Kay Swee Pin *v* Singapore Island Country Club and others
[2010] SGHC 175

Case Number	: Suit No 973 of 2008
Decision Date	: 10 June 2010
Tribunal/Court	: High Court
Coram	: Belinda Ang Saw Ean J
Counsel Name(s)	: S H Almenoar and Raji Ramason (R Ramason & Almenoar) for the plaintiff; Ang Cheng Hock SC, Ramesh s/o Selvaraj and Eunice Chew (Allen & Gledhill LLP) for the defendants.
Parties	: Kay Swee Pin — Singapore Island Country Club and others

Res Judicata – Issue Estoppel

Tort – Defamation

10 June 2010 Judgment reserved.

Belinda Ang Saw Ean J:

Introduction

1 The plaintiff, Kay Swee Pin ("KSP"), is a principal member of the first defendant, Singapore Island Country Club ("SICC" or "the Club"). The second to thirteen defendants (collectively, "D2" to "D13") are being sued as members of the General Committee of the SICC ("the GC"). The subject matter of this libel action is a notice suspending KSP's club membership for the period from 19 May 2006 to 18 May 2007 ("the Notice") which was, by order of the GC, posted for a year on the notice boards of SICC's Bukit and Island clubhouses.

The background

2 This libel action is a sequel to KSP's successful judicial review proceedings against SICC, whereby her year-long suspension as a member of the SICC was held to be invalid by the Court of Appeal (see *Kay Swee Pin v Singapore Island Country Club* [2008] 2 SLR (R) 802 ("*Kay Swee Pin v SICC (CA)*")). To vindicate her reputation, KSP is seeking substantial damages for defamation from the defendants. The details of the proceedings before the Disciplinary Committee of the SICC ("the DC"), and the judicial review proceedings in the High Court (see *Kay Swee Pin v Singapore Island Country Club* [2007] SGHC 166 ("*Kay Swee Pin v SICC (HC)*") for the High Court's grounds of decision) are set out in *Kay Swee Pin v SICC (CA)*.

3 The brief factual background for present purposes is this. In 1992, KSP made an application to SICC to be approved as a principal member after purchasing her membership from an existing member. In her application form, KSP declared one Ng Kong Yeam ("NKY") as her spouse. As a spousal member, NKY would be entitled to use the Club's facilities. For clarity, I should reproduce here the text of the declaration in the application form completed by KSP. It stated:

> I, the undersigned, declare that all the information given herein is true.

The signature of KSP as the proposed transferee followed immediately after the declaration.

4 In August 2005, acting upon concerns raised by some SICC members over KSP's marital status, the second defendant ("D2"), who was the then President of SICC, asked the membership department to check whether KSP's membership file contained a copy of KSP's marriage certificate. None was found. This was not surprising because prior to 1994, the Club did not require a member to submit a copy of his or her marriage certificate when registering his or her spouse as a spousal member to use the Club's facilities. The membership department then asked KSP for a copy of her marriage certificate in order to update her membership record. On 10 September 2005, KSP provided SICC with a copy of her marriage certificate, which showed that her marriage to NKY was registered on 24 August 2005 in Las Vegas, State of Nevada.

The charge against KSP

5 On 26 September 2005, the Club received a formal complaint lodged by a SICC member, one John Lee ("JL") against KSP. JL called upon SICC to investigate concerns among SICC members over KSP's marital status as she was running for the post of Lady Captain of the Lady Golfers' Sub-Committee of SICC ("Lady Captain for Golf"). The complaint was referred to the GC. In October 2005, the GC decided to institute disciplinary proceedings against KSP. The DC of SICC duly convened a hearing in accordance with Rule 34 (a) of the Club's rules ("the Rules"). On 18 November 2005, a charge against KSP ("the Charge") was framed in the following manner: [note: 1]

> ...[Y]ou have acted in a manner prejudicial to the interests of the Club and its members in that, you have falsely declared Mr Ng Kong Yeam (NRIC S2504572/F) as your spouse, to make use of the Club's facilities since September 1992, when the marriage certificate submitted by you on [Saturday] 10 September 2005 showed that your marriage to Mr Ng Kong Yeam was only registered on 24 August 2005 in Las Vegas, State of Nevada.

