to Nippon Steel Singapore, it does not manufacture or fabricate steel but performs "specific business functions" in and out of Singapore.[4]

4 One Mr Yoshimitsu Murahashi ("Mr Murahashi") joined Nippon Steel Singapore from Nippon Steel Japan in late 2011.[5] As at October 2017, he was a Senior Manager, Technical Services, in Nippon Steel Singapore.[6] As will become clear, Mr Murahashi played a central role in the creation and dissemination, if any, of the alleged defamatory publication ("the Publication")

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1 Statement of claim (Amendment No. 3) ("SOC (Amd 3)") at para 1; First defendant's Defence (Amendment No. 3) ("1D's Defence") at para 2; Second defendant's Defence (Amendment No. 1) ("2D's Defence") at para 2.

2 SOC (Amd 3) at paras 3–4.

3 1D's Defence at para 3(a); 2D's Defence at para 3(a).

4 First and second defendants' closing submissions ("DCS") at para 2.

5 Mr Yoshimitsu Murahashi's AEIC ("Mr Murahashi's AEIC") at para 4.

6 Further and better particulars ("FNBP") of first defendant's Defence (Amendment No. 1 ("1D's Defence (Amd 1)") dated 29 Oct 2018 at answer 2(a).

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and words ("the Words"). The Publication and the Words are set out in full in Annexes 1 and 2 respectively. Where appropriate, I refer to the Publication and the Words collectively as the "Alleged Defamatory Material".

Introduction to relevant steel products and industry regulations

5 This suit revolves around the Product. CS began distributing the Product in the Singapore market in or around 2014. It is CS's case that the Product is of superior quality to other steel grades on the market, including S460M. For convenience, I refer to this grade of steel as the "Superior steel grade" or "Superior grade". I explain the difference between the various grades of steel at [7]–[9] below. CS pleads that the Alleged Defamatory Material conveyed to the reasonable person that, among other things, the Product was sold by CS in breach of the BC1:2012.[7] This, it says, damaged its credit and reputation and caused it to lose sales of the Product.[8]

6 To provide context to CS's claim, I set out an overview of the relevant segment of the steel column market in Singapore and the industry standards relevant to the dispute. The present proceedings concern "H beams". The vertical members of the H beam are known as flanges, while the horizontal member that connects the two flanges is known as the web.[9]

7 Various grades of H steel beams are marketed in Singapore. These steel columns may be used for purposes such as property development or the construction of fixed offshore structures (*eg*, oil rigs and service platforms).[10]

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7 See SOC (Amd 3) at para 16.

8 SOC (Amd 3) at para 19.

9 NE, 1 February 2021, pp 3:19–4:6.

10 Professor Ting Seng Kiong's ("Prof Ting") Expert Report at para 7.

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Two such grades of steel columns are S460M and S355. Both CS and the defendants supply S460M and S355 steel columns in Singapore. CS has been supplying S460M steel (*ie*, the Product when used in accordance with lower design strengths) since 2014.[11] The defendants anticipated being ready to release their new product, the "Nippon Product" into the market in December 2017.[12] The defendants were not supplying the Nippon Product when the acts of alleged defamation and/or malicious falsehood first started in October 2017 (see [18] and [130] below). CS alleges that only the defendants and itself supply S460M steel columns in Singapore.[13] They are therefore competitors in this range of steel columns.

8 S460M steel is of a higher quality than S355.[14] To appreciate this, an understanding is needed of the inverse relationship between the flange thickness of a steel column and its strength properties. As the defendants' expert, Professor Ting Seng Kiong ("Prof Ting") explained, all strength properties like tensile strength reduce as the steel section becomes thicker.[15] Tensile strength is the maximum stress a material can endure before fracturing.[16] As a result, the thicker the section, the lower its design strength value.[17] The design strength value is the pressure that a steel column may be intended to withstand in the

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11 Plaintiff's closing submissions ("PCS") at paras 34 and 46; Mr Simon Koh ("Mr Koh")'s AEIC at para 23.

12 PCS at para 34; Agreed Bundle ("AB") 1169.

13 PCS at para 34; Simon Koh's AEIC at para 16.

14 Professor Pang Sze Dai's ("Prof Pang") Expert Report at paras 15 and 17; Mr Murahashi's AEIC at para 12(a).

15 Prof Ting's Expert Report at para 22.

16 Mr Eddy Lee's ("Mr Lee") Expert Report at para 1.15 n 8.

17 Prof Ting's Expert Report at para 22.

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design of the project.[18] Design strength is expressed in megapascals ("MPa") and the design strength for different grades of steel columns is set out in various industry guides. Prof Ting clarified that if the design strength of a steel column is reduced, this is done to "preserve safety levels" of the eventual construct.[19]

9 Returning now to S460M and S355 steel, the former is of a "higher quality" than the latter because for a given flange thickness, S460M steel has a higher design strength value.[20]

10 A suite of industry standards governs the design strength of steel columns used in projects in Singapore. From 1 April 2013, the "Structural Eurocodes" were implemented in Singapore. The Eurocodes are a set of European Standards (abbreviated "EN") for the design of buildings and other civil engineering works and construction products.[21] CS alleges that after a two-year transition period wherein the Structural Eurocodes applied alongside the British and Singaporean design standards, from 1 April 2015 onwards, the British design standards no longer apply in Singapore.[22]

11 The main Eurocode containing the rules for the use of structural steel in the design of buildings and civil engineering works is EN 1993-1-1: 2005 'Eurocode 3: Design of Steel structures - Part 1-1 : General Rules and Rules for Buildings' ("Eurocode 3"). Other Eurocodes like "Eurocode 2" relate to the design of concrete structures while "Eurocode 5" relates to the design of timber

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18 Prof Ting's Expert Report at para 22; DCS at paras 29 and 30.

19 Prof Ting's Expert Report at para 22.

20 NE, 27 January 2021, p 7:11–14.

21 Prof Pang's Expert Report at p 61.

22 Prof Pang's Expert Report at para 5; PCS at para 149(c).

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structures.[23] Singapore's implementation of the Eurocode 3, "SS EN 1993-1-1:2010" is identical to the Eurocode 3 itself.[24] The Eurocode 3 is significant for two reasons. First, CS claims that the Eurocode 3 recognises that if a "European Technical Approval" ("ETA") is granted in respect of a construction product, that product is in full compliance with the Eurocode 3.[25] An ETA is a favourable technical assessment of the product's fitness for an intended use.[26] It is usually given for innovative products that are too early in their life to be covered by a harmonised European standard.[27] Second, the Eurocode 3 sets out the design strength of various steel columns with different thicknesses.[28]

12 On 1 April 2013, the BCA also issued the BC1:2012. This was a revision of an initial version of the same guide introduced in 2008. In 2008, Singapore was still adopting British standards instead of the Eurocodes. The BC1:2012 comes along with a handbook: "Handbook to BC1:2012, Use of Alternative Structural Steel to BS 5950 and Eurocode 3" ("the Handbook").[29] Part of CS's case is that the BC1:2012 *only* applies to "alternative steel materials", *ie*, steels that are not covered and compliant with British or European standards.[30]

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23 Prof Pang's Expert Report at p 61.

24 Prof Pang's Expert Report at para 6.

25 Prof Pang's Expert Report at para 6, citing item 1.1.1 of SS EN 1993-1-1 (AB 1848).

26 Prof Pang's Expert Report at p 65.

27 Prof Pang's Expert Report at p 65.

28 AB 1865, Table 3.1.

29 AB 2069.

30 Prof Pang's Expert Report at para 11.

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CS introduces and sells the Product in Singapore and the Asia Pacific

13 In or around 2014, CS introduced the Product to the Singapore market.[31] CS describes the Product as a "high-strength jumbo column", which is also a H-column, with the design name "HISTAR 460".[32] The Product is manufactured by ArcelorMittal Belval&Differdange ("AM"), a Luxembourg company. AM and CS entered into a distribution agreement on 27 September 2017 for CS to supply the Product within Singapore on an exclusive basis. This was superseded by a revised version dated 1 January 2018 ("the Distribution Agreement").[33] Under the Distribution Agreement, CS agreed to purchase a minimum of 6,000 metric tonnes ("mt") of beams and sections in the Superior and S460M steel grades each year for distribution in Singapore.[34]

14 CS claims that the Product has dual-specifications, in that it meets the specifications of both the S460M grade and Superior grade.[35] Mr Sim Thiam Chye Eric ("Mr Sim"), the Deputy Head of Sales from CS, explained that the Product would meet the design standards of S460M steel in the European Standard EN 10025-2004 "Hot rolled products of structural steels" ("EN 10025-4:2004"). However, the Product can also enjoy a higher design strength available to the Superior steel grade due to the issuance of ETA 10-0156 ("the Issued ETA"). Under the Issued ETA, the Product has an enhanced design strength of 460 MPa for up to a flange thickness of 100mm, as compared to the design strength of S460M steel which is only 400MPa at 100mm. I shall refer to this enhanced design strength as the "Catalogue Design Strength" of the

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31 Mr Koh's AEIC at para 23.

32 PCS at para 37.

33 PCS at para 47; Mr Koh's AEIC at para 34.

34 Mr Koh's AEIC at para 34.

35 PCS at para 37.

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Product.[36] CS argues that Eurocode 3-1.1.1(3) allows for the use of ETAs and Eurocode 3-2.3.2 adds that the material properties for design are specified in the ETAs.[37] In this context, CS claims that if the Product is used as HISTAR 460 (*ie*, the Superior steel grade), it is even stronger than S355 and S 460M steel.[38]

15 The practical benefits of using the Product as the Superior grade of steel were explained by Mr Simon Koh ("Mr Koh"), CS's Head of Sales. Mr Koh testified that since the Product is stronger than the S355 and S460M grades of steel, smaller sizes of the Product are required to meet the load-bearing capacities of columns. These weight savings translate to cost savings through reductions in the amount of materials used and time expended on welding.[39]

16 Accordingly, CS claims that since the Superior grade is covered by the Issued ETA and also complies with the design standards of S460M steel in EN 10025-4:2004, the defendants' representation in the Alleged Defamatory Material that the Product must comply with the BC1:2012 Guide is false.[40] CS argues that the BC1:2012 itself does not permit the use of ETAs and that reference to an ETA is only permitted under the Eurocodes.[41]

17 CS expected strong sales of the Product.[42] However, CS now complains that the annual total tonnage of the Product sold between 2016 and 2018 fell

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36 PCS at para 43.

37 PCS at para 40.

38 PCS at para 39; DCS at para 36.

39 Mr Koh's AEIC at para 18(a).

40 PCS at para 118.

41 PCS at para 169.

42 PCS at para 48.

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below the minimum 6,000mt under the Distribution Agreement.[43] CS's evidence is that from 2016 to 2019, it only sold a further 3,200mt of the Product in total across three projects in Singapore.[44]

Mr Murahashi's response to the launch of the Product

18 According to CS, the defendants wanted to develop their own S460M steel product but knew that this would take years. The impetus for the defendants' development efforts was Mr Murahashi's prediction of growth in demand for S460M H-columns in Singapore in the years following the release of the BC1:2012.[45] From about 2013 onwards, Mr Murahashi, employed by Nippon Steel Singapore, took it upon himself to persuade Nippon Steel Japan to manufacture a steel column to rival the Product.[46] CS alleges that before the defendants could bring a rival product to market, both defendants disseminated the Alleged Defamatory Material to nip CS's competitive advantage in the bud.[47]

19 On a few occasions in 2013, Mr Murahashi met with one Professor Chiew Sing-Ping ("Prof Chiew"), an author of the BC1:2012, to understand the local conditions better.[48] It is unclear if Prof Chiew was the only author of the BC1:2012,[49] as he referred to himself as the "Principal Consultant" engaged by

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43 PCS at para 50, citing NE, 22 January 2021, p 67:2–4.

44 Mr Lee's Expert Report at para 4.12.

45 Mr Murahashi's AEIC at para 13.

46 PCS at para 54.

47 PCS at para 54.

48 Mr Murahashi's AEIC at para 14.

49 See, *eg*, NE, 1 February 2021, pp 48:20–49:2.

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the BCA to develop the BC1:2012.[50] I therefore refer to him as an author of the BC1:2012. During one such meeting with Prof Chiew, Mr Murahashi claims that Prof Chiew explained that even if S460M steel was manufactured to British and European standards, it was a Class 1 steel under the BC1:2012 and the default design parameters for S460M therein had to be complied with. According to Mr Murahashi, Prof Chiew's position is that even if the Catalogue Design Strength of the Superior steel grade provides for a greater design strength as compared to S460M steel, once the Product is deployed in a Singapore construction project, the default design parameters for S460M apply.[51] However, Prof Chiew was not called as a witness by any party to this action.

2014 Internal Paper

20 After these meetings with Prof Chiew, Mr Murahashi commenced work on an internal presentation paper sometime in 2013 to propose the manufacturing and marketing of a S460M product by Nippon Steel (*ie*, the Nippon Product). Mr Murahashi believed that the Nippon Product would possess characteristics that were slightly different from the Product.[52]

21 By August 2014, Mr Murahashi completed the internal presentation paper and titled it "Reaction of the Market on High-strength H-column, HISTAR 460, by ArcelorMittal and the Prospect of Future Demand in Singapore" ("2014 Internal Paper"). By an email dated 18 August 2014, he circulated the paper to his Heads of Department in Nippon Steel Japan,

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50 AB 363.

51 Mr Murahashi's AEIC at para 15.

52 Mr Murahashi's AEIC at para 16.

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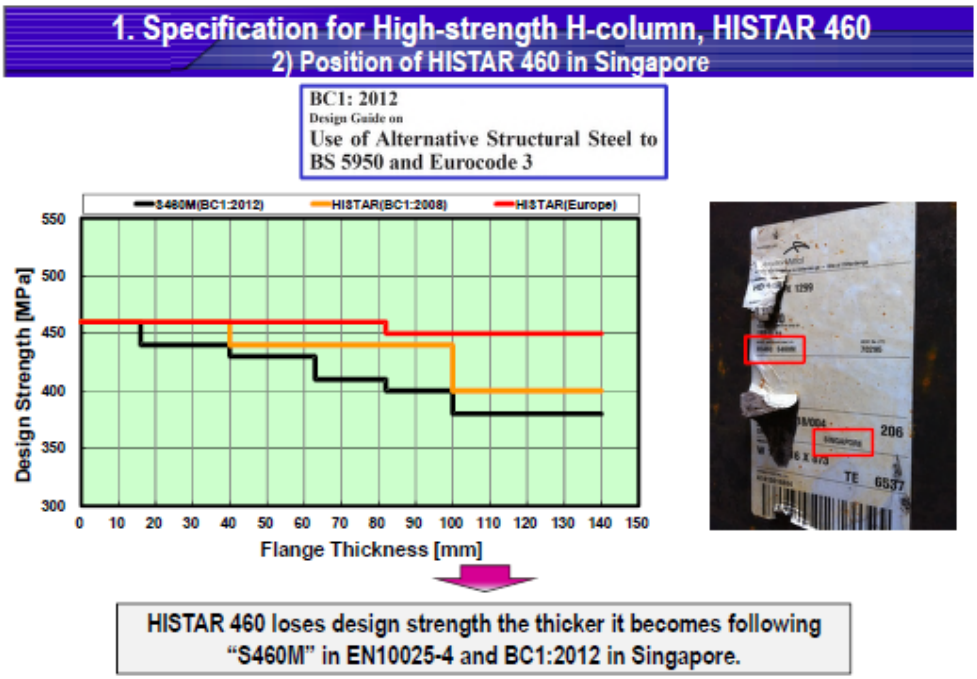
Mr Tetsuya Akahoshi and Mr Yasuo Muraoka.[53] Mr Murahashi admitted under cross-examination that the 2014 Internal Paper recommended the development of a product to compete with AM's Product in Singapore.[54]

22 CS's case is that the 2014 Internal Paper contained a variation of the Publication. I surmise that CS was troubled by the graph depicted below. On one view, the graph suggests that the Product's Catalogue Design Strength is superseded by lower design strengths in the BC1:2012 when the Product is used in Singapore:[55]



53 Mr Murahashi's AEIC p 127.

54 NE, 28 January 2021, p 27:6–10.

55 AB 34.

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23 Mr Murahashi claims that he met with Prof Chiew and another acquaintance, Professor Richard Liew ("Prof Liew"), in or around the last quarter of 2014 to discuss the main conclusions in his 2014 Internal Paper. Mr Murahashi claims that Prof Liew is, like Prof Chiew, a local expert on structural steel.[56] Mr Murahashi testifies that the two professors concurred with the main conclusions in the document.[57] However, like Prof Chiew, Prof Liew was not called as a witness in this action.

2016 Internal Paper

24 In 2016, research and development work was still ongoing with regard to the proposed Nippon Product.[58] Mr Murahashi prepared another presentation which revised the 2014 Internal Paper. The revised paper is titled "Increasing Need for Grade-60 High-strength H-column Supplied by ArcelorMittal for Iconic Building Projects in Asian Countries" and is dated 31 July 2016 (the "2016 Internal Paper"). Mr Murahashi's evidence is that the 2014 Internal Paper was focused on the Singapore market, whereas the 2016 Internal Paper predicted a growing demand for S460M H-columns in major construction projects in other parts of Asia as well.[59]

25 Mr Murahashi was concerned not to fall behind the competition. His intent behind the 2016 Internal Paper was to impress upon Nippon Steel Japan that it should expedite the process of being ready to supply the Nippon Product to potential customers in Asia.[60] The 2016 Internal Paper contained a variation

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56 Mr Murahashi's AEIC at para 8.

57 Mr Murahashi's AEIC at para 19.

58 Mr Murahashi's AEIC at para 23.

59 Mr Murahashi's AEIC at para 23.

60 Mr Murahashi's AEIC at para 23.

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of the Publication and was shared first with two members of Nippon Steel Japan's Ho Chi Minh City office and copied to Mr Masaya Higuchi ("Mr Higuchi"). The latter was Mr Murahashi's colleague in Singapore, working in Nippon Steel Singapore's sales department.[61]

Publication of the Alleged Defamatory Material

26 CS's case is that "since in or about August 2014",[62] the defendants took steps to inform customers, using the Alleged Defamatory Material or some variation thereof, that the BC1:2012 applied to the Product and the Product could not be used in Singapore in accordance with its Catalogue Design Strength.[63]

27 CS claims that there are four versions of the Publication in the following documents: the 2014 Internal Paper, 2016 Internal Paper, a presentation dated 25 July 2017 ("the 2017 Presentation") and another internal report prepared by Mr Murahashi dated 11 December 2017 ("the 2017 Internal Report").[64] In contrast, the defendants contend that there is only one version of the Publication that originated from the 2014 Internal Paper and was modified in the 2016 Internal Paper.[65] However, even if CS is right about there being multiple versions of the Publication, CS does not allege that there is a substantive difference between them. I also do not think the question of whether there are indeed multiple versions of the Publication is material to the resolution of the dispute. I therefore say no more on this issue.

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61 AB 156; NE, 28 January 2021, pp 29:20–30:13; PCS at para 65.

62 SOC (Amd 3) at para 12; Plaintiff's Opening Statement ("POS") at para 46(b).

63 PCS at para 73.

64 PCS at para 96(b).

65 PCS at para 94.

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The alleged occasions on which the Publication was disseminated

Meetings with Mr Fukuda of Kajima and Mr Kannan of Kong Hwee

(1) August and September 2017 meetings with Mr Fukuda and Mr Kannan in relation to the IICH Project

28 In August 2017, Mr Murahashi reached out to Mr Hiroki Fukuda ("Mr Fukuda") of Kajima Overseas Asia Pte Ltd ("Kajima"), the main contractor of the Integrated Intermediate Care Hub project ("IICH Project"). Mr Murahashi, Mr Higuchi and Mr Fukuda eventually met on 24 August 2017. Mr Murahashi wanted to find out about the structural steel requirements of the IICH Project. At this meeting, Mr Murahashi promoted the use of S460M steel and, in particular, the Nippon Product.

29 In mid-September 2017, Mr Fukuda informed Mr Murahashi that Kajima was contemplating the use of S460M steel. However, he revealed that the final decision lay with Kajima's subcontractor overseeing structural steel works for the project, Kong Hwee Iron Works and Construction Pte Ltd ("Kong Hwee"). Kong Hwee was slated to reach a decision in the first week of October 2017.[66] Mr Fukuda referred Mr Murahashi to Mr Kannan Natarajan ("Mr Kannan") from Kong Hwee.[67]

30 On 18 September 2017, Mr Murahashi and Mr Kannan met. According to Mr Murahashi, he promoted the Nippon Product to Mr Kannan at this meeting by explaining its design strength and properties.[68] At the end of the meeting, Mr Murahashi obtained from Mr Kannan a verbal promise not to disclose the details

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66 Mr Murahashi's AEIC at para 27; AB 179 (paras 1(4) and 1(5)).

67 Mr Murahashi's AEIC at para 27.

68 NE, 28 January 2021, p 47:15–23.

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of their meeting to CS as he did not want CS to know that he had approached Kong Hwee about potentially supplying S460M steel for the IICH Project.[69]

(2) 21 October 2017 meeting with Mr Fukuda

31 In mid-October 2017, Kong Hwee decided to order the Product (rather than the Nippon Product) for the IICH Project.[70] Having learnt of this, Mr Murahashi asked to meet Mr Fukuda on 21 October 2017.[71] Mr Murahashi acknowledged in cross-examination that the point of meeting with Mr Fukuda was to convey that the Nippon Product was just as good as the Product because the latter could not be used in Singapore in accordance with its Catalogue Design Strength, and only S460M steel was certified under the BC1:2012.[72]

(3) 23 October 2017 meeting with Mr Fukuda – publication of Alleged Defamatory Material

32 Subsequently, on 23 October 2017, Mr Fukuda sent Mr Murahashi a text message stating: "Regarding lack of BCA's approval on HISTAR, if you have any BCA's circular etc., could you send it over? I would like to check it."[73]

33 Parties differ over the proper interpretation of Mr Fukuda's message. CS argues that the message reveals Mr Fukuda's impression, after his meeting with Mr Murahashi on 21 October 2017, that the BCA had not approved the use of the Product in Singapore.[74] In contrast, Mr Murahashi claims that Mr Fukuda

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69 NE, 28 January 2021, pp 48:21–50:11; AB 180.

70 DCS at para 7(a); PCS at para 81.

71 Mr Murahashi's AEIC at para 30.

72 NE, 29 January 2021, p 13:8–18.

73 AB 160.

74 PCS at para 83.

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was simply under the misapprehension that the BCA's approval was required before the Product could be used as the Superior grade of steel in the IICH Project.[75] This divergence between parties appears to go to the issue of whether the Alleged Defamatory Material conveyed to Mr Fukuda on 21 October 2017 bore a defamatory meaning.

34 Mr Murahashi asked to meet Mr Fukuda on the same day to clarify matters. At this meeting at Kajima's site office at Jalan Tan Tock Seng, Mr Murahashi handed out two or three copies of the Publication to Mr Fukuda and two of his colleagues.[76] Mr Murahashi claims that the Publication is pages 2 and 3 of the 2016 Internal Paper.[77] Mr Murahashi then explained verbally that: (a) the BC1:2012 applied to all construction projects in Singapore and to all columns certified as S460M steel, including the Product and the Nippon Product; (b) the Product, even if used as the Superior steel grade, had to comply with the design strengths prescribed in the BC1:2012 (*ie*, it could not be used in accordance with its Catalogue Design Strength); and (c) in the graph in the Publication ("the Graph") (see below), the red line represented the Catalogue Design Strength of the Product as the Superior steel grade, the black line represented the default design strength values for S460M under the BC1:2012 and the yellow line the default design strength values for the Superior steel grade under the 2008 version of the BC1:2012.[78] These oral representations made to Mr Fukuda and his colleagues are "the Words" referred to at [4] above. The Graph is as follows:

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75 Mr Murahashi's AEIC at para 31.

76 Mr Murahashi's AEIC at para 35.

77 Mr Murahashi's AEIC at para 33; AB 125–126; SOC (Amd 3) at pp 20–21.

78 Mr Murahashi's AEIC at para 35.

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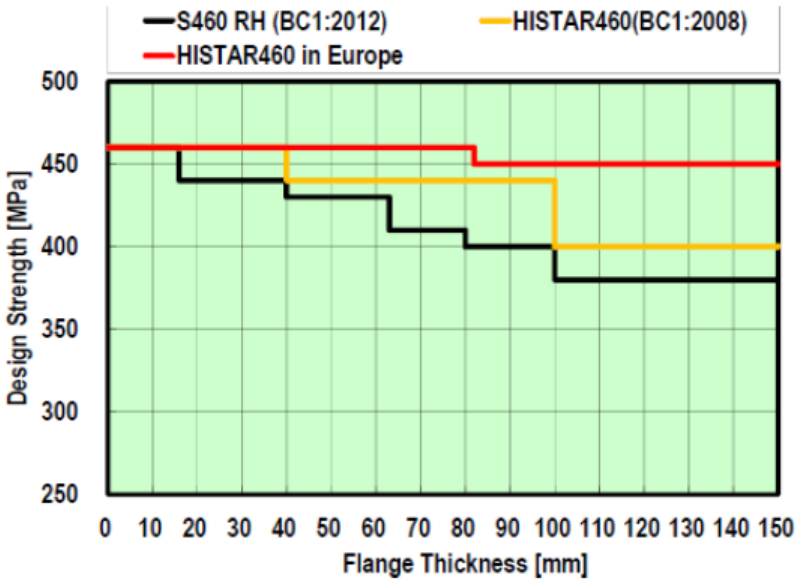

35 However, Mr Murahashi denies telling Mr Fukuda that the Product sold in Europe and in Singapore was of a different quality.[79]

(4) 25 October 2017 meeting with Mr Kannan

36 Mr Murahashi subsequently arranged a meeting with Mr Kannan to share what he had earlier conveyed to Mr Fukuda on 23 October 2017.[80] The two met on 25 October 2017 and again on 7 December 2017.[81] Mr Kannan testified that he was given a copy of the Publication by Mr Murahashi but was unable to recall when this had occurred. He testified that he could have been shown the Publication in October 2017, December 2017 or at some other time.[82] The defendants accept that on the balance of probabilities, Mr Murahashi did

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79 NE, 29 January 2021, p 18:10–16.

80 Mr Murahashi's AEIC at para 38.

81 Mr Murahashi's AEIC at para 28.

82 NE, 27 January 2021, pp 5:7–21, 6:10–19.

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share a copy of the Publication with Mr Kannan on 25 October 2017.[83] As to the Words, Mr Murahashi accepted that he had "shared with Mr Kannan the *same points* [he] had shared with Fukuda-san on 23 October 2017" [emphasis added].[84] Although Mr Kannan could not recollect what had happened at the 25 October 2017 meeting, based on Mr Murahashi's affidavit and oral evidence, and given the unlikelihood of Mr Murahashi sharing the Publication with Mr Kannan *without* speaking the Words, I accept on the balance of probabilities that the Words were communicated to Mr Kannan.

37 After meeting with Mr Murahashi, Mr Kannan called CS's Mr Sim to clarify doubts on the strength of the Product. Mr Kannan said that his doubts arose because of the Publication given by the defendants.[85]

38 Eventually, however, Kajima's order for the Product in the IICH Project was invoiced on 23 November 2017.[86]

(5) Seminar by AM on 26 October 2017

39 The following sequence of events accounts for how Prof Chiew, one of the alleged publishees, came to know that CS was marketing the Product under the Catalogue Design Strength (see [134] below). After he met with Mr Fukuda and Mr Kannan, Mr Murahashi attended a seminar on 26 October 2017 ("the Seminar") during which AM's Mr Jean-Claude Gerardy ("Mr Gerardy") gave a presentation. Mr Gerardy stated that the Product was used in the Funan Mall

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83 DCS at para 79.

84 Mr Murahashi's AEIC at para 38; NE, 29 January 2022, pp 18:22–19:2; NE, 27 January 2021, p 5:22–25.

85 NE, 27 January 2021, pp 22:24–23:17.

86 AB 2232; SOC (Amd 3) at para 10; DCS at para 7(a).

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redevelopment project ("Funan Project") in accordance with its Catalogue Design Strength.[87] Mr Gerardy added that the BCA did not require the design parameters set out in the BC1:2012 to be followed because of the Issued ETA that the Product had obtained.[88] As Mr Murahashi conceded in cross-examination, if Mr Gerardy was right, then what was represented in the Alleged Defamatory Material communicated to Mr Kannan and Mr Fukuda is incorrect.[89]

40 Mr Murahashi disbelieved Mr Gerardy's account that the Product was used as the Superior steel grade in the Funan Project without objection from the BCA.[90] However, neither Mr Murahashi nor anyone else employed by the defendants clarified the accuracy of Mr Gerardy's account with the BCA. Instead, Mr Murahashi sought to verify Mr Gerardy's claims with Prof Chiew. He says he reached out to Prof Chiew *via* WhatsApp on the evening of 26 October 2017.[91] The two then met up in early November 2017 to speak about the Seminar. At the end of this meeting, Prof Chiew said he would make inquiries with his contacts at the BCA.[92] Mr Murahashi's account is that he followed up with Prof Chiew in December 2017 to check in on the latter's findings but Prof Chiew did not give him a clear answer.

41 CS challenges the suggestion that Prof Chiew failed to respond clearly to Mr Murahashi. CS argues that Prof Chiew did receive confirmation from the

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87 PCS at para 100.

88 Mr Murahashi's AEIC at para 42.

89 NE, 29 January 2021, pp 48:21–49:4.

90 NE, 29 January 2021, p 49:12–14.

91 Mr Murahashi's AEIC at p 217.

92 Mr Murahashi's AEIC at para 44.

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BCA in late October 2017 that the Product had been used in the Funan Project in accordance with its Catalogue Design Strength.[93] In an email dated 5 April 2018 to Mr Murahashi, Prof Chiew stated:[94]

> Until late October 2017, I was not aware of any construction project in Singapore in which HISTAR460 manufactured to ETA-10/156 was approved for use by BCA.

42 CS also highlights the evidence of its steel expert, Associate Professor Pang Sze Dai ("Prof Pang"), that the Product has been used in the Jewel Changi Airport project ("Jewel Project"), the DUO Singapore (a residences, offices, hotel and retail space in Bugis) project ("DUO Project") and the Funan Project in accordance with its Catalogue Design Strength.[95]

43 Prof Pang relies on portions of AM's website stating that the Product was used in the Jewel Project and DUO Project.[96] However, Prof Pang admitted that he had not seen any "structural calculations or any other documents" confirming this.[97] As for the Funan Project, Prof Pang referred to the construction drawing of the building. He observes that "[i]n the Kingpost (steel column) Schedule, a distinction is made between S460 steel (which suffers from strength loss with larger thickness ...) and HISTAR 460 steel in the Grade column. If HISTAR 460 steel is designed and used as S460 steel, the grade of steel will most likely be listed as S460…". He explains that the "deliberate distinction between S460 and HISTAR S460M by the consultant will imply that in all likelihood, HISTAR 460 is used in this project for members marked UC2

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93 PCS at para 104–105.

94 AB 363.

95 Prof Pang's Expert Report at para 12 and p 135, referenced in PCS at para 107; see also Mr Koh's AEIC at p 495.

96 Prof Pang's Expert Report at para 12 and pp 134–135.

97 NE, 1 February 2021, p 85:1–11.

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– UC5 according to its technical specifications ***in the ETA*** ...” [emphasis added]. The relevant portion of the construction drawing is as follows:

KINGPOST SCHEDULE		
MARK	SIZE	GRADE
UC1	UC 356 x 406 x 236 kg/m	S460
UC2	UC 356 x 406 x 393 kg/m	HISTAR S460M
UC3	UC 356 x 406 x 592 kg/m	HISTAR S460M
UC4	UC 356 x 406 x 818 kg/m	HISTAR S460M
UC5	UC 356 x 406 x 990 kg/m	HISTAR S460M

A

Prof Pang was not cross-examined specifically on the construction drawing. However, Prof Pang was questioned on how he knew that the Product was used in the Funan Project in accordance with its Catalogue Design Strength. In response, Prof Pang testified that he inferred this from an email between the main contractor for the Funan Project, Woh Hup (Private) Limited (“Woh Hup”), and CS. According to Prof Pang, the email mentions that the Product was used without a reduction factor.[98] It is unclear to me what email Prof Pang was referring to or whether the construction drawing cited in his report was found within said email. However, CS submits that in addition to Prof Pang’s report and testimony, WhatsApp messages between one Ms Cong Zheng Xia (“Ms Cong”) from Woh Hup and Mr Koh in January 2018 confirm that the Product’s Catalogue Design Strength was approved for the Funan Project.[99] In these messages, Ms Cong states that: “Now BCA and Prof Chiew Sing Ping is

98 NE, 1 February 2021, p 87:10–16.

99 PCS at para 107.

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commenting that we should follow BC1 – by using reduction factor as S460M"; "We have finished Jewel, Funan also installed on site"; and "Funan - ***BCA approved almost one year*** and installed few months ago, we cannot strengthen it" [emphasis added].[100] I accept Prof Pang's explanation that, on the face of the construction drawing, the Product was used in the Funan Project under its Catalogue Design Strength. The construction drawing is corroborated by Ms Cong's messages to Mr Koh.

44 It is also CS's case that Dr Chi Trung Tran ("Dr Tran") of the BCA accepted that the Product's Catalogue Design Strength could be used in the IICH Project because of the Issued ETA. According to Mr Koh, Dr Tran was the Deputy Director (Innovative Materials and Solutions) of the BCA and the Principal Engineer for the Bridges and Structural Steel department at the material time.[101] The BCA indeed does not appear to have objected to the use of the Product's Catalogue Design Strength, at least, until late 2017. That is when *Mr Murahashi* caused Prof Chiew to begin inquiring with the BCA as to whether the BC1:2012 should lead to a reduction in the Product's design strengths (see [40]–[41]).

45 To re-capitulate, in October 2017, Kong Hwee had agreed to use the Product in the IICH Project.[102] However, in or before November 2017, Meinhardt Group ("Meinhardt"), who appears to be the Qualified Person ("QP") for the IICH Project,[103] was approached by Dr Tran to discuss the use of the Product. A QP is an architect or a professional engineer appointed to prepare

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100 Mr Koh's AEIC at p 770; see also DCS at paras 97–98.

101 Mr Koh's AEIC at para 54.

102 Mr Koh's AEIC at paras 53–54.

103 Mr Koh's AEIC at paras 53–55.

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the plans of any building works: ss 2(1) and 9(1) Building Control Act 1989. Among other things, the QP should ensure that the design and execution of his/her projects are in accordance with the BCA's requirements: see the Handbook at p i; s 9 of the Building Control Act 1989. CS highlights that after Mr Koh informed Dr Tran that the Product was covered by the Issued ETA, Dr Tran told Mr Koh that "The Histar 460 has ETA hence it is okay. We don't need to meet tomorrow". I reproduce the relevant portion of Mr Koh's WhatsApp messages with Dr Tran on 1 November 2017:[104]

> Mr Koh: Oh u meant to have HiStar460 comply with the strength reduction stipulated in BC1?
>
> Dr Tran: Yes, this is the agenda of meeting with Meinhardt
>
> Mr Koh: I see, ok with all due respect, what we are doing for IICH is to put forth the case, as with Woh Hup via KTP, that HiStar460 has been tested and verified by European Technical Assessment that this material does not suffer from a reduction in strength with increasing thickness
>
> can i send u these documents, via email
>
> Dr Tran: ***I see, if it has ETA then different story liao***
>
> Can send me the ETA, then inform Mun Wai no need to meet tmr
>
> Mr Koh: sure no problem, thanks Dr Tran
>
> Dr Tran: Received. I hv informed Mun Wai no need to meet.
> …
>
> [emphasis added]

46 Based on the foregoing, CS argues that Dr Tran accepted that the Product was not subject to the BC1:2012. The defendants challenge this by pointing to Dr Tran's follow-up email on 19 December 2017 to Meinhardt. In this email, Dr Tran informed Meinhardt that as the QP, it needed to conduct

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104 AB 251–252.

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tests on the Product if the Product was to be used in the IICH Project in accordance with its Catalogue Design Strength.[105] The defendants argue that this shows that the BCA took the view that the Product had to adhere to the BC1:2012. CS counters by pointing to Mr Koh's evidence that: (a) the strength reduction "actually comes from the EN standards" (and not the BC1:2012);[106] and Dr Tran later called Mr Koh in late March 2018 to say that the Product was not subject to the BC1:2012.[107] Mr Koh alleges that Mr Ronnie Lim, CS's general manager, and Mr Sim were with him when he took the call.[108]

Mr Murahashi's visit to Vietnam – alleged dissemination of the Alleged Defamatory Material

47 CS also alleges that Mr Murahashi disseminated the Alleged Defamatory Material in October 2017 on a business trip to Vietnam. During that trip, Mr Murahashi and a representative from Okaya, a broker or trading house in Vietnam that worked with the defendants but is not part of the defendants' group of companies, went to visit Coteccons (a contractor) and Arup (a structural design consultant).[109] Mr Murahashi claims that at this meeting he shared information about the Nippon Product. CS argues that in doing so he referred to the 2016 Internal Paper and the 2017 Presentation.[110] The next day, he emailed a copy of both documents to two representatives of Okaya.[111]

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105 Mr Koh's AEIC at para 55.

106 PCS at para 112; NE, 22 January 2021, p 101:12-13.

107 PCS at para 113.

108 Mr Koh's AEIC at para 64.

109 NE, 28 January 2021, p 60:1-12; see also PCS at para 91.

110 PCS at para 92.

111 Mr Murahashi's AEIC at para 40; AB 204.

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48 CS doubts that Mr Murahashi attended the meeting to share information about the Nippon Product. Presumably, CS insinuates that the purpose of the meeting in Vietnam was instead to disparage the Product and/or CS. CS points to the documents referenced at the meeting – the 2016 Internal Paper and the 2017 Presentation – and highlights that the Nippon Product is nowhere mentioned therein and that instead the documents are replete with references to "HISTAR 460".[112]

Other alleged instances of dissemination

49 The defendants argue that Mr Murahashi did not share the Publication with anyone other than Mr Fukuda of Kajima and Mr Kannan of Kong Hwee.[113] For the following reasons, CS invites me to infer a wider dissemination of the Alleged Defamatory Material.

50 First, CS argues that the Alleged Defamatory Material was disseminated to more of the defendants' customers based on a statement made in the 2017 Internal Report prepared by Mr Murahashi. Mr Murahashi prepared this report for Mr Yoichi Furuta ("Mr Furuta") to summarise the discussion that the two had on 8 December 2017 when Mr Furuta confronted Mr Murahashi about the Publication (see [58]–[59] below). Mr Furuta was the managing director of Nippon Steel Singapore at the material time. Under the heading "NSSMC reaction", the report states:[114]

> Currently, the government of Singapore does not permit the use of HISTAR 460 catalogue value itself as design standard. Therefore, we have ***explained to our client*** about the current

112 PCS at para 93.

113 DCS at para 85.

114 AB 1167.

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> situation with the help of the materials (draft was created in 2013, ***used from 2016***).
>
> …
>
> - If the catalogue values of ArcelorMittal (represented by the red line in our graph) are approved in Singapore, the advantage of reducing material weight by adopting HISTAR 460 is significant. However since it is not approved, we can only enjoy the advantage equivalent to that of the standard 60kg steel (represented by black line in our graph) [*ie*, standard S460 steel]
>
> [emphasis added]

51 CS argues that the excerpt above reveals that in response to the Product entering the market in Singapore, the defendants took steps from 2016 to *inform customers*, using the Publication (or some variation thereof) that the BC1:2012 Guide applied to the Product, and that the Product could not be used in Singapore in accordance with its Catalogue Design Strength.[115]

52 Second, CS argues that apart from Mr Murahashi, other employees of the defendants had copies of the Publication and there is a "very real possibility" that they could have shared it with other customers or external parties. As to the identity of these other employees, Mr Murahashi testified that there were two other colleagues in the Technical Services department in Singapore who worked with him to promote the Nippon Product and they sometimes exchanged information.[116] CS also relies on the fact that Murahashi "worked with other employees in the Defendants' sales department", such as Mr Higuchi, to promote the Nippon Product.[117]

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115 PCS at para 97(c).

116 NE, 27 January 2021, p 38:2–25.

117 PCS at para 98(b).

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53 Third, CS highlights that Mr Murahashi shared variations of the Publication (in the 2016 Internal Paper and 2017 Presentation) with Okaya in Vietnam. Mr Murahashi admits that Okaya is an external party *vis-à-vis* the defendants.[118] CS further argues that the fact that AM received a copy of the Publication from a third party whose identity is not adduced in evidence shows that "bad words" spread in the industry.[119]

Discovery of Publication

54 CS discovered the Publication when Mr Sim met Mr Kannan at Kong Hwee's premises on or about 27 December 2017.[120] To Mr Sim's recollection, he met Mr Kannan to discuss further opportunities for the use of the Product. By this time, Kong Hwee had agreed to use the Product in the IICH Project (see [31] above).

55 Mr Sim testified that at this meeting Mr Kannan showed him the Publication of his own accord.[121] Mr Sim claims he was "dumbfounded" when he saw the Publication because it incorrectly suggests that the Product is subject to the BC1:2012.[122]

56 Following Mr Sim's discovery, several of CS's representatives met with Mr Derrick Goh, AM's sales manager, to discuss the Publication and how to

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118 NE, 29 January 2021, p 1:19–21.

119 PCS at para 99(b).

120 Mr Sim Thiam Chye's AEIC ("Mr Sim's AEIC") at paras 10–11.

121 Mr Sim's AEIC at para 11.

122 Mr Sim's AEIC at paras 13–14.

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address its circulation. It was agreed that AM would engage the defendants, while CS would engage the BCA to address the correctness of the Publication.[123]

57 However, it was also discovered that AM had earlier received a copy of the Publication and suspected that Mr Murahashi was behind its dissemination.[124] No evidence was led as to how AM came into possession of this information or the identity of the person who disclosed such information to AM. Further, sometime in early December 2017, AM's Mr Bradley Davey ("Mr Davey") had reached out to the defendants' Mr Takashi Yatsunami ("Mr Yatsunami") regarding the Publication. Mr Davey forwarded the Publication or a version of it and the Issued ETA to Mr Yatsunami.[125] At the material time, Mr Yatsunami was the President and Chief Executive Officer of Nippon Steel & Sumitomo Metal USA Inc (as it was known then).[126] Sometime in or around December 2017, Mr Yatsunami brought the Publication to Mr Furuta's attention and informed the latter that Mr Murahashi had allegedly circulated the document.[127]

Mr Furuta confronts Mr Murahashi about the Publication

58 On 8 December 2017, Mr Furuta met with Mr Murahashi to better understand the situation. Mr Murahashi was apprised of AM's accusation that: (a) the Publication suggests that the Product supplied in Singapore is of an inferior quality to that supplied in Europe; and (b) he is responsible for

123 Mr Sim's AEIC at para 21.

124 AB 255.

125 AB 253–263.

126 Mr Yoichi Furuta's AEIC ("Mr Furuta's AEIC") at para 4.

127 Mr Furuta's AEIC at para 4.

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circulating the Publication.[128] Mr Murahashi then offered his side of the story to Mr Furuta. Among other things, Mr Murahashi told Mr Furuta that: (a) he did not intend to suggest that the Product supplied in Singapore was inferior to that supplied in Europe; (b) under the BC1:2012, the Product was subject to the default design strengths for S460M steel; and (c) an author of the BC1:2012 (*ie*, Prof Chiew) informed him that Mr Gerardy was wrong to suggest that the Product could be used in accordance with its Catalogue Design Strength in Singapore.[129]

59 At the end of the meeting, Mr Furuta instructed Mr Murahashi to prepare a report setting out what the latter had shared with him.[130] This report is the 2017 Internal Report.

60 The 2017 Internal Report reveals that the defendants anticipated being ready to "start manufacturing and supplying [the Nippon Product] from December 2017".[131] This contradicts Mr Murahashi's evidence that the defendants were ready to supply the Nippon Product in July 2017.[132] Further, the report shows that the defendants' projected timeline for *another new* product, which would equal the strength of the Product, was even longer.[133] The

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128 Mr Murahashi's AEIC at para 45; Mr Furuta's AEIC at para 4; see Tapas Rajderkar's email of 6 December 2017 (AB 255); see also Tapas Rajderkar's letter of 19 January 2018 to Mr Furuta (AB 288–289).

129 Mr Murahashi's AEIC at para 46.

130 Mr Murahashi's AEIC at para 47; Mr Furuta's AEIC at para 7.

131 AB 1169.

132 Mr Murahashi's AEIC at para 22.

133 See Mr Lee's Expert Report at para 3.24; PCS at para 70.

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report stated that the latter product would likely be manufactured and supplied "sometime in the second half of 2021".[134]

The 23 Jan Letter

61 After Mr Furuta reviewed the 2017 Internal Report together with Mr Yatsunami, an email exchange between various representatives of the defendants and AM ensued.

62 I highlight only the salient email messages. First, Mr Yatsunami's 20 December 2017 email states that the defendants would check with the BCA on "this design standard issue". CS argues that the defendants never followed up with the BCA.[135]

63 Second, Mr Furuta sent a letter to AM on 23 January 2018 ("the 23 Jan Letter"). The 23 Jan Letter, among other things, explained how the defendants used the Publication in their interactions with customers. In particular, the 23 Jan Letter stated that:[136]

> [Nippon Steel Japan] when asked about the appropriate sizes of S460 H-column to be used in Singapore, explained to ***several customers***, using this document (or its slight variations), about the relationship between design strength and flange thickness for S460 defined in BC1:2012.
>
> [emphasis added]

The 23 Jan Letter also contained an offer by the defendants to issue a written clarification which could be shown to all of the defendants' customers. The written clarification would include a statement that the parties were seeking

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134 AB 1169; Mr Lee's Expert Report at para 3.24.

135 PCS at para 123.

136 AB 303.

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clarification with the BCA on the matter and that the defendants were not suggesting that the "HISTAR 460 H-columns" AM sold in Singapore were inferior to those AM sold in Europe.[137]

The 9 Feb Letter

64 In response to the 23 Jan Letter, AM called for a meeting between the defendants and Mr Gerardy. This meeting took place on 2 February 2018, at which Mr Gerardy explained why the BC1:2012 did not apply to the Product.[138]

65 Mr Furuta claims that he had no reason to disbelieve what Mr Gerardy said and that he agreed to work with Mr Gerardy's team to prepare a written clarification. That clarification letter is dated 9 February 2018 ("9 Feb Letter").[139] Mr Furuta testified that the letter was handed to AM and it was for AM to decide how it wished to deploy the letter.[140] The 9 Feb Letter stated, among other things, that:[141]

> As HISTAR steels are covered by the ETA-10/0156, they are automatically covered by the Eurocodes. Thus, ***we now understand that [the BC1:2012 Guide] does not apply to HISTAR steels***.
>
> [emphasis added]

66 Now, Mr Furuta testifies that the 9 Feb Letter was issued just to "placate" AM. Mr Furuta says that when the letter was released, the defendants

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137 AB 304.

138 Mr Furuta's AEIC at para 20; PCS at para 131.

139 AB 325.

140 Mr Furuta's AEIC at para 21.

141 AB 325.

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were still confused and proposed to go to the BCA together with AM to clarify the applicability of the BC1:2012.[142]

67 CS claims that even after the 9 Feb Letter was released, AM and CS continued to receive queries about the suitability of the use of the Product in Singapore. Mr Sim's evidence is that on or around 3 May 2018, Kajima's Mr Koji Aihara ("Mr Aihara") informed him that Kajima wished to use the Product in Singapore. However, because of what the defendants had said, Mr Aihara was afraid of having the proposal rejected by the BCA for non-compliance with regulatory standards.[143] CS then decided to take action against the defendants.

The parties' cases

68 CS brings two claims against the defendants.

69 First, CS claims that the defendants are liable for defamation. Its pleaded case is that the natural and ordinary meaning of the Alleged Defamatory Material is that:

(a) the Product should not be used in Singapore ("the First Meaning");

(b) CS is selling the Product for use in accordance with its Catalogue Design Strength in contravention of the relevant standards in Singapore ("the Second Meaning"); and/or

(c) the Product distributed by CS differs from that sold in Europe ("the Third Meaning").[144]

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142 NE, 26 April 2021, pp 69:17–70:4.

143 Mr Sim's AEIC at para 25; PCS at para 136.

144 PCS at paras 146 and 150; SOC (Amd 3) at para 16.

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70 I elaborate on each of these alleged meanings. As regards the First Meaning, CS submits that the Publication would "ordinarily lead reasonable people in the industry to the opinion that [CS], which sold and marketed the Product for use ***even though it was not covered by the BC1:2012*** Guide, conducted its business in a dishonest and/or improper manner." [emphasis added].[145] As regards the Second Meaning, CS's case is that the Publication conveyed that the Product could not be used in accordance with its Catalogue Design Strength in Singapore. Its complaint is that the BC1:2012 does not apply to the Product since it only applies to alternative steels.[146] Alternative steels are those which are not manufactured in accordance with British and European Standards, whereas the Product has the Issued ETA and hence complies with the Eurocode 3.[147] As regards the Third Meaning, CS argues that the graph in the Publication (see [34] above) conveys that the Product distributed by CS in Singapore differs from the same distributed in Europe.[148]

71 Further and/or alternatively, CS argues that the Publication and/or Words are defamatory by innuendo. In gist, knowledge of certain extrinsic facts would cause the language in the Publication and/or Words to convey the three defamatory meanings described in the preceding paragraph. These extrinsic facts are that CS is the sole distributor of the Product in Singapore and that CS has marketed the Product under its Catalogue Design Strength.[149]

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145 PCS at para 148.

146 PCS at para 149.

147 PCS at para 149(c).

148 PCS at para 150.

149 PCS at paras 151–152.

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72 CS pleads that the Alleged Defamatory Material seriously damaged its credit and reputation, sales of the Product and the credibility of the Product.[150] CS seeks general damages for loss of reputation[151] and special damages for loss of profits from a reduction in sales of the Product.[152] To prove special damages, CS relies on the quantification of its losses by its expert, Mr Eddy Lee ("Mr Lee"). Mr Lee estimated CS's losses to be $3,006,000 (comprising $2,578,000 plus pre-judgment interest of $428,000 at a rate of 5.33% *per* annum). Mr Lee calculated CS's losses by taking the difference between the profits CS would have made from its sales of the Product had the Alleged Defamatory Material not been published. To project the sales CS would have made in the counter-factual, Mr Lee estimated the size of the jumbo column market by referencing sales of S355 steel, S460M steel and the Product. He then estimated the market share which the Product would occupy in the jumbo column market by reference to the market share of S355 steel after it was introduced into the Singapore market to replace S275.[153] Mr Lee regarded the period of loss as being between January 2016 to December 2019.[154]

73 Second, CS claims that the defendants are liable for malicious falsehood. It pleads that the defendants published the Alleged Defamatory Material and conveyed the defamatory meanings with malice. The basis of this claim is that there is "no need for the Product to comply with the ... BC1:2012 Guide".[155]

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150 SOC (Amd 3) at para 19.

151 PCS at para 193.

152 SOC (Amd 3) at para 19.

153 PCS at para 199; Mr Lee's Expert Report at paras 2.2, 2.21 and 2.22.

154 Mr Lee's Expert Report at para 5.8.

155 SOC (Amd 3) at para 20(d); PCS at para 167.

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74 The thrust of the defence in defamation is that the Alleged Defamatory Material disparages the *Product* and not CS's reputation in its trade and business. Among other points, the defendants stress that the Alleged Defamatory Material does not mention CS[156] and cannot be defamatory of it. For malicious falsehood, the defendants' case is that the BC1:2012 *does* apply to the Product. The falsity element of malicious falsehood would thus fail. The defendants rely on the expert evidence of their steel expert, Prof Ting, to show the applicability of the BC1:2012. However, as CS notes, the defendants have not pleaded a defence of justification.[157] The defendants simply deny that the Publication and/or Words carry any defamatory meaning.[158]

75 Assuming that liability is proved, the defendants submit that CS has failed to prove that the losses complained of were directly caused by the Alleged Defamatory Material.[159] The defendants appear to suggest that CS is only entitled to nominal damages even if it succeeds on the issues of liability. In addition, the defendants rely on the evidence of their expert for assessment of damages, Mr Tan Wei Cheong ("Mr Tan"), to criticise Mr Lee's methodology for assessing CS's loss of profits. Mr Tan criticises Mr Lee's methodology on the grounds that, among other things: (a) Mr Lee's projection that the Product's market share of the jumbo column market would rise to 32% in 2018[160] contradicts Mr Koh's evidence that demand for the Product stagnated from 2016 to 2018;[161] (b) it is wrong to regard steel columns using S355 and the Superior

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156 DCS at para 147.

157 PCS at para 164; Plaintiff's further submissions ("PFS") at para 7.

158 1D's Defence at para 15; 2D's Defence (A2) at para 7.

159 DCS at paras 239–241.

160 Mr Lee's Expert Report at p 18, para 2.25.

161 DCS at para 242; NE, 22 January 2021, p 69:20–21.

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grade as being interchangeable alternatives and forming part of the same relevant market;[162] and (c) the period of loss used by Mr Lee is over-inclusive, as there is no evidence that the Publication was shared before October 2017 or that there was further damage caused after the 9 Feb Letter was placed at AM's disposal.[163]

Issues to be determined

76 In light of the foregoing, the issues that arise for my determination are:

(a) Whether the claim in defamation should succeed?

(b) Whether the claim in malicious falsehood should succeed?

(c) What quantum of general and special damages should be awarded if CS successfully proves defamation and/or malicious falsehood?

Defamation

77 To succeed in a claim for defamation, CS must prove that there is a statement: (a) bearing a defamatory meaning; (b) published to a third party; and (c) referring to the plaintiff: *Golden Season Pte Ltd and others v Kairos Singapore Holdings Pte Ltd and another* [2015] 2 SLR 751 ("*Golden Season*") at [35].

Whether the Publication and/or Words bear a defamatory meaning

78 In the present action, the plaintiff is a corporate entity. It pleads that the Publication and/or Words "seriously damaged" its "credit and reputation" and

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162 Mr Tan Wei Cheong's ("Mr Tan") Expert Report at paras 5.3–5.5.

163 Mr Tan's Expert Report at paras 4.6–4.7.

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business (see [72] above).[164] In order for a statement to be defamatory of a plaintiff's trade and/or business, it must be shown that the statement would "ordinarily lead reasonable people to the opinion that it conducts its business in a dishonest, improper or inefficient manner": *ABZ v Singapore Press Holdings Ltd* [2009] 4 SLR(R) 648 ("*ABZ*") at [31].

79 Lee Seiu Kin J's exposition of the law in *ABZ*, which I gratefully adopt, is consistent with English authorities. English courts have held that as a starting position, words which reflect adversely on a product as opposed to its manufacturer or distributor are not defamatory. If the words complained of only malign a product, the plaintiff's cause of action lies in malicious falsehood: *Thornton v Telegraph Media Group Ltd* [2011] 1 WLR 1985 at [40]. In order for words to be defamatory of a person's reputation in business, the English Court of Appeal in *Patterson v ICN Photonics Limited* [2003] All ER (D) 187 (Mar) at [21] observed that the words must impute "at least ***incompetence*** on the part of the trader or manufacturer in the way in which he runs his business" [emphasis added]. In a similar vein, Lord Esher in *South Hetton Coal Company Limited v North-Eastern News Association Limited* [1894] 1 QB 133 ("*South Hetton Coal*") at 138–139 said as follows:

> It may be published of a man in business that he conducts his business in a manner which shews him to be a ***foolish or incapable man of business***. That would be a libel on him in the way of his business, as it is called – that is to say, with regard to his conduct of his business. If what is stated relates to the goods in which he deals, the jury would have to consider whether the statement is such as to import a statement as to his conduct in business. Suppose the plaintiff was a merchant who dealt in wine, and it was stated that wine which he had for sale of a particular vintage was not good wine; that might be so stated as only to import that the wine of the particular year was ***not good in whosesoever hands it was, but not to imply any reflection on his conduct of his business***. In that case the

[164] SOC (Amd 3) at para 19.

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> statement would be with regard to his goods only, and there would be ***no libel***, although such a statement, if it were false and were made maliciously, with intention to injure him, and it did injure him, might be made the subject of an action on the case. On the other hand, if the statement were so made as to import that his ***judgment in the selection of wine was bad, it might import a reflection on his conduct of his business***, and shew that he was an inefficient man of business. If so, it would be a libel. In such a case a jury would have to say which sense the libel really bore; if they thought it related to the goods only, they ought to find that it was not a libel; but, if they thought that it related to the man's conduct of business, they ought to find that it was a libel. ***With regard to a firm or a company, it is impossible to lay down an exhaustive rule as to what would be a libel on them. But the same rule is applicable to a statement made with regard to them.*** Statements may be made with regard to their mode of carrying on business, such as to lead people of ordinary sense to the opinion that they conduct their business badly and inefficiently. If so, the law will be the same in their case as in that of an individual, and the statement will be libellous.
>
> [emphasis added]

80 George Wei JC (as he then was) also neatly summarised the general principles applicable in determining the meaning of words which are alleged to be defamatory (*Golden Season* at [37]):

> Whether a statement is defamatory is generally determined based on the construction of the natural and ordinary meaning of the words used. As summarised by the Court of Appeal in *Chan Cheng Wah Bernard v Koh Sin Chong Freddie* [2012] 1 SLR 506 ('*Chan Cheng Wah*') at [18], the following guiding principles apply:
>
> (a) the natural and ordinary meaning of a word is that which is conveyed to an ordinary reasonable person;
>
> (b) as the test is objective, the meaning which the defendant intended to convey is irrelevant;
>
> (c) the ordinary reasonable reader is not avid for scandal but can read between the lines and draw inferences;
>
> (d) where there are a number of possible interpretations, some of which may be non-defamatory, such a reader will not seize on only the defamatory one;

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(e) the ordinary reasonable reader is treated as having read the publication as a whole in determining its meaning, thus "the bane and the antidote must be taken together"; and

(f) the ordinary reasonable reader will take note of the circumstances and manner of the publication.

81 It is important to distinguish the natural and ordinary meaning of a publication from a meaning that arises by innuendo. This distinction was explained in *Fox v Boulter* [2013] EWHC 1435 as follows (at [15]–[16]):

> The meanings of words for the purposes of defamation are of two kinds: the natural and ordinary meaning, and an innuendo meaning. The distinction was explained by Lord Morris of Borth-y-Gest, delivering the advice of the Board in *Jones v Skelton*[1963] 1 WLR 1362-1, as follows:
>
> > 'The ordinary and natural meaning of words may be either the literal meaning or it may be an implied or inferred or an indirect meaning: any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be a part of the ordinary and natural meaning of words. See *Lewis v. Daily Telegraph Ltd*[1964] AC 234. The ordinary and natural meaning may therefore include any implication or inference which a reasonable reader guided not by any special but only by general knowledge and not fettered by any strict legal rules of construction would draw from the words. The test of reasonableness guides and directs the court in its function of deciding whether it is open to a jury in any particular case to hold that reasonable persons would understand the words complained of in a defamatory sense'.
>
> There is, surprisingly, a dispute as to what is comprised under the heading of 'general knowledge' in the passage just quoted. Mr McCormick suggested that at least the broad outline of the Defendant's dispute with 3M would be a matter of general knowledge, since it had been the subject of articles in the months leading up to the broadcast in several national newspapers, or at least in their online versions. I cannot accept this submission. I regard 'general knowledge' as referring to what Lord Mansfield CJ in *R v Home* [1775 – 1802] All ER Rep 390 at 393E called "matters of universal notoriety" – that is to say, matters which any intelligent viewer or reader may be expected to know. Anything which requires assiduous reading

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> and a good memory so as to recall the facts of a story dating back several weeks or months cannot fall within that definition.
> …

82 As the Court of Appeal in *Chan Cheng Wah Bernard and others v Koh Sin Chong Freddie and another appeal* [2012] 1 SLR 506 stated, "the natural and ordinary meaning of a word is that which is conveyed to an ordinary reasonable person". The court added that the "the *class of reader* is relevant in determining the scope of possible meanings the publication may bear" [emphasis in original] (at [19]):

> However, the *class of reader* is relevant in determining the scope of possible meanings the publication may bear: *Price, Duodu and Cain* at para 2-07. For example, in *Rees v Law Society Gazette* (2003) (cited in *Price, Duodo and Cain* at para 2-07), Gray Jnoted [*sic*] that a solicitor reading the UK's *Law Society Gazette* is less prone to 'loose thinking' than the average ordinary reader. In the context of the present case where the statements were contained in the minutes of the Club's MC meetings and which were published principally to Club members, the 'ordinary reasonable person' would be, as the Judge had held at [29] of the Judgment, the ordinary reasonable and interested Club member possessing general knowledge of the affairs of the Club. It should be noted that this view is *not* contested by the Defendant in this appeal.
>
> [emphasis in original]

In a similar vein, the authors of *Gatley on Libel and Slander* (Alastair Mullis & Richard Parks eds) (Sweet & Maxwell, 13th Ed, 2022) ("*Gatley*") at paras 3-013 and 3-026 state that the reasonable person, through whose eyes the publication is interpreted, is taken to be representative of those who read the publication. In this context, it is the general knowledge, common sense and experience of the class of readers or listeners to whom the words were published that is relevant: *Halsbury's Laws of Singapore* vol 8(2A) (LexisNexis, 2020 reissue) ("*Halsbury's Singapore Defamation*") at para 96.043.

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83 In contrast, an innuendo meaning is one that is apparent only to those readers possessed of special knowledge of extrinsic facts unknown to the ordinary person (also known as "true" or "legal" innuendo): *Goh Chok Tong v Jeyaretnam Joshua Benjamin* [1997] 3 SLR(R) 46 ("*Goh Chok Tong*") at [53] and [56]; *Halsbury's Laws of Singapore* vol 18 (LexisNexis, 2019 reissue) ("*Halsbury's Singapore Tort*") at para 240.085. I elaborate on the elements of proving defamation by innuendo at [101] below.

84 To the above, I add that the Publication and Words will be construed together and in totality where it is proved that the Words were uttered when the Publication was handed to the alleged recipient.[165] This is because alleged defamatory statements must be understood in the context in which they were presented to their recipients. As stated in *Clerk & Lindsell on Torts* (Michael A Jones gen ed) (Thomson Reuters, 23rd Ed, 2020) ("*Clerk & Lindsell*") at para 21-26, "[t]he context in which words are published is very important" (see also *Longyuan-Arrk (Macao) Pte Ltd v Show and Tell Productions Pte Ltd and another suit* [2013] SGHC 160 ("*Longyuan-Arrk*") at [129(e)]). In this regard, I recognised at [34] and [36] above that Mr Murahashi had uttered the Words when he handed the Publication to Mr Fukuda and Mr Kannan.

What is the natural and ordinary meaning of the Alleged Defamatory Material?

85 CS advances three possible meanings of the Alleged Defamatory Material (see [69] above). However, in defamation law, the single meaning rule "requires, in essence, that out of a range of possible meanings that could arise from the words in question, the court must alight on 'the single and the right meaning' of the words, and then determine whether they are defamatory having

165 See DCS at para 144.

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regard to that meaning *only*" [emphasis in original]: *The Online Citizen Pte Ltd v Attorney-General and another appeal and other matters* [2021] 2 SLR 1358 at [142].

86 In my judgment, the natural and ordinary meaning of the Alleged Defamatory Material is the second one (see [69(b)] above) – which is premised on the fact that the BC1:2012 applies to the Product. Therefore, the Product cannot be used under its Catalogue Design Strength, but only under reduced design strengths in the guide. This meaning is supported by the express language in the Publication, which states: "[n]ecessary to reduce the design strength for each thicknesses [*sic*] following ... BC1:2012 in Singapore". Similarly, the Words convey that (a) the BC1:2012 applies to all construction projects in Singapore and to all columns certified as S460M steel, including the Product; and (b) the Product, even if used as the Superior steel grade, has to comply with the design strengths prescribed in the BC1:2012 (*ie*, it cannot be used in accordance with its Catalogue Design Strength) (see [34] above and Annex 2).

87 On the contrary, the alleged First Meaning – "the Product ***should not be used in Singapore***"[166] [emphasis added] – is not shown to flow naturally from the language in the Alleged Defamatory Material. The steel expert called by CS, Prof Pang, is of the view that although the BC1:2012 does not apply to the Product, the Product is still "clearly admissible for use in Singapore according to the ETA".[167] CS argues that the "Eurocode 3, adopted in Singapore as SS EN 1993-1-1:2010, allows for the use of ETAs as per Eurocode 3-1.1.1(3) and also provide[s] that the material properties for design should be those specified in

166 PCS at para 147.

167 Prof Pang's Expert Report at para 11; PCS at para 171.

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the ETAs as per Eurocode 3-2.3.2."[168] Put differently, CS's own position is that the Product's Catalogue Design Strength is "compliant with the applicable standards in Singapore".[169] In this context, I am not persuaded that reasonable persons in the construction industry would conclude, from the Alleged Defamatory Material, that the Product should not be used in Singapore under its Catalogue Design Strength. In any event, for the First Meaning to assume a defamatory character, CS would also have to prove that the fact that it distributes the Product in Singapore is generally known (see [82] above). However, CS has *not* submitted on the state of general knowledge held by the reasonable person in the construction industry (see [94] below).[170]

88 I also reject the alleged Third Meaning – that the Product distributed by CS differs from that distributed in Europe.[171] In my view, the Alleged Defamatory Material, including the Graph, simply illustrates that the Product enjoys a higher design strength under European industry standards than it would under the BC1:2012 or BC1:2008 in Singapore. However, I do not accept that the reasonable person will jump to the conclusion that the Product distributed by CS is of an inferior quality to that in Europe. The reasonable person is not avid for scandal and is not unduly suspicious: *Microsoft Corp and others v SM Summit Holdings Ltd and another and other appeals* [1999] 3 SLR(R) 465 at [53]. If anything, a reasonable person would simply deduce that Singapore has a more risk-averse regulatory landscape than Europe in relation to the use of structural steel.

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168 PCS at para 169.

169 PCS at para 169.

170 See PCS at para 149.

171 PCS at para 150.

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89 As such, the alleged First and Third Meanings are contrived, and I reject them. The Second Meaning is the natural, ordinary and sole meaning of the Alleged Defamatory Material. I next analyse whether the Second Meaning is defamatory.

Is the Second Meaning defamatory?

90 CS argues that the Second Meaning of the Publication would ordinarily lead reasonable people to the opinion that CS, which sold and marketed the Product for use in accordance with the Catalogue Design Strength, conducted its business in a dishonest and/or improper manner.[172]

91 In my view, the natural and ordinary meaning of the Publication and the Words reflects adversely on the *Product*, and not on the propriety of CS's business. The Words include Mr Murahashi's explanation that the BC1:2012 applied to "all construction projects in Singapore". The Graph in the Publication depicts that the design strength of the Product under the BC1:2012 and/or BC1:2008 is lower than that under European design standards after the flange thickness of the Product exceeds a certain measure. The Publication also states that it is "[n]ecessary to reduce the design strength [of the Product] for each thicknesses [*sic*] following 'S460M, ML' in EN10025-4 (S460 RH) and BC1:2012 in Singapore" [emphasis in original omitted].[173] The Publication and/or Words are no more than an observation that because of the prevailing industry standards in Singapore, the Product does not enjoy as high a design strength as it would under equivalent European standards. The Alleged

172 PCS at paras 146(b) and 149; SOC (Amd 3) at para 16(b).

173 AB 126.

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Defamatory Material merely reflects the limitations in the way the Product can be deployed in Singapore, *whoever the distributor happened to be*.

92 What gives rise to a defamatory sting is, in my judgment, knowledge of the fact that, as CS argues, CS has been selling and marketing the Product under its *Catalogue Design Strength*. If so, being confronted with the Publication and/or Words, the reasonable person in the construction industry would likely infer that CS is conducting its business in a dishonest or improper manner.

93 However, outside of the context of defamation by innuendo (which I consider at [101]–[111] below), for CS to rely on the extrinsic fact that it has been selling and marketing the Product under its Catalogue Design Strength to prove the defamatory sting, the extrinsic fact must fall within the general knowledge, common sense and experience of a reasonable person in the construction industry (see [82] above).

94 However, CS does not submit that it is *general knowledge* among members of the construction industry that it marketed the Product under its Catalogue Design Strength.[174] I therefore refrain from deciding this issue. Instead, CS characterises this fact as an *extrinsic* one that is known to members of the construction industry and on which it relies to establish a true innuendo. I will hence consider the prevalence of this extrinsic fact in Singapore at [187]–[199] below when analysing CS's submissions on true innuendo and re-publication.

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174 See PCS at para 149.

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95 Accordingly, CS fails to establish that the Second Meaning is defamatory. Without any extrinsic facts, the Publication and/or Words are, at best, imputations against the Product.

96 The two cases CS relies on to argue that the Publication and/or Words are defamatory can also be distinguished.

97 In *Sin Heak Hin Pte Ltd and another v Yuasa Battery Singapore Co Pte Ltd* [1995] 3 SLR(R) 123 ("*Sin Heak Hin*"), the plaintiffs imported Yuasa brand batteries from China for sale in Singapore. These batteries were made by a Chinese manufacturer under a licence from Yuasa Japan. The defendant was a subsidiary of Yuasa Japan. The defendant issued circulars to its dealers stating that, among other things, Yuasa brand batteries purported to be manufactured in China were illegal imitations (at [8]). Judith Prakash J (as she then was) held that the defendant's circular was defamatory. While there was no express allegation of incompetence or wrongdoing, she held that it "would lower the reputation of any business in Singapore if it was accused of dealing in imitation goods and of holding out such goods as being authentic goods. Such statements are also defamatory in the sense that they disparage the plaintiffs in the way that they conduct their business." (at [29]). However, as the defendants in the present case point out, the defamatory imputation in *Sin Heak Hin* was that the plaintiff was committing an *unlawful* act of passing off to cheat customers.[175] In contrast, no similar imputation that CS is peddling an illegal imitation of the Product arises from the Publication and/or Words.

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175 First and second defendants' reply submissions ("DRS") at paras 24–25.

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98 Next, CS cites *DHKW Marketing and another v Nature's Farm Pte Ltd* [1998] 3 SLR(R) 774 ("*DHKW*").[176] The two plaintiffs and the defendant distributed a health product called pycnogenol. The product was discovered by one Professor Jack Masquelier ("Prof Masquelier") and was manufactured by two companies – Horphag Research Ltd ("Horphag") and INC BV ("INC"). At the material time, the two plaintiffs distributed the Horphag pycnogenol while the defendant distributed INC pycnogenol. The defendant published an advertisement in *The Straits Times* claiming that it alone was selling the original pycnogenol manufactured to Prof Masquelier's standards and bearing his trademark authorisation (at [5]). The court held that the nett effect of the advertisement was to suggest that the other parties selling pycnogenol, including the plaintiffs, were fraudulently using the pycnogenol trade mark to promote a fake or counterfeit product, conducting fraudulent businesses and using the pycnogenol trade mark without proper authority (at [16]). The plaintiffs were awarded damages for defamation and malicious falsehood (at [44]).

99 Unlike in *DHKW*, there is no imputation in the Publication and/or Words that CS is fraudulently selling *counterfeit* versions of the Product or is not authorised to distribute the Product. The defamatory advertisement in DHKW also expressly accused other distributors of pycnogenol of fraud (albeit without naming the plaintiffs specifically) and labelled them "non-authorised companies". No such language is found in the Alleged Defamatory Material.

100 For these reasons, *Sin Heak Hin* and *DHKW* do not change my decision.

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176 PCS at para 155(b).

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Was there defamation by innuendo in relation to the Second Meaning?

101 However, even if words are innocent on their face, they may still bear defamatory meaning to some persons in possession of certain extrinsic facts.[177] In this regard, I now turn to CS's case on defamation by innuendo. To establish defamatory meaning by innuendo, a plaintiff must prove: (a) that there are facts extrinsic to the words, where such facts give rise to a defamatory imputation; (b) that those facts were known to one or more of the persons to whom the words were published; and (c) that knowledge of those extrinsic facts could cause the words to convey the defamatory imputation, on which the plaintiff relies, to a reasonable person possessing knowledge of those extrinsic facts: *Lim Eng Hock Peter v Lin Jian Wei and another* [2009] 2 SLR(R) 1004 at [106].

102 CS argues that members of the construction industry such as Kajima and Kong Hwee would have known that (a) CS is the sole distributor of the Product ("the 1st Extrinsic Fact"); and (b) that CS has been marketing the Product for use in accordance with its Catalogue Design Strength ("the 2nd Extrinsic Fact").[178] Collectively, I refer to these facts as the "Extrinsic Facts". CS submits that knowledge of these facts could cause the Publication to convey to the reasonable person in the construction industry that:[179]

> (a) CS, which sold and marketed the Product for use even though it was not covered by the BC1:2012, conducted its business in a dishonest and/or improper manner (*ie*, the First Meaning);

177 PCS at para 151.

178 PCS at para 152.

179 PCS at para 152.

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(b) CS, which sold and marketed the Product for use in accordance with its Catalogue Design Strength, when the design strength should be reduced under the BC1:2012, conducted its business in a dishonest and/or improper manner (*ie*, the Second Meaning); and

(c) The Product distributed by CS in Singapore was inferior to products made with the Superior steel grade that were distributed in Europe, although CS marketed the Product for sale in accordance with its Catalogue Design Strength (*ie*, the Third Meaning).

103 I have made no finding as to whether it was general knowledge among members of the construction industry that CS was marketing the Product under its Catalogue Design Strength. Accordingly, CS must prove that the specific persons to whom the Alleged Defamatory Material was published knew of either or both Extrinsic Facts described in the preceding paragraph. Whether CS is able to do so is an issue I explore under the element of publication at [131]–[135] below.

104 For now, the question I am faced with is whether, with knowledge of either or both Extrinsic Facts, the Publication and/or Words acquire a defamatory sting. In my view, the First and Third Meanings do not crystallise by innuendo, even if the Extrinsic Facts are known to the publishee, for the same reasons explained at [87] and [88] above. The following analysis is therefore confined to the Second Meaning.

105 CS submits that if a person knows that it is the sole distributor of the Product in Singapore and that it has been advertising the Product and its advantages as *per* the Catalogue Design Strength, then the Alleged Defamatory Material conveys that CS acted dishonestly or improperly in doing so. This is

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because the Alleged Defamatory Material conveys that the Product cannot be used in accordance with its Catalogue Design Strength in Singapore, but has to comply with the BC1:2012.[180]

106 In my view, the Second Meaning is defamatory if one receives the Publication or hears the Words with the knowledge that CS is marketing the Product in accordance with its Catalogue Design Strength (*ie*, 2nd Extrinsic Fact identified at [102] above). Without the 2nd Extrinsic Fact in play, I accept the defendants' argument that that the Publication and/or Words, at worst, reflect adversely on the Product *simpliciter* (see [91] above).

107 However, once the recipient of the Alleged Defamatory Material knows that CS has been selling and marketing the Product in accordance with its Catalogue Design Strength, in my view, a defamatory sting arises. By CS touting the Product's Catalogue Design Strength even though, according to the Publication and Words, a lower design strength under the BC1:2012 ought to apply, a reasonable person in the construction industry would infer that CS is dishonest in selling the Product in this manner. The combination of the 2nd Extrinsic Fact and the Defamatory Material thus, to borrow Lord Esher's language in *South Hetton Coal*, "import[s] a reflection on [CS's] conduct of [its] business". In a similar vein, *Clerk & Lindsell* contains an illustration that explains why the Second Meaning is not made out without the 2nd Extrinsic Fact, but only crystallises by innuendo. The learned authors therein observed as follows (at para 21-46):

> A statement that a certain ship is unseaworthy is directed against the character of the ship, not against the character of the owner, but if it be added that this unseaworthy vessel is advertised to carry passengers, the statement becomes

[180] PCS at para 152(b) read with 149(b) and 149(d).

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> defamatory, for it involves almost necessarily a charge of misconduct or mismanagement.

108 Transposed to the present context, the observation in the Publication and/or Words that the Product is subject to stricter design standards in the BC1:2012 than in Europe does not, by itself, reflect poorly on the manner in which CS conducts its business. However, couple the Publication and/or Words with knowledge of the fact that CS has been marketing the Product under its Catalogue Design Strength, I hold that a reasonable person in the construction industry would infer that CS was selling the Product for use in contravention of the BC1:2012. I accept, as CS submits, that the Publication conveys that CS conducted its business in a dishonest manner.[181] The credit and reputation of CS's business would be lowered in the eyes of the reasonable person.[182]

109 The defendants rely on *Morford and others v NIC Rigby and another* [1998] EWCA Civ 263 ("*Morford*")[183] to submit that because of CS's position as a *distributor*, the court should be slow to infer that the Publication and/or Words are defamatory.[184] The alleged defamatory publication in *Morford* was an article titled "Fertiliser Attacked as Unsafe". The plaintiff was the sole distributor of "N-Viro Soil Fertiliser". Among other things, the article reported that an organisation called "Friends of the Earth" ("FoE") feared that the fertiliser contained "cement kiln dust" impregnated with high amounts of toxins. However, the article also revealed that the fertiliser was developed in the US and that FoE's claims were "criticised by the chairman of the National Farmers Union in Essex". The article stated that the latter cited a soil expert's view that

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181 PCS at para 149(d).

182 SOC (Amd 3) at paras 16(b) r/w 17(g) and 19(a).

183 DCS at paras 152–156.

184 PCS at paras 150–155.

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the fertiliser was "100 per cent safe". The English Court of Appeal upheld the first instance decision to strike out the plaintiff's claim for defamation. The court reasoned that readers of the article would: (a) appreciate the existence of two opposing views in the controversy and would not have their impression of the plaintiffs tarnished by FoE's word alone; and (b) would recognise that the plaintiffs were mere distributors and would not attribute responsibility to them (at pp 4–5):

> Assuming that there are readers of the Article with the knowledge that the Plaintiffs promoted or marketed or sponsored N-Viro soil, (as suggested by the earlier Article) it does not follow that they will think the worse of the Plaintiffs merely for distributing a product which may be unsafe. …
>
> The readers of this publication in East Anglia, particularly farmers, would ***readily appreciate that two views of the controversy were possible and they are sophisticated enough to appreciate that FoE is an environmental lobbyist concerned for potential damage to the environment***. Merely because the FoE has strong reservations about the safety of the product does not mean that the Plaintiffs individually or collectively would be lowered in the estimation of the reader. …
>
> In the instant case the Plaintiffs are not even the manufacturers. The reader is told that the developer of the product was in the United States and that the fertiliser was produced by Southern Water. The reader might infer that the ***developer or manufacturer*** in the course of his involvement should have come to appreciate an actual or potential danger. If subsequently the product is shown to be so no fair minded reader, in my view, would attribute any responsibility (still less irresponsibility) to these Plaintiffs as ***mere distributors***. Even if there were substance in the suggestion that the Plaintiffs ***sponsored or actively promoted*** the product, as Mr Rampton contends, there is no basis upon which a reader could draw an inference adverse to them. …
>
> [emphasis added]

110 I do not find *Morford* persuasive in the particular circumstances of this dispute. There is no indication in *Morford* that the plaintiffs had actively sold or marketed the fertiliser *as being toxin-free* or otherwise harmless to the

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environment. If they had done so, *Morford* would then be closer to the case at hand. What is pertinent in the present case is that CS did promote the *very* characteristic of the Product that the Publication and/or Words suggest is untrue. Namely, CS marketed – to some customers at least – the Product under its Catalogue Design Strength. As such, the substance of the defendants' statements that the Catalogue Design Strength is superseded by lower design strengths in the BC1:2012, to my mind, undoubtedly impugns the honesty of CS as a distributor of the Product in Singapore.

111 In conclusion, if a publishee knows that CS is marketing the Product under its Catalogue Design Strength, the Publication and/or Words would convey the defamatory imputation as described in the Second Meaning. In my view, it is not necessary that the publishee further knows that CS is the *sole* distributor of the Product in Singapore (*ie*, the 1st Extrinsic Fact). The defamatory sting arises as long as it is known that CS is *a* distributor of the Product. Such knowledge naturally follows if one knows that CS is marketing the Product under its Catalogue Design Strength in Singapore. As I later explain, direct publishees, identified republishees and some unidentified republishees of the Alleged Defamatory Material indeed knew of the 2nd Extrinsic Fact (see [131]–[135], [165]–[169] and [188]–[199] below). I will henceforth refer to the "Alleged Defamatory Material" as, simply, the "Defamatory Material".

Whether the Publication and/or Words refer to CS

112 The third legal requirement of a *prima facie* defamation action is that the plaintiff must show that a third party would reasonably understand the defamatory words to refer to the plaintiff. Even in the case of true innuendo, the third party with special knowledge of the extrinsic facts must be shown to reasonably understand the defamatory words as referring to the plaintiff:

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Morgan v Odhams Press Ltd and another [1971] 1 WLR 1239; Gary Chan & Lee Pey Woan, *The Law of Torts in Singapore* (Academy Publishing, 2nd Ed, 2016) ("*Law of Torts in Singapore*") at para 12.055. Once it is shown that the defamatory statement refers to the plaintiff, the fact that it also refers to other persons is immaterial: *Law of Torts in Singapore* at para 12.059; *Knupffer v London Express Newspaper Ltd* [1944] AC 116 at 121.

113 In the present case, a person who is aware of the fact that CS is selling and marketing the Product under its Catalogue Design Strength would reasonably come to the conclusion that the Publication and/or Words referred to CS. The reasonable person can "read between the lines and draw inferences" (*Golden Season* at [37]). Putting two and two together, the Graph and the words directly under it – "necessary to reduce the design strength ... following ... BC1:2012 in Singapore" – are likely to be understood as referring to CS's practice of marketing the Product under the Catalogue Design Strength.

114 While the reasonable person in the construction industry may not know whether CS is the *only* distributor of the Product in Singapore or not, and therefore whether the Publication and/or Words refer exclusively to CS, this is immaterial. The Defamatory Material still refers to CS if the recipient of the Publication and/or Words knows that CS markets the Product under the Catalogue Design Strength.

Whether the Publication and/or Words were published to third parties

115 Finally, CS must prove publication of the Defamatory Material to a third party or third parties. As a general principle, publication takes place where the defamatory material is communicated to a third party (other than the claimant): *Ng Koo Kay Benedict and another v Zim Integrated Shipping Services Ltd*

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[2010] 2 SLR 860 ("*Ng Koo Kay Benedict*") at [26]. I also need not consider the operation of the doctrine of abuse of process in *Jameel (Yousef) v Dow Jones & Co Inc* [2005] QB 946 ("*Jameel*"), under which limited publication may indicate that no real and substantial tort has been committed, given my eventual conclusion that substantial damages are owed to CS (see [272] below). In any event, *Jameel* is not binding on me. While the Court of Appeal in *Yan Jun v Attorney-General* [2015] 1 SLR 752 at [120] acknowledged that *Jameel* contains some general principles that may be applicable in the Singapore context, this observation was, strictly speaking, *obiter dictum*. Moreover, Aedit Abdullah J noted in *Lee Hsien Loong v Leong Sze Hian* [2021] 4 SLR 1128 at [69] that *Jameel* was really a case concerned with private international law principles and issues of forum shopping. These concerns do not arise in the present case.

116 In my view, *prima facie* liability is made out because the Defamatory Material was communicated to Mr Fukuda of Kajima[185] and Mr Kannan of Kong Hwee.[186]

117 I also accept that at least the Words were communicated to Prof Chiew.[187] I infer that at Mr Murahashi's meeting with Prof Chiew after the Seminar (see [40] above), Mr Murahashi likely spoke the Words to Prof Chiew. Mr Murahashi did not believe Mr Gerardy's claim that the Product's Catalogue Design Strength was approved for the Funan Project. He would have lamented that the BC1:2012 required the Product to be subject to lower design strengths.

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185 1D's Defence at para 11, adopted by 2D in 2D's Defence at para 5; Mr Murahashi's AEIC at para 35.

186 DCS at para 79; NE, 27 January 2021, pp 5:7–21, 6:10–19.

187 SOC (Amd 3) at para 12(a).

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That Prof Chiew agreed to investigate the matter with the *BCA* after the Seminar also indicates that the BC1:2012 must have come up for discussion. Mr Murahashi's view might have been shaped by his previous discussions with Prof Chiew in 2013 or in 2014 regarding the 2014 Internal Paper (see [19] and [23] above). However, CS has not demonstrated that the communication of the 2014 Internal Paper to Prof Chiew in or around the last quarter of 2014[188] is a relevant act of publication. As a general proposition, the extrinsic fact(s) needed to appreciate the defamatory innuendo "would have to be known at the time of publication of the defamatory statement and not after": *Law of Torts in Singapore* at para 12.042; *Gatley* at para 3-021*; Goh Chok Tong* at [102]. There is no evidence that Prof Chiew knew of the 2nd Extrinsic Fact until after the Seminar *in October 2017* (see [134] below). Thus, at the time Prof Chiew received the 2014 Internal Paper, he would not have appreciated the defamatory innuendo. CS provides no grounds for departing from this position. For completeness, Prof Liew also received the 2014 Internal Paper from Mr Murahashi. However, as there is no evidence that the Prof Liew knew of the 2nd Extrinsic Fact, he is not a relevant publishee.

118 The more difficult question is the extent of publication (if any) to persons other than Mr Fukuda, Mr Kannan and Prof Chiew. For the purpose of determining *liability* for defamation, I will confine my analysis to who (if any) the defendants published the Defamatory Material to *directly*. I consider the issue of re-publication (if any) when determining the quantum of damages for defamation subsequently.

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188 Mr Murahashi's AEIC at para 19.

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Whether the defendants communicated the Defamatory Material to third parties other than Mr Fukuda and Mr Kannan

119 As summarised at [47]–[53] above, CS argues that the Defamatory Material was disseminated to more of the defendants' customers or external parties. The plaintiff is required to prove publication *within the jurisdiction* in which the action is pursued: see *Ng Koo Kay Benedict* at [27]. Therefore, I first focus on publication of the Defamatory Material within Singapore and will deal with the issue of publication and liability in Vietnam (if any) later at [136].

120 In seeking to establish communication of the Defamatory Material to third parties, CS makes the following points. None of these points, in my view, establishes direct publication of the Defamatory Material by the defendants to customers other than Mr Fukuda from Kajima and Mr Kannan from Kong Hwee.

121 First, CS challenges Mr Murahashi's evidence that he did not share the Publication with customers other than Kajima and Kong Hwee as being unreliable. Mr Murahashi states in his AEIC that besides having disclosed the Publication to Mr Fukuda, he "did not share the [Publication] with any other customer".[189] Under cross-examination, Mr Murahashi revealed that he arrived at this conclusion by reviewing his weekly reports of appointments and then *recalling* who he had shown the Publication to.[190] It bears noting that Mr Murahashi's AEIC was affirmed on 6 October 2020, some three years after the publications to Mr Fukuda and Mr Kannan in October 2017. I accept CS's submission that little weight should be placed on Mr Murahashi's averment that the Publication was not disclosed to other customers. There is no objective

189 Mr Murahashi's AEIC at para 50(c).

190 NE, 29 January 2021, p 47:14–21.

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contemporaneous record that Mr Murahashi relies on to ascertain whether the Publication was disclosed to other customers. Further, as CS emphasises,[191] it is conspicuous that Mr Murahashi failed to check his emails or other documentary correspondence with customers to verify whether the Publication was disclosed.

122 However, that Mr Murahashi's evidence is unreliable does not prove on the balance of probabilities that the Defamatory Material was communicated to third party customers other than Kajima and Kong Hwee. The legal burden still rests on CS to make good this allegation.

123 In this regard, CS first argues that the 2017 Internal Report reveals that in response to the Product, the defendants "took steps from 2016 to inform ***customers***, using the Publication (or some variation thereof) that the BC1:2012 Guide applied to the Product" [emphasis added in bold italics].[192] However, in this report, Mr Murahashi only admitted to explaining to "our ***client***" [emphasis added] that Singapore did not permit the use of the Product in accordance with its Catalogue Design Strength. In his AEIC, Mr Murahashi testifies that the words "our client" were intended to be a generic reference to a customer of either defendant. He added that when preparing the report, he had not specifically thought about who he had shared the 2016 Internal Paper with.[193] This portion of his evidence was not challenged under cross-examination. As such, I am not prepared to accept that the report proves communication of the Publication (or the Words) to customers other than Kajima and Kong Hwee.

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191 PCS at para 97(a).

192 PCS at para 97(c); see AB 1167.

193 Mr Murahashi's AEIC at para 48(a).

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124 Second, CS argues that other employees of the defendants had copies of the Publication and that there is "a very real possibility that they could have shared the Publication with other customers or external parties."[194] CS alleges that the following employees of the defendants, other than Mr Murahashi, had copies of the Publication: (a) Mr Murahashi's three colleagues in the technical department in Singapore with whom he "sometimes exchange[d] information";[195] (b) the "other employees" in the defendants' sales department who promoted the Nippon Product, such as Mr Higuchi;[196] and (c) "colleagues in Japan" who Mr Murahashi sent the 2014 Internal Paper and 2016 Internal Paper to.[197]

125 Even assuming that all of the identified employees of the defendants possessed the Publication and could disseminate it, it is a leap of logic to suggest that they did in fact communicate it to customers or other third parties. It is telling that CS did not produce a shred of evidence, such as documentary evidence of correspondence with said external parties, that proves communication of the Publication or Words to these third parties. Importantly, as Mr Murahashi's evidence indicates, he prepared the 2014 Internal Paper and 2016 Internal Paper to persuade the defendants to manufacture and supply the Nippon Product (see [20] and [25] above). The reports were for internal circulation. I am not convinced, without more, that Mr Murahashi's colleagues who had the Publication used it to market the defendants' products to clients. There is no evidential basis of there being a "very real possibility" that the

194 PCS at para 98.

195 PCS at para 98(a).

196 PCS at para 98(b)–98(d).

197 PCS at para 98(e).

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Publication was shared with other customers or external parties by other employees of the defendants.

126 I also agree with the defendants that it is material that CS did not call any witnesses to support the allegation that the defendants' employees shared the Publication with other customers or external parties.[198] As CS pleaded, it conducted further investigations to find out who the defendants had communicated the Publication to.[199] If CS discovered that the defendants had sent the Publication to customers other than Kajima and Kong Hwee, there was nothing preventing it from leading evidence from these persons.

127 Third, CS points to the fact that AM had separately received a copy of the Publication from "someone else" and AM alerted Mr Yatsunami to the Publication before Mr Furuta caught wind of the Publication (see [57] above).[200] CS also relies on Mr Sim's testimony that "bad words" can spread in the industry.

128 As I noted at [57] above, no evidence was led as to how AM came into possession of the Publication. CS's submission presumes that a third party forwarded the Publication to AM, and that this evidences a wider circulation of the Publication in the industry.

129 Finally, the 23 Jan Letter in which Mr Furuta stated that Nippon Steel Japan communicated the Publication to "several customers" when asked about the appropriate sizes of S460 H-columns to be used in Singapore (see [63]

198 DRS at para 53.

199 SOC (Amd 3) at para 12.

200 PCS at para 99(b).

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above)[201] does not assist CS's case. The 23 Jan Letter was drafted under Mr Furuta's instructions after reviewing Mr Murahashi's 2017 Internal Report (see [61] above). Mr Furuta testifies that he used the word "several" because Mr Murahashi had informed him that he shared the Publication with Kajima and possibly Kong Hwee. As Mr Murahashi was still checking his records to ascertain whether the Publication was shared with anyone else while the 23 Jan Letter was being drafted, Mr Furuta used the phrase "several customers" in case Mr Murahashi later confirmed that the Publication had been shared with other third parties.[202] However, Mr Murahashi denies sharing the Publication with persons other than Mr Fukuda from Kajima and, possibly, Mr Kannan from Kong Hwee.[203] Thus, the 23 Jan Letter is not evidence that the Publication and/or Words were communicated to other third parties.

130 In sum, there is insufficient evidence to prove that *the defendants* communicated the Defamatory Material to third parties in Singapore other than Kajima's Mr Fukuda, Kong Hwee's Mr Kannan and Prof Chiew. I shall refer to these persons as "direct publishees". While Prof Liew received the Defamatory Material, as explained at [117], I do not regard him as a relevant publishee.

Whether the direct publishees knew of the 2nd Extrinsic Fact

131 I now explain how the direct publishees knew that CS marketed the Product under its Catalogue Design Strength (*ie*, the 2nd Extrinsic Fact).

132 For Kong Hwee, Mr Kannan testified that after Mr Murahashi shared the Publication with him on 25 October 2017, he called Mr Sim to clarify doubts

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201 AB 303.

202 Mr Furuta's AEIC at paras 16(a) and 16(b).

203 Mr Murahashi's AEIC at paras 35, 38 and 39; DCS at para 79.

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that arose from the Publication. Mr Kannan asked Mr Sim "whether or not HISTAR is suitable for use in Singapore" and "whether there is some doubt about the usage of these materials". Mr Kannan likely made those inquiries because CS had marketed the Product in accordance with its Catalogue Design Strength.[204] Kong Hwee had also attended a seminar organised by CS on 26 October 2017 at which CS marketed the Product under its Catalogue Design Strength.[205]

133 In respect of Kajima's Mr Fukuda, I am prepared to infer that he knew that CS was marketing the Product under its Catalogue Design Strength. Mr Murahashi and Mr Fukuda first met on 24 August 2017 to discuss the use of the Nippon Product in the IICH Project (see [28] above). On 21 October 2017, the two met again. Mr Fukuda informed Mr Murahashi then that "a decision had been made to use the HISTAR Product for the king posts in the second lot of the IICH Project".[206] Under cross-examination, Mr Murahashi admitted that the point of this latter meeting was for him to "convey to Mr Fukuda that the Nippon Steel [P]roduct is just as good as the HISTAR product because the HISTAR product cannot be used in accordance with its catalogue design strength under [the BC1:2012]".[207] There would simply be no need for Mr Murahashi to make this point unless Mr Fukuda had earlier revealed that CS had marketed the Product under its Catalogue Design Strength.

134 As for Prof Chiew, by early November 2017, at his meeting with Mr Murahashi after the Seminar, he would have learnt that *AM* was taking credit

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204 NE, 27 January 2021, pp 4:13–25.

205 SOC (Amd 3) at p 25 (s/n 70); Mr Koh's AEIC at pp 123–124.

206 Mr Murahashi's AEIC at para 30.

207 NE, 29 January 2021, p 13:8–18.

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for the installation of the Product in the Funan Project under its Catalogue Design Strength (see [40] above). I infer that at the same meeting, Prof Chiew also discovered that *CS* was distributing the Product for AM in Singapore under the Catalogue Design Strength. Competition from CS was on the forefront of Mr Murahashi's mind and, indeed, one of the driving forces behind the 2014 and 2016 Internal Papers (see [18] above). CS was likely mentioned and discussed by Mr Murahashi and Prof Chiew. Prof Chiew's conduct following his meeting with Mr Murahashi after the Seminar is consistent with my finding that he discovered the 2nd Extrinsic Fact at this meeting. Ms Cong's WhatsApp messages with Mr Koh in January 2018 indicate that Prof Chiew was involved in the BCA's inquiries with Woh Hup, the main contractor in the Funan Project (see [43] above). Prof Chiew even spoke to Ms Cong on 17 January 2018 about the propriety of using the Product under the Catalogue Design Strength in the Funan Project.[208]

135 Hence, Kajima's Mr Fukuda, Kong Hwee's Mr Kannan and Prof Chiew are direct publishees who appreciated the innuendo in the Defamatory Material. Based on the foregoing, these persons did not receive the Defamatory Material and/or appreciate the defamatory innuendo before October 2017. As all three elements of a cause of action for defamation in Singapore are established, subject to the availability of any defences, a *prima facie* case of defamation arises.

Whether the Defamatory Material was published in Vietnam

136 I conclude by addressing the issue of whether the Defamatory Material was published in Vietnam. CS highlights that Mr Murahashi disseminated the

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[208] Mr Koh's AEIC at p 770.

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Publication or variations thereof in *Vietnam* to Okaya, Arup and Coteccons.[209] However, in order for these acts of publication in Vietnam to be actionable in Singapore, the double actionability rule applies. Namely, CS must prove that the defendants' acts in Vietnam were actionable under both Singapore law and the law of the place of the tort: *Rickshaw Investments Ltd and another v Nicolai Baron von Uexkull* [2007] 1 SLR(R) 377 at [53]. Without having to determine where the place of the tort is, even under Singapore law, the publications in Vietnam are not actionable. This is because there is no evidence that Okaya, Arup or Coteccons had knowledge of the 2nd Extrinsic Fact. As the defamatory imputation in the Second Meaning only crystallises by innuendo when one knows of the 2nd Extrinsic Fact, the Publication and/or Words are not shown to bear a defamatory meaning to any publishee in Vietnam. Accordingly, the acts of publication in Vietnam are not actionable and I say no more on them.

Whether the defendants can invoke the defence of justification

137 As stated at [74] above, the defendants argued, albeit in respect of malicious falsehood, that the BC1:2012 *did* apply to the Product. If so, the Second Meaning, while conveying a defamatory innuendo to persons with knowledge of the 2nd Extrinsic Fact, would have been justified. Justification is a complete defence to a claim for defamation and involves the defendant proving that the defamatory statement is true in substance and in fact: *Law of Torts in Singapore* at para 13.003. However, I accept CS's submission[210] that the defendants are not entitled to invoke the defence of justification.

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209 PCS at paras 91–93,

210 PFS at para 13.

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138 I reach this conclusion because justification has to be specifically pleaded in such a way so as to inform the plaintiff and the court precisely what meaning or meanings the defendant seeks to justify: see *Aaron Anne Joseph and others v Cheong Yip Seng and others* [1996] 1 SLR(R) 258 at [68]; *Practitioners' Guide on Damages Awarded for Defamation Cases in Singapore* (Salina Ishak ed-in-chief) (Academy publishing, 2019) at para 5.12 ("*Practitioners' Guide on Damages for Defamation*"); *Law of Torts in Singapore* at para 13.012. However, the defendants failed to plead the defence of justification. Their only defence in relation to the claim for defamation is to deny that the Publication and/or Words carry a defamatory meaning. In other words, they deny that a *prima facie* case of defamation even arises. They do not go further to argue that the words, even if defamatory, are justified.

139 Crucially, the defendants expressly disavowed the defence of justification in relation to defamation on the first day of trial. Before me, the defendants' counsel confirmed that their only defence under defamation is that no defamatory sting arises and there was *no need* to run the defence of justification.[211] Notably, in a pre-trial conference on 23 November 2020, the defendants' counsel acknowledged that justification was unpleaded and that the Defence would be amended if necessary.[212] No amendment was made. The thrust of their defence is that the Defamatory Material relates to the Product, rather than CS (as the sole distributor of the Product). If so, CS's reputation in its trade and business is not impugned and CS can only sue for slander of goods under malicious falsehood.[213]

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211 NE, 22 January 2021, pp 19:20–20:11.

212 Minute sheet, 23 November 2020, at p 4; POS at para 37; PFS at para 9(b).

213 See DCS at paras 137–159.

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140 In their further written submissions, both parties also accept[214] that if truth is not pleaded, evidence of justification is inadmissible in relation to the issue of *liability* for defamation (see also *Australian Consolidated Press Ltd v Uren* (1966) 117 CLR 185 at 204; *Plato Films Ltd and others v Speidel* [1961] AC 1090 at 1133–1134). On this issue, I therefore do not consider any evidence going towards the truth of the Defamatory Material, which was, in any event, adduced for the purposes of defending the claim for malicious falsehood.[215]

141 Having nailed their colours to the mast, the defendants cannot now argue (and in fairness, nor do they) that the defamatory words were justified. The presumption that a defamatory imputation is false is not displaced: see *Jameel and another v Wall Street Journal Europe Sprl (No.2)* [2005] EWCA Civ 74 at [4]; *W v Westminster City Council and others* [2004] EWHC 2866 (QB) at [102]; *Williams v Mirror Group Newspapers (1986) Ltd* [1990] Lexis Citation 3087; *Gatley* at para 12-006.

***Whether the Publication and/or Words are actionable* per se**

142 I also hold that both the Publication and Words are actionable *per se* without the need to prove special damage.

143 As the Publication is a form of libel it is trite that damage is presumed. There is no need for the plaintiff to prove special damage to establish the tort of libel even though the plaintiff is a corporate body and not an individual (see the House of Lords' majority decision in *Jameel (Mohammed) and another v Wall Street Journal Europe Sprl* [2007] 1 AC 359 at 372–374, cited in *Quantum Automation Pte Ltd v Saravanan Apparsamy* [2019] 3 SLR 1383 at [63]).

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214 First and second defendants' further submissions ("DFS") at para 11.

215 DFS at paras 11 and 12.

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144 However, the Words are a form of slander which, as a starting position, would require proof of special damage to be actionable unless specific common law and/or statutory exceptions apply. Examples of special damage include the loss of profits and jobs arising from the slander: *Practitioners' Guide on Damages for Defamation* at para 1.15. One such statutory exception which CS relies on[216] is s 5 of the Defamation Act (Cap 75, 2014 Rev Ed) (the "Defamation Act"). This provision states that:

> **Slander affecting official, professional or business reputation**
>
> **5.** In an action for slander in respect of words ***calculated*** to disparage the plaintiff in any office, profession, calling, *trade or business held or carried on by him at the time of the publication,* it shall not be necessary to allege or prove special damage whether or not the words are spoken of the plaintiff in the way of his office, profession, calling, trade or business.
>
> [emphasis added in italics and bold italics]

145 Andrew Ang J (as he then was) in *WBG Network (Singapore) Pte Ltd v Meridian Life International Pte Ltd and others* [2008] 4 SLR(R) 727 ("*WBG*") at [65] held that the word "calculated" means "likely to produce the result" (citing the interpretation of the same word in s 6 of the same act in *DHKW* at [39]). As such, to invoke this exception, the defendant's intention is irrelevant: *Halsbury's Singapore Defamation* at para 96.264.

146 As explained at [107] above, I am satisfied that the Publication and/or Words are likely to disparage CS's "trade or business" by innuendo. If the party to whom the Defamatory Material is communicated knows that CS sells and markets the Product under its Catalogue Design Strength, the Publication and/or Words insinuate that CS is dishonestly selling the Product in Singapore under a

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216 PCS at para 185.

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higher design strength that does not comply with the BC1:2012.[217] Section 5 of the Defamation Act thus renders it unnecessary to prove special damage for slander by way of the Words to be actionable.

Whether both defendants are liable

147 The defendants accept that if Mr Murahashi's conduct constitutes an actionable wrong in law, Nippon Steel Singapore is vicariously liable for such conduct. The defendants recognise that Mr Murahashi was an employee of Nippon Steel Singapore and that his conduct was carried out in the course of his employment.[218]

148 However, the defendants argue that Nippon Steel Japan cannot be the subject of any legal liability on account of Mr Murahashi's conduct because he was not an employee of Nippon Steel Japan.[219] They argue that it has not been suggested that Nippon Steel Japan acted in concert with Mr Murahashi in relation to the publication of the Defamatory Material and the evidence does not bear out any relevant involvement on the part of Nippon Steel Japan in relation to its publication to third parties.[220]

149 CS argues that Nippon Steel Japan was indeed involved in preparing and publishing the Publication.[221] It highlights that the Publication named Nippon Steel Japan in the footer and[222] Mr Murahashi had sent the 2014 Internal Paper

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217 PCS at para 149.

218 DCS at para 128.

219 DCS at para 129.

220 DCS at para 130.

221 Plaintiff's reply submissions ("PRS") at paras 7–11.

222 PRS at para 8.

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and 2016 Internal Paper to Nippon Steel Japan for its review.[223] It therefore urges that Nippon Steel Japan be held liable for the Defamatory Material published by Mr Murahashi.

150 Where two or more people by their tortious acts cause damage to the plaintiff, the tortfeasors may be liable as: (a) joint tortfeasors; (b) several tortfeasors causing the same damage; or (c) several tortfeasors causing distinct damage: *Halsbury's Singapore Tort* at para 240.031; *Clerk & Lindsell* at para 4-02.

151 Nippon Steel Japan is not a distinct tortfeasor. In reaching this conclusion, the pivotal question is whether Nippon Steel Japan *published* the Defamatory Material. From my findings above, only Mr Murahashi – who was employed by Nippon Steel Singapore – is responsible for direct publication to Kajima's Mr Fukuda, Kong Hwee's Mr Kannan and Prof Chiew. Any re-publication that followed thus resulted from *Mr Murahashi's* initial publications. While Nippon Steel Japan is named in the footer of the Publication, and hence it might have been involved in *preparing* the Publication, it is not liable for defamation without having *published* the Defamatory Material itself.

152 In addition, I am not prepared to hold Nippon Steel Japan as a joint tortfeasor. The categories of joint tortfeasors include: (a) a person who authorises, procures or instigates the commission of a tort and the person who carries out the instructions; and (b) persons who participate in a joint enterprise or common design in the commission of a tort: see *Law of Torts in Singapore* at para 18.028; *Trek Technology (Singapore) Pte Ltd v FE Global Electronics*

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223 PRS at para 9.

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Pte Ltd and others and other suits [2005] 3 SLR(R) 389 at [35]; *Clerk & Lindsell* at para 4-04.

153 If the defendants are alleged to be joint tortfeasors, this must be pleaded: *Ong Seow Pheng and others v Lotus Development Corp and another* [1997] 2 SLR(R) 113 at [40], [41] and [43]. CS advances no such pleading. CS's pleadings indicate that each defendant separately published the Defamatory Material: (a) "[e]ach of the Defendants had printed and published or caused the Publication ... to be printed and published";[224] (b) "the Defendants had published and circulated or caused to be published and circulated the Publication";[225] and (c) "[t]he Defendants also spoke and published words that were defamatory".[226] In addition, CS has not pleaded any grounds to establish joint tortfeasorship. It does not plead that Nippon Steel Japan authorised, procured or instigated the commission of defamation and that Mr Murahashi acted on Nippon Steel Japan's instructions in publishing the Defamatory Material, or that the defendants participated in a joint enterprise or common design.

154 Therefore, only Nippon Steel Singapore is liable for defamation. The analysis that follows shall focus on it. However, where the context requires, I will refer to Nippon Steel Singapore and Nippon Steel Japan as the defendants.

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224 SOC (Amd 3) at para 11.

225 SOC (Amd 3) at para 12.

226 SOC (Amd 3) at para 13.

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Damages

Whether evidence of the truth of the defamatory matter may be considered when assessing the quantum of damages to be awarded

155 I earlier dealt with the question of whether justification may be invoked to dispute *liability* for defamation (see [137]–[141] above). I now address the separate question of whether evidence of the truth of the Defamatory Material may be relied on in the assessment of damages. In further submissions, CS argues that evidence going towards the defence of justification can only be relied on if the defence of justification was pleaded and relied on but failed.[227]

156 In response, Nippon Steel Singapore cites *Burstein v Times Newspapers Ltd* [2001] 1 WLR 579 ("*Burstein*") for the proposition that a defendant (although he has not sought to advance a case of truth) may lead evidence of the directly relevant background context of the circumstances in which the publication came to be made ("*Burstein* particulars"), even though the facts might have been the ingredients of the defence of truth: at [42] and [47]; *Gatley* at para 34-033. This allows the court to avoid having to assess damages "in blinkers" (at [47]). I agree with Nippon Steel Singapore that the *Burstein* rule applies in Singapore.[228] It was endorsed by Belinda Ang J (as she then was) in *Lee Hsien Loong v Singapore Democratic Party and others and another suit* [2009] 1 SLR(R) 642 ("*LHL v SDP*") at [38] and [39] (see also *Law of Torts in Singapore* at para 13.147). The *Burstein* rule is also cited affirmatively in *Gatley* at paras 12-020 and 34-092–34-095; *Clerk & Lindsell* at para 21-238; and James Goudkamp & Donal Nolan, *Winfield & Jolowicz: Tort* (Sweet & Maxwell, 20th Ed, 2020) at para 13-115.

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227 PFS at para 16.

228 DFS at para 15.

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157 The admissibility of evidence on the publication's directly relevant background context is subject to *Burstein* particulars being pleaded. Order 78 r 7 of the Rules of Court (2014 Rev Ed) ("ROC 2014") states:

> **Evidence in mitigation of damages (O. 78, r. 7)**
>
> **7.** In an action for libel and slander in which the defendant does not by his defence assert the truth of the statement complained of, the defendant shall not be entitled at the trial or hearing to give evidence-in-chief, with a view to mitigation of damages, as to the circumstances under which the libel or slander was published, or as to the character of the plaintiff, without the leave of the Court, unless —
>
> (*a*) such ***matters are included in his defence*** filed and served in the action; or
>
> (*b*) where no defence has been filed and served, directions have been obtained from the Registrar pursuant to Order 37, Rule 1 for the inclusion of such evidence.
>
> [emphasis added]

158 Order 78 r 7 applies in this case as the defence of justification is not pleaded or relied on. In *LHL v SDP*, Ang J stated that a defendant who proposes to plead and establish facts under the *Burstein* rule had to notify the plaintiff of the proposed particulars either in the defence or a notice given pursuant to O 78 r 7 of the then-applicable Rules of Court (2006 Rev Ed) ("ROC 2006") (at [41]).

159 The onus on a defendant under O 78 r 7 today is even greater. Rule 7 was amended in 2010 (by S 605/2009) to "***narrow*** the circumstances in which evidence in chief may be given without the leave of the court. In the past, the defendant could simply furnish particulars to the plaintiff not less than seven days before the trial. The new rule provides that the ***information must be included in the defence*** pleading or (if the defence has not been filed and served), the Registrar has directed that such evidence is to be included" [emphasis added]: *Singapore Court Practice* (Jeffrey Pinsler gen ed)

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(LexisNexis Singapore, 2017 reissue) at para 78/7/1; see also *Singapore Civil Procedure 2022* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell, 2022) at para 43/6 (O 43 r 6 in the Rules of Court 2021 is *in pari materia* with O 78 r 7 ROC 2014). As Ang J noted more generally, "if a defendant intends to raise mitigation or reduction of damages as part of his defence as to damages, this point, together with the relevant supporting particulars, must be pleaded and proved like any other fact" (*LHL v SDP* at [14]). She cited in support of this the obligation to plead any matter "which, if not specifically pleaded, might take the opposite party by surprise" (O 18 r 8(1)(*b*) of the ROC 2006). I respectfully agree with Ang J's views. The amendments to O 78 r 7 did not alter the obligation on the defendant to plead the particulars he intends to rely on in mitigation of damages.

160 At present, Nippon Steel Singapore submits that the court is entitled to consider *all* the evidence before it when assessing the quantum of damages and that, therefore, CS has "serious difficulties in establishing proof of the alleged losses for which it is claiming damages".[229] I am unable to agree in so far as particulars going to justification are concerned. Nippon Steel Singapore has not pleaded reliance on such particulars in mitigation of damages. Each defendant filed separate Defences.[230] In Nippon Steel Singapore's Defence, it merely refuses to admit that damage was caused and puts CS to strict proof thereof.[231] It also denies the defamatory meaning alleged by CS without providing particulars.[232] In other words, Nippon Steel Singapore has failed to furnish adequate particulars – concerning facts going toward justification – in its Defence to satisfy O 78 r 7 ROC 2014.

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229 DFS at paras 14 and 17.

230 Set Down Bundle ("SDB") at Tabs 22 and 23.

231 1D's Defence at paras 17, 19 and 22; 2D's Defence at paras 9, 11 and 13.

232 1D's Defence at para 15; 2D's Defence at para 7.

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161 Accordingly, even if there is merit to Nippon Steel Singapore's submission that the BC1:2012 *does* apply to the Product, this does not affect the quantification of damages for defamation.

General damages

162 A claimant is entitled to general damages once liability for defamation has been made out. The recognised heads of damage claimable as general damages are injury to reputation, injury to feelings, and for vindication: *Low Tuck Kwong v Sukamto Sia* [2014] 1 SLR 639 ("*Low Tuck Kwong*") at [90]. However, a company cannot be injured in its feelings: *Longyuan-Arrk* at [133]. In deciding the quantum of general damages, the guidance of the Court of Appeal in *Lim Eng Hock Peter v Lin Jian Wei and another and another appeal* [2010] 4 SLR 357 at [7] and [8] is instructive:

> ... circumstances that are relevant and should be taken into account include:
>
> (a) the nature and gravity of the defamation;
>
> (b) the conduct, position and standing of the plaintiff and the defendant;
>
> (c) the mode and extent of publication;
>
> (d) the natural indignation of the court at the injury caused to the plaintiff;
>
> (e) the conduct of the defendant from the time the defamatory statement is published to the very moment of the verdict;
>
> (f) the failure to apologise and retract the defamatory statement; and
>
> (g) the presence of malice.
>
> Another consideration relevant to the determination of the quantum of general damages to be awarded is its intended

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> deterrent effect. In *The Gleaner Co Ltd v Abrahams* [2004] 1 AC 628, the Privy Council (*per* Lord Hoffman) said (at 646):
>
> > [D]efamation cases have important features not shared by personal injury claims. *The damages often serve not only as compensation but also as an effective and necessary deterrent.* The deterrent is effective because the damages are paid either by the defendant himself or under a policy of insurance which is likely to be sensitive to the incidence of such claims. [emphasis added]

163 While CS claims general damages for loss of reputation, it has not advanced a specific quantum for my consideration.[233] CS does, however, submit that several factors aggravate the damage to its reputation: the grapevine effect where defamatory information percolates through society,[234] that CS and the defendants are competitors, the grave nature of the defamatory meaning of the Publication and/or Words, the dissemination of the Publication to parties other than Kajima and Kong Hwee, that the defendants never bothered to check with the BCA on whether the BC1:2012 applied, the defendants' malice and that the defendants never apologised for the Publication and Words.[235]

(1) Extent of publication and nature of gravity of the defamation

164 For the purpose of establishing liability for defamation, I earlier recognised (see [130] above) that Nippon Steel Singapore published the Defamatory Material to Kajima's Mr Fukuda, Kong Hwee's Mr Kannan and Prof Chiew. Now, to determine the full extent to which the Defamatory Material spread for the purpose of calculating damages, I turn to consider whether the Defamatory Material was re-published and whether Nippon Steel Singapore is liable for re-publications. I deal with two forms of re-publication alleged in CS's

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233 PCS at paras 193–194.

234 PCS at para 188.

235 PCS at para 193.

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pleadings and submissions: (a) re-publication to identified third parties; and (b) re-publication to unidentified third parties (or the "grapevine effect").

(A) RE-PUBLICATION TO IDENTIFIED THIRD PARTIES

165 CS pleads that "[e]ach of the Defendants published and circulated or caused to be published and circulated the Publication, and/or variations thereof, to Third Parties, some of whom are unknown to the Plaintiff but known to the Defendants."[236] In Further and Better Particulars ("FNBP") provided on 17 January 2019, CS alleges that the "Third Parties", who received the Publication and are known to CS, are Woh Hup, Meinhardt, KTP Consultants Pte Ltd ("KTP Consultants") and the BCA. As I earlier found, there is no evidence that Nippon Steel Singapore (or Nippon Steel Japan, for that matter) communicated the Publication to persons other than Kajima, Kong Hwee and Prof Chiew. These Third Parties would therefore, if at all, have received the Publication and/or Words by way of *re-publication*.

166 First, CS avers that Dr Tran of the BCA received the Publication from Prof Chiew. I accept this. As stated at [40], after the Seminar at which Mr Gerardy asserted that the Product was used in the Funan Project in accordance with its Catalogue Design Strength, Mr Murahashi contacted Prof Chiew to check if this was possible. Prof Chiew promised Mr Murahashi that he would make inquiries with his contacts at the BCA.[237] Prof Chiew did act on this promise. This much is confirmed by Ms Cong's WhatsApp messages to Mr Koh in January 2018. Ms Cong stated that "BCA and Prof Chiew" were commenting that the Product should be subject to the BC1:2012.[238] Moreover,

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236 SOC (Amd 3) at para 12(c).

237 Mr Murahashi's AEIC at para 44.

238 Mr Koh's AEIC at p 770.

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that Prof Chiew was in communication with Dr Tran regarding the Product and the BC1:2012 is buttressed by the following. In Dr Tran's email of 19 December 2017 to Mr Kam Mun Wai of Meinhardt ("Mr Kam"), Dr Tran referenced a "concern raised by local expert" regarding the non-reduction of design strengths for the Product, and instructed Meinhardt to "ensure the tests are specified if [Meinhardt] wish[ed] to adopt no strength reduction".[239] Given Prof Chiew's interpretation of the BC1:2012 and his conversation with Mr Murahashi after the Seminar, it is likely that this "local expert" was Prof Chiew. As such, Prof Chiew did inform the BCA that the Product was being sold and allegedly used in accordance with its Catalogue Design Strength, and queried the propriety of this in light of the BC1:2012. The BCA would not have had reason to make inquiries with Woh Hup and Meinhardt otherwise.

167 Second, CS avers that Dr Tran of the BCA had circulated the Publication to Ms Cong from Woh Hup on or before 5 March 2018.[240] I accept that Dr Tran communicated the Publication and/or Words to Ms Cong. Based on Mr Koh's evidence and his WhatsApp conversation records, Ms Cong contacted him in January 2018 to check whether the Product, when used as the Superior steel grade, had to comply with the design strength standards in the BC1:2012.[241] On 17 and 18 January 2018, she told Mr Koh "Now BCA and Prof Chiew Sing Ping is commenting that we should follow BC1 – by using reduction factor as S460M" and "Pls try to convince Chiew. BCA Tran told me only Chiew SP has comment."[242] Her message on 18 January 2018 also reveals her understanding that the Product enjoys a higher design strength than other steel columns.

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239 Mr Koh's AEIC at p 734.

240 FNBP of 17 January 2019 (SDB pp 123–124).

241 Mr Koh's AEIC at para 63 and p 770.

242 Mr Koh's AEIC at pp 770–771.

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Ms Cong therefore knew that CS marketed the Product under its Catalogue Design Strength. This message reads: "Talked to Prof Chiew yesterday, he disagree with us. In his view, we should treat Histar @460 and Nippon Steel similar. He commented all other steel got reduction factor, HISTAR cannot be special."

168 While it is unclear if Dr Tran had circulated the *Publication* or merely the Words to Ms Cong, whichever the case, I am satisfied that the defamatory innuendo set out at [111] above was brought home to Ms Cong in light of the analysis in [167].

169 Third, CS pleads that Dr Tran circulated the Publication to Mr Kam on or before 19 December 2017.[243] I also accept that Dr Tran conveyed the Publication and/or the Words to Meinhardt. In Dr Tran's WhatsApp correspondence with Mr Koh on 1 November 2017, the former revealed the BCA had scheduled a meeting with Meinhardt on 2 November 2017[244] to determine if the Product complied with the design strengths in the BC1:2012.[245] However, after Mr Koh explained to Dr Tran that the Product was covered by the Issued ETA, Dr Tran emailed Mr Kam on 1 November 2017 to say: "[t]he Histar S460M has ETA hence it is ok. We don't need to meet tomorrow". In my view, it is highly unlikely that Dr Tran did not inform Meinhardt of the meeting agenda and that he provided no context to the meeting. In providing said context, it is likely that Dr Tran explained the BCA's then-view that the Product was subject to the BC1:2012. Put differently, (at least) the Words would have been communicated to Meinhardt. This view, which Dr Tran conveyed, appears

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243 FNBP of 17 January 2019 (SDB at p 124).

244 Mr Koh's AEIC at p 735.

245 Mr Koh's AEIC at p 731.

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to have been formed after Prof Chiew made inquiries with the BCA in or after October 2017. Before Prof Chiew's intervention, the BCA had approved the Product for use in the Funan Project under its Catalogue Design Strength (see [43] above). Dr Tran's email to Mr Kam on 1 November 2017 would also not have made sense to Mr Kam unless Dr Tran had earlier explained the BCA's then-view that the BC1:2012 applied to the Product. Further, Mr Kam would certainly have taken the opposing view that the Product could enjoy its Catalogue Design Strength. If not, the meeting of 2 November 2017 between the BCA and Meinhardt would have been unnecessary. Thus, I also find that Meinhardt (through Mr Kam) appreciated the defamatory innuendo as a result of re-publication by the BCA.

170 CS further alleges that Mr Fong Kah Wing of KTP Consultants received the Publication from Dr Tran.[246] However, CS has not directed me to any evidence in support of this averment and I therefore reject it.

171 To summarise, I accept that there was, at least, re-publication to Woh Hup's Ms Cong, Meinhardt's Mr Kam and the BCA's Dr Tran. The next question is whether Nippon Steel Singapore should be held liable for damage that results from repetitions by the immediate publishees. The law in this regard is settled. As stated in *ATU and other v ATY* [2015] 4 SLR 1159 ("*ATU*") at [38], liability attaches to re-publications if they were intended by the defendant or were a foreseeable consequence. In this vein, S Rajendran J in *Goh Chok Tong* said (see also *The Wellness Group Pte Ltd and another v OSIM International Ltd and others and another suit* [2016] 3 SLR 729 at [224]):

> 129 The general rule … is simply that the original publisher is liable for his publication and the republisher for his republication. Separate acts constitute separate torts. However,

246 FNBP of 17 January 2019 (SDB at p 124).

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> applying the rules relating to remoteness of damage to the original tort, it is conceivable that the original publisher is liable for the republication where that republication was more likely than not the consequence of the original publication.
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> 130 If the defendant authorised or intended the republication, it would almost certainly be the case that republication was a foreseeable consequence. Similarly, if the defendant published it to a person under some sort of duty to repeat it, the probability of repetition would be high. Where the defendant acted innocently but recklessly, how probable repetition would have been is still a question of degree to be answered on the facts of every case.

172 Having regard to the circumstances of this case, I find that the re-publications above were a foreseeable consequence of Mr Murahashi's initial publication of the Words and/or Publication to Prof Chiew. This is because after the Seminar, when Mr Murahashi and Prof Chiew spoke about Mr Gerardy's presentation, Prof Chiew informed Mr Murahashi that he would "speak with his contacts at BCA to verify the facts and find out whether or not BCA did in fact give its approval for the adoption of the HISTAR Product's catalogue yield strength values in the ***Funan Project's*** design" [emphasis added].[247] Mr Murahashi must have foreseen that Prof Chiew would convey (a) the Words and/or Publication *and* (b) the fact that CS was marketing the Product under its Catalogue Design Strength, to the BCA. Prof Chiew would have needed to communicate these matters to the BCA to determine if the BCA had indeed approved use of the Product in the Funan Project in accordance with its Catalogue Design Strength. It is telling that Dr Tran then contacted the main contractor and QP of the *Funan Project* – Woh Hup and Meinhardt respectively.[248]

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247 Mr Murahashi's AEIC at para 44.

248 DCS at para 93; NE, 22 January 2021, p 106:2–3.

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173 Similarly, it would have been foreseeable to Mr Murahashi that the BCA would communicate the Words and/or Publication to Woh Hup and Meinhardt. Mr Murahashi knew that the basis for Prof Chiew's inquiries with the BCA was Mr Gerardy's claim that the Product's Catalogue Design Strength was approved by the BCA *in the Funan Project*. It is eminently logical and foreseeable that the BCA make inquiries with the main contractor and QP of the Funan Project, Woh Hup and Meinhardt. In investigating the matter, the BCA would inevitably explain to Woh Hup and Meinhardt its then-view, which had been formed after Prof Chiew made inquiries with the BCA, that the BC1:2012 applied to the Product. Thus, it was highly likely that the Words and/or Publication would be circulated to Woh Hup and Meinhardt by the BCA.

174 For these reasons, the re-publications to the BCA, Woh Hup and Meinhardt were highly likely and hence foreseeable by Mr Murahashi. Nippon Steel Singapore is thus liable for these re-publications.

(B) RE-PUBLICATION TO UNIDENTIFIED THIRD PARTIES

175 CS further argues that the Publication and/or the Words percolated in the construction industry in Singapore as they were repeated by persons who had initially received the Defamatory Material from Nippon Steel Singapore "by informal means and unforeseen ways".[249] In this regard, CS pleads that "[i]t can be inferred that a ***large but presently unquantifiable*** number of parties have read the Publication, and/or variations thereof" [emphasis added].[250]

176 It is recognised in English and Australian law that defamatory statements have the "propensity to percolate through underground channels and

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249 PCS at para 188.

250 SOC (Amd 3) at para 12(c).

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contaminate hidden springs". In short, a defamatory statement may be repeated to persons other than those to whom the defendant communicates the defamatory words: *Slipper v British Broadcasting Corporation* [1991] 1 QB 283 ("*Slipper*") at 300, cited in *Dhir v Saddler* [2018] 4 WLR 1 ("*Dhir*") at [55]; see also *McGregor on Damages* (James Edelman, Simon Colton & Dr Jason Varuhas (gen eds)) (Sweet & Maxwell, 21st Ed, 2020) ("*McGregor*") at para 46-032. This is known as the grapevine effect. However, as Gummow J cautioned, this is not some doctrine of law which operates independent of evidence: *Palmer Bruyn & Parker Pty Ltd v Parsons* (2001) 208 CLR 388 ("*Palmer*") at [89]. Stocker LJ also noted in *Slipper* at 300 that the grapevine effect "must be discounted or ignored [if there is] lack of proof". In this vein, the grapevine effect is "not a separate doctrine of law, but merely a description of the ordinary process of legitimately drawing inference from direct evidence": *Aktas v Westpac Banking Corporation Ltd* [2007] NSWSC 1261 ("*Aktas*") at [95].

177 I know of no authority in Singapore which has recognised the grapevine effect as part of our defamation law. However, I see force to the doctrine. This is because, as Lord Atkin observed in *Ley v Hamilton* (1935) 153 LT 384 at 386, it is "impossible to track the scandal, to know what quarters the poison may reach: it is impossible to weigh at all closely the compensation which will recompense a man or a woman for the insult offered or the pain of a false accusation". The difficulty in proving the extent to which a defamatory statement has percolated in the relevant class of addressees should not automatically lead to refusal to award compensation. This would ignore damage to the plaintiff's reputation caused by re-publication of the initial communication, where such re-publication was intended or foreseeable by the defendant. However, I echo Gummow J and Stocker LJ's admonition *not* to

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presume that the grapevine effect takes root in all cases. A recognition of the grapevine effect – which, as explained above, is an inference of fact – must ultimately have an evidential basis. In this regard, relevant but non-exhaustive factors which assist in determining if the grapevine effect should apply are: (a) the gravity of the imputation. The graver it is, the more likely it is to spread (*Sloutsker v Romanova* [2015] EWHC 545 (QB) at [69]); (b) the ease of repetition; and (c) the nature, size and character of the audience to whom it was published (see *Palmer* at [118]). In addition, since the grapevine effect is, at its core, an inference of re-publication, the ordinary requirements attracting liability for re-publication apply: *Aktas* at [96].

178 I provide two examples in which the grapevine effect was recognised. In *Roberts v Prendergast* [2014] 1 Qd R 357 ("*Roberts*"), the court rejected the defendant's argument that there was no evidential foundation for the grapevine effect because a witness ("Person X"), to whom the defendant communicated the defamatory material, was himself concerned that the defamatory words would spread (at [34]). Separately, the defendant in *Roberts* also told Person X that he would tell everybody about the plaintiff. In *Dhir*, where the court relied on the grapevine effect, there was evidence that one "Alfonso" who was not present at the initial publication of the defamatory words, had nevertheless heard about them from others (at [103]).

179 In the present case, I recognise that the grapevine effect operates but only to a limited degree.

180 First, the defamatory imputation is moderately grave. By innuendo, the Defamatory Material calls into question CS's honesty in selling the Product under its Catalogue Design Strength even though this does not comply with the design strengths stated in the BC1:2012. As a company that specialises in the

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supply of *steel* products for the building and construction industry, this insinuation will likely cast a pall over CS's sales of the Product. In 2014, CS was also the first in Singapore to distribute steel columns made with the Superior steel grade. I do not think word of the Product and aspersions cast on the manner in which CS was marketing the Product under the Catalogue Design Strength (*eg*, at seminars from 2014 to 2018: see [191] below) would have gone unnoticed by industry players.

181 Second, there is some evidence of the Publication and/or Words percolating in the construction industry. Mr Koh testified that on 18 January 2018, Ms Fong Kah Wing from KTP Consultants approached AM to clarify queries that the BCA had posed regarding the use of the Product without a reduction in design strength.[251] There is no evidence that Nippon Steel Singapore communicated the Publication and/or Words *directly* to KTP Consultants. That KTP Consultants caught wind of the Defamatory Material is in addition to the identified re-publishees (*ie*, Woh Hup's Ms Cong, Meinhardt's Mr Kam and the BCA's Dr Tran), which I recognised at [171] above. However, as the evidence of percolation is not overwhelming, the grapevine effect (if any) in this case will not be strong.

182 Third, the ease of repetition is moderately high. The material portions of the Publication (*ie*, the Graph and the text under it reading "Necessary to reduce the design strength for each thicknesses [*sic*] ... following ... BC1:2012") are contained in a single page. The material portion of the Words, that the "Product, even if used as HISTAR 460 steel, has to comply with the design strengths prescribed in the BC1:2012", is also brief. I also do not think members of the construction industry would be unfamiliar with the BC1:2012. It is therefore

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251 Mr Koh's AEIC at para 61 and p 767.

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likely that persons who heard the Words would recall the essence of the defamatory imputation – that CS was dishonestly breaching the guide known as *BC1:2012* – and repeat it to others in the industry. As such, I think the Defamatory Material could be conveyed with relative ease.

183 Fourth, the nature of the audience to whom Mr Murahashi published the Defamatory Material is relevant. Prof Chiew is an important direct publishee. As an author of the BC1:2012, he had connections with the BCA and the credibility to persuade the BCA to launch investigations on the use of the Product. Further, I am prepared to infer that the BCA's investigation into the Product's Catalogue Design Strength would likely have raised interest among industry players on the same. This would have facilitated more re-publications within the industry.

184 In these circumstances, I infer that persons to whom the Defamatory Material was communicated and who knew that CS was marketing the Product under its Catalogue Design Strength repeated the defamatory imputation to others in the construction industry. For completeness, I do not think Mr Sim's evidence alone, that "bad words" spread in the industry, would have been sufficient to invoke the grapevine effect.[252]

185 However, even considering re-publication to unidentified third parties under the grapevine effect (see [179] above) together with evidence of direct publication by Nippon Steel Singapore (see [130] above) and re-publication to identified third parties (see [171] above), I am only willing to recognise a limited extent of publication and re-publication overall. There is simply

[252] NE, 26 January 2021, p 86:17–19.

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insufficient evidence to support an inference of substantial percolation of the Publication and/or Words.

186 Finally, I am satisfied that Nippon Steel Singapore should be liable for re-publications of the Publication and/or Words *via* the grapevine effect. It is an entirely foreseeable consequence that if: (a) a corporate defendant maligns the manner in which its trade rival is conducting the sale and marketing of a particular product ("X"); (b) X belongs to a class of goods which the trade rival specialises in the supply of; and (c) the defendant communicates the defamatory statements in the context of promoting a new product that competes with X, this would be repeated to other players in the relevant industry. Persons considering adopting X in a future project would no doubt solicit views on X from other players in the industry (including academics and/or regulatory bodies, both of which were publishees of the Defamatory Material in this case), thereby facilitating re-publication of the Defamatory Material.

(I) WHETHER THE PERSONS WHO RECEIVED THE DEFAMATORY MATERIAL VIA *THE GRAPEVINE EFFECT WOULD HAVE APPRECIATED THE DEFAMATORY INNUENDO*

187 A final question on the issue of re-publication is whether re-publishees who received the Defamatory Material by virtue of the grapevine effect would have appreciated the defamatory innuendo.

188 In this regard, CS argues that it was well known among members of the construction industry that it was marketing the Product under the Catalogue Design Strength. It claims to have "spent substantial resources on marketing and advertising the Product, promoting the ***designed material strength*** and other benefits of the Product" [emphasis added].[253] Further, CS submits that "[a]s it

253 PCS at para 43; SOC (Amd 3) at para 6.

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was a relatively new product, [it] explained to potential customers that the Product was suitable for use as per its [Catalogue Design Strength], as it was covered by ETA 10-0156 and complies with the requirements of EN 10025-2004."[254] In these premises, CS's case is that "[m]embers of the construction industry" would have known, among other things, that it was marketing the Product for use in accordance with its Catalogue Design Strength.[255]

189 In contrast, Nippon Steel Singapore submits that CS marketed the Product as a S460M steel column. This contradicts CS's assertion that it marketed the Product under its Catalogue Design Strength which exceeds that of S460M steel. Nippon Steel Singapore makes this submission in the context of arguing that, on a proper interpretation of the BC1:2012, it applies to the Product. It contends that CS marketing the Product as S460M steel is acknowledgement by CS that the BC1:2012 applies.[256] However, whether CS marketed the Product as a Superior grade of steel or S460M steel is also relevant to CS's submission that it is well known that it marketed the Product under its Catalogue Design Strength.

190 Having regard to the evidence, I accept that it was moderately known within the construction industry that CS was marketing the Product under its Catalogue Design Strength. Some persons to whom the Publication was re-published would therefore have appreciated the defamatory innuendo. For context, I later hold at [259] below that the relevant loss period during which recipients of the Defamatory Material were labouring under the defamatory imputation is between October 2017 and June 2018. Thus, evidence of

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254 PCS at para 43; see also Mr Koh's AEIC at para 28.

255 PCS at para 152.

256 DCS at paras 33–52.

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knowledge of the 2nd Extrinsic Fact *after* the defined loss period is irrelevant and will not be considered.

191 First, it is significant that CS organised seminars from 2014 to 2018 for members of the construction industry. At these seminars, CS marketed the Product under its Catalogue Design Strength. Of the four seminars that occurred within the loss period,[257] Mr Koh exhibited the slides used at two seminars[258] – those on 26 October 2017 and 6 February 2018. These slides confirm that AM and/or CS promoted the Product under its Catalogue Design Strength.[259]

192 A range of industry players was represented at the four seminars organised by CS. There were approximately 100 guests at each seminar on 26 October 2017 and 6 February 2018, and approximately 30 guests at the two seminars on 27 November 2014 and 30 June 2015. The stakeholders represented at these seminars included public and private organisations and universities. Examples are the BCA, Housing & Development Board, JTC Corporation, Nanyang Technological University and Surbana Jurong Consultants Pte Ltd.[260]

193 Second, CS also delivered private presentations to individual organisations, at which the Product was marketed under its Catalogue Design Strength. For instance, a presentation to the Land Transport Authority in January 2016 contained a graph that depicts the Product as possessing a higher design strength than S460M and S355 steel.[261]

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257 SOC (Amd 3) at para 6; Mr Koh's AEIC at para 24.

258 Mr Koh's AEIC p 105.

259 Mr Koh's AEIC at pp 123–124 (October 2017 seminar), 280–283 (February 2018 seminar).

260 SOC (Amd 3) paras 6–7 and Annex B.

261 Mr Koh's AEIC at p 496.

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194 Third, in the process of competing for projects, CS also pitched the Product's Catalogue Design Strength to some potential customers. CS adduced evidence of email correspondence with these potential customers. In particular, CS's correspondence with KTP Consultants in January 2018[262] and CPG Corporation Pte Ltd in June 2018[263] prove that CS marketed the Product to potential clients as a Superior grade of steel that could be used under the Catalogue Design Strength.

195 However, as indicated at [190], I regard the 2nd Extrinsic Fact as being moderately known within the construction industry. This is a lower degree of notoriety than what CS contends for. I am cautious to go further because certain evidence on which CS relies to prove extensive marketing of the Product under its Catalogue Design Strength *does not* bear this out. I provide a few examples.

196 When making private presentations to *some* entities, it is unclear if CS marketed the Product under its Catalogue Design Strength. For instance, Mr Koh exhibited correspondence between CS and Koh Brothers Group in October 2017 regarding a presentation to be delivered to the latter. While "HiStar460" is mentioned, there is no evidence that CS promoted the Product under its Catalogue Design Strength.[264]

197 With regard to CS's correspondence with potential clients, it is sometimes unclear if CS marketed the Product under its Catalogue Design Strength or a lower design strength. I therefore accept Nippon Steel Singapore's submission (see [189] above) in *part*, in so far as CS has not proved that it

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262 AB 337.

263 AB 425.

264 Mr Koh's AEIC at p 545 (Koh Brothers Corporation).

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always marketed the Product under its Catalogue Design Strength. For instance, the sales pitch made by CS to Samsung C&T Corporation in 2016 does not mention "HISTAR 460", much less that the Product was marketed under its Catalogue Design Strength.[265] As for CS's marketing efforts to China Railway Tunnel Group Co Ltd ("CRTG") in December 2017, while CS did promote "HiStar 460" in a counter-proposal, it is unclear if CS did so in accordance with the Product's Catalogue Design Strength or S460M design strengths. The original proposal to CRTG was only for S355M steel.[266]

198 CS even admits that there were three occasions on which the Product was marketed as S460M, rather than Superior grade of steel, to CPG Corporation, Sato Kogyo (S) Pte Ltd and the Woh Hup/Obayashi joint venture ("the WO JV").[267] CS's explanation is that S460M steel was more suitable to the customer's needs in those projects, or that CS merely suggested S460M steel as a pretext for marketing the Superior grade of steel at a subsequent meeting. In particular, with regard to CS/AM's engagement with the WO JV, Mr Koh is unable to explain why AM had, in a counter-proposal, marketed the Product as "HISTAR 460 *per BC1*" [emphasis added].[268] This, on its face, suggests that AM was marketing the Product under the design strengths in the BC1:2012, rather than the Catalogue Design Strength. Mr Koh admits that he does not know why the counter-proposal was phrased in this way. However, Mr Gerardy, who prepared the counter-proposal,[269] was not called as a witness to account for

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265 Mr Koh's AEIC at pp 554–556.

266 Mr Koh's AEIC at pp 560–561.

267 PRS at para 24(a); AB 91 (CPG Corporation, Jan 2016), 103 (Sato Kogyo), 105 (Woh Hup and Obayashi); For the Woh Hup/Obayashi JV, see Mr Koh's AEIC at p 436.

268 AB 105 and 113; NE, 22 January 2021, 60:1–12.

269 AB 113; DCS para 44.

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his choice of words. These examples demonstrate that CS may not *always* have marketed the Product under its Catalogue Design Strength.

199 Considering the evidence in totality, while CS might not have marketed the Product under its Catalogue Design Strength on all occasions, it cannot be gainsaid that it went to significant expense to market the Product under its Catalogue Design Strength, such as at the four seminars (see [191] above). It is also hard to believe that CS would *not* leverage on the Issued ETA and the cost savings flowing from the usage of the Catalogue Design Strength to market the Product to potential clients. Hence, on the balance of probabilities, I find that some members of the construction industry knew that CS marketed the Product in accordance with its Catalogue Design Strength. This means that a proportion of re-publishees who received the Defamatory Material *via* the grapevine effect would have appreciated the defamatory innuendo.

(2) Malice

200 CS further argues that the defendants acted with malice in publishing the defamatory falsehoods. It accuses the defendants of being "motivated by a dominant intention to injure [CS'] business in selling the Product, and/or the Defendants did not honestly believe that the statements were true or [have] acted with reckless disregard as to the truth of the statements."[270] On a related note, CS also submits that the defendants never bothered to ascertain with the BCA whether the BC1:2012 applies to the Superior grade of steel.[271]

201 If express malice defeats the defence of qualified privilege or fair comment, such malice may also aggravate the quantum of damage: see *Arul*

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270 PCS at para 193(e).

271 PCS at para 193(d).

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Chandran v Chew Chin Aik Victor [2001] 1 SLR(R) 86 [45]–[50] and [57] (qualified privilege); *Halsbury's Singapore Defamation* at para 96.255. Malice may be proved in one of two ways (*Hady Hartanto v Yee Kit Hong and others* [2014] 2 SLR 1127; [2014] SGHC 40; *Lim Eng Hock Peter v Lin Jian Wei and another and another appeal* [2010] 4 SLR 331 at [35]–[38], [40] and [44]):

(a) First, the plaintiff can show that the defendant had no honest belief that the publication was false, or was reckless to the truth of what he published.

(b) Second, even if the defendant had an honest belief in the truth of what he published, there would still be malice if, among other things, the defendant's dominant motive for publishing the statement was to injure the plaintiff.

202 Evidence of the defendant's conduct and actions prior to the publication, at the time of the publication and after the publication, including the entire surrounding circumstances, must be viewed in totality: *Arul Chandran v Chew Chin Aik Victor JP* [2000] SGHC 111 at [301].

203 The Court of Appeal's *obiter dictum* in *Basil Anthony Herman v Premier Security Co-operative Ltd and others* [2010] 3 SLR 110 ("*Basil Anthony Herman*") at [65] may on one view suggest that express malice does not entitle a corporate plaintiff to additional damages:

> … given the Judge's clarification (at [151] of the Judgment) that she ***doubled the damages awarded to each of the respondents because of her finding of malice***, we are not at all certain that she had, in deciding on the quantum, appreciated that '[a] company [such as Premier] cannot be injured in its feelings, it can only be injured in its pocket' (*Rubber Improvement Ltd v Daily Telegraph Ltd* [1964] AC 234 at 262 *per* Lord Reid). Only an individual can claim damages for distress. A corporate or business entity can only recover

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> damages appropriate for vindication and (if pleaded) special damages for loss of business and goodwill. We also note that the ability of a corporate plaintiff to recover aggravated damages for defamation has not been authoritatively settled (see, *eg*, the contrasting positions taken in the English High Court cases of *Messenger Newspapers Group Ltd v National Graphical Association* [1984] IRLR 397 and *Collins Stewart v The Financial Times Ltd* [2005] EMLR 5).
>
> [emphasis added]

204 Later decisions, however, have cited this passage in *Basil Anthony Herman* in relation to *aggravated damages* or for the proposition that corporate plaintiffs are not entitled to damages for injured feelings: see *Golden Season* at [136]; *ATU* at [55]–[60]; *Li Siu Lun v Looi Kok Poh and another* [2015] 4 SLR 667 at [181]; *Qingdao Bohai Construction Group Co, Ltd and others v Goh Teck Beng and another* [2016] 4 SLR 977 at [50]. *Basil Anthony Herman* has not been interpreted to preclude raising the quantum of general damages if the court infers that express malice increased the damage done to the corporate plaintiff's reputation. In fact, Wei JC in *Golden Season* declined to award a corporate plaintiff aggravated damages on account of *Basil Anthony Herman*, but accepted that malice increased the quantum of general damages due (at [136] and [142]; see also *DHKW* at [43]). The approach in *Golden Season*, which I agree with, is also consistent with that set out by the Hong Kong Court of First Instance in *Oriental Press Group Limited v Inmediahk.Net Limited* [2012] HKCU 714 at [69]. I thus proceed to consider CS's submissions on express malice.

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(A) DID MR MURAHASHI NOT HONESTLY BELIEVE THE DEFAMATORY MATERIAL WAS TRUE OR RECKLESSLY DISREGARD THE TRUTH?

205 CS submits that the defendants did not honestly believe that the defamatory imputation was true or acted with reckless disregard as to its truth because:[272]

(a) Mr Murahashi could not give any good reason why he did not check the position with the BCA.

(b) Even after Mr Murahashi attended the Seminar on 26 October 2017, where Mr Gerardy confirmed that the Product was used in accordance with its Catalogue Design Strength in the Funan Project, the defendants did not bother to check the position with the BCA or anyone involved in the Funan Project, and/or to correct the position with customers they had previously misinformed.

(c) Prof Chiew did receive confirmation from the BCA in late October 2017 that the Product had been used in the Funan Project in accordance with its Catalogue Design Strength.

206 I begin by setting out some principles. In the main, the authorities draw a clear line between recklessness and mere negligence. The latter does not amount to malice: *Golden Season* at [163]. As far as recklessness is concerned, Yong Pung How CJ in *Maidstone Pte Ltd v Takenaka Corp* [1992] 1 SLR(R) 752 stated that (at [50]):

> A defendant is not reckless, for the purposes of proving malice, if he did so ***believing it was true, even if he was careless, impulsive or irrational in coming to that belief. The law does not require him to be logical. In order for him to be held to be reckless, he must be shown to have not cared or***

272 PCS at para 183.

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> ***considered if the statement was true***. This is illustrated by the finding of malice (albeit *obiter*) by L P Thean J in *Lee Kuan Yew v Davies Derek Gwyn* … the learned judge held that [the defendants] had a duty to verify the account in the documents, and by not doing so before writing the defamatory article on the basis of the account in the documents, they were reckless as to the truth of the account in the article.
>
> [emphasis added]

207 I find that on the balance of probabilities, Mr Murahashi and Nippon Steel Singapore communicated the Publication and Words with reckless disregard as to the truth of the defamatory imputation (that the BC1:2012 applied to the Product and that the Catalogue Design Strength had to be reduced in compliance with the BC1:2012). As Kan Ting Chiu J recognised in *Macquarie Corporate Telecommunications Pte Ltd v Phoenix Communications Pte Ltd and another* [2004] 1 SLR(R) 463 at [45], malice is proved when the defendant acts with knowledge that the statement is untrue or knowing indifference as to whether it is true or false. Citing from *Gatley on Libel and Slander* (9th Ed, 1998) at para 16.16, Kan J stated that (see also Doris Chia, *Defamation: Principles and Procedure in Singapore and Malaysia* (LexisNexis, 2016) at para 13.16):

> [W]here the defendant ***purposely abstains*** from inquiring into the facts or from availing himself of means of information which lie at hand when the ***slightest inquiry*** would show that the imputation was groundless, or where he ***deliberately stops short*** in his inquiries in order not to ascertain the truth, a jury may rightly infer malice.
>
> [emphasis added]

208 In the present case, Nippon Steel Singapore was indifferent as to the truth of the Defamatory Material. It deliberately stopped short of making inquiries *directly* with the BCA so as to ascertain whether the BC1:2012 applied to the Product when it was used as the Superior grade of steel. I now provide my reasons.

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209 I agree with CS that Nippon Steel Singapore has not provided "any good reason" why it failed to ask the BCA directly whether the BC1:2012 applied to the Product.[273] Nippon Steel Singapore's explanation is that it relied on the advice of Prof Chiew, an author of the BC1:2012, that the Product was indeed subject to the guide.[274] However, while Prof Chiew may have authored the guide, as Mr Murahashi implicitly recognises, Prof Chiew does not represent the BCA[275] nor the BCA's views on whether the BC1:2012 applied to the Product *as at* the time the Defamatory Materials were published. Prof Chiew's view was contrary to the BCA's position that the Product could be used in Singapore under its Catalogue Design Strength, which it held until the former made inquiries after the Seminar (see [43] above). The BCA is the regulatory authority that promulgated the BC1:2012. The evidence suggests that it monitors and polices enforcement of the industry standards contained in the guide. Accordingly, while Prof Chiew's views may be relevant, any inquiry into whether the BC1:2012 applied to the Product would patently be incomplete without referring the question to the BCA. I can think of no explanation why Nippon Steel Singapore would abstain from making enquiries with the BCA before communicating the Defamatory Materials to customers *unless* this omission was made purposely to avoid confronting the truth. Mr Murahashi's conduct of his research into the BC1:2012 stands in *stark* contrast to that of CS. Once Mr Sim discovered the Publication on 27 December 2017, *within a day*, CS had made a decision in consultation with AM to engage the BCA to address the correctness of the Publication (see [56] above).

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273 PCS at para 183(b).

274 Defendants' Opening Statement at para 12; DCS at paras 216–219.

275 NE, 29 January 2021, p 49:15–16.

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210 Mr Murahashi is not a simple person. He has been with Nippon Steel Singapore since 2011. He has spoken at international conferences in Singapore organised or supported *by the BCA*.[276] He is hence no stranger to the BCA. He is a structural and environmental engineer by profession and has a Doctor of Economics from Saitama University.[277] He must have appreciated the obviousness of checking with the BCA on whether it agreed with Prof Chiew's view of the BC1:2012. Instead, Mr Murahashi was content to run with Prof Chiew and Prof Liew's view of the guide since it was favourable to his employer's commercial interests, when another source of verification (the BCA) was readily available.

211 I am also satisfied that by the time Mr Murahashi communicated the Defamatory Material to Mr Fukuda and Mr Kannan on 23 and 25 October 2017 respectively, he knew that CS was marketing the Product under the Catalogue Design Strength. This is why Mr Murahashi took pains to state in the Publication that it is "***Necessary*** to reduce the design strength ... following ... BC1:2012 in Singapore", and/or to explain, using the Words, that the lower design strength in the BC1:2012 "***would be*** applicable to the HISTAR Product" [emphasis added in bold italics]. Emphasising the need for such a design strength reduction would be redundant if CS had not been marketing the Product under the Catalogue Design Strength. That Mr Murahashi possessed this knowledge, yet omitted to make the appropriate clarifications with the BCA *before* publishing the Defamatory Material, revealed a certain cynicism and indifference towards the truth.

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276 Mr Murahashi's AEIC at para 6.

277 Mr Murahashi's AEIC at para 7.

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212 Mr Murahashi's recklessness as to the truth continued even after the Seminar. Granted, after the Seminar on 26 October 2017, Mr Murahashi reached out to Prof Chiew *via* WhatsApp to clarify whether what Mr Gerardy had said was possible. The relevant portions of their WhatsApp exchange are as follows:[278]

Mr Murahashi:	I just attended a SSSS evening lecture on S460 and Histar application. During the lecture, a speaker told us we don't need design strength reduction if we use Histar in Singapore. BC1 doesn't include Histar but Histar is certified by European Technical Assessment so that we don't need design strength reduction compare to S460M. I am very fine [*sic*] if you give me your comment in your spare time. …
Prof Chiew:	ETA not recognised as approved documents by BCA; they have always try to say this and asked me before, ***the answer is NO, must follow BC1 and strength reduction apply if they want to use in SGP***..
Mr Murahashi:	Thanks Professor
Prof Chiew:	AM can say what they want, not valid in SGP. …
Mr Murahashi:	I see. However, King post used in Funan Project uses Histar without no [*sic*] reduction for the first time in Singapore, AM speaker told us. I ***will check its detail and report you on 2nd or 3rd December if you are convenient***. How about your convenience?
Prof Chiew:	ok..sometimes ***BCA processing officer also don't know*** ..
Mr Murahashi:	I think so.
Prof Chiew:	3Nov or 3Dec?..give me the facts and ***I'll raise this with BCA***..
Mr Murahashi:	Sorry, 3 Nov

[278] AB 248–249; see also Mr Murahashi's AEIC at para 43; DCS at para 218.

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[emphasis added]

213 Although Prof Chiew again asserted that the Product is subject to design strength reductions under the BC1:2012, in my view, Mr Gerardy's presentation would have alerted Mr Murahashi to the possibility that the BCA interpreted the BC1:2012 differently from Prof Chiew. This would have provided even greater impetus (than before) to approach the BCA directly to clarify matters. Nippon Steel Singapore did no such thing. It was happy to let Prof Chiew take the lead in making enquiries with the BCA. But it *did not* receive a clear answer from Prof Chiew with regard to the BCA's interpretation of the BC1:2012. Mr Murahashi concedes that he asked Prof Chiew for updates at the end of 2017[279] but did not receive a clear answer from Prof Chiew as to whether the Product was used in the Funan project:[280]

> Q. So one way or the other it is a matter of fact that Prof Chiew would have easily asked his colleagues in BCA "was it approved or was it not approved?"
>
> A. I agree.
>
> Q. But it is still your evidence that Prof Chiew never gave you a clear answer on this?
>
> A. Yes, as I mentioned, I heard that HISTAR S460M will be used and, if not, performance test will be needed. That was what was said. So, for me, it was ***not clear***.
>
> [emphasis added]

214 In other words, Mr Murahashi did not know whether the BCA had approved the use of the Product in the Funan Project without design strength reductions. It is telling, however, that in his oral testimony, Mr Murahashi

279 NE, 29 January 2021, p 51:10–13.

280 NE, 29 January 2021, pp 52:20–53:4.

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briefly suggested that he *had* approached the BCA himself to make the relevant enquiries. He quickly re-canted this assertion when confronted:[281]

> COURT: Mr Murahashi, why did you not check with BCA?
>
> A. ***Before checking with BCA*** I checked with Prof Chiew.
>
> COURT: Did you ever check with BCA?
>
> A. I did not.
>
> COURT: Then why you say "before"?
>
> A. I do not remember saying that, "before".
>
> COURT: Look at your answer. Read your answer.
>
> A. Yes, I see it now, the way I have said it was not good. It was not before.
>
> COURT: Then why did you say to me you did not use the word "before"? Mr Murahashi, you are testifying under oath. In particular, you pay careful attention to a question that I ask you.
>
> A. Yes, I will be careful.
>
> [emphasis added]

Accordingly, in so far as Nippon Steel Singapore published the Defamatory Material after the Seminar, it continued to be indifferent as to the truth of the defamatory imputation therein.

215 It also bears emphasising that Mr Murahashi did not make enquiries with the contractor or QP for the Funan Project. This was another obvious source of information as regards the applicability of the BC1:2012 to the Product which Nippon Steel Singapore conveniently ignored.

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[281] NE, 29 January 2021, pp 49:20–50:8.

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216 It is also telling that Mr Furuta attempted to suggest that Mr Murahashi had made relevant enquiries with the BCA. This speaks volumes about how even Nippon Steel Singapore recognises that the omission to approach the BCA is a conspicuous gap in its investigations. That Mr Furuta blew hot and cold on the question of whether Nippon Steel Singapore had made enquiries directly with the BCA is apparent from the following:[282]

(a) Initially, Mr Furuta claimed that on 8 December 2017, Mr Murahashi confirmed that he had made enquiries directly with the BCA.[283] However, Mr Furuta quickly qualified his answer by admitting that he was ***unsure*** if Mr Murahashi spoke with the BCA directly.[284]

(b) Later, when being questioned on the 2017 Internal Report Mr Murahashi had prepared on 11 December 2017, Mr Furuta performed a *volte-face*. He claimed that after receiving the report, he spoke with Mr Murahashi and verified that the latter had already received confirmation from the BCA that the Product could not be used in Singapore in accordance with its Catalogue Design Strength.[285] This contradicts his earlier qualification to his evidence (see sub-paragraph (a)).

(c) Eventually, Mr Furuta conceded that before December 2017, he did not know whether Mr Murahashi or his staff received confirmation from the BCA with regard the use of the Product in Singapore in

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282 PCS at para 127.

283 NE, 26 April 2021, p 23:15–24:3.

284 NE, 26 April 2021, p 24:4–14.

285 NE, 26 April 2021, pp 33:19–34:6.

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accordance with its Catalogue Design Strength.[286] He, in effect, recanted his evidence in sub-paragraph (b) above. Mr Furuta also admitted that *after* December 2017, Nippon Steel Singapore never got an answer from the BCA (through Prof Chiew's investigations or otherwise).[287] He also admitted that the only person who communicated with the BCA (if at all) was Mr Murahashi.[288] However, as it turns out, Mr Murahashi had testified earlier that he had not spoken directly to the BCA.[289]

Mr Furuta thus made a thinly-veiled and desperate attempt to paper over Nippon Steel Singapore's glaring omission to clarify the applicability of the BC1:2012 with the BCA.

217 In all of these circumstances, I find that Nippon Steel Singapore was reckless with the truth and published the Defamatory Material with malice.

218 I am fortified in my conclusion by *Sin Heak Hin*.[290] In that case, Prakash J regarded the defendant's failure to make proper investigations as to the truth of the defamatory imputations as indicating malice.

219 To re-capitulate, the defamatory circular in *Sin Heak Hin* accused the plaintiffs of distributing imitation Yuasa batteries from China. The circular stated categorically that there was no Yuasa manufacturing facility in China. Prakash J held that the circular was made maliciously with the dominant intention to traduce the plaintiff's Yuasa batteries to nip the competition in the

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286 NE, 26 April 2021, p 60:13–17.

287 NE, 26 April 2021, p 60:18–22.

288 NE, 26 April 2021, p 62:22–24.

289 NE, 29 January 2021, p 33:18-23, 50:11–14.

290 PCS at para 182.

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bud (the defendant also distributed Yuasa batteries) (at [68]). One reason for her finding of malice was that the defendant failed to make proper investigations as to the authenticity of the plaintiff's batteries (at [67]). Prakash J was not convinced that the defendants even had sight of the alleged counterfeit batteries or inspected the batteries before publishing the circular. There was also no "hard evidence" of correspondence between the defendant and Yuasa Japan before the circular was published to prove that the former had enquired as to whether the Chinese batteries were authentic (at [65]–[66]).

220 Admittedly, Prakash J's finding of malice rested on other factors. She also noted that the defendant "conveniently omitted" to mention that a Chinese manufacturer, Xinjiang Electric, had a licensing agreement with Yuasa Japan to manufacture Yuasa batteries. She found that the defendant preferred to disregard this as he would otherwise have to admit the possibility that the plaintiff's Chinese batteries were authentic. She also noted that the phraseology of the circular was excessive (*eg*, the word "imitation" was used thrice and once in conjunction with "illegal") and a simple statement that buyers of the Chinese Yuasa batteries would not enjoy the defendant's guarantees and after-sale service would have sufficed (at [68]).

221 However, in my view, the failure to make proper investigations in the present case is egregious enough to establish indifference to the truth. It is inexplicable that for at least four years (from 2013 to 2017), Mr Murahashi failed to approach the BCA directly even once. Mr Murahashi was even confronted, at the Seminar, with information that squarely contradicted Prof Chiew's interpretation of the BC1:2012. The inference therefore is that Nippon Steel Singapore deliberately stopped short of approaching the BCA or parties involved in the Funan project to ascertain the BCA's position on the applicability of the BC1:2012 to the Product.

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(3) Nippon Steel Singapore never apologised

222 Finally, CS argues that the defendants never apologised for the Publication and the Words. It accuses the defendants of pretending in the 23 Jan Letter that the BCA had informed them that the BC1:2012 applied to the Product.[291]

223 An apology achieves a dual purpose: it soothes the injured feelings of the person defamed and undoes harm done to his reputation in consequence of the publication: *Lee Hsien Loong v Ngerng Yi Ling Roy* [2016] 1 SLR 1321 ("*LHL v Roy Ngerng*") at [64]. The mitigatory effect of an apology must therefore be assessed with a view towards the fulfilment of its consolatory and vindicatory aims, bearing in mind the defamatory imputation of the publication for which damages are to be quantified: *LHL v Roy Ngerng* at [64].

224 In this case, Nippon Steel Singapore did not issue an apology. However, since companies have no feelings (*Basil Anthony Herman* at [65]), the failure to *console* CS should not aggravate the damages due. As for the vindicatory effect of an apology, that is achieved, at least in part, by the retraction of the defamatory imputation by way of the 9 Feb Letter.

225 Within four months of the communication of the Publication and/or Words in October 2017, the defendants *retracted* the defamatory imputation by placing the 9 Feb Letter at AM's disposal. In that letter, the defendants admitted that the BC1:2012 did *not* apply to the Product and that the Product could be used in accordance with the design strength in the Issued ETA (*ie*, the Catalogue Design Strength). It is only in these proceedings that the defendants now argue

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[291] PCS at para 193(f).

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that the concession in the 9 Feb Letter was done for expediency and that they maintain the BC1:2012's applicability to the Product.

226 In the particular circumstances of this case, I do not think the retraction of the 9 Feb Letter in these proceedings should be held against Nippon Steel Singapore. Granted, the insincerity of the initial retraction deprives it of mitigating weight (*Goh Chok Tong v Chee Soon Juan (No 2)* [2005] 1 SLR(R) 573 ("*Goh Chok Tong (No 2)*") at [54] and *Halsbury's Singapore Tort* at para 240.200). However, this does not mean that the retraction necessarily evidences bad faith or malice on the part of Nippon Steel Singapore such as to warrant an aggravation in the award of compensatory damages.

227 The present case is quite unlike the following two cases in which the *reversal* of an apology or initial retraction of the libel or slander was held against the defendant. In *Goh Chok Tong (No 2)*, the defendant was the political opponent of the plaintiff. The defendant retracted an apology he initially made. The defendant argued that the apology was the product of duress and intimidation, but the court found that these allegations were "so lacking in substance and merit as to raise no triable issue". The court indicted him for knowing the allegations he made were false and acting in bad faith throughout (at [51]). In those circumstances, the retraction of the apology aggravated the damages awarded. In *Sin Heak Hin*, Prakash J noted that the defendant had initially recognised that the plaintiffs were dealing in Xinjian Electric's authentic Yuasa batteries. However, in the action, the defendant withdrew that recognition of authenticity. Prakash J said that this retraction evidenced an "unrelenting attitude" that "led easily to the defendant exceeding the bounds of the protection of its legitimate commercial interest" (at [69]). That the defendant resiled from an initial retraction of the libel (if this could be said to amount to a retraction), buttressed the finding of malice which she had arrived at.

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228 In contrast, that Nippon Steel Singapore now resiles from the 9 Feb Letter does not evidence bad faith in litigation or malice. An apology, or, as is the case here, a retraction of the defamatory statement(s) may be extended for commercial considerations or expediency. In my view, the 9 Feb Letter was indeed issued for commercial expediency. As Mr Furuta testified under cross-examination, the defendants released the 9 Feb Letter "to settle this issue as per ArcerlorMittal's suggestion to avoid further market confusion" and to "in a way, placate ArcerlorMittal".[292] The letter should thus be appreciated in the context of the business relationship between AM and the defendants, which was described as a "long lasting" one in internal emails within AM.[293] Nippon Steel Singapore should not be penalised for running the case that it now does in an adversarial litigation.

229 Therefore, that Nippon Steel Singapore never apologised and resiled from the 9 Feb Letter is, at best, a neutral factor in the assessment of damages.

(4) The appropriate quantum of general damages

230 Bearing the foregoing factors in mind, particularly the moderate gravity of the defamatory imputation (at [180] above), I award CS $25,000 in general damages.

231 In my view, $25,000 is appropriate having considered the following authorities and accounting for the different aggravating and mitigating factors in this case. Lee J helpfully summarised some relevant authorities in *ATU* at [42], which I gratefully adopt and adapt to the circumstances of this case:

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292 NE, 26 April 2021, p 69:9–70:4.

293 AB 255.

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S/N	Case	Facts	Award
1.	*Oversea-Chinese Banking Corp Ltd v Wright Norman and others and another suit* [1994] 3 SLR(R) 410	The first defendant wrote a letter to *The Business Times* ("the BT") stating that there is "a *prima facie* case of rank amateurism or carelessness at OCBC" to have allowed confidential information, namely the identities of four potential hires, to be leaked. The letter was published in the weekend issue of the BT (at [3]). In assessing the quantum of damages, the court noted that: (a) OCBC is one of the "leading local banks in Singapore"; (b) that "the defamatory remarks appeared in a newspaper for the business community; (c) that no apology was tendered; (d) a plea of justification was added; and (d) and that the defamatory remarks were made with the object of promoting generally the commercial interests of executive search firms, and that of the defendants in particular (at [69]).	OCBC was awarded $50,000 in general damages from the first defendant.
2.	*Sin Heak Hin*	Defendant issued a circular to its dealers conveying the meaning that the plaintiff's batteries were imitation goods. The defendant's failed plea of justification and repetition of the allegation of imitation was an aggravating factor (at [79]).	Sin Heak Hin was awarded $100,000 in general damages and $35,849.43 in special damages.

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3.	*DHKW*	The defendant published an advertisement in *The Straits Times*, which had the net effect of accusing the plaintiffs of fraud. The defendant acted with malice and refused to apologise even after becoming aware that the advertisement was false (at [43]).	Each plaintiff was awarded $80,000 in damages. This appears to include both general and special damages: see [40]–[43].
4.	*Chen Cheng and another v Central Christian Church and other appeals* [1998] 3 SLR(R) 236	The defendants published a newspaper article referring to the Central Christian Church ("CCC") as a cult. A plea of justification failed.	CCC was awarded $20,000 in general damages from The New Paper and Lianhe Wanbao each.
5.	*Cristofori Music Pte Ltd v Robert Piano Co Pte Ltd* [1999] 1 SLR(R) 562	Defendant placed an advertisement in *The Straits Times* front page that imputed that the plaintiff was dishonest in claiming that the Asahi and Paco pianos it sold used mainly Japanese parts. The defences of justification, fair comment and qualified privilege failed. There was no apology or an attempt to withdraw any part of the defamatory statements (at [69]).	Plaintiff was awarded $50,000 in damages (presumably general) (at [5] and [69]).

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6.	*TJ System (S) Pte Ltd and others v Ngow Kheong Shen (No 2)* [2003] SGHC 217	The defendant wrote an email to his fellow colleagues, 15 Cisco Security Technology Pte Ltd ("Cisco") officers, suggesting that the plaintiff company was suspected of having bribed staff from the Police Technology Department to procure projects. Cisco and the plaintiff were competitors. The plaintiff company and a number of its directors sued the defendant for defamation.	First plaintiff (corporate entity) awarded $25,000 in general damages.
7.	*Golden Season*	The defendants suggested, in a Facebook post and in a chain of e-mails to various individuals in a non-governmental organisation, that the plaintiffs engaged in cheating or malpractice that caused donor moneys to be used unwisely and suggested an incident of copyright infringement. The emails were not sent *en masse* to a large number of people (at [141]) but the second defendant had been malicious in publishing the chain of emails (at [142]).	$15,000 in general damages to the first plaintiff.

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8.	*ATU*	The defendant suggested in emails, WhatsApp messages and communications to the press that the first plaintiff ("ATU"), a school, attempted to cover up purported child sexual abuse that allegedly occurred on its premises. To be specific, the first plaintiff was a private non-profit international school that served mainly the expatriate community in Jakarta. The defendant was also liable for damage that flowed from the repetition of her statements by the web articles posted by the "Jakarta Post" and the "Independent". Malice was not considered in determining general damages.	ATU was awarded $30,000 in general damages.

232 Having reviewed the authorities, I am satisfied that $25,000 in general damages represents a fair and reasonable sum commensurate with the damage CS has suffered to its reputation and that sufficiently vindicates it. In making this award, I note that Mr Murahashi acted with malice and that the Defamatory Material was spread to identified and unidentified re-publishees.

Special damages

233 I now consider CS's claim for special damages. The Court of Appeal in *Low Tuck Kwong* noted that special damage refers to loss which is pecuniary, *ie*, it must be loss capable of estimation in money's worth (at [94]). It is damage which sits in contradistinction to the "presumptive" damage the court awards when one claims general damage (at [96]). The court also adopted Bowen LJ's

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explanation in *Ratcliffe v Evans* [1892] 2 QB 524 ("*Ratcliffe*") of the notion of special damage for wrongs which are actionable *per se* (at [95]):

> At times (both in the law of tort and of contract) it is employed to denote that damage arising out of the special circumstances of the case which, if properly pleaded, may be ***superadded*** to the general damage which the law implies in every breach of contract and every infringement of an absolute right: see *Ashby v. White*. In all such cases the law presumes that some damage will flow in the ordinary course of things from the mere invasion of the plaintiff's rights, and calls it ***general damage***. Special damage in such a context means the particular damage (beyond the general damage), which results from the particular circumstances of the case, and of the plaintiff's claim to be compensated, for which he ought to give warning in his pleadings in order that there may be no surprise at the trial.
>
> [emphasis in original omitted, emphasis added]

234 However, the Court of Appeal cautioned that not all manner of pecuniary loss falls within the scope of special damage (at [94]). It stressed that any special damage that is claimable in an action for libel must be referable to the damage to reputation (at [96]). There are limits to what may be claimed as special damage in the context of defamation because this tort does not protect all kinds of interests. Some kinds of losses are therefore too remote to be recoverable in an action for defamation. The court observed that (at [98]):

> The tort of defamation primarily protects a person's reputation (see *Gatley* … at para 1.1) and so grants relief for damage to a plaintiff's reputation, the injury to his feelings and also provides a vindicatory effect. Where therefore the loss resulting from the publication of the words complained of is *not referable to such protected interests*, such loss is *not claimable* even if the publication was factually causative of it; it therefore does not include all consequential pecuniary loss.
>
> [emphasis added]

235 CS pleads that it lost sales of the Product and asks for "[g]eneral loss of business to be assessed" and "[l]oss of profits/business to be assessed, including

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by reference to loss of market share".[294] To prove that it suffered loss of sales, CS points to the fact that: (a) the annual tonnage of the Product sold between 2016 and 2018 was far below the minimum 6,000mt it agreed to purchase annually from AM under the Distribution Agreement (see [17] above) and Nippon Steel Singapore's estimation of market demand for the Product at 15,000 to 20,000mt per year;[295] and (b) CS had submitted eight counter-proposals from 2016–2018 but none was successful despite the substantial weight and cost savings one stood to reap by adopting the Product. CS argues that the *defendants* secured orders for three of these projects.[296] As for the quantum of its loss of profits, CS relies on Mr Lee's estimation of $3,006,000 (comprising $2,578,000 plus pre-judgment interest of $428,000 at a rate of 5.33% *per* annum). Mr Lee calculated CS's losses by taking the difference between the profits CS would have made from its sales of the Product had the Defamatory Material not been published and the profits actually made by CS within the relevant period (see [72] above).

236 Nippon Steel Singapore argues that CS has not proved that the losses it allegedly suffered were directly caused by the Defamatory Material. It makes three points: (a) even after the Publication and Words were communicated to Kajima and Kong Hwee in October 2017, on or about 23 November 2017, Kong Hwee placed its first order with CS for use of the Product in the IICH Project;[297] (b) Mr Koh's evidence is that demand for the Product stagnated in 2016 and that in 2017 and 2018 the same trend continued. This casts doubt on whether the lost sales flowed directly from the Defamatory Material; and (c) the lost sales CS

294 SOC (Amd 3) at para 19(b).

295 See AB 42.

296 PCS at para 198.

297 DCS at para 240.

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experienced could be due to the industry getting wind of the fact that the BCA had raised questions about the use of the Product as the Superior grade of steel, rather than the statements made by Mr Murahashi. It also highlights that it was Prof Chiew who raised certain issues with the BCA, not the defendants.[298] Nippon Steel Singapore further relies on the evidence of its expert, Mr Tan, to criticise Mr Lee's methodology of estimating CS's loss of profits (see [75] above).

237 To recover special damages, it must be shown that the loss of repute caused the alleged pecuniary loss. As F A Chua J held in *Workers' Party v Tay Boon Too* [1974-1976] SLR(R) 204 at [42], "[t]he special damage must be the natural and reasonable result of the defendant's words. The special damage must be the direct result of the defendant's words." (see also *Practitioners' Guide on Damages for Defamation* at para 6.11). *Low Tuck Kwong* at [99] underscores the need to establish a causal link:

> ... in a case where defamatory materials were published calling a trader dishonest (whether in the way of his trade or otherwise). He may as a result suffer a fall in custom because of customer shunning him having heard of his reputation of being dishonest. In such a case, the plaintiff may either claim for a loss of reputation generally, or, if he can ***specifically prove so, the fall in custom resulting from the damaged reputation as special damages***, such loss being the particular loss he suffered in his circumstances.
>
> [emphasis added]

238 In my view, causation must be proved in respect of special damage even for slander which is actionable *per se*, by virtue of s 5 of the Defamation Act, and libel. In these cases, special damage need not be proved in order for the defendant's conduct to be actionable. If liability is established, the law presumes

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298 DCS at para 243.

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injury to the claimant's reputation and awards *general* damages in respect of it even if the plaintiff produces no proof of such injury: *Lachaux v Independent Print Ltd and another* [2020] AC 612 ("*Lachaux*") at [4]; *McGregor* at para 46-043. However, as Lord Sumption stressed in *Lachaux*, "[s]pecial damage, *ie* pecuniary loss caused by the publication, may be recovered in addition, but must be proved" (see also *McGregor* at para 46-044). If the facts do not admit of particularising specific instances of loss, a generalised statement of special damage will suffice in pleading and general evidence of special damage will be permitted in proof: *McGregor* at para 46-044, citing *Ratcliffe*.

239 These cases illustrate the importance of proving causation. In *Hisham bin Tan Sri Halim v Teh Faridah bt Ahmad Norizan & Anor* [2021] 10 MLJ 683, even though s 5 of the Defamation Act 1957 applied (at [56]–[62]), no special damages were awarded because of want of causation (at [66]) and the failure to prove the existence of the alleged loss (at [68]). Section 5 of Malaysia's Defamation Act 1957 is *in pari materia* with Singapore's. In *ATU*, special damages were denied because the plaintiff school failed to prove that the fall in its student enrolment numbers was caused by the defendant's libel. The school was already hit by scandal approximately two months before the defendant alleged that her child was sexually assaulted at the plaintiff school (at [72]).

240 I note that CS's claim for special damages is in the nature of a general loss of custom. In its Statement of Claim, CS pleads for "[g]eneral loss of business" and "[l]oss of profits/business" to be assessed.[299] Its pleadings do not particularise instances of loss of custom such as by reference to specific customers or parties who have turned down its business. This is significant

[299] SOC (Amd 3) at para 19.

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because where specific instances are not pleaded they may not be produced in proof: *McGregor* at para 46-044, citing *Bluck v Lovering* (1885) 1 TLR 497. As such, CS cannot rely on specific instances of loss, such as the eight counter-proposals, in order to prove special damage. However, in any case, for the reasons that follow, the evidence does not disclose any *specific* instance of loss of sales.

241 First, the communication of the Defamatory Material to Kajima's Mr Fukuda and Kong Hwee's Mr Kannan in October 2017 did not cost CS any profits. As Nippon Steel Singapore argues, it is undisputed that Kong Hwee's order for the Product was invoiced in November 2017.[300] This very fact is pleaded by CS in its Statement of Claim.[301]

242 Second, there is insufficient evidence that CS was unsuccessful in the eight counter-proposals *because of* the damage to its reputation inflicted by Nippon Steel Singapore. As far as I understand, CS's basis for alleging a causal link between the failure of its counter-proposals and the defamation is that the Product yielded "substantial weight and cost savings" and it did not make economic sense to turn down the Product.[302] However, there could be other reasons why CS was unsuccessful, including: (a) that the purchaser, for reasons unrelated to the defamation, reposed more trust in another steel supplier; or (b) as Mr Koh posits, CS being unable to meet timelines set by the purchaser or competition from alternative steel products.[303]

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300 DCS at para 240; SOC (Amd 3) at para 10(a); AB 2232.

301 SOC (Amd 3) at para 10(a).

302 PCS at para 198; PRS at para 41.

303 NE, 22 January 2021, p 68:3–6.146

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243 Further, it was open to CS to call as witnesses the parties to whom the counter-proposals were submitted[304] to testify as to why they decided not to purchase the Product. For reasons best known to CS, it failed to do so. Hence, it does not take CS's case any further to allege that the defendants were awarded three projects in which CS's counter-proposal was rejected.[305] It would be speculative for me to conclude that the defendants prevailed over CS *because* of the defamatory statements. There is a glaring lack of evidence explaining why CS's counter-proposals were rejected.

244 I now arrive at the heart of the issue – whether CS has proved a general loss of sales and the extent of that loss.

245 I accept that the loss of repute due to the libel and slander probably caused CS some loss of sales in respect of the Product. I earlier recognised that the Defamatory Material was likely to disparage CS's trade or business by innuendo because, together with the 2nd Extrinsic Fact, it imputes dishonesty in the way CS marketed the Product in Singapore (see [146] above). The defamatory imputation would likely deter some prospective customers from dealing with CS in relation to the Product.

246 The more difficult question is whether, based on Mr Lee's expert evidence and the surrounding circumstances, CS has proved that its general loss of sales and business in respect of the Product was to the tune of $2,578,000 before pre-judgment interest (see [72] above).

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304 Mr Lee's Expert Report at p 94.

305 See PCS at para 198.

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247 I begin by outlining Mr Lee's quantification methodology. In gist, he took the difference between: (a) the profits CS would have made from its sales of the Product but for the publication of the Defamatory Material; and (b) the profits actually made by CS. The salient steps in his analysis are as follows:

(a) Period of loss: Mr Lee regarded the period of loss as between January 2016 to December 2019 based on CS's instructions that the Defamatory Statements were circulated since *August 2014*.[306]

(b) Size of the jumbo column market: Mr Lee estimated the size of the jumbo column market from 2014 to 2019. He regarded the market as comprising S355 columns, S460M columns and Superior grade columns.[307] He aggregated the sales by CS, the defendants and other relevant companies marketing the three just-mentioned columns in Singapore in the loss period in order to derive the market size in each year.[308]

(c) Superior grade's market share but for the defamation ("but for market share"): Mr Lee estimated the share which Superior grade would occupy in the jumbo column market for the period of loss.[309] Mr Lee's calculations proceed on the basis that only CS was marketing the Product under the Catalogue Design Strength in the loss period:

(i) He arrived at the but for market share by first determining the market share of S355 columns when they were introduced in Singapore in the early 2000s to replace S275 columns. Mr Lee

306 Mr Lee's Expert Report at paras 1.40 and 5.8.

307 Mr Lee's Expert Report at para 6.26, Table 6-5.

308 Mr Lee's Expert Report at paras 6.6–6.23.

309 Mr Lee's Expert Report at paras 6.34–6.41.

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regarded the "take-up" of S355 columns in CS's sales (*ie*, the sales of S355 columns as a proportion of both S355 and S275 column sales) as reflecting the take-up of S355 columns in the jumbo column market generally.[310] This is because he was unable to obtain data on the total sales of S275 and S355 columns in Singapore over the relevant period and accepted CS's instructions that the take-up within CS would be similar to that in the wider market.[311]

(ii) From the take-up profile of S355 from 2013–2019, Mr Lee made two adjustments. First, he capped the market share of the Superior grade of steel at 50% because he claimed that this was the lower bound of the defendants' estimate of the market share for the Superior grade ("Step (i)").[312] Second, he deducted the actual market share of S460M jumbo columns from the take-up profile of S355 (now the take-up profile of the Superior grade) ("Step (ii)").[313] The result is this:

310 Mr Lee's Expert Report at para 2.21.

311 Mr Lee's Expert Report at para 2.22

312 Mr Lee's Expert Report at para 6.40(i).

313 Mr Lee's Expert Report at para 6.40(ii).

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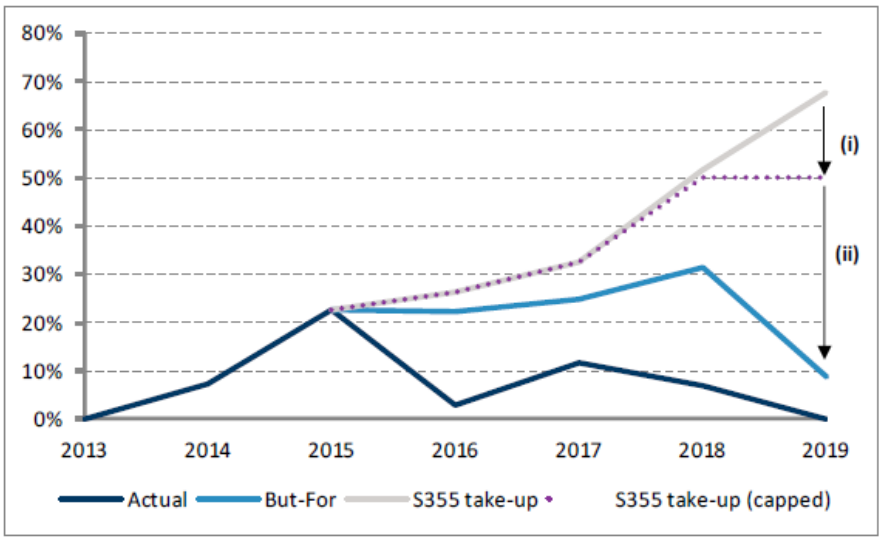
Figure 2-4: Comparison of HISTAR 460 market share in Actual and But-For Scenarios (% of jumbo column market)



The "But-For" curve represents the Superior grade's but for market share.

(d) Calculating loss in gross profits:

(i) Mr Lee calculated the sales CS lost by taking the difference between its actual sales of the Product and what it would have sold under the but for market share.[314]

(ii) He regarded the sale price *per* unit of the Product as being $1,650 *per* mt. He said this was, *inter alia*, consistent with a weighted average price on the eight counter-proposals made by CS.[315]

(iii) He regarded CS's gross profit margin as 18.7% of revenue based on a weighted average margin achieved by CS

314 Mr Lee's Expert Report at para 6.42.

315 Mr Lee's Expert Report at para 2.28.

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across these projects: Jewel, T212, Funan and IICH.[316] He regarded operating expenses (*eg*, transportation, storage, handling and financing costs) as being 2% of revenue.[317]

(iv) As a result, CS's lost profits were as follows:[318]

Table 7-1: My assessment of Continental Steel's lost profits

	Units	Guide	2016	2017	2018	2019	Total
Lost sales	MT	A	2,889	1,941	4,073	453	9,356
HISTAR 460 price	SGD/MT	B	1,650	1,650	1,650	1,650	-
Lost revenues	**SGDk**	**C = A x B**	**4,767**	**3,203**	**6,720**	**748**	**15,438**
Gross profit margin	%	D	18.7%	18.7%	18.7%	18.7%	18.7%
Opex percentage	%	E	2.0%	2.0%	2.0%	2.0%	2.0%
Lost profits	**SGDk**	**F = C x (D – E)**	**796**	**535**	**1,122**	**125**	**2,578**

248 With respect, I am unable to accept Mr Lee's estimation of CS's loss of sales of the Product for the following reasons, some of which were advanced by the defendants' expert, Mr Tan.

249 First, Mr Lee assumes that *all* of the loss of sales CS experienced was caused by its loss of reputation. In fairness to him, he was proceeding on CS's instructions that the Defamatory Material "made an important and direct contribution to the low uptake in HISTAR 460 in Singapore from January 2016 to December 2019."[319] However, the point remains that Mr Lee did not address his mind to the question of whether it was Nippon Steel Singapore's tortious conduct or other market forces unconnected to the defamation that precipitated the fall in sales. I am troubled by the question of causation because, as Mr Tan

316 Mr Lee's Expert Report at para 7.8 read with p ii.

317 Mr Lee's Expert Report at paras 7.10 and 7.12.

318 Mr Lee's Expert Report at para 7.13.

319 Mr Lee's Expert Report at para 1.40.

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points out,[320] it appears that demand for *all* grades of steel columns in the jumbo column market dropped after 2015. Mr Tan's observation is based on Mr Lee's own estimates of the size of the jumbo column markets from 2014–2019:[321]

Table 6-5: My estimate of the size of the jumbo column market (MT)

Grade	2014	2015	2016	2017	2018	2019
Before adjustment						
S355	18,584	30,814	19,554	16,633	17,212	4,230
S460M	0	29	624	1,189	3,254	2,276
HISTAR 460	1,039	6,382	451	1,718	1,118	0
Total	**19,623**	**37,225**	**20,629**	**19,540**	**21,584**	**6,507**
After adjustment						
S355	13,262	21,990	13,955	11,870	12,283	3,019
S460M	0	27	579	1,103	3,019	2,112
HISTAR 460	1,039	6,382	451	1,718	1,118	0
Total	**14,301**	**28,399**	**14,985**	**14,691**	**16,421**	**5,131**

Source: Appendix 7, tab "Market size".

For reference, the adjusted market size (in the second half of the table above) was calculated by Mr Lee to account for the fact that "a higher strength grade can reduce the column sizes required to build a structure".[322] The Superior grade has the highest strength out of the three grades of steel. To build the same structure, a greater quantity of lower strength steel columns is required. Thus, the market share (in mt) of S355 and S460M steel will fall at a faster rate than the rate at which the market share for the Superior grade rises. To account for this difference, Mr Lee further reduced the sale quantities of S355 and S460M after the Product entered the market.[323]

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320 Mr Tan's Expert Report at para 4.2, s/n 2.

321 Mr Lee's Expert Report at para 6.26.

322 Mr Lee's Expert Report at para 6.25.

323 Mr Lee's Expert Report at para 6.25 and Appendix 5 paras A5.2–A5.3.

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250 Admittedly, during the loss period between October 2017 and June 2018 (see [258] below), the demand for the Product fell from 1,718mt to 1,118mt.

251 However, I am not prepared to conclude that the fall in demand was wholly caused by the acts of defamation. In 2016, CS also experienced a sharp drop in demand for the Product from 6,382mt (in 2015) to 451mt in 2016. I previously indicated that the earliest publication of the Defamatory Material or the earliest time at which someone apprehended the defamatory imputation was in October 2017 (see [135] above). The drop in demand from 2015 to 2016 thus occurred *independent* of the defamation. Evidently, the demand for the Product is sensitive to market forces. It is telling that even CS's own evidence muddies the water as to why demand for the Product stagnated in 2016 and recognises that causes unconnected to the defamation could be responsible. Mr Koh testifies that "[t]he demand stagnated [in] I would say ***2016***, yes, we didn't sell as much HISTAR as we wanted to"[324] [emphasis added]. He said that this could have been due to a "mix" of reasons which do not appear connected to the defamation, including that volume of projects was slightly lower and/or competition from other suppliers:[325]

> Q: ... you would agree in 2016 demand stagnated: now, you are on the ground marketing the product and, you know, I have showed you -- at least my case is that your marketing of S460M, but can you help us understand why did the demand stagnate in 2016?
>
> A: My answer would probably be a ***mix*** of just, you know, projects, maybe the ***volume of projects*** was slightly lower, or, you know, we were not successful in the counter-proposals that we were trying to go for. Probably ***competition*** as well from other suppliers.
>
> Q: But what competition at the S460 level?

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[324] NE, 22 January 2021, p 66:9–12; see also NE, 22 January 2021, p 67:2–4.

[325] NE, 22 January 2021, pp 67:16–68:6.

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> A: I think we have actually mentioned about ***alternatives*** or it could be ***timelines*** as well.
>
> [emphasis added]

Mr Koh testified that this dampened demand continued into 2017 and 2018.[326] It is thus speculative to assume that the drop in demand from 2017 to 2018 was caused solely by the acts of defamation.

252 Further, CS accepts that the defendants anticipated being ready to release the Nippon Product into the market in December 2017 (see [60] above).[327] The Nippon Product was a S460M grade column. I do not think it is a coincidence that in Mr Lee's adjusted estimate of the jumbo column market size, the demand for S460M columns rose by 174% from 2017 to 2018 (from 1,103mt to 3,019mt). In the same period, demand for S355 steel only rose by 3.48% (from 11,870mt to 12,283mt) while demand for the Product fell by 35% (from 1,718mt to 1,118mt). It is therefore plausible that, as the market began to recover from 2016 to 2018 (total demand rose from 14,985mt to 16,421mt), the Nippon Product absorbed some market share from the Product. This could explain the strong growth in demand for S460M steel in 2017–2018, and the dip in demand for the Product over the same period. There is nothing preventing me from viewing S460M and the Product as substitutes in the same market.[328] While Mr Tan opines that *S355* and the Product are not part of the "same market",[329] I do not understand him to take the same objection in relation to S460M and the Superior grade of steel. In as much as their substitutability is concerned, the evidence shows that columns made using S460M and the Superior grade were

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326 NE, 22 January 2021, p 69:16–21.

327 PCS at para 34.

328 See PCS at para 42; Mr Koh's AEIC at para 17.

329 Mr Tan's Expert Report at para 5.4.

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the strongest jumbo steel columns available in the Singapore market at the relevant time and the Product itself could be characterised as either grade of steel.

253 Second, I agree with Nippon Steel Singapore's submission that the loss period advanced by Mr Lee is too broad.[330] Mr Lee's instructions were that the publications of the Defamatory Material began in 2014.[331] However, as I concluded at [135] above, the direct publishees only received or came to appreciate the defamatory innuendo in October 2017. Neither has CS pointed to evidence that re-publishees received the Defamatory Material before October 2017. There is also insufficient evidence of the publications having started in 2016, as CS would now have me believe.[332] The only evidence CS points to in this regard is the part of the 2017 Internal Report which states:[333]

> 2. **NSSMC reaction**
>
> Currently, the government of Singapore does not permit the use of HISTAR 460 catalogue value itself as design standard. Therefore, we have explained to our ***client*** about the current situation with the help of materials (draft was created in 2013, ***used from 2016***)
>
> [emphasis added]

254 However, CS did not put to Mr Murahashi that this portion of the 2017 Internal Report meant that he had been communicating the Publication to customers *since* 2016. Rather, Mr Murahashi's explanation of this portion of the report is that "the finalised version of the 2016 Internal Paper was available

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330 DRS at para 71.

331 Mr Lee's Expert Report at paras 1.40 and 5.8

332 PCS at para 181(c) and 199(b).

333 AB 1167.

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from 2016 and that was the version that was in use *within* Nippon Steel from 2016 onwards" [emphasis added].[334] He maintained under cross-examination that he meant that in 2016, he explained *within* Nippon Steel that the Product was subject to design strength reductions under the BC1:2012.[335] It should be remembered that one of Mr Murahashi's motivations for issuing the 2016 Internal Report was to persuade *Nippon Steel Japan* to expedite bringing the Nippon Product to market (see [24] above).

255 As such, I regard 23 October 2017 as the start of the loss period because this is the earliest proven communication of the Defamatory Material (which occurred to Kajima's Mr Fukuda). The same was then communicated to Mr Kannan from Kong Hwee on 25 October 2017. October 2017 is also when Prof Chiew would have first appreciated the defamatory innuendo (see [117] and [135] above).

256 As for end date of the loss period, I do not agree that it should be December 2019. Mr Lee said that 2019 is the appropriate end date because: (a) CS's dampened sales occurred from 2016 to 2019; (b) in May 2018, Kajima's Mr Aihara told CS that he was "unsure whether [the use of the Catalogue Design Strength] would be accepted by the [BCA]" (see [67] above);[336] and (c) two of CS's counter-proposals recommending the use of the Superior grade were rejected in December 2019.[337] However, reasons (a) and (c) presuppose the very thing that CS must prove – that these losses were occasioned by the loss of repute. I, however, accept that the fact that Kajima remained unsure of the

334 Mr Murahashi's AEIC at para 48(b).

335 NE, 29 January 2021, p 35:3–6.

336 Mr Lee's Expert Report at para 5.11(i); SOC (Amd 3) at para 14(b); Mr Sim's AEIC at para 25.

337 Mr Lee's Expert Report at paras 5.10–5.11.

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applicability of the BC1:2012 to the Product even in May 2018 is indicative of the defamatory sting not having been expunged completely by that time.

257 As against Mr Lee's views, Nippon Steel Singapore submits that the 9 Feb Letter represents the time at which CS's losses ceased. It argues that any computation of losses beyond 9 February 2018 cannot properly be said to flow directly from the Defamatory Material.[338]

258 I do not think either side is entirely right in identifying the appropriate end date for the loss of sales. While placing the 9 Feb Letter at AM's disposal represents the beginning of the end, so to speak, it would take time for AM and CS to put right the wrong that Nippon Steel Singapore had set in motion. Bearing in mind that Kajima was still labouring under the defamatory imputation in May 2018, I think that CS was not out of the woods at that time. In the particular circumstances of this case, a fair outcome would be to afford AM and CS the same amount of time to disseminate the 9 Feb Letter to the construction industry as the defamatory imputation was in circulation. This, I think, is reasonable as CS itself pleads that it had discussions with AM and relevant parties "for a period of 6 to 8 weeks in or about 2018 to clarify any issues related to the suitability of the Product for its use" and that *during* said period the 9 Feb 2018 Letter was released by the defendants.[339] The defamatory imputation was percolating in the industry for four months – October 2017 to February 2018. As such, I infer that CS experienced loss of sales in the Product up to 10 June 2018.

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338 DRS at para 71.

339 SOC (Amd 3) at paras 14(c)–14(d).

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259 Given the loss period is between October 2017 and June 2018, this severely undermines Mr Lee's estimation of CS's loss of profits. In particular, Mr Lee accepts that if the Defamatory Material was only shared with customers in the last quarter of 2017, he would have to "reconsider [his] analysis based on that particular set of facts". He would "want to understand why sales have reacted as they did in 2016".[340]

260 For these reasons, I reject Mr Lee's estimation of CS's loss of profits.

261 On the other hand, Mr Tan's expert report did not provide much assistance for the purpose of quantifying CS's losses. He proposed determining lost sales by reference to the "tenders/counter-proposals which [CS] submitted during the Loss Period."[341] He identified one counter-proposal which CS submitted during the loss period he preferred, 23 October 2017 to 9 February 2018. This was a counter-proposal to CRTG.[342] However, he concluded that he was "unable to determine the impact, if any, of the Publication ...on [CS's] ability to success [*sic*] on obtaining this project as it is not clear why the customer in this project was not willing to consider HISTAR 460. ... [and was] not in a position to estimate the potential loss to [CS]…"[343]

262 Despite this, I am not prepared to award nominal damages only. As is noted in *McGregor* at para 10-002:

> … where it is clear that some substantial loss has been incurred, the fact that an assessment is difficult because of the nature of the damage is no reason for awarding no damages or merely nominal damages. …

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340 NE, 1 February 2021, pp 129:12–15, 128:13–15.

341 Mr Tan's Expert Report at para 6.2.

342 Mr Tan's Expert Report at para 6.7.

343 Mr Tan's Expert Report at para 6.9.

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263 Having regard to the loss period of eight months and the moderate gravity of the defamatory sting, I award CS $50,000 on account of its probable pecuniary loss.

264 Tay Yong Kwang JC (as he then was) was faced with a similar conundrum in *Integrated Information Pte Ltd v CD-Biz Directories Pte Ltd and others* [1999] 2 SLR(R) 301, albeit in the context of assessment of damages for malicious falsehood. The plaintiff had sued the defendants for malicious falsehood in certain promotional materials for the first defendant's market directory in a Compact Disc format ("the CD Rom"). The statements falsely claimed that the circulation of the plaintiff's "Singapore Yellow Pages Commercial and Industrial Guide" ("Yellow Pages") was only 180,000 while that of the CD Rom's was 200,000 copies. The plaintiff claimed that it had suffered loss of goodwill and profits as a result of the false statements which caused some advertisers to switch from the plaintiff to the first defendant. The assistant registrar had awarded $654,320 in damages for loss of profits from the shift of business from the plaintiffs to the first defendant.

265 With regard to loss of profits, Tay JC held that one could not simply compare yearly revenues to show how much business has been lost as a result of the falsehood. He noted that of the two written complaints from the plaintiffs' clients in evidence, one complainant (Yew Aik Hung Pte Ltd) *increased* rather than cancelled or decreased its advertisements in the Yellow Pages (at [35]). Tay JC thus noted that there may be no causal link between the decline in business and the tort in some cases (at [36]).

266 Tay JC also identified other possible causes of the decline in the plaintiff's business: (a) the novelty value of the defendants' CD Rom (at [37]); and (b) the economic downturn of 1997 (at [38]). While Tay JC accepted that

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loss in profits had "probably been caused", he was not persuaded to adopt the plaintiff's estimation and instead awarded the plaintiff $50,000 for this head of claim. This was, he noted, slightly higher than the $30,000 awarded for loss of goodwill in the business (at [39]).

267 Given the state of the evidence, and applying common sense and fairness to the facts, $50,000 is in my view a fair estimate of CS's pecuniary loss. The extent of publication (and re-publication) of the Defamatory Material was limited. The gravity of the defamatory sting is also moderately grave on account that it imputes dishonesty to CS. The defendants also retracted the defamatory imputation within four months of its initial publication in October 2017. While the damage would not have been undone immediately, AM and CS had the 9 Feb Letter at their disposal to set the record straight with customers. It is also, ultimately, CS's burden to make good the quantum of damages it seeks. I am not persuaded by its expert evidence and submissions and, therefore, award CS $50,000.

268 For all the foregoing reasons, I hold Nippon Steel Singapore liable for defaming CS by innuendo and award CS $25,000 in general damages and $50,000 in special damages.

269 Some English authorities suggest that damages for general loss of custom should be claimed as part of general damages (*Ratcliffe*, cited in *Gatley* at para 10-032; David Price, Korieh Duodu & Nicola Cain, *Defamation Law, Procedure & Practice* (Sweet & Maxwell, 4th Ed, 2010) at para 20-33). However, as CS claims loss of profits under special damages,[344] and Nippon Steel Singapore does not contest this characterisation, I need not explore this

[344] PCS at para 199; SOC (Amd 3) at para 19.

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distinction. There are also contrary authorities which appear to support allowing a general loss of custom to be compensated by an award of special damages (see *Culla Park Ltd and others v Richards and others* [2007] EWHC 1850 (QB) at [32]–[37], cited in *McGregor* at para 46-040; *McGregor* at para 46-044). Even if such a distinction exists, it does not affect my decision to award CS $50,000 for its loss of profits.

Malicious falsehood

270 The elements of a claim in malicious falsehood are usefully summarised in *WBG* (at [68]) as follows:

(a) that the defendant published to third parties words which are false;

(b) that they refer to the claimant or his property or his business;

(c) that they were published maliciously; and

(d) that special damage has followed as a direct and natural result of their publication.

271 CS claims the same measure of damages for loss of profits – $2,578,000 – and makes the same submissions as it does for defamation. However, I have awarded CS substantial damages on account of its loss of profits caused by the publication of the Defamatory Material. CS is not entitled to more damages under this cause of action due to the rule against double recovery (see *Golden Season* at [160]). It is therefore unnecessary for me to analyse the elements of malicious falsehood. For reasons explained at [269] above, the concern of double recovery remains if the $50,000 awarded for loss of profits is characterised as general damages.

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Conclusion

272 For all the foregoing reasons, I find Nippon Steel Singapore liable for defaming CS by communicating the Publication and/or Words in Singapore. I award CS $25,000 in general damages and $50,000 in special damages. I dismiss the claim against Nippon Steel Japan.

273 I will hear parties on interest and costs separately.

Dedar Singh Gill
Judge of the High Court

Lim Wei Lee, Low Chin Pang Levin, Lum Kwong Hoe Melvin and Yu Zheng Yi Victoria (WongPartnership LLP) for the plaintiff;
Sathiaseelan Jagateesan, Ramesh Kumar Ramasamy, Tan Shu-Ning Alyssa and Edmond Lim Tian Zhong (Allen & Gledhill LLP) for the first and second defendants.

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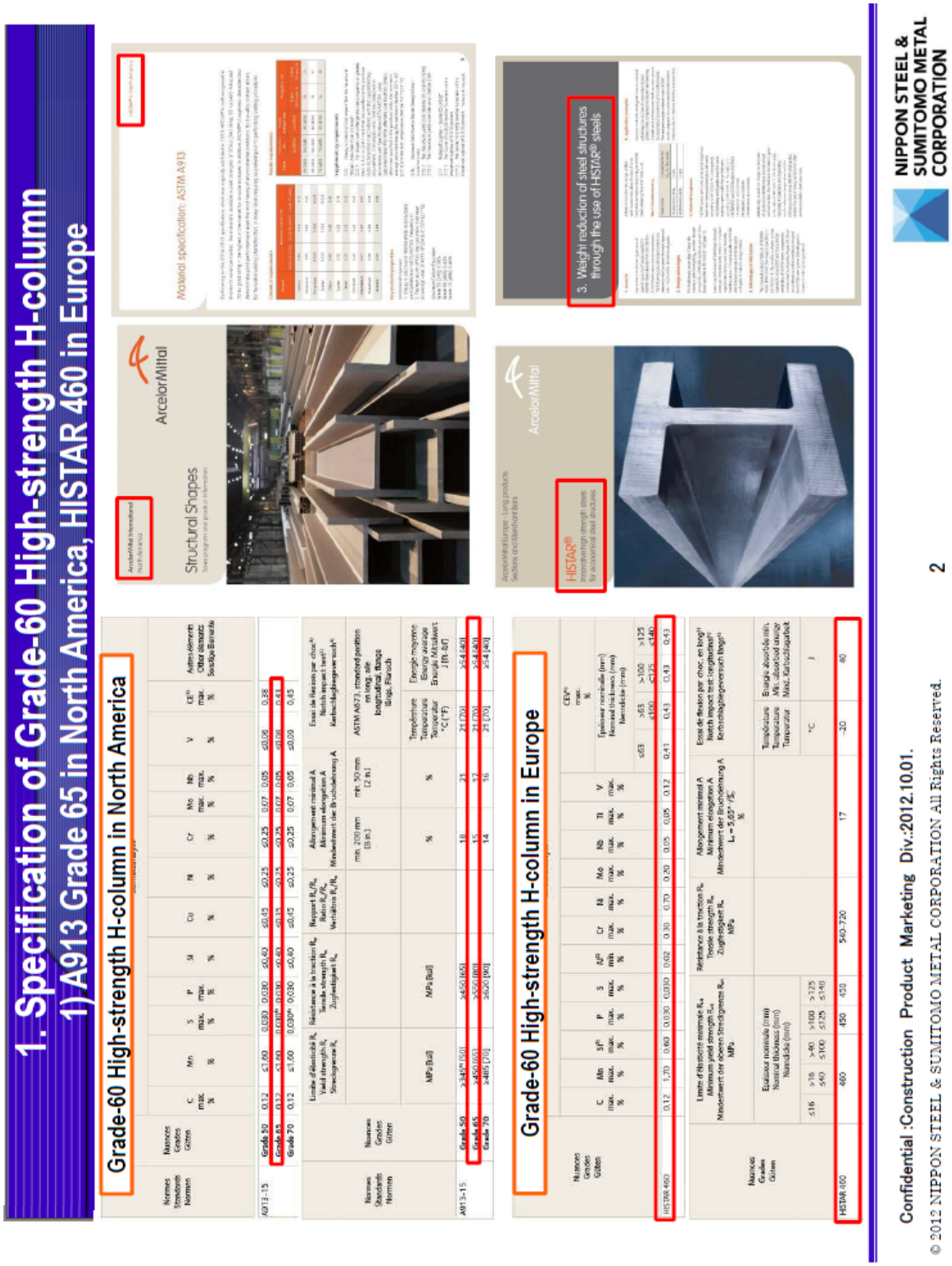
Annex 1: The Publication



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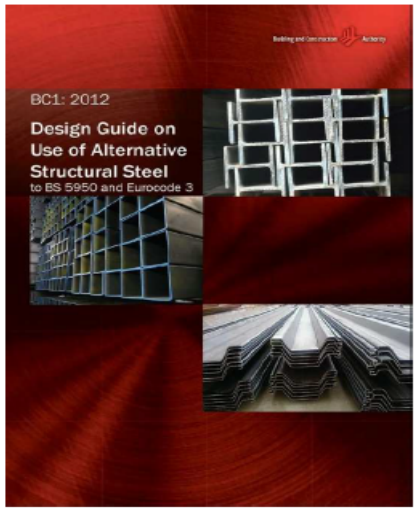
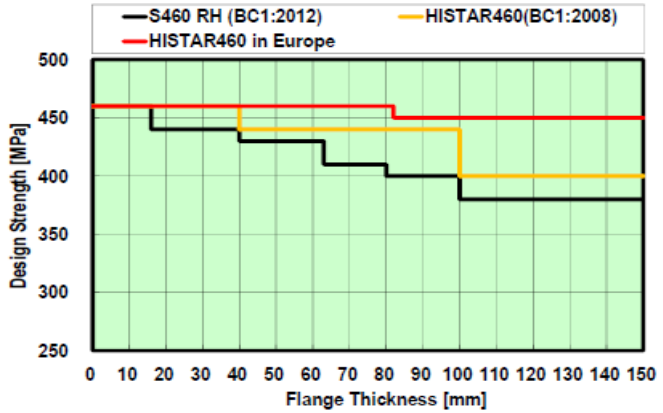
1. Specification of Grade-60 High-strength H-column
2) EN10025-4 S460M, ML (S460 RH) in Asian



BC1: 2012
Design Guide on
Use of Alternative Structural Steel to BS 5950 and Eurocode 3

Grade-60 High-strength H-column in Asia

Designation		C % max.	Si % max.	Mn % max.	P % max.	S % max.	Nb % max.	V % max.	Al$_{tot.}$ % min.	Ti % max.	Cr % max.	Ni % max.	Mo % max.	Cu % max.	N % max.
According EN 10027-1 and CR 10260	According EN 10027-2														
S275M	1.8818	0,15	0,55	1,60	0,035	0,030	0,06	0,10	0,015	0,06	0,35	0,35	0,13	0,60	0,017
S275ML	1.8819				0,030	0,025									
S355M	1.8823	0,16	0,55	1,70	0,035	0,030	0,06	0,12	0,015	0,06	0,35	0,55	0,13	0,60	0,017
S355ML	1.8834				0,030	0,025									
S420M	1.8825	0,18	0,55	1,80	0,035	0,030	0,06	0,14	0,015	0,06	0,35	0,85	0,23	0,60	0,027
S420ML	1.8836				0,030	0,025									
S460M	1.8827	0,18	0,65	1,80	0,035	0,030	0,06	0,14	0,015	0,06	0,35	0,85	0,23	0,60	0,027
S460ML	1.8838				0,030	0,025									



- Necessary to reduce the design strength for each thicknesses following "S460M, ML" in EN10025-4 (S460 RH) and BC1: 2012 in Singapore.
- "S460M, ML" in EN10025-4 (S460 RH) loses design strength the thicker it becomes.

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Annex 2: The Words

A.1 CS's case is that the Words are found in Mr Murahashi's AEIC at para 35:

> (a) I shared with them my understanding of BC 1: 2012. In this regard, I explained that BC I: 2012 applied to all construction projects Singapore to prescribe default design strength(s) for all columns certified as S460M, including the HISTAR Product as well as the [Nippon Product].
>
> (b) I then explained that the HISTAR Product can be used for the IICH Project as S460M certified structural steel. I also shared that, according to the general position under BC I: 2012, the default design strength(s) prescribed for S460M under BC 1:2012, which meant that the design strength decreased as the flange thickness of the H-column increased, would be applicable to the HISTAR Product (as well as the Nippon Product), and should be followed in the project's design.
>
> (c) I referred to the graph in the Two-Page Document and explained that:
>
> > (i) the red line in the graph represented the yield strength (design strength) values for the HISTAR Product based on the values found in AM'S catalogue;
> >
> > (ii) the black line in the graph represented the default design strength values for S460M under BCI: 2012; and
> >
> > (iii) the yellow line in the graph represented the default design strength values for the HISTAR Product under the predecessor version of BC1:2012 (i.e. the 2008 version).

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