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

[2024] SGHC 167

District Court Appeal No 22 of 2022

Between

Tang Swea Phing

… *Appellant*

And

Chan Tam Hoi @ Paul Chan

… *Respondent*

District Court Appeal No 23 of 2022

Between

Chan Tam Hoi @ Paul Chan

… *Appellant*

And

(1) Tang Swea Phing
(2) SDCS Holdings Pte Ltd

… *Respondents*

In the matter of District Court Suit No 1387 of 2019

Between

Chan Tam Hoi @ Paul Chan

… *Plaintiff*

And

(1) Tang Swea Phing
(2) SDCS Holdings Pte Ltd

… *Defendants*

And Between

Tang Swea Phing

… *Plaintiff in Counterclaim*

And

Chan Tam Hoi @ Paul Chan

… *Defendant in Counterclaim*

GROUNDS OF DECISION

[Agency — Principal — Tortious liabilities]
[Tort — Defamation — Justification]
[Tort — Defamation — Remedies — Nominal damages]

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Tang Swea Phing
v
Chan Tam Hoi (alias Paul Chan) and another appeal

[2024] SGHC 167

General Division of the High Court — District Court Appeals Nos 22 and 23 of 2022
Pang Khang Chau J
31 October, 25 November 2022, 24 July 2023, 4, 31 January, 1 February 2024

29 June 2024

Pang Khang Chau J:

Introduction

1 District Court Appeal No 22 of 2022 ("DCA 22") and District Court Appeal No 23 of 2022 ("DCA 23") are two cross appeals against the judgment rendered by the learned district judge (the "DJ") in District Court Suit No 1387 of 2019 ("DC 1387"). The appellant in DCA 22, Ms Tang Swea Phing ("Ms Tang"), was the first defendant in DC 1387. The appellant in DCA 23, Mr Chan Tam Hoi @ Paul Chan ("Mr Chan"), was the plaintiff in DC 1387.

2 In DC 1387, Mr Chan sued Ms Tang and SDCS Holdings Pte Ltd ("SDCS") for defamation. He alleged that Ms Tang had engaged SDCS to recover a sum of $120,000 from him, and that SDCS had defamed him in the course of doing so. He sought damages to be assessed and a permanent injunction to restrain Ms Tang and SDCS from further defaming him.

3 Ms Tang and SDCS both accepted that SDCS had been engaged by Ms Tang to recover an alleged debt of $120,000 from Mr Chan ("Alleged Debt"), but they disputed that Mr Chan was defamed. They also asserted that the defence of justification applied because Mr Chan did in fact owe $120,000 to Ms Tang. On this basis, Ms Tang also made a counterclaim for $120,000 against Mr Chan.

4 The DJ found in favour of Mr Chan in the defamation claim and awarded damages at $10,000 to him. The DJ also dismissed Ms Tang's counterclaim. (See the DJ's judgment at *Chan Tam Hoi @ Paul Chan v Tang Swea Phing and another* [2022] SGDC 95 ("the Judgment").) In DCA 22, Ms Tang appealed against the whole of the DJ's decision. In DCA 23, Mr Chan appealed against the DJ's decision on quantum of damages. I upheld the DJ's findings on liability for defamation and on the dismissal of the counterclaim but substituted the DJ's award of substantial damages for defamation with nominal damages of $1. Consequently, DCA 22 was allowed in part and dismissed in part, while DCA 23 was dismissed in its entirety.

5 Ms Tang has appealed against my decision in DCA 22.

Facts

The parties

6 Up until her employment was terminated in August 2017, Ms Tang was the finance manager of the following two related companies:[1]

[1] Record of Appeal (vol 2) ("2RA") at p 267, para 6.

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(a) NSC Capital Pte Ltd ("NSC"), a company incorporated in Singapore and in the business of offering business service centres, management consultancy services and business administration services;[2] and

(b) Menon Network Pte Ltd ("Menon Network"), a company incorporated in Singapore and in the business of offering training and conference rooms for rent.[3]

7 At all material times, Mr Chan was the chief executive officer[4] and majority shareholder of NSC.[5] At the time the Alleged Debts were incurred in 2016, Mr Chan was one of three directors of NSC.[6] By the time Ms Tang sought to recover the Alleged Debts through the services of SDCS in 2019, Mr Chan had become the sole director of NSC.[7] At all material times, Mr Chan was the sole director and sole shareholder of Menon Network.[8] NSC and Menon Network (collectively, the "Companies") shared the same office premises.[9]

8 SDCS is a company incorporated in Singapore and is in the business of providing debt recovery services.[10] SDCS was engaged on 11 March 2019 by Ms Tang to recover the Alleged Debt from Mr Chan. SDCS was the second

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2 2RA at p 267, para 3.

3 2RA at p 267, para 4.

4 2RA at p 133, para 7; p 209, para 7 and p 270, para 16.

5 Judgment at [4].

6 2RA at p 350.

7 2RA at p 146.

8 Judgment at [4].

9 Judgment at [4]; 2RA at p 267, para 5.

10 2RA at p 268, para 9.

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defendant in DC 1387 and the second respondent in DCA 23. SDCS did not file its own appeal against the DJ's decision and did not participate in DCA 22 and DCA 23.

Background to the dispute

9 Ms Tang and Mr Chan originally shared a good working relationship.[11] Mr Chan stated in his affidavit of evidence-in-chief ("AEIC") that, over the years, he had entrusted Ms Tang to oversee the day-to-day business of NSC in its entirety, with the aim of grooming Ms Tang to "take over NSC".[12] Ms Tang likewise stated in cross-examination that she had treated Mr Chan like her father.[13] Ms Tang's husband, who operated his own computer business, also had business dealings with the Companies.[14]

10 Against this backdrop, Ms Tang extended several loans which formed the basis of the Alleged Debt.

The October 2016 loan

11 The first loan was extended by Ms Tang in or around October 2016 (the "October 2016 loan"). At that time, the Companies were facing cash flow issues and had difficulty paying the salaries of their employees. This led to Ms Tang transferring a total of S$18,050 to the respective bank accounts of eight of the Companies' employees on or around 28 October 2016.[15] In addition, Ms Tang

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11 Judgment at [6].

12 Judgment at [6(a)]; 2RA at p 269, paras 12 to 16.

13 Judgment at [6(b)].

14 Judgment at [6(c)]; 2RA at p 135, para 13.

15 Judgment at [8].

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was owed $2,000 which represented her own October 2016 salary which had not been paid.[16]

12 The October 2016 loan thus amounted to $20,050, although Ms Tang only claimed $20,000 in respect of the October 2016 loan in her counterclaim against Mr Chan. According to Ms Tang, she extended the October 2016 loan because Mr Chan had approached her for help in paying the outstanding salaries and promised to repay the amount within two weeks.[17] Mr Chan's position was that Ms Tang extended the October 2016 loan without any request on his part.[18] More importantly, Mr Chan took the position that the October 2016 loan was extended by Ms Tang *to the Companies* and not to Mr Chan personally.[19]

The November 2016 loan

13 The second loan was extended by Ms Tang on or around 3 November 2016 (the "November 2016 loan"). According to Ms Tang, Mr Chan had requested her help in paying for the Companies' office rent and promised to repay her within one week.[20] She initially told him that she did not have that much money but eventually transferred a sum of $100,000 to NSC's bank account.[21]

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16 Judgment at [9].

17 Judgment at [91].

18 2RA at p 140, para 91.

19 Judgment at [10].

20 Judgment at [11]; 2RA at p 136, para 16.

21 Judgment at [11]; 2RA at pp 136–137, para 16.

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14 Mr Chan's position on the November 2016 loan was, once again, that it was extended to the Companies and not to Mr Chan personally.[22]

The attempts to recover the Alleged Debt

15 Prior to the termination of her employment with the Companies in August 2017, Ms Tang had approached Mr Chan on several occasions for the repayment of the Alleged Debt.[23] Ms Tang suspected this could be the reason behind Mr Chan's eventual decision to terminate her employment with the Companies on grounds of insubordination and conflict of interest.[24]

16 On 11 March 2019, Ms Tang engaged SDCS's services to recover the Alleged Debt from Mr Chan.[25] SDCS made six recovery attempts. The first attempt was made on 11 March 2019, whereby a letter of demand addressed to Mr Chan was sent by SDCS to the Companies' address ("First Attempt").[26] The second attempt was made on 12 March 2019, whereby representatives from SDCS attended at the Companies' premises to recover the Alleged Debt ("Second Attempt"). The SDCS representatives were met by an employee of Menon Network, Ms Balvinda Kaur ("Ms Kaur"), who informed them that Mr Chan had left for the day and was not in the office (even though she knew at the time that Mr Chan was still in the office). The SDCS representatives then handed Ms Kaur a second letter of demand (referred to in the Judgment as the "first red letter") before departing.[27] In this first red letter, Mr Chan's name was

22 Judgment at [11].

23 2RA at p 137, para 17.

24 2RA at p 137, para 18.

25 Judgment at [12].

26 Judgment at [13].

27 Judgment at [45].

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written in a box labelled "Debtor Name", below which the follow statements appeared:

> Dear Sir/Madam, we are looking for the Above Person, demanding an amount of SGD120,000.
>
> …
>
> This is to notify you that payment is past due from the day we sent our "Letter of Demand" to your Premises to inform you of the outstanding which you have owed our Client. Today we have visited you at (6.30).
>
> If you have not settled, please contact our office at the above hotline as soon as possible to make the overdue payment to avoid unnecessary embarrassment and inconvenience. If you have settled the above matter, kindly send us a screenshot of the receipt.
>
> …

17 This was followed by two further attempts at Mr Chan's home address on 14 March 2019 ("Third Attempt") and on 21 March 2019 ("Fourth Attempt").[28] On both occasions, Mr Chan was not at home. The Third Attempt ended with the SDCS representatives leaving a letter of demand with Mr Chan's domestic helper ("the second red letter") which was worded identically to the first red letter.[29] At the Fourth Attempt, the SDCS representative only made oral demands and did not leave a letter of demand.[30]

18 On 22 March 2019, Mr Chan's solicitors sent a letter each to SDCS and Ms Tang, demanding that they cease and desist from the "making and/or causing of unfounded harassment and/or allegations against our client and/or his family members and/or the Company [*ie*, NSC] and its related companies" (the "D&N

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28 Judgment at [14].

29 Judgment at [54] to [55].

30 Judgment at [60].

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Letters").[31] Despite the D&N Letters, a fifth recovery attempt was made on 28 March 2019 at the office of Her Velvet Vase Pte Ltd ("HVV") where Mr Chan's wife and daughter worked ("Fifth Attempt"). During this attempt, the SDCS representatives did not directly approach the occupants of the HVV premises but merely loitered outside hoping to catch sight of Mr Chan. After some time, they slipped a letter of demand ("the third red letter") under the door of the HVV premises and left.[32] The relevant parts of the third red letter read:

> Dear Sir/Madam, we went down to your premises to demand an amount of SGD120k.
>
> DEBTOR NAME: Paul Chan
>
> PREMISES WE WENT TODAY: [Blank]
>
> This is to notify you that payment is past due from the day we sent out "Letter of Demand" to your Premises to inform you of the outstanding which you have owed our Client. Today we visited You at (_____).
>
> If you have not settled, please contact our office at +65 [NUMBER] as soon as possible to make the overdue payment to avoid unnecessary embarrassment and inconvenience. If you have settled the above matter, kindly send us a screenshot of the receipt.
>
> …

19 A final attempt was made at Mr Chan's home address on 1 April 2019 ("Sixth Attempt").[33] Mr Chan was again not at home, and the SDCS representatives departed after leaving a letter of demand ("the fourth red letter") with Mr Chan's domestic helper. The contents of the fourth red letter were identical to those of the third red letter.[34]

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31 2RA at p 356; Judgment at [15].

32 Judgment at [69] to [70].

33 Judgment at [16].

34 Judgment at [79] to [80].

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Decision below

20 The DJ found in favour of Mr Chan and awarded damages in the sum of $10,000 to him. However, he declined to grant the injunction sought. The DJ also dismissed Ms Tang's counterclaim.[35]

21 The DJ held that Ms Tang was capable of being held liable for SDCS's defamatory acts (if any) on the basis that SDCS had been acting as her agent.[36] The DJ also held that SDCS was capable of being held liable for defamatory acts (if any) undertaken in the course of its retainer with Ms Tang.[37] In his view, SDCS's engagement by Ms Tang did not afford SDCS a valid defence.

22 The DJ found that a *prima facie* case of defamation was established only in relation to the Second, Third, Fifth and Sixth Attempts as there was publication in the course of only those four attempts.[38] The defamatory statements were similar across the four attempts and consisted of allegations made in the various letters of demand, that Mr Chan was indebted to Ms Tang in the amount of $120,000 and this debt remained outstanding. Relying on *Koh Kok Cheng v Vernes Asia Ltd* [1993] SGHC 23, the DJ found the statements to be defamatory as they indicated that Mr Chan was unable or unwilling to pay his debts.[39] This finding of a *prima facie* case of defamation was not challenged by Ms Tang on appeal.

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35 Judgment at [3].

36 Judgment at [22] to [29].

37 Judgment at [30] to [31].

38 Judgment at [49] (Second Attempt), [59] (Third Attempt), [74] to [77] (Fifth Attempt) and [80] to [83] (Sixth Attempt).

39 Judgment at [46] to [48] (Second Attempt), [55] (Third Attempt), [71] (Fifth Attempt) and [80] (Sixth Attempt).

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23 On the defence of justification, this turned on whether Mr Chan was *personally* liable for the Alleged Debt. To recapitulate, counsel for Mr Chan argued that the October 2016 loan and November 2016 loan (collectively, the "Loans") had been extended by Ms Tang *to the Companies*, and not to Mr Chan in his personal capacity. The DJ found on a balance of probabilities that the October 2016 loan had been extended to the Companies and not to Mr Chan personally while the November 2016 loan had been extended to NSC and not to Mr Chan personally.[40] Hence, the DJ rejected the defence of justification.[41]

24 On the remedies sought by Mr Chan, the DJ awarded damages at $10,000, having regard to the following factors:[42]

(a) the nature and gravity of the defamation and Mr Chan's standing as a businessman;

(b) the limited publication of the defamatory words (*ie*, the defamatory statements were published to Ms Balvinda Kaur ("Ms Kaur") in the Second Attempt, to Mr Chan's domestic helper in the Third and Sixth Attempts, as well as to Mr Chan's daughter and two of her colleagues in the Fifth Attempt);

(c) the repetition of the libel by Ms Tang and SDCS and their refusal to apologise, as well as the presence of conduct calculated to add hurt to Mr Chan's feelings; and

(d) the need for the award to include an element of deterrence.

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40 Judgment at [133].

41 Judgment at [133].

42 Judgment at [139] to [158].

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25 However, the DJ declined to grant the final prohibitory injunction sought by Mr Chan as he found that neither Ms Tang nor SDCS manifested a propensity to repeat the defamatory allegation.[43]

26 Finally, the DJ dismissed Ms Tang's counterclaim for $120,000, since he had found that the Loans were not extended to Mr Chan in his personal capacity.[44]

The parties' cases on appeal

27 Ms Tang raised three issues in her submissions on appeal. First, the DJ erred in finding that the Loans were not extended to Mr Chan in his personal capacity.[45] Second, the DJ erred by relying on agency principles to hold Ms Tang liable for defamatory statements made by SDCS in their attempts to recover the Alleged Debt.[46] Third, the damages award of $10,000 was excessive.[47]

28 On Mr Chan's part, he submitted that the DJ's factual finding that the Alleged Debt was not owed by Mr Chan should not be overturned as it was not plainly wrong or manifestly against the weight of the evidence.[48] Mr Chan also submitted that the DJ was correct to hold Ms Tang liable for the defamatory statements made by SDCS, as it is trite law that a principal is liable for its

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43 Judgment at [159] to [167].

44 Judgment at [168] to [169].

45 Skeletal Submissions of the Appellant in DCA 22/Respondent in DCA 23 dated 27 October 2022 ("Ms Tang's Submissions") at paras 4 to 9.

46 Ms Tang's Submissions at paras 11 to 19.

47 Ms Tang's Submissions at paras 22 to 23.

48 Skeletal Submissions of the Respondent in DCA 22/Appellant in DCA 23 dated 25 October 2022 ("Mr Chan's Submissions") at paras 18 to 22.

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agent's acts when such acts are within the agent's actual or apparent authority.[49] On quantum of damages, Mr Chan submitted that the award of $10,000 was inadequate.[50]

Issues to be determined

29 In the light of the parties' cases as outlined above, the issues to be determined in DCA 22 and DCA 23 were:

(a) whether the DJ erred in finding that Ms Tang was capable of being held liable for SDCS's defamatory acts (if any);

(b) whether the DJ erred in finding that the Loans were not extended to Mr Chan in his personal capacity; and

(c) whether the DJ erred in his assessment of the quantum of damages.

Issue 1: Whether Ms Tang was capable of being held liable for SDCS's defamatory acts

Parties' submissions

30 Counsel for Ms Tang submitted that the DJ erred in relying on agency principles to hold Ms Tang liable for the defamatory acts of SDCS. According to Ms Tang, she had engaged SDCS as a *contractor* to perform services for her, *ie*, to attempt recovery of the Alleged Debt.[51] On this basis, SDCS was "not her employees and neither [was SDCS] her agents". In support of this submission,

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49 Mr Chan's Submissions at para 44.

50 Mr Chan's Submissions at paras 49 to 66.

51 Skeletal Submissions of the Appellant in DCA 22/Respondent in DCA 23 dated 27 October 2022 ("Ms Tang's Submissions") at paras 12 to 16.

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counsel for Ms Tang referred to a passage from Matthew Collins, *Collins on Defamation* (Oxford University Press, 1st Ed, 2014) ("*Collins on Defamation*"), which states that "[a]s a general rule, vicarious liability applies where there is a contract of service, but not where there is a contract for services" (at para 22.07). Counsel for Ms Tang also submitted that the DJ erred in finding that, by signing a retainer which authorised SDCS to act on her behalf to demand the Alleged Debt from Mr Chan, Ms Tang had given SDCS express authorisation to defame Mr Chan.[52]

31 Counsel for Mr Chan responded that vicarious liability in employment relationships and the principle that a principal is liable for its agent's acts when such acts are within the agent's authority are two separate and distinct concepts which impose liability differently: *Ong Han Ling and another v American International Assurance Co Ltd and others* [2018] 5 SLR 549 ("*Ong Han Ling*") at [208]–[210]. Thus, Ms Tang's attempt to characterise the relationship between SDCS and herself as a contract for services as opposed to a contract of service did not assist her, since she would still be liable based on agency principles.

My decision

32 I agreed with counsel for Mr Chan that the enquiry into whether Ms Tang may be held liable for defamatory statements made by SDCS does not end with Ms Tang demonstrating that SDCS was operating as an independent contractor. In this regard, I would point out that counsel for Ms Tang had cited the passage from *Collins on Defamation* at para 22.07 out of context. While that passage says that vicarious liability arises only in the context of a contract for

52 Ms Tang's Submissions at paras 18 to 19.

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service, it does not say that the principal in a contract for services situation can never be liable for defamatory statements made by his independent contractor. In fact, the author of *Collins on Defamation* states the opposite proposition very clearly, just a few paragraphs up, in the following passage (at para 22.01):

> In accordance with usual tortious principles, employers are generally liable for the publication of defamatory statements by their employees, if the publication is made in the course of the employee's employment. *A principal is liable for the publication of defamatory statements made by an agent, if the agent has acted within the scope of his or her authority. …*
>
> [emphasis added]

33 In a similar vein, the authors of *Gatley on Libel and Slander* (Richard Parkes QC & Godwin Busuttil eds) (Sweet & Maxwell, 13th Ed, 2022) ("*Gatley on Libel and Slander*") states (at para 9-029):

> **Vicarious liability: its scope** Three principles are as much applicable to defamation as to any other tort. First, that where A procures or authorises B to commit a tort, A is liable with B as a joint tortfeasor. Secondly, that where there is a relationship in the nature of, or akin to, employment between A and B and "in the course of" that relationship, B (the employee) commits a tort, A is vicariously liable for B's act. *Thirdly, a principal is liable for the torts of an agent (whether or not an employee or in a relationship akin to employment)* where the principal has instigated, authorised or ratified the tortious act, or has assumed responsibility for the agent's actions; and *where a statement is made in the course of representing the principal within the actual or apparent authority of the agent*: and for such a statement the principal may be liable notwithstanding that it was made for the benefit of the agent alone and not for that of the principal.
>
> [emphasis added]

Thus, according to both *Collins on Defamation* and *Gatley on Libel and Slander*, a principal who is not in an employer-employee relationship with his agent may still be liable for defamatory statements made by the agent if the

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statements are made in the course of representing the principal within the actual or apparent authority of the agent.

34 Both *Collins on Defamation* and *Gatley on Libel and Slander* had cited the case of *Colonial Mutual Life Assurance Society Ltd v Producers and Citizens Co-operative Assurance Company of Australian Ltd* (1931) 46 CLR 41 ("*Colonial Mutual*") as authority for the foregoing proposition. It will therefore be useful to examine the facts and reasoning in that case. *Colonial Mutual* is a decision of the High Court of Australia on appeal from the Supreme Court of South Australia. In that case, both the plaintiff and defendant were insurance companies. The defendant engaged the services of one Ridley as a canvasser to procure proposals for insurance from members of the public. The agreement between the defendant and Ridley described the latter as "agent", and provided for Ridley to be paid commissions on proposals bearing his signature as introducing agent. Ridley was authorised under the agency agreement to receive insurance premiums on the defendant's behalf. The agency agreement also provided that the duties of the agent under the agreement may be performed either by Ridley personally or by his clerks or servants. The agency agreement further provided that Ridely was *not* prevented from engaging in any other business or occupation during the continuance of his agency with the defendant (at p 43).

35 Finally, the agency agreement specifically prohibited Ridley from using language which would disparage other persons or institutions. In breach of this stipulation in the agency agreement, Ridley made remarks which questioned the solvency of the plaintiff to induce the plaintiff's customers away. At the suit of the plaintiff, the Supreme Court of South Australia found both Ridley and the defendant liable for slander. The defendant appealed to the High Court of Australia, arguing that Ridley was not a servant of the defendant but an

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independent contractor, and the law did not impose on the defendant liabilities in tort for the acts of an independent contractor (at p 44).

36 The appeal was heard by a six-judge bench, which dismissed the defendant's appeal by a majority of four to two. Among the four judges in the majority, Duffy CJ and Starke J issued a joint judgment which contained slightly different reasoning from Dixon J's judgment. Rich J issued a one-line judgment agreeing with Dixon J.

37 Duffy CJ and Starke J rested their decision primarily on the finding that the nature of Ridley's employment gave the defendant sufficient power of controlling and directing his actions such that the relationship between Ridley and the defendant was one akin to that of master and servant. Consequently, the defendant was vicariously liable for Ridley's slander on the same basis that a master would be vicariously liable for a servant's tort. However, Duffy CJ and Starke J also held in the alternative that, if the principle of vicarious liability in a master and servant relationship did not apply on the facts, the defendant would still be liable under the principle that (at p 46):

> … one is liable for another's tortious act "if he expressly directs him to do it or if he employs that other person as his agent and the act complained of is within the scope of the agent's authority". It is not necessary that the particular act should have been authorised; it is enough that the agent should have been put in a position to do the class of acts complained of …

38 Dixon J did not find that the defendant had assumed such control over Ridley's work as to constitute him a servant. He therefore held that the liability of a master for the torts committed by his servant was *not* imposed on the defendant by the agency agreement. However, Dixon J added that it did not follow that the defendant incurred no responsibility for the defamation

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published by Ridley in the course of his attempts to obtain proposals. Dixon J summarised the legal position as follows (at p 48):

> In most cases in which a tort is committed in the course of the performance of work for the benefit of another person, he cannot be vicariously responsible if the actual tortfeasor is not his servant, and he has not directly authorised the doing of the act which amounts to a tort. The work, although done at his request and for his benefit, is considered as the independent function of the person who undertakes it, and not as something which the person obtaining the benefit does by his representative standing in his place, and therefore identified with him for the purpose of liability arising in the course of its performance. The independent contractor carries out his work, not as a representative, but as a principal. But a difficulty arises when the function entrusted is that of representing the person who requests its performance in a transaction with others, so that the very service to be performed consists in standing in his place and assuming to act in his right and not in an independent capacity.

Dixon J went on to analyse the relationship between the defendant and Ridley in these terms (at p 49)

> In this very case the "agent" has authority to obtain proposals for and on behalf of the appellant; and he has, I have no doubt, authority to accept premiums. When a proposal is made and a premium paid to him, the Company then and there receives them, because it has put him in its place for the purpose. This does not mean that he may conclude a contract of insurance which binds the Company. It may be, and probably is, outside his province to go beyond soliciting and obtaining proposals and receiving premiums, but I think that in performing these services for the Company he does not act independently, but as a representative of the Company, which accordingly must be considered as itself conducting the negotiation in his person.

Dixon J then concluded that Ridley indeed represented the defendant in soliciting proposals so that he was acting in right of the defendant with the defendant's authority when he uttered the defamatory remarks (at p 50). In this regard, Dixon J considered that the provision in the agency agreement

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prohibiting Ridley from disparaging others was not a limitation of his authority but a promise as to the manner of its exercise.

39 The two dissenting judges, Evatt and McTiernan JJ, found that the relationship between the defendant and Ridley was not that of master and servant. However, they did not base their decision on the absence of a master and servant relationship. Instead, both dissenting judges based their decision on the ground that the provision in the agency agreement prohibiting Ridley from disparaging others operated as a limitation of his authority, with the consequence that Ridley could not be said to have been acting within the scope of his authority in representing the defendant when he made the defamatory remarks.

40 From the foregoing narrative, the following observations may be made:

(a) Although the primary basis of Duffy CJ's and Starke J's decision was that the relationship between the defendant and Ridley was akin to that of master and servant, they also accepted the principle that, even in the absence of a relationship of master and servant or relationship akin to that of master and servant, one is liable for another's tortious act if he expressly directs him to do it or if he employs that other person as his agent and the act complained of is within the scope of the agent's authority.

(b) Dixon J (with whom Rich J agreed) drew a distinction between a "true" independent contractor and someone engaged to represent the principal in dealing with others (although he may not be a true agent in the technical, legal sense of having authority to conclude contracts which binds the principal). He considered that, in the latter case, a

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principal could be liable for tortious utterances made by the "agent" when representing the principal.

(c) By grounding their dissenting judgment on Ridley's lack of authority (by virtue of the provision in the agency agreement prohibiting the disparaging of others) instead of grounding it on the absence of a master and servant relationship, it may be said that Evatt and McTiernan JJ have proceeded on the basis that the defendant could be held liable for Ridley's defamatory remarks if they had been uttered within the scope of Ridley's authority, notwithstanding that he was not a servant.

(d) Thus, even though *Colonial Mutual* was a majority decision, all six judges (including the dissenting judges) were unanimous in accepting the principle that a principal who is not in master and servant relationship with his "agent" may still be liable for defamatory statements made by the "agent" if the statements are made in the course of representing the principal within the authority of the "agent". Further, given the nature of the relationship between the defendant and Ridley, it is clear that the type of "agents" which comes within the scope of this principle is not limited to agents in the technical, legal sense of having authority to conclude contracts which bind the principal, but also includes an "agent" in the less technical sense of someone engaged to represent the principal in dealing with others.

41 With the foregoing outline of the applicable legal principles in mind, I turn next to examine the scope of authority which Ms Tang had granted to SDCS when she engaged them to recover the Alleged Debts so as to determine

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whether SDCS was acting within the scope of such authority when they made the defamatory statements.

42 When Ms Tang engaged SDCS's services on 11 March 2019, she signed a six-page agreement with SDCS. This agreement was referred to in the Judgment as "the retainer",[53] and I will refer to it the same way in these grounds. On the first page of the retainer, after defining Ms Tang as the "Client", the retainer went on to state:[54]

> The client hereby authorize **"SDCS HOLDINGS PTE LTD"** to act on behalf [sic] to demand S$(120,000) the Debt
>
> **From:** Paul Chan (**The debtor**) …

On the second page of the retainer, under the bold and underlined heading "EXCLUSIVE AUTHORIZATION", it was stated that Ms Tang "irrevocably grant[s] [SDCS] a retainer for a period of one (1) year commencing from 11/3/19 to act as the authorized Debt Recovery Specialists to recover back all outstanding debts" and that she also "irrevocably grants [SDCS] the sole and authorized rights to abide by Singapore rules & regulations to recover back the outstanding debts".[55] It was also set out on the second page that Ms Tang would pay SDCS a commission of 10% on the amount of debt recovered. On the third page of the retainer, clause 3B) envisaged that SDCS could secure and arrange a payment schedule with the debtor by agreement.[56] It was further agreed in clause 6 that SDCS may receive payments from the debtor on behalf of Ms Tang. On the fourth and fifth pages of the retainer, it was agreed that:[57]

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53 Judgment at [26].

54 2RA at p 188.

55 2RA at p 189.

56 2RA at p 190.

57 Judgment at [26]; 2RA at pp 191–192.

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> 8. …
>
> d) SDCS *will visit debtors 5-8 times a month* and it could be any days from Monday to Sunday and our visiting hours are before 10pm only. SDCS will send (1) overall monthly report to the client via email containing the latest photos / video footage of the visits. …
>
> …
>
> e) SDCS administrator shall send to "the client" a copy of LOD (Letter of demand) via email as part of our procedures *as this Letter of demand will be serve [sic] to the debtor/s via normal mail after the case file is done, but before our operation [sic] visits them* as it states clearly that within 7 days if debtor's [*sic*] fail to make payment, we will send our debt recovery specialists down to visit the debtor and this may cause them inconvenience and embarrassment.
>
> [emphasis added]

43 Thus, under the retainer, Ms Tang had authorised SDCS to "act on [her] behalf" or, in other words, to represent her in recovering the Alleged Debt from Mr Chan. In fact, the word "authorize", "authorized" or "authorization" was used no less than four times in the retainer. Further, SDCS was authorised under the retainer to represent Ms Tang in securing and arranging a payment schedule with the debtor by agreement and in receiving payments from the debtor on her behalf. Finally, as envisaged in clauses 8d) and 8e) of the retainer, Ms Tang had agreed that SDCS would, in the course of acting on her behalf to recover the Alleged Debt, pay visits to the debtor and serve letters of demand on the debtor.

44 Turning to the four statements which the DJ found to be defamatory, all of them are statements contained in letters of demand and all of them were found by the DJ to be defamatory because they were statements to the effect that Mr Chan was indebted to Ms Tang in the amount of $120,000 and that this debt remained outstanding, as that would suggest that Mr Chan was unable or unwilling to pay up his debts. In my view, these were clearly statements made by SDCS in the course of representing Ms Tang within the scope of authority

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of granted to SDCS by Ms Tang. It goes without saying that the authority to make demands for repayment of the Alleged Debts from Mr Chan necessarily encompasses the authority to name Mr Chan as the debtor in those demands as well as the authority to allege or imply, in those demands, that the Alleged Debt remained outstanding.

45 As for Ms Tang's submission that the relationship between her and SDCS was not that of principal and agent but that of a principal and a contractor,[58] the answer lies in the observation I made at [40(d)] above that the principle underlying *Colonial Mutual* applies, not only to an agent in the technical, legal sense of having authority to conclude contracts which bind the principal, but also to an "agent" in the less technical sense of someone engaged to represent the principal in dealing with others. In this regard, it is clear, from the terms of the retainer, as summarised at [43] above, that SDCS was indeed engaged by Ms Tang to represent her in dealing with Mr Chan for the purpose of recovering the Alleged Debt.

46 For the foregoing reasons, I hold that the DJ did not err in holding that Ms Tang was capable of being held liable for the defamatory statements made by SDCS in the letters of demand they issued in the course of carrying out the retainer.

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58 Ms Tang's Submissions at para 13.

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Issue 2: Whether the Loans were extended to Mr Chan in his personal capacity

Parties' submissions

47 According to Ms Tang, the Loans had been extended to Mr Chan in his personal capacity. Counsel for Ms Tang submitted that the DJ erred in finding that the October 2016 loan and November 2016 loan had been extended to the Companies and to NSC respectively. In this regard, Ms Tang raised two broad arguments. First, a number of documents emanating from NSC demonstrated that the Loans were not extended to NSC.[59] Second, the DJ erred in his assessment of the WhatsApp messages exchanged between Mr Chan and Ms Tang.[60]

48 In response, counsel for Mr Chan submitted that the DJ had correctly considered all the evidence in finding, on a balance of probabilities, that the October 2016 loan was extended to the Companies and the November 2016 loan was extended to NSC.

My decision

49 As the identity of the debtor(s) is essentially a question of fact, it would be useful to recall what the role of an appellate court is with respect to the findings of facts made in the course of a trial. Generally, an appellate court would only overturn findings of facts when the trial judge's assessment is plainly wrong or manifestly against the weight of the evidence. However, where a particular finding of fact is not based on the veracity or credibility of

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59 Ms Tang's Submissions at para 5.

60 Appellant's Case for DCA 22 dated 15 August 2022 ("Appellant's Case for DCA 22") at paras 8 to 13.

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witnesses, but instead, is based on an inference drawn from the facts or the evaluation of primary facts, the appellate court is in as good a position as the trial judge to undertake that exercise. In doing so, the appellate court will evaluate the cogency of the evidence given by the witnesses by testing it against inherent probabilities or uncontroverted facts: *Tat Seng Machine Movers Pte Ltd v Orix Leasing Singapore Ltd* [2009] 4 SLR(R) 1101 at [41].

50 In the following analysis, I deal in turn with the two broad arguments outlined at [47] above.

Whether NSC's documents demonstrated that the Loans were extended to Mr Chan personally

51 Counsel for Ms Tang submitted that the following documents "which emanate from NSC" demonstrated conclusively that the Loans were not extended to NSC:[61]

(a) NSC's letter dated 15 March 2019 ("NSC's 15 March 2019 Letter") issued to Ms Tang stating that NSC "does not have any records that there is an outstanding debt in [Ms Tang's] favour of S$120,000.00."[62]

(b) The D&N's letter of 22 March 2019 to Ms Tang ("D&N's Letter to Ms Tang") which stated that Mr Chan "instructs that your [*ie,* Ms Tang's] claim of the Purported Debt [of $120,000] … is wholly unfounded and baseless as he and/or the Company [*ie,* NSC] are not aware of any records of the Purported Debt".[63]

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61 Ms Tang's Submissions at para 5.

62 2RA at p 201, para 3.

63 2RA at p 194, para 6 and p 197, para 6.

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(c) A WhatsApp message dated 18 December 2018 from NSC's accountant, Mr Ho Chiman ("Mr Ho"), to Ms Tang stating that "[t]here's no account such as amount owe to you in balance sheet. I will try to look into it".[64]

(d) An entry dated 30 November 2016 for the amount of $100,000 in NSC's general ledger. The entry appeared in the section of the general ledger headed "Amt due to Directors" and it bore the description "Deposit by SP".[65]

52 In respect of the first three documents, Ms Tang submitted that they showed that "[i]t is NSC's own position that they do not owe [Ms Tang] any money" and "by the logical process of elimination, it can only be [Mr Chan] who is owing the debt."[66] In my view, these three documents are not as unequivocal as Ms Tang made them out to be.

53 First, NSC's 15 March 2019 Letter did not actually assert that NSC owed no money to Ms Tang. Instead, it merely stated, as a factual assertion, that NSC did not have any records that there was an outstanding debt of $120,000. This factual assertion has to be understood against the background that, even though Ms Tang had stated on the first page of the retainer that she was seeking recovery of two separate debts – one for $100,000 and the other for $20,000 – SDCS's letters of demand referred only to a single amount of $120,000 without making clear that this amount was made up of two separate debts. In the circumstances, it was not surprising that NSC responded that it had no records

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64 2RA at p 240.

65 2RA at p 124; Judgment at [123].

66 Ms Tang's Submissions at para 6.

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of a debt of $120,000. (By way of background, while there was record of a $100,000 loan in NSC's general ledger (see [51(d)] above), there was no record of the $20,000 loan in the Companies' books (see Judgment at [103(b)]). This further explained why NSC would state that it had no records of a debt amounting to $120,000.)

54 Second, Ms Tang's submission on D&N's Letter to Ms Tang was built on an attempt to quote paragraph 6 of the letter out of context. To see the proper context, I set out paragraphs 1 to 6 of the letter in full here:

> 1. We act for Mr Paul Chan Tam Hoi (NRIC No SXXXXXXX).
>
> **PURORTED DEBT**
>
> 2. Our client instructs that on 11 March 2019, he received a letter of demand from SDCS Holdings Pte Ltd ("**SDCS**") which was sent to his company NSC Capital Pte Ltd ("**Company**").
>
> 3. It is our understanding that SDCS is in the business of debt collection services.
>
> 4. In the said letter of demand, it was mentioned that SDCS had been engaged by you, Tang Swea Phing, to demand for the said amount of $120,000.00 ("**Purported Debt**") which our client purportedly is indebted to you and is fully aware of. It was further mentioned in the said letter that the failure to respond to the notice to pay the said Purported Debt within 7 days will require SDCS to utilize one of the enforcement options against our client.
>
> 5. We enclose the said letter of demand hereto at **Tab 1** for your reference.
>
> 6. Our client instructs that your claim of the Purported Debt and the engagement of SDCS is wholly unfounded and baseless as he and/or the Company are not aware of any records of the Purported Debt.

55 The following observations may be made about the D&N's Letter to Ms Tang:

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(a) Paragraph 1 of the letter identified Mr Chan as the client. D&N was therefore writing on behalf of Mr Chan and not on behalf of NSC.

(b) Paragraph 2 referred to the "Purported Debt" as a debt "which our client purportedly is indebted to you". It was therefore clear in context that the term "Purported Debt" was used by D&N to refer to a debt purportedly due from Mr Chan (and not a debt purportedly due from NSC).

(c) The first part of paragraph 6 asserted that the Purported Debt was unfounded and baseless. In the light of the observations at sub-paragraphs (a) and (b) above, this constitutes a denial by Mr Chan that he owed the Purported Debt to Ms Tang (and not a denial that NSC owed the Purported Debt to Ms Tang).

(d) The second part of paragraph 6 merely stated that *both* Mr Chan and NSC had no record of the Purported Debt. By no means could this be construed as an assertion that NSC did not owe any money to Ms Tang or an implied admission that the Purported Debt was owed by Mr Chan.

(e) In other words, given the clear assertion in the first part of paragraph 6 of the letter that Mr Chan was denying that he owed the Purported Debt to Ms Tang, it would not be open to the court to construe the letter in the manner Ms Tang contended for.

56 Third, Mr Ho's WhatsApp message of 18 December 2018 was in response to an informal request from Ms Tang, after she had left the Companies' employment, for Mr Ho to help locate some accounting records. Mr Ho's response that he could not find the records was simply an assertion that he did

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not find the records. Given the nature of Ms Tang's request, Mr Ho's response could not be construed as an assertion on behalf of NSC that it did not owe any money to Ms Tang. This understanding is fortified by observing that Mr Ho ended his message with "I will try to look into it", which indicated that Mr Ho did not treat the matter as closed, but was prepared to conduct further searches for the records sought by Ms Tang.

57 For the foregoing reasons, none of these three documents supported Ms Tang's submission.

58 Turning to the entry in NSC's general ledger, counsel for Ms Tang submitted that this was the "best evidence" that the Loans were extended to Mr Chan in his personal capacity.[67] It was submitted that Ms Tang, as the finance manager of NSC at the material time, made this entry in NSC's general ledger to signify that the $100,000 was owed by NSC to Mr Chan (because it was recorded in the section of the general ledger for amounts due to directors) and that the source of the money was Ms Tang (thus the description "Deposit by SP"). The inference therefore was that NSC owed Mr Chan S$100,000, which was the money he borrowed from Ms Tang in order to tide over the cash-flow problems of NSC.[68] In response, counsel for Mr Chan submitted that Ms Tang made this entry to record the $100,000 as a loan *from her to NSC*, and that was why she described the $100,000 entry as "Deposit from SP". Counsel for Mr Chan also pointed out that, back in 2016, Mr Chan was not yet the sole director of NSC, and NSC had two other directors at the time. It was therefore not clear, merely from the appearance of the entry in the section headed "Amt due to directors" and the description "Deposit from SP", that the amount had

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67 Notes of Argument, 25 November 2022, at p 7, ln 11.

68 Appellant's Case for DCA 22" at para 19; Ms Tan's Submissions at para 5(iii).

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anything to do with Mr Chan, since Mr Chan's name did not appear anywhere in the description.

59 The DJ accepted that, on its face, the entry appeared to indicate that Ms Tang had loaned the $100,000 to Mr Chan who in turn loaned it to NSC. However, the DJ did not think that Ms Tang had proved on the balance of probabilities that this was the case. One particular reason relied on by the DJ was that Ms Tang's own action indicated that, when she was communicating with Mr Ho in December 2018 and Ms Kaur in January 2019, she was attempting to recover the $100,000 from NSC.[69] In my view, the DJ's conclusion was sufficiently supported by the evidence and I saw no reason to disturb this particular finding.

60 On appeal, counsel for Ms Tang also submitted that an adverse inference should be drawn by the court against Mr Chan for his failure to call Mr Ho as a witness. According to Ms Tang, Mr Ho, as NSC's accountant, would have been able to give evidence of what Mr Chan knew about the Loans and the entry into NSC's general ledger.[70] The "irresistible inference" to be drawn was that Mr Chan did not call Mr Ho as a witness "because [Mr] Ho would have revealed that [Mr Chan] knew about this entry all along and knew full well that it was a personal loan to him and not a loan to the Company" and "[i]t would also have destroyed [Mr Chan's] incredible and unbelievable claim that he saw the ledger only in 2018".[71]

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69 Judgment at [126].

70 Ms Tang's Submissions at para 5(iv).

71 Ms Tang's Submissions at para 7.

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61 I was unable to agree with this submission. It was unclear whether Mr Ho would have been able to give evidence of the entry into NSC's general ledger or Mr Chan's knowledge of the same. Mr Ho had not joined the Companies at the time when the Loans were extended by Ms Tang and when the entry was recorded in NSC's general ledger.[72] Furthermore, on the face of the WhatsApp messages between Mr Ho and Ms Tang on 18 December 2018, it would appear that this was the first time Mr Ho was informed of the existence of the entry in NSC's general ledger and he did not have personal knowledge of the Loans which were extended two years earlier:[73]

> Tang: I believed that you also able to find out my 100 [*sic*] in NSC UOB bank ac on 1 November 2016.
>
> Sept/Oct16 which i advanced paid out salaries to staff about 20k+ +
>
> Hope I able to get all the info thru bank statement & myob journal entries
>
> 14:12
>
> Really appreciated your great helps .
>
> Hopefully I able to get back all my money
>
> …
>
> 14:15
>
> Ho: There's no account such as amount owe to you in balance sheet. I will try to look into it.
>
> 15:27
>
> Tang: Only go to Paul's director ac
>
> …
>
> 16:47

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72 Respondent's Case in HC/DCA 22/2022 dated 15 September 2022 at para 60.

73 Agreed Bundle ("AB") at p 299.

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It followed that Mr Ho would likewise have limited knowledge of whether Mr Chan knew of the existence of the entry in the general ledger *before* 2018.

62 I would therefore decline to draw an adverse inference against Mr Chan for not calling Mr Ho as a witness.

Assessment of the WhatsApp messages exchanged between Mr Chan and Ms Tang

63 In her Appellant's Case, Ms Tang made two arguments concerning the WhatsApp messages exchanged between Mr Chan and Ms Tang in the lead up to the November 2016 loan.

64 The first argument went as follows:

(a) The WhatsApp messages exchanged from 24 to 28 October 2016 showed Mr Chan's "unrelenting and increasingly frantic efforts" to persuade Ms Tang to lend him money.[74]

(b) Mr Chan was so frantic that he even asked Ms Tang if her husband could obtain a personal loan from the bank to help.[75]

(c) If Ms Tang's husband had indeed assisted, he would have extended the loan to Mr Chan personally instead of the Companies because (i) Ms Tang's husband was not connected with the Companies and (ii) the Companies were practically insolvent as they could not even make payment of salaries and office rent.[76]

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74 Appellant's Case for DCA 22 dated 15 August 2022 ("Appellant's Case for DCA 22") at para 8.

75 Appellant's Case for DCA 22 at para 9.

76 Appellant's Case for DCA 22 at para 10.

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(d) For the same reasons, Ms Tang would not have extended the loan to the Companies instead of to Mr Chan personally.[77]

65 The second argument is based on a WhatsApp message dated 27 October 2016 from Mr Chan to Ms Tang which read: "Sweaphing possible to borrow 100k and settle with gateway once for all?" (The term "gateway" here referred to the landlord of the Companies' office premises.) The argument is that the language and wording of this message "strongly indicates" that Mr Chan was asking for a personal loan.[78]

66 I was not persuaded by the first argument, not least because the third limb of that argument (as outlined at [64(c)] above) was entirely speculative and not supported by any evidence. Ms Tang's husband, one Mr Phua Meng Soo ("Mr Phua"), filed an AEIC and attended as a witness at trial, but neither his AEIC nor his oral testimony contained any evidence to substantiate the points made at [64(c)] above. In fact, there is some indication from the relevant WhatsApp exchanges that Mr Chan was suggesting that Mr Phua make the proposed loan *to NSC*, and not to Mr Chan personally. This is found in the following messages from Mr Chan to Ms Tang on 24 October 2016:[79]

Chan: May be ask ur hubby for personal loan

23:22

Chan: 200k

23:22

Chan: We pay interested [*sic*]

23:23

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77 Appellant's Case for DCA 22 at para 11.

78 Appellant's Case for DCA 22 at paras 12 to 13.

79 4RA at p 935.

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In the foregoing messages, after asking Ms Tang to get a personal loan from Mr Phua, Mr Chan added that "we" could pay interest as opposed to "I" could pay interest. In my view, the use of the term "we" instead of "I" strongly indicates that Mr Chan envisaged that the proposed loan from Mr Phua would be made to NSC and not to Mr Chan personally.

67 As for the second argument, I did not accept that the message in question "strongly indicates" that Mr Chan was asking Ms Tang for a personal loan. On the contrary, I found that the message did not provide any indication one way or the other on whether the loan requested by Mr Chan was to be extended to NSC or to Mr Chan personally. On the face of the message, it was equally plausible that that Mr Chan had made the loan request on behalf of NSC, in his capacity as director of NSC. As the DJ rightly pointed out, just because Mr Chan wanted Ms Tang to transfer $100,000 into NSC's bank account did not necessarily mean that he wanted to borrow the money personally (Judgment at [116]).

68 Overall, I was satisfied that the DJ had given due weight to the various WhatsApp messages exchanged between Mr Chan and Ms Tang in arriving at his finding that the Loans were not extended to Mr Chan in his personal capacity. As the DJ rightly found, the WhatsApp messages were, in totality, equivocal as to the identity of the debtor – while there were messages which appeared to indicate that the Loans were extended to Mr Chan personally, there were also others which appeared to indicate that the Loans were extended to NCS and/or Menon Network.[80] For instance, on 28 October 2016, Ms Tang sent

[80] Judgment at [94], [117] to [119].

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a WhatsApp message which read: "If my husband transfer 50k to me then i can *lend to company*" [emphasis added].[81]

69 The DJ found that what was more relevant were the WhatsApp messages exchanged on 30 March 2017 where Mr Chan and Ms Tang discussed how the October 2016 loan would be repaid. These messages indicated that the parties understood that the Companies would ultimately be responsible for the October 2016 loan. Ms Tang referred to the October 2016 loan and stated that she had "not yet claim from company" and proposed to "gradually claim back the amount". Mr Chan agreed to this proposal:[82]

> Tang: Paul .. hope u still able to recall . I did sms on 29 nov that above amt *not yet claim from company*
>
> Can i gradually claim back the amt
>
> Sept - nsc
>
> Mary -$1960
>
> Joannah - $2200
>
> Balvin - $2560
>
> Me- $2000
>
> Sept - menon
>
> Faye - $2450
>
> Eileen - $3200
>
> May-$2130
>
> Yee & ashley - $3600
>
> Total - $20100..
>
> Oct - $20100
>
> Chan: Sure u can claim back gradually beco I dun know how income made next few months

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81 4RA at p 940.

82 AB at p 254.

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[emphasis added]

The DJ likewise found relevant other WhatsApp messages in 2017 and 2018 which indicated that Ms Tang had pegged repayment of the October 2016 loan to "*when co has money*", and a potential investment by one Mr Wang Jian in the Companies.[83]

70 In a similar vein, Ms Tang's attempts to recover the November 2016 loan *from NCS* on more than one occasion suggested that the November 2016 loan was not extended to Mr Chan personally. One occasion was on 6 January 2017, where Ms Tang contacted Mr Chan on WhatsApp and reminded him that the loan had only been temporarily extended *to the company*. Mr Chan likewise replied asking *whether NSC* could "carry forward" the loan:[84]

> Tang: Paul anywhere to issue 100k back to me 1st.. as my husband is checking my ac soon
>
> 13:44
>
> Chan: I told u I need cash I took out the money
>
> 13:45
>
> Tang: Ohhh.. i didn't know u took from maybank ac
>
> 13:46
>
> Chan: …
>
> Sweaphing u know 300k may help nsc to breath for few more months in order sales come in n take over part of cash flow problem y u asked to return u back the money?
>
> 15:31
>
> …
>
> Tang: *That time only temperary [sic] lend to company ma* as u said need money

83 AB at pp 261, 263 and 270.

84 4RA at p 954; AB at p 247.

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16:13

Temporary

16:13

Chan: Is everything ok?

16:14

Or nsc cannot carry forward?

16:14

Tang: I am ok.. it just afraid my husband checking my bank fund..

…

16:14

[emphasis added]

71 It was also pertinent to note that at the time of both the 30 March 2017 messages and the 6 January 2017 messages, the relationship between Mr Chan and Ms Tang had not yet broken down – Ms Tang was only dismissed from the Companies in August 2017. The DJ assessed that this meant that the messages were less likely to be influenced by any animosity or the likelihood of litigation.[85] Against this context, both Mr Chan and Ms Tang seemed to have shared the mutual understanding that the Loans had been extended to the Companies.

72 In this regard, counsel for Ms Tang argued that the DJ had given too much weight to the 30 March 2017 messages and the messages where Ms Tang had pegged repayment of the October 2016 loan to "*when co has money*", as Ms Tang was a layperson and the messages were informal messages. It was thus unsurprising that there would be some imprecise language. According to Ms Tang, she had used the word "company" interchangeably to also refer to

[85] Judgment at [95] and [96].

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Paul personally as he was the person in control of the Companies (being a director and majority shareholder of NSC and sole director and shareholder of Menon Network). She further claimed to have sent "*when co has money*" as she knew that Mr Chan could only repay the Alleged Debt or parts of it when the Companies had money and he was able to withdraw these moneys to repay the personal loan he took out from Ms Tang.

73 I accepted that there was some informality and ambiguity in the WhatsApp messages but this was the very concern which the DJ had expressly identified and was alive to in his assessment of the evidence (at [117]):[86]

> 117 For the reasons at [94] (above), I did not think that generic references to "u" or the "company" proved that the S$100k Loan was extended to either the plaintiff or the Companies. *Both the plaintiff and 1st defendant are laypersons who were sending messages in an informal context. As such, some level of imprecision in language is unsurprising.* This is apparent from the WhatsApp messages exchanged on 27 and 28 October 2016 reproduced at [111] above. While the plaintiff did not say that he was requesting the S$100k Loan on behalf of NSC and/ or Menon Network, the 1st defendant's reply indicated that she was lending money to one of them.
>
> [emphasis added]

74 As explained at [68] above, the DJ considered that there were a number of WhatsApp messages which indicated that the Loans were extended to Mr Chan personally and a number of WhatsApp messages which indicated that the Loans were extended to NSC and/or Menon Network. He continued to observe, in respect of the October 2016 loan (at [95]):

> 95 Under these circumstances, simply identifying WhatsApp messages which pointed one way or the other was insufficient to resolve the issue. *Something more was required.* And here, I thought that the WhatsApp messages where the parties discussed how the S$20k Loan would be repaid were

86 Judgment at [117]

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> revealing because they better reflected whom the parties understood to be ultimately responsible for the S$20k Loan.
>
> [emphasis added]

75 Similarly, the DJ observed in respect of the November 2016 loan (at [120] and [121]):

> 120 *As such, it was important for the defendants to explain why their messages and version should be preferred. After all, the burden of proof rested on them.* To that end, the defendants relied on the 1st defendant's explanation that she only wanted to remind the plaintiff that she was making "a personal loan" and that she "only wanted him to be liable for [her] personal loan".
>
> 121 I was unable to accept this explanation. *Leaving aside the language used in these WhatsApp messages (see [119] above), the 1st defendant had sought to recover the S$100k Loan from NCS on more than one occasion. …*
>
> [emphasis added]

76 It was thus evident that the DJ had not simply sought to rely on the language used in any particular WhatsApp message or any particular group of WhatsApp messages, but had corroborated it with the contemporaneous evidence of Ms Tang's actions, *ie*, that she had taken steps to recover the November 2016 loan *from NSC* on more than one occasion.

77 In the light of the above, I rejected Ms Tang's contention that the DJ "erred grievously in ignoring all the other contemporaneous evidence … and in putting so much weight" on, *inter alia*, the 30 March 2017 messages.[87] Admittedly, the language of some of the WhatsApp messages was equivocal but that much was to be expected between parties who trusted each other to an appreciable degree and conversed informally. I was satisfied that the DJ had

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87 Appellant's Case for DCA 22 at para 31.

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carefully considered the evidence in totality before concluding that the Loans were, on a balance of probabilities, not extended to Mr Chan personally.

Conclusion on the identity of the debtor(s) under the Alleged Debt

78 In light of the above, I did not find any basis to interfere with the DJ's findings of fact that (a) the October 2016 loan had been, on a balance of probabilities, extended to the Companies, and (b) the November 2016 loan had been, on a balance of probabilities, extended to NSC. As the Loans were not extended to Mr Chan in his personal capacity, it followed that Ms Tang and SDCS could not avail themselves of the defence of justification. As Ms Tang's counterclaim rests on the same factual basis as her defence of justification, it follows that her counterclaim would also fail.

Issue 3: Quantum of damages

Parties' submissions

79 On the quantum of general damages, counsel for Mr Chan submitted that damages in the quantum of $10,000 awarded by the DJ was manifestly inadequate and would not be a sufficient and effective award in deterring Ms Tang and SDCS from future libels.[88] He sought an award of damages in the sum of $10,000 *per incident* of defamation. Citing *Lim Eng Hock Peter v Lin Jian Wei and another and another appeal* [2010] 4 SLR 357 ("*Peter Lim v Lin Jian Wei*") for the relevant factors that the court may consider in determining the quantum of damages, counsel for Mr Chan argued that (a) the publication of the defamatory statements was not limited, (b) the conduct of Ms Tang and

88 Mr Chan's Submissions at para 59; Supplementary Written Submissions of the Respondent in DCA 22/Appellant in DCA 23 dated 9 January 2023 ("Mr Chan's Further Submissions") at para 28.

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SDCS was not one-off and was clearly calculated to harass Mr Chan into paying the Alleged Debt, and (c) given SDCS's business model, which was based on acts that would tend to defame and/or harass individuals in society, their callous conduct should not be condoned but should instead be deterred.[89]

80 Counsel for Ms Tang contended that the quantum of damages awarded by the DJ was excessive. Out of the four defamatory statements, two were published to Mr Chan's domestic helper. It was doubtful if she would have understood what the letters were about. Furthermore, it was argued that Mr Chan's reputation would not have been damaged, in relation to his domestic helper, to the same extent that his reputation would have been damaged if the defamatory statements had been published to his fellow business colleagues.[90]

81 Observing that Mr Chan did not deny the existence of the Alleged Debt but merely took the position that they were owed by the Companies, and considering that Mr Chan was the sole director and majority shareholder of NSC and the sole director and sole shareholder of Menon Network, I directed parties to make further submissions on whether, assuming the DJ was correct to find Ms Tang liable, the court should nevertheless award only nominal damages to Mr Chan.

82 In response, counsel for Ms Tang submitted that nominal damages of $1 would be appropriate.[91] It was submitted that Mr Chan was the alter ego of the Companies, and any alleged debts of the Companies were procured or obtained

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89 Mr Chan's Submissions at paras 34 to 58; Mr Chan's Further Submissions at paras 30 to 33.

90 Ms Tang's Submissions at paras 22, 23 and 24(v).

91 Further Written Submissions of the Appellant in DCA 22/Respondent in DCA 23 dated 9 January 2023 ("Ms Tang's Further Submissions") at para 1.

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by him as the person in control of the Companies. Thus, the alleged defamatory publications were brought on by Mr Chan's own conduct in asking for, even "pushing hard for", the Loans from Ms Tang, and then refusing to repay the Loans (either personally or through the Companies).[92] Mr Chan's reputation was so undeserving of protection such that he should be entitled to only nominal damages.[93] According to Ms Tang, no less than three other legal proceedings had been brought against Mr Chan in recent times for failure to pay debts or for breach of contract, from which it would appear that he had "a history of legal problems with investors who have invested in his company and who later find it difficult to get their monies back."[94]

83 Counsel for Mr Chan submitted that nominal damages would not be appropriate and general damages should still be awarded. Two arguments were raised in support of this. First, the defamatory statements caused injury to Mr Chan's personal reputation as a businessman.[95] The defamatory sting involved (namely, that Mr Chan was unable and/or unwilling to repay Ms Tang the Alleged Debt) had impinged on his personal creditworthiness, a characteristic which was closely intertwined with his reputation as a businessman. An adverse inference may be drawn against Mr Chan's ability to manage businesses, based on his failure to manage and pay off his personal debts. Second, even if the court were to find that there was no injury to Mr Chan's reputation arising from the defamatory statements, general damages should still be awarded for the purposes of vindicating Mr Chan's reputation and providing consolation to him for personal distress and hurt.

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92 Ms Tang's Further Submissions at para 11.

93 Ms Tang's Further Submissions at paras 18 to 21.

94 Ms Tang's Further Submissions at para 23.

95 Mr Chan's Further Submissions at paras 22 and 23.

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My decision

The applicable law

84 The purposes of general damages in defamation cases are: (a) to act as a consolation to the plaintiff for the distress he suffered from the defamation, (b) to repair the harm to plaintiff's reputation, and (c) to vindicate the plaintiff's reputation: *Arul Chandran v Chew Chin Aik Victor* [2001] 1 SLR(R) 86 at [53]. In line with these purposes, the following factors are relevant for assessing the quantum of damages (*per Peter Lim v Lin Jian Wei* at [7]):

(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.

85 In relation to factor (b) in the foregoing list of factors, the conduct, position and standing of the plaintiff may, in certain circumstances, lead the court to *reduce* the quantum of damages to be awarded. As noted in *Collins on Defamation* at para 21.47:

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> Evidence that the claimant had a bad general reputation is admissible in mitigation of damages. In an appropriate case, a claimant's reputation may be so undeserving of protection that he or she is entitled only to nominal damages even after succeeding in a defamation action in respect of a publication conveying a seriously defamatory imputation.

In a similar vein, Doris Chia, *Defamation: Principles and Procedure in Singapore and Malaysia* (LexisNexis, 2016) observed (at para 20.55):

> Where a plaintiff is without any or little worthwhile reputation, the court may order nominal damages. In *Sandison v Malayan Times Ltd & Ors*, the plaintiff was awarded nominal damage of one cent in respect of defamatory imputations of corruption. The plaintiff had been dismissed by his employer prior to the defamatory publication for conduct which was described, *inter alia*, as reflecting 'upon the plaintiff's honesty and integrity as regards the award of contracts' at rates which 'would not bear investigations'. The court also expressed the view that 'the plaintiff's conduct was such as to have forfeited whatever esteem he was held by others before his dismissal' and that his dismissal 'left him little residue of credit and reputation to be further damaged by the libel in the defendants' newspaper'. The court referred to the case of *Dering v Uris*, where the libel was that the plaintiff had, in Auschwitz, performed 17,000 experiments in surgery without anaesthesia. The defendants were only able to prove that the plaintiff had performed 90 such operations. The jury awarded the plaintiff nominal damages of a halfpenny.

86 Returning to the passage from *Collins on Defamation* quoted in the preceding paragraph, the key authority cited in that passage for the proposition that "a claimant's reputation may be so undeserving of protection that he or she is entitled only to nominal damages" is *Grobbelaar v News Group Newspapers Ltd* [2002] 1 WLR 3024 ("*Grobbelaar*"), a decision of the UK House of Lords. The plaintiff in *Grobbelaar* was a well-known professional footballer who was the goalkeeper for a prominent English team in the 1980s and 1990s. In November 1994, the "Sun" newspaper published a series of prominent articles charging the plaintiff with corruption. The defendants accepted that the articles were defamatory but pleaded justification as a defence. It was common ground

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that the articles carried the following defamatory meanings: (a) having dishonestly taken bribes, the plaintiff had *actually* fixed or attempted to fix the result of football matches, and (b) the plaintiff had dishonestly taken bribes *with a view* to fixing matches he would be playing. In relation to meaning (a), the plaintiff called expert witnesses who reviewed video recordings of the football matches in question and found no evidence of actual or attempted match fixing by the plaintiff. The defendants did not call their own experts to rebut the plaintiff's expert evidence, contending that the sting of the defamation lay in meaning (b) and not in meaning (a). The defendants did not face any difficulties proving meaning (b) as they tendered in evidence recordings of the plaintiff accepting bribes from an *agent provocateur* engaged by the defendants and also admitting to having previously accepted bribes to fix matches.

87 At first instance, the jury found in favour of the plaintiff and awarded him £85,000 in damages. The defendants' appeal to the Court of Appeal was allowed. The Court of Appeal reasoned that:

(a) the jury's award of £85,000 was explicable only on the basis that that the defendants had failed to justify *both* meaning (a) and meaning (b);

(b) a finding that the defendants failed to justify meaning (b) would have been perverse in the face of the evidence adduced at trial;

(c) consequently, the jury's verdict represented a miscarriage of justice and should be set aside.

88 The plaintiff appealed to the House of Lords. By a majority of four to one, the House of Lords allowed the appeal and restored the jury's verdict *on liability*. The majority reasoned that, although a finding that meaning (b) had

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not been justified would be wrong in the light of the evidence, the jury was entitled to find that the sting of the defamation lay in meaning (a), which the defendants had failed to justify, and rule in the plaintiff's favour on that basis. Nevertheless, the majority decided to award the plaintiff only nominal damages of £1. As Lord Bingham of Cornhill explained (at [24]):

> The tort of defamation protects those whose reputations have been unlawfully injured. *It affords little or no protection to those who have, or deserve to have, no reputation deserving of legal protection.* Until 9 November 1994 when the newspaper published its first articles about him, the appellant's public reputation was unblemished. But he had in fact acted in a way in which no decent or honest footballer would act and in a way which could, if not exposed and stamped on, undermine the integrity of a game which earns the loyalty and support of millions. Even if the newspaper had published no more than what, on my interpretation of the jury's verdict, it was entitled to have published, the appellant would have been shown to have acted in a way which any right-thinking person would unequivocally condemn. It would be an affront to justice if a court of law were to award substantial damages to a man shown to have acted in such flagrant breach of his legal and moral obligations.
>
> [emphasis added]

In a similar vein, Lord Scott of Foscote held (at [87]) that:

> … a professional footballer who has agreed to accept, and has accepted, bribes with a view to throwing matches has so diminished his reputation in the eyes of right thinking people that his success in establishing that, in breach of his corrupt agreement, he did not in fact throw matches cannot, in my opinion, justify anything more than nominal damages

In other words, nominal damages is the appropriate award where the plaintiff is shown to deserve no reputation worthy of legal protection.

Application to the present facts

89 Returning to the facts of the present case, the starting point would be to recall what the sting of the defamation in the present case was, and consider the

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nature of the reputation which Mr Chan sought to protect and vindicate. As noted at [22] above, the DJ found that the sting of the defamation was that Mr Chan was unable or unwilling to pay his debts. Counsel for Mr Chan submitted that this adversely affected Mr Chan's reputation as a businessman, as a negative inference might be drawn about his ability to manage businesses based on his failure to pay off his personal debts (see [83] above).

90 As noted at [82] above, counsel for Ms Tang referred to three lawsuits (where claims were made against Mr Chan for either failing to pay his debts or failing to abide by his contractual obligations) to demonstrate that Mr Chan's reputation was underserving of protection. I declined to take these lawsuits into account in assessing damages as the facts and circumstances concerning them were not put in evidence. In any event, even if Ms Tang had sought to adduce evidence of the same, such evidence would have been inadmissible pursuant to the rule, established in *Scott v Sampson* (1882) 8 QBD 491 ("*Scott v Sampson*"), that only evidence of *general* bad reputation (as opposed to evidence of particular acts of misconduct on the part of the plaintiff tending to show his character and disposition) is admissible in mitigation of damages. As explained 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 ("*Lee Hsien Loong v SDP*") , the rule in *Scott v Sampson* that excludes evidence of particular acts of misconduct was intended primarily to prevent defamation trials from becoming roving inquiries into areas of the plaintiff's reputation, character or disposition unconnected with the subject matter of the defamatory publication, which inquiries if permitted could result in a "trial within a trial" occurring in defamation suits (at [40]).

91 This exclusionary rule in *Scott v Sampson* is subject to two well-recognised exceptions concerning:

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(a) evidence of particular facts directly relevant to the contextual background in which a defamatory publication was made; and

(b) evidence relied on in support of a substantive defence, such as justification or fair comment.

92 The first exception was established in the case of *Burstein v Times Newspaper Ltd* [2001] 1 WLR 576 ("*Burstein*"). In *Burstein,* the plaintiff brought an action in respect of an article in the defendant's newspaper which stated that the plaintiff was "an aggressively self-righteous, rather slushy composer who used to organise bands of hecklers to go about wrecking performances of modern atonal music". The defendants' plea of fair comment was struck out as the words were clearly not comment. One of the issues before the court was whether the defendants could rely on the facts pleaded in support of the defence of fair comment for the purposes of reducing the quantum of damages. The trial judge held that the defendants could not, and this holding was reversed on appeal. In giving the main judgment for the Court of Appeal, May LJ explained (at [42]):

> For practical purposes, every publication has a contextual background, even if the publication is substantially untrue. In addition, the evidence which *Scott v Sampson* excludes is particular evidence of general reputation, character or disposition which is not directly connected with the subject matter of the defamatory publication. It does not exclude evidence of directly relevant background context. To the extent that evidence of this kind can also be characterised as evidence of the claimant's reputation, it is admissible because it is directly relevant to the damage which he claims has been caused by the defamatory publication.

93 The rationale for the *Burstein* exception was explained by Belinda Ang J in *Lee Hsien Loong v SDP* (at [34]) in the following terms:

> To May LJ, the admissibility of the evidence in question was essentially a "procedural case management [question]" (*id* at

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> [40]) which would be "heavily affected, if not determined, by questions of procedural fairness and of case management" (*ibid*). He held that "[t]here was a background context to the defamatory publication … [and] [t]o keep that away from the jury was to put them in blinkers" (see *Burstein* at [41]). He added that the heckling which Mr Burstein had organised would appear sufficiently from an appropriately confined selection of the documents to which the defendant wanted to refer. That evidence was directly relevant to the damage which Mr Burstein claimed had been caused by the defamatory publication. Agreeing with May LJ, Sir Slade pointed out that he considered the case to be a special one on its facts. He listed (at [59] of *Burstein*) the facts which the defendant wished to adduce in evidence, and held that "[t]o preclude the jury from knowledge of [those] … facts … was indeed to compel them to look at [the] case in blinkers when they came to assess the damages properly payable" (*id* at [60]).

94 The second exception was established in the case of *Pamplin v Express Newspapers Ltd* [1988] 1 WLR 116 ("*Pamplin*"). As Neill LJ explained in *Pamplin* at 120 (after having summarised the rule in *Scott v Sampson*):

> So much for evidence which is directed solely to establishing the plaintiff's previous bad reputation. But a defendant is also entitled to rely in mitigation of damages on any other evidence which is properly before the court and Jury. This other evidence can include evidence which has been primarily directed to, for example, a plea of justification or fair comment.
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> …
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> There may be many cases, however, where a defendant who puts forward a defence of justification will be unable to prove sufficient facts to establish the defence at common law and will also be unable to bring himself within the statutory extension of the defence contained in section 5 of the Defamation Act 1952 [*ie,* the Defamation Act 1952 (c 66) (UK)]. *Nevertheless, the defendant may be able to rely on such facts as he has proved to reduce the damages, perhaps almost to vanishing point.* Thus a defence of partial justification, though it may not prevent the plaintiff from succeeding on the issue of liability, may be of great importance on the issue of damages.
>
> [emphasis added]

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In this regard, the case of *Grobbelaar* (discussed at [86]–[88] above) stood as a prime example of a case where the *Pamplin* exception was applied by the court to reduce the damages "to vanishing point".

95 Having regard to the principles articulated in *Burstein* and *Pamplin*, the following facts are relevant for the assessment of damages in the present case:

(a) The November 2016 loan, amounting to $100,000, was extended by Ms Tang to NSC at Mr Chan's request (Judgment at [112]);

(b) As for the October 2016 loan, there was a dispute as to whether this was extended by Ms Tang voluntarily or at Mr Chan's request (see [12] above), and the DJ did not make a finding on this disputed fact. However, it was clear from the evidence that Mr Chan was aware of the October 2016 loan both immediately before and immediately after it was extended. On 26 October 2016, Ms Tang informed Mr Chan by WhatsApp that: "I will still help u to settle Salary 1st .. 20k".[96] On 28 October 2016, Ms Tang informed Mr Chan that: "I just transferred all staff salary .. total $18250.. without my salary".[97] Thus, Mr Chan both knew of and acquiesced in the extension of the October 2016 loan by Ms Tang to the Companies.

(c) As the chief executive officer, majority shareholder and a director of NSC and as the sole shareholder and a sole director of Menon Network, Mr Chan had control over whether the Companies would repay or withhold repayment of the Loans to Ms Tang.

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96 2RA at p 376.

97 2RA at p 378.

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(d) Despite being asked repeatedly by Ms Tang in 2017 and 2018 for repayment of the Loans, Mr Chan did not cause the Companies to repay the Loans to Ms Tang.

(e) Mr Chan's failure to cause the Companies to repay the Loans to Ms Tang led to Ms Tang engaging the services of SDCS, pursuant to which the defamatory statements were made.

96 The foregoing facts demonstrate that Mr Chan, being the person in control of the Companies, had caused or allowed the Companies to incur the Loans and had subsequently failed to cause the Companies to repay the Loans despite receiving repeated requests from Ms Tang to do so. For the purposes of assessing damages, any reputation of Mr Chan as a businessman, including any reputation concerning his ability to manage businesses, which Mr Chan wished to protect and vindicate had to be assessed against the foregoing facts. In my view, the foregoing facts had so destroyed this particular area of Mr Chan's reputation that he could not be said to have any reputation, concerning the subject matter of the defamatory remarks made in the present case, to be worthy of legal protection. Consequently, I held that there was no reason to award substantial damages to Mr Chan.

Conclusion on the award of damages

97 In the light of the above, I decided to substitute the DJ's damages award of $10,000 with an award of nominal damages of $1.

Conclusion

98 In the light of my decisions that the DJ did not err in holding that Ms Tang was capable of being held liable for the defamatory statements made

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by SDCS (see [46] above), that the DJ was justified in finding that the Loans were not extended to Mr Chan personally (see [78] above), and that Mr Chan should be awarded only nominal damages (see [97] above):

(a) I affirmed the DJ's finding that Ms Tang was liable for defaming Mr Chan.

(b) I also affirmed the DJ's decision to dismiss Ms Tang's counterclaim.

(c) I set aside the DJ's award of damages and substituted it with an award of nominal damages of $1 to Mr Chan.

Consequently, DCA 22 is allowed in part and dismissed in part, while DCA 23 is dismissed in its entirety.

Costs

99 Mr Chan filed his costs submissions while acting in person because, by then, a bankruptcy order had been made against him in *Standard Chartered Bank (Singapore) Ltd v Chan Tam Hoi @ Paul Chan* (HC/B 2413/2022) and his counsel had ceased acting for him. Mr Chan submitted that he should be entitled to costs of $10,000 in DCA 22 since Ms Tang failed in her appeal on liability, while he should pay costs of $5,000 to Ms Tang in DCA 23. Mr Chan also submitted that the costs ordered below should remain since the DJ's findings on liability was left untouched on appeal, while the work done by parties below on the issue of damages was minimal.[98]

[98] Mr Chan's submissions on costs dated 4 January 2024.

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100 Counsel for Ms Tang submitted that the award of nominal damages of $1 for Mr Chan's defamation claim meant that Ms Tang should be treated as the successful party on Mr Chan's defamation claim for the purposes of costs, citing *Marathon Asset Management LLP v Seddon* [2017] EWHC 479. Taking the foregoing together with Ms Tang's failure to establish her counterclaim, Ms Tang submitted that each party should bear their own costs in DCA 22 and DC 1387. In addition, as Mr Chan was not successful in DCA 23, Ms Tang sought costs of $10,000 for DCA 23.[99]

101 I accepted Ms Tang's submissions for the reasons given therein, and made the following costs orders:

(a) Each party shall bear their own costs in DCA 22.

(b) Costs of DCA 23 is fixed at $10,000 (inclusive of disbursements) to be paid by Mr Chan to Ms Tang.

(c) Costs order made in DC 1387 on 31 August 2022 is set aside. Each party shall bear their own costs in DC 1387.

(d) Security for costs provided by Ms Tang in DCA 22 be discharged (if provided by way of solicitor's undertaking) or returned (if provided by payment into court).

[99] Ms Tang's submissions on costs dated 31 January 2024

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(e) Security for costs provided by Mr Chan in DCA 23 be released to Ms Tang in part satisfaction of the costs order made in DCA 23.

Pang Khang Chau
Judge of the High Court

Lim Tean (Carson Law Chambers) for the appellant in DCA 22 and first respondent in DCA 23;
Wendell Wong and Faith Hwang (Drew & Napier LLC) for the respondent in DCA 22 and appellant in DCA 23;
The second respondent in DCA 23 absent and unrepresented.

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