Proceedings before the DC

6 KSP's answer to the Charge was that even though she had formally registered her marriage to NKY only on 24 August 2005, it did not mean that they were not married much earlier. She maintained that they had clearly been husband and wife for over 20 years, and this was acknowledged by everyone to be so. Their daughter from the marriage was already 18 years old. In her written responses of 7 January 2006 and 8 February 2006, KSP informed the Club of her Chinese customary marriage to NKY on 12 January 1982 having observed traditional and customary rites in the marriage ceremony. To substantiate her claim, KSP submitted to the DC, four statutory declarations confirming her customary marriage to NKY and the legal opinion of Messers Haris Azmi & Associates ("HAA"), a Malaysian law firm, that confirmed that marriages solemnised under any custom prior to 1 March 1982 would be deemed to be registered under s 4 of the Law Reform (Marriage and Divorce) Act 1976 (No 164 of 1976) (Malaysia). [note: 2] HAA further opined that KSP and NKY's marriage on 12 January 1982 in accordance with Chinese custom would be deemed to be registered under the aforementioned statutory provision.

7 At the hearing on the Charge on 11 February 2006, the DC's concern was whether KSP was divorced from her first husband, Koh Ho Ping ("KHP"), when she joined the Club in 1992. SICC wrote to KSP seeking information and documents relating to the dissolution of her marriage to KHP. In response to the Club's request, KSP said that she was unable to recall the exact date of the dissolution of her first marriage, which had taken place more than 20 years ago *before* she joined SICC as a member. She remarked that her first marriage was an unhappy period in her life that was

best forgotten. She also confirmed that she did not have any documents relating to the dissolution of that marriage. In any case, she felt that details of the dissolution of her first marriage were irrelevant to the Charge. Her explanation of why she and NKY had registered their marriage in Las Vegas on 24 August 2005 was that they had done so in order to provide a marriage certificate as requested by SICC. Significantly, KSP pointed out that if the SICC had insisted on the submission of a marriage certificate at the time she applied to be a member in 1992, she and NKY could easily have complied by registering their marriage at that time.

8 Based on the divorce documents filed in court (which were obtained by the Club and made available to the DC), KSP filed her divorce petition on 23 December 1982. The Decree Nisi was granted on 28 November 1983, and the Decree Absolute was granted on 2 March 1984. To the DC, the court documents showed that KSP was already divorced from KHP at the time she joined SICC. On that basis and in the light of her marriage to NKY on 12 January 1982 at the New Hong Kong Restaurant, Johor Bahru, Malaysia, according to Chinese customary rites, the DC recommended that the Charge b e withdrawn. The DC specifically stated in its findings that it was unable to confirm whether Singapore law would recognise the Malaysian customary marriage between KSP and NKY in 1982 in view of the fact that KSP's divorce was only finalised in 1984.

9 The DC's findings and recommendations were not accepted by the GC. In its deliberations, it noted that KSP's first marriage had been dissolved only on 2 March 1984 whereas her customary marriage to NKY had been entered into on 12 January 1982. The GC concluded that, on the evidence, KSP had still been married to KHP on 12 January 1982. As such, she could not have had the requisite legal capacity to marry NKY on that date. The GC remitted the case back to the DC with directions that it decide the complaint on the basis that NKY was not "the spouse at the material time of nomination to the Club", [note: 3] and that it take into account any relevant mitigating factors. [note: 4]

10 The DC met again on 21 April 2006 to deliberate and make its recommendations on the complaint to the GC based on the fact that NKY was not a spouse. In that connection, the DC noted that the ordinary grammatical meaning of the word "spouse" is one's husband or wife under a valid marriage. [note: 5] In the report which it issued after this meeting ("the Second DC Report"), the DC identified the following as mitigating factors: [note: 6]

(a) Prior to January 1994, the Club did not require a member to provide a copy of his or her marriage certificate in order to register his or her spouse as spousal member.

(b) If the Club had required such a certificate when KSP applied to join as a member, she and NKY could have complied with such a requirement.

(c) KSP did not hide her marital status. Everyone who knew her acknowledged NKY and her as husband and wife. In fact, KSP and NKY had a daughter who was already 18 years old.

(d) There was no attempt to cheat or deceive the Club.

(e) NKY had used the Club's facilities as a spousal member, not with the intention of cheating, but as a result of a technical breach of the Rules.

11 The DC recommended that SICC be compensated for green fees amounting to $12,500 that it could have collected from KSP for NKY's golf games from 2001 to date (the records for the period prior to 2001 were not available). The DC was of the view that this was a sufficient penalty.

Suspension of KSP's membership and the Notice

12 The GC met on 8 May 2006 to consider the Second DC Report. The GC adopted the recommendations, but, in addition, decided to suspend KSP's club membership for a year from 19 May 2006 to 18 May 2007. Following the decision of the GC, SICC posted on the notice boards at its clubhouses copies of the Notice, which read as follows:

> SUSPENSION OF MEMBERSHIP
>
> Member's Name: Kay Swee Pin
>
> Membership Number : K 1074
>
> Incident : Acted in a manner prejudicial to the interests of the Club and its members in that, she had falsely declared Mr Ng Kong Yeam as her spouse to make use of the Club Facilities since September 1992, when the marriage certificate submitted by her on Saturday, 10 September 2005 showed that her marriage to Mr Ng Kong Yeam was only registered on 24 August 2005 in Las Vegas, State of Nevada.
>
> Period of Suspension: One year from 19 May 2006 to 18 May 2007 (both dates inclusive).
>
> BY ORDER OF THE GENERAL COMMITTEE

13 It is SICC's standard operating practice to put up notices, such as the Notice in this case, on its notice boards to inform SICC members of the outcome of concluded disciplinary hearings involving SICC members. The Notice remained on SICC's notice boards for the duration of KSP's suspension, namely, from 19 May 2006 to 18 May 2007.

14 When KSP learnt about her suspension and the posting of the Notice on SICC's notice boards, she wrote to the GC on 25 May 2006 expressing her shock at not having been informed of her suspension before it was announced to the Club's members via the Notice. In the same letter, she said that she and NKY had been seriously maligned. The Notice, she pointed out, did not refer to her marriage to NKY on 12 January 1982. She reminded the GC that she had submitted proof that her 1982 marriage was "proper and legal under existing Malaysian marriage laws". [note: 7] SICC replied on 7 June 2006 to say that it was not the Club's practice to put up suspension notices only after the member in question had been notified. Extremely upset, KSP wrote a second letter to the GC on 24 June 2006 setting out her arguments as to why there had been a serious miscarriage of justice, *viz*: at the time she declared NKY to be her spouse in her application form, she believed in good faith that she was validly married to NKY and did not know that her declaration was in fact false; thus, she could not have falsely declared NKY to be her spouse. She pointed out that no one had ever suggested that her marriage to NKY was invalid until the impending election for the Lady Captain for Golf. Moreover, she asserted that since she and NKY were in a strong financial position and have paid $190,000 for membership of the Club, they would not have gone to the extent of lying about their relationship just to save some green fees which they could well afford.

15 Receiving no response from the SICC, KSP wrote a third letter on 18 September 2006 requesting that the Club, at its annual general meeting ("AGM"), pass a resolution to revoke her suspension. SICC rejected that request. On 28 September 2006, KSP e-mailed SICC stating that the Rules allowed SICC members to discuss any matter at an AGM provided seven clear days' notice was given. SICC replied to say that her request was out of order, and that since, during her period of suspension, she was not permitted to enter the Club's premises, she would not be allowed to participate in the

forthcoming AGM.

The judicial review proceedings

16 As we now know, the events described above culminated in KSP's application to the High Court via Originating Summons No 2125 of 2006 ("OS 2125/2006") for judicial review of the Club's decision to suspend her membership for a year and for revocation of the suspension. It is not necessary to go into the arguments canvassed before the High Court; suffice it to say that the High Court dismissed KSP's application in OS 2125/2006. On appeal vide Civil Appeal No 46 of 2007 ("CA 46/2007"), the Court of Appeal set aside the suspension order of the GC on three grounds. First, it found that the GC had erred in failing to focus on whether the Charge was made out, and that the GC's decision was irrational and unreasonable. The essence of the Charge was that KSP had made a false declaration, which necessarily meant that it had to be proved that when she filled in the name of NKY as her spouse in the application form, she knew that that was a false statement and made that false statement deliberately so that NKY could make use of the Club's facilities. These two matters, the Court of Appeal held, were clearly not considered as the GC addressed its mind instead to the wrong question of whether KSP was validly married to NKY when she declared him to be her spouse in 1992. The Court of Appeal's conclusion on this point is succinctly put by Chan Sek Keong CJ at [64] of *Kay Swee Ping v SICC (CA)* in the following terms:

> [W]e came to the conclusion that the GC erred in law in focusing its discussion … on whether [KSP's] customary marriage with [NKY] in 1982 was valid or not, and in failing to ask itself whether the Charge was made out. We were also of the view that the GC's finding that [KSP] was guilty as charged was irrational and unreasonable. Its reasoning was illogical and was based on a failure to address the Charge. The GC inferred [KSP's] intention from the consequences of her act, *ie*, it inferred that because [NKY] had enjoyed the use of the Club's facilities as a spousal member, [KSP] must have declared him as her spouse with that intention. This was irrational.

17 Second, the Court of Appeal found that the GC had breached the rules of natural justice. For instance, the GC had failed to give KSP an opportunity to respond to JL's email of 1 April 2006 which took issue with the DC's initial recommendation that the Charge be withdrawn. In particular, KSP was not given the chance to respond to JL's allegation in the email that her customary marriage was void or to explain why the nullity of that marriage (assuming it was indeed void) did not matter for the purposes of the Charge. The GC had therefore breached its duty to give a fair hearing to KSP. Furthermore, the Court of Appeal said that the GC had prejudged KSP's guilt which led the GC to reject, for the wrong reasons, the DC's initial recommendation that the Charge be withdrawn.

18 Third, the Court of Appeal held that the Charge was illegal because the Rules only applied to SICC members: at the time KSP named NKY as her spouse in the application form, she was not yet a member of the Club.

19 For these reasons, the Court of Appeal allowed the appeal and declared the suspension order invalid. In addition to ordering a refund of all sums paid by KSP pursuant to the GC's decision, the Court of Appeal also awarded KSP damages to be assessed by the Registrar. At the hearing of the assessment of damages on 29 August 2008, the Club was ordered to pay (and has since paid) damages in the sum of $72,000, the breakdown of which is as follows: [note: 8]

> (a) the sum of $32,000 for the deprivation of membership rights and privileges as a result of the suspension of KSP's membership for a year; and

(b) the sum of $40,000 for mental distress sustained by KSP as a result of the wrongful suspension.

Bigamy investigations against KSP

20 After KSP's successful appeal, in March 2008, JL complained to the Registry of Marriages of her bigamous marriage to NKY. This led to the police investigations into the possible commission of an offence of bigamy. At the time of the trial, no formal charges have been preferred against KSP.

The libel action

21 On 23 December 2008, KSP filed her Writ of Summons in the present libel action. The subject matter of this suit is the Notice. The subject matter of the Notice was also referred to in an announcement published in the June 2006 issue of "*Islander*", a monthly publication of SICC. The outcome of the disciplinary proceedings was mentioned in that announcement ("the *Islander* announcement"), but KSP was not mentioned by name therein. KSP is relying on the *Islander* announcement as a factor relevant to her claim for aggravated damages (see [24] below).

22 As stated, upon judicial review of SICC's decision in CA 46/2007, the Court of Appeal held that the suspension of KSP was invalid by reason of illegality, breaches of natural justice and procedural impropriety in the conduct of the disciplinary proceedings. In the result, the Notice as a whole published in respect of KSP's suspension information that was unfounded and wrong. In this context, the words in the Notice were untrue and allegedly defamatory. KSP's pleaded case is that, in the circumstances described, SICC and D2 to D13 (as members of the GC) had wrongly, falsely and maliciously published the Notice.

23 In claiming that the Notice was libellous, KSP set out in para 8 of the Statement of Claim the alleged meanings which she ascribed to the Notice. Her plea is that the natural and ordinary meanings of the words used in the Notice meant and were understood to mean the following:

(a) KSP acted in a manner prejudicial to the interests of SICC and its members ("meaning (1)");

(b) KSP made a declaration that was false ("meaning (2)");

(c) KSP was a dishonest person ("meaning (3)");

(d) KSP was a cheat ("meaning (4)"); and

(e) KSP committed fraud ("meaning (5)").

24 KSP is seeking aggravated and exemplary damages arising out of the fact that (a) the Notice was only removed on 19 May 2007, one year after it was put up; (b) SICC refused to remove the Notice despite KSP's repeated requests that it be removed during the period of her suspension; and (c) the subject matter of the Notice was referred to in the *Islander* announcement.

25 The defendants do not deny that the Notice was placed on SICC's notice boards for a year and that it referred to KSP. However, the defendants deny that the Notice was defamatory and contend that the words complained of, in their natural and ordinary meaning, are not capable of bearing any of the defamatory meanings pleaded by KSP. The defendants have also raised the defences of justification and qualified privilege in the event that the words do carry the defamatory meanings

pleaded by KSP.

26 On the defence of justification, detailed particulars are given in para 11 of the Defence (Amendment No 1). In particular, the defendants plead in para 7 of the Defence (Amendment No 1) that since KSP was found guilty of the Charge, the Notice, which substantially mirrors the words used in the Charge, accurately summarised the outcome of the disciplinary proceedings against her. At any rate, the defendants contend, the Notice was posted in accordance with the Club's standard operating practice, and KSP had in fact been found guilty of the Charge at the conclusion of the disciplinary proceedings. Other particulars of justification are referred to later on in this judgment. Paragraph 13 of the Defence (Amendment No 1) contained a plea that the Notice was published on an occasion of qualified privilege. I will return to the defences of justification and qualified privilege later in this judgment.

27 It is convenient to note at the outset that despite their pleaded case, the defendants through their counsel, Mr Ang Cheng Hock SC ("Mr Ang"), have confirmed in their closing submissions that they accept that the words complained of bear meaning (1), meaning (2) and meaning (3), but they deny that those words bear meaning (4) and meaning (5). Mr Ang submits that the words complained of are not capable of bearing a defamatory meaning that is more serious than words to the effect that KSP had made a declaration knowing that it was false and/or was dishonest in this respect. [note: 9] In rejecting meaning (4) and meaning (5), Mr Ang submits that these two meanings are not borne out by the plain words of the Notice, but are instead subjective, strained, forced and the product of an over-elaborate analysis of the Notice. [note: 10]

Issues raised in the libel action

28 There is no dispute that the Notice was published and referred to KSP. The issues in this libel action are as follows:

(a) whether each of the meanings pleaded by KSP is capable of: (i) being conveyed by the words in the Notice, and (ii) defaming KSP;

(b) if the answer to (a) is yes, whether the defence of justification is available to the defendants;

(c) Further, if the answer to (a) is yes, and the defence of justification is not available, whether the Notice was published on an occasion of qualified privilege, and if so, whether the publication of the Notice was actuated by malice so as to defeat the defence of qualified privilege; and

(d) the quantum of damages payable to KSP, if applicable.

29 One related matter that has to be considered is the doctrine of issue of estoppel. KSP has raised issue estoppel in her Reply (Amendment No 1) in the context of the defendants' plea that it was not wrong at the material time for SICC to publish the Notice as KSP had been found guilty of the Charge and had thereafter been suspended as a member for one year. In response to the defendants' plea, KSP has cited her successful appeal in CA 46/2007 – she contends that her suspension was found by the Court of Appeal to be invalid and the defendants are estopped from relying on the findings of the disciplinary proceedings that led to her suspension to validate the posting of the Notice on SICC's notice boards. In his closing submissions, KSP's counsel, Mr S H Almenoar ("Mr Almenoar"), referred to *Kay Swee Pin v SICC (CA)*, relying on the judgment as a whole and

specific passages therein which, in his view, amount to findings of fact necessary for establishing libel. For example, Mr Almenoar argues that the defendants are estopped from denying that the Charge (and, hence, the Notice) connotes an intention on KSP's part to cheat or deceive SICC. [note: 11] In relation to the defence of justification, which is based on the premise that the defamatory words are substantially true, Mr Almenoar argues that the plea of justification is tantamount to a collateral attack on the findings of the Court of Appeal, and that is not permissible by virtue of the doctrine of issue estoppel. Moreover, since the GC was wrong to have found KSP guilty of the Charge, the Notice should never have been published and the defendants, so the argument develops, ought not to be allowed to succeed on their defence of justification. [note: 12] On the question of malice in the context of the defendants' defence of qualified privilege, KSP appeared to be content at the trial to support her allegation of malice by inviting the court to look at the alleged findings of the Court of Appeal, which, in her view, demonstrate malice on the part of the defendants, and did not adduce any evidence to this end.

30 In his opening statement, Mr Ang dismissed as misconceived, KSP's estoppel argument (as mentioned in the preceding paragraph, KSP relied on the judgment and the alleged findings of the Court of Appeal to invoke the doctrine of issue estoppel as a complete response to the defences raised by the defendants). If KSP's argument on estoppel is right, the present case would be an open-and-shut case of defamation; the blueprint for her success would be contained in the judgment of the Court of Appeal. On that score, it is appropriate and expedient that I first address the issue estoppel argument, which is, in my view, a short point.

Issue 1: Issue estoppel

31 If KSP is looking to the Court of Appeal's decision to establish the defendants' liability in this libel action (or is, at least, seeking to transpose the findings of fact and, *inter alia*, the conclusions of breach of natural justice from that decision wholesale into this libel action), and to say that the Court of Appeal's decision is conclusive against the defendants, and if she is indeed entitled to do so, then the Court of Appeal's judgment is potentially a powerful factual tool in KSP's hands. For instance, on the question of malice in the context of the defendants' defence of qualified privilege, KSP could potentially defeat any reliance on this defence by inviting the court to look at the alleged findings on malice made by the Court of Appeal without adducing any actual evidence of malice. Even so, Mr Almenoar's difficulty is that a judgment itself is not admissible to prove the truth of the facts which it state (see *Trans-World (Aluminium) Ltd v Cornelder China (Singapore)* [2003] 3 SLR(R) 501).

32 It is worthwhile standing back at this juncture from the arguments and details being relied upon. I start with some basic propositions. The principles of *res judicata* and issue estoppel apply between parties to the earlier proceedings or their privies. This is the long-established principle of mutuality. Mr Ang argues that it cannot be suggested here that either principle has any direct application which gives the Court of Appeal's judgment in CA 46/2007 evidential value in establishing facts that need to be proved in separate proceedings against strangers to the earlier judicial review proceedings, namely, D2 to D13. Mr Almenoar disagrees. He says that D2 to D 13, as members of the GC, may be considered "privies" of SICC. Since the GC is in charge of the management of the SICC, D2 to D13 can be considered privies in interest to SICC. This is because by definition, "privies of the parties" include (see *Spencer Bower and Handley*: *The Doctrine of Res Judicata* (LexisNexis, 4th Ed, 2009) at para 9.38):

> … any person who succeeds to the rights or liabilities of a party on death, insolvency, by assignment or by statute, or who is otherwise identified in estate or interest. The party estopped by privity must have some interest, legal or beneficial, in the previous litigation or its subject

matter, and accordingly assignees are privies of the assignor. Privity was described by the US Supreme Court as a mutual successive relationship to the same right of property, although this cannot be exhaustive. Privity is a matter of substance, not form.

33 In addition, as members of the GC (which, as just mentioned, is in charge of the management of the SICC), D2 to D13 are effectively identical to SICC (see *Goh Nellie v Goh Lian Teck* [2007] 1 SLR (R) 453 at [32]-[33] ("*Goh Nellie*") on persons who are effectively parties).

34 With regard to the requirements to establish issue estoppel, the court in *Wing Joo Loong Ginseng Hong (Singapore) Co Pte Ltd v Qinghai Xinyuan Foreign Trade Co Ltd* [2009] 2 SLR 814 at [165] reiterated the principles on issue estoppel laid out in *Lee Tat Development Pte Ltd v Management Corporation of Grange Heights Strata Title No 301 (No 2)* [2005] 3 SLR(R) 157 at [14]-[15] as follows:

(a) There must be a final and conclusive judgment on the merits of the issue which is said to be the subject of an estoppel;

(b) That judgment must be by a court of competent jurisdiction;

(c) The parties in the two actions that are being compared must be identical; and

(d) There must be identity of subject matter in those two actions.

35 On the present facts, it is clear that criterion (d) is not satisfied. The subject matter of the present action and OS 2125/2006 are quite different. As Mr Ang rightly pointed out, criterion (d) encapsulates a number of discrete conceptual strands (see *Goh Nellie* at [34]-[37]).First, the issues have to be identical in the sense that the prior decision must have traversed the same ground as the subsequent proceedings, and the facts and circumstances giving rise to the earlier decision must not have changed or must be incapable of change. Second, the previous determination in question must have been fundamental and not merely collateral to the previous decision such that the decision cannot stand without that determination.

36 Notably, OS 2125/2006 was a judicial review action in which the court was determining whether there had been breaches of natural justice and procedural impropriety in the conduct of the disciplinary proceedings instituted by the GC of SICC against KSP. The present action, however, is a claim in libel in relation to the Notice published by SICC. Although it could be said that the two actions are somewhat related factually, it cannot be said that there is identity in the subject matter of the two proceedings in the sense of the decision by the Court of Appeal traversing the same ground as the present action, such that KSP is entitled to reply on the principle of issue estoppel.

37 The broad grounds of the Court of Appeal's decision are set out in [16]-[18] above. The issue of whether NKY was, at the material time, KSP's spouse was not determined by the Court of Appeal; neither was it necessary for the Court of Appeal to make findings of fact on (a) whether or not KSP's declaration of NKY as her spouse was false and (b) whether or not KSP's declaration was made with the intention to cheat or deceive the Club in order to register NKY as a user of the Club's facilities. The Court of Appeal's decision in CA 46/2007 that the suspension was invalid was not even collateral to these two questions, and there is nothing in the judgment to constitute an issue estoppel in the present litigation.

38 Finally, I should mention that the defendants, in raising the defences of justification and qualified privilege, are not seeking to challenge the decision that the suspension was invalid. Hence,

Mr Almenoar's attempt to rely on the extended doctrine of *res judicata* or the defence of abuse of process is misplaced.

39 For the reasons stated, issue estoppel does not arise in the present case.

Issue 2: Whether each of the meanings pleaded is capable of being conveyed by the words complained of and, thus, capable of defaming KSP

The legal principles

40 The principles for determining the natural and ordinary meaning of offending words in a defamation action are not in dispute. They were set out recently in *Review Publishing Co Ltd and Another v Lee Hsien Loong and Another* [2010] 1 SLR(R) 52 ("*Review Publishing v Lee Hsien Loong (CA)*") at [27] as follows:

> *The court decides what meaning the words would have conveyed to an ordinary, reasonable person using his general knowledge and common sense: Jeyaretnam Joshua Benjamin v Goh Chok Tong* [1984-1985] SLR 516; [1985] 1 MLJ 334 ("*JJB v GCT*") and *JJB v LKY* (1992) ([19] *supra*)]. *The test is an objective one: it is the natural and ordinary meaning as understood by an ordinary, reasonable person, not unduly suspicious or avid for scandal*. The meaning intended by the maker of the defamatory statement is irrelevant. Similarly, the sense in which the words were actually understood by the party alleged to have been defamed is also irrelevant. *Nor is extrinsic evidence admissible in construing the words*. The meaning must be gathered from the words themselves and in the context of the entire passage in which they are set out. *The court is not confined to the literal or strict meaning of the words, but takes into account what the ordinary, reasonable person may reasonably infer from the words*. The ordinary, reasonable person reads between the lines. …
>
> [emphasis in original]

41 In determining the meaning of the alleged defamatory words (*ie*, in determining whether the statements or words complained of are capable of bearing any of the defamatory meanings attributed to them), the court's task is to put itself in the position of the hypothetical reasonable reader reading the offending literature as a whole without being too analytical or too literal in considering the words used (see *Ashok Segar v Kok Fonn Lyn Veronica* [2010] SGHC 168 at [39]).

42 The hypothetical reasonable reader may reasonably infer a meaning from the words used. There is an important difference between *inferences* and *implications*, and this difference must be appreciated. The *inferences* that the ordinary reasonable person may draw are based on his general knowledge, common sense and experience, and are entirely permissible. On the other hand, *implications* are based on extrinsic evidence which is not admissible as a matter of law in the construction of the natural and ordinary meaning of the offending words (see *Microsoft Corporation* v *SM Summit Holdings Ltd* [1999] 3 SLR(R) 465 at [53]).

43 After the natural and ordinary meaning of the offending words has been ascertained, the court's next consideration is whether that meaning is defamatory. For guidance, some definitions of the word "defamatory" which were approved and used in the past are noted in *Halsbury's Laws of Singapore*, vol 18 (LexisNexis: 2009 Reissue) ("*Halsbury's*") at para 240.091 as follows (although, admittedly, these definitions are not comprehensive or exhaustive):

> There is no exhaustive definition for what constitutes a defamatory statement, since the word

> 'defamatory' is nowhere precisely defined. A statement is defamatory of the person of whom it is published if it tends to lower him in the estimation of right thinking members of society generally or if it exposes him to public hatred, contempt or ridicule or if it causes him to be shunned or avoided. An untrue statement is not necessarily a defamatory statement; in order to be defamatory, the statement must lower the plaintiff in the estimation of others, or expose him to hatred, contempt or ridicule. A person's reputation is not confined to his general character and standing but extends to his trade, business or profession, and words will be defamatory if they impute lack of qualification, knowledge, skill, capacity, judgment or efficiency in the conduct of his trade, business or professional activity.

44 Consideration has to be given to the actual words used and the circumstances in which they were used. It must be remembered that the context in which the words appear is also important as it may be that the words used cannot be understood in a defamatory sense in certain contexts. The question is how the words would be understood in their proper context, and not how they were meant to be understood by the author/publisher.

The meanings of the words complained of

45 The meanings pleaded in para 8 of the Statement of Claim are reproduced in [23] above. As stated earlier, the defendants accept that the impugned words in the Notice are capable of bearing meaning (1), meaning (2) and meaning (3). In adopting this stance, the defendants are in effect contending that those words, in their natural and ordinary sense, are not capable of bearing in relation to KSP, any meaning beyond the meaning that she made a declaration knowing that it was false and/or was dishonest in this regard. Mr Ang, on behalf of the defendants, submits that the impugned words in the Notice are not capable of bearing meaning (4) and meaning (5).

46 I begin with Mr Almenoar's submissions. He submits, and rightly so, that the impugned words must be read in the context of the Notice as a whole in order to ascertain whether their natural and ordinary meaning can be any of the meanings pleaded by KSP. The reader looking at the Notice as a whole would have his attention drawn to the heading of the Notice which states in bold letters: "Suspension of Membership". Mr Almenoar argues that this heading would immediately tell the reader that a member's membership has been suspended, and the reader would infer that the member must have done something "awfully wrong" for this to happen. [note: 13] The questions that would come to the reader's mind are: "Who is this member?" and "What did the member do?" Moving down the Notice, the reader finds the answers. The reader is able to easily identify KSP as the member in question as her name and her membership number are on the Notice. As the reader reads on, it will become clear that KSP is said to have "falsely declared Mr Ng Kong Yeam as her spouse in order to make use of [Club's] facilities". This statement conveys the meaning that KSP is a dishonest person, and a cheat. In addition, the words "since 1992" suggest to the reader that "the cheating had been continuous for the past 14 years (date of notice 19 September 2006)". [note: 14] Mr Almenoar says the meaning finally conveyed by the Notice as a whole (*viz*, that KSP had acted in a manner prejudicial to the interests of the Club as in meaning (1) when read in the light of the allegations that (a) KSP falsely declared NKY as her spouse so that he could make use of the Club's facilities; (b) KSP was dishonest and cheated in making the false declaration; and (c) NKY as a result obtained the benefit of the use of the Club's facilities since 1992), is that she was fraudulent and had committed fraud.

47 To reinforce meaning (4), Mr Almenoar points to how the Court of Appeal interpreted the Charge in CA 46/2007: in the Court of Appeal's view, the word "falsely" connoted a deliberate lie or deception in order to cheat SICC (see *Kay Swee Pin v SICC (CA)* at [59]). Commenting on the essence of the Charge, the Court of Appeal said at [53]:

> The Charge was that in 1992, [KSP] had falsely declared NKY as her spouse so as to enable him to make use of the Club's facilities. In the context of the Charge, the word "falsely" implied that [KSP] had made an untrue statement in order to cheat or deceive the Club into allowing NKY to use the facilities of the Club. It implied that *when* she filled in the name of NKY as her spouse on her application form in 1992, she *knew* that it was a false statement and that she made it *deliberately* so that NKY could use the facilities of the Club. [emphasis added]

48 Mr Almenoar complains that despite this clear "finding" on the meaning of the words used in the Charge, the defendants have still chosen to submit that the words in the Notice do not in their natural and ordinary meaning "[connote] that she cheated or was a cheat". [note: 15]

49 In response, the defendants assert that Mr Almenoar's argument is specious and not convincing. They contend that in the earlier judicial review proceedings (which was not an action in defamation), the Court of Appeal interpreted the essence of the Charge in the light of the issues raised in those proceedings and considered that an implied *mens rea* element, (*ie*, an intention to cheat or deceive) arose out of the Charge. In the defendants' view, it does not follow that the Court of Appeal's interpretation of the Charge in the judicial review proceedings necessarily accords with the objective meaning which the Notice would have conveyed to the hypothetical reasonable reader who is a fair-minded person. In any case, Mr Ang concludes that, if the court finds that the imputed meanings to the words in the Notice are defamatory, the sting of the libel is that KSP had made a declaration knowing that it was false and/or was dishonest in this regard. According to Mr Ang, the sting is substantially true on the facts. [note: 16]

50 Adopting the legal principles and the approach set out above, the Notice is capable of bearing the meaning attributed to it in meaning (4) in so far as it alleges dishonest conduct. *The Cambridge International Dictionary of English* (London: Cambridge University Press, 1995) at p 221 defines a "cheat" as "a person who behaves in a dishonest way". The Notice sets out in terms the basis on which the Club found that KSP had made a declaration which was false – namely, she married NKY in Las Vegas on 24 August 2005 and not earlier. Based on the Notice, KSP had inexcusably made a false declaration, and the hypothetical reasonable reader would understand that, in effect, KSP's conduct could fairly be described as cheating and was dishonest.

51 However, I agree with Mr Ang that meaning (5) is a product of an over-elaborate analysis of the words complained of. A hypothetical reasonable reader would not have understood the words to allege fraud or to allege that KSP had committed fraud in making the false declaration. The falsehood was in respect of KSP's marital status in 1992, in that KSP named NKY as her spouse whereas her marriage to NKY was in fact solemnised and registered only on 24 August 2005 ("Situation (1)"). We are here concerned with Situation (1). In respect of meaning (5), KSP's state of mind at the time she filled in the application form needs to be ascertained in order to prove fraud, which usually connotes an intent to deceive someone like the Club. The words complained of in themselves do not say in terms or suggest that KSP made the false declaration "at the time of filing of the application form", which is the relevant date. In context, the phrase "since September 1992" is capable of being understood to refer to the length of time for which NKY made use of the Club's facilities; it is not referable to the point in time when KSP made the false declaration. I agree with Mr Ang that it is not possible to attribute meaning (5) to the Notice either by the plain words of the Notice or inferentially.

52 In my judgment, the sting is not so much in the words themselves as in what the hypothetical reasonable reader would infer to be KSP's dishonest conduct based on the facts as set out in the Notice and the premise of the Notice, which is that KSP had inexcusably made a false declaration. In

effect, KSP's improper conduct could fairly be described as cheating and was dishonest. The Club accepted NKY as a spousal member. Her dishonest conduct was an act prejudicial to the interest of the Club.

53 The Notice is therefore, and I so find, libellous. The imputation of KSP's dishonest conduct in connection with NKY's use of the Club's facilities for 14 years as a spousal member before KSP's marriage to NKY was registered on 24 August 2005 is defamatory as it is enough to induce an ill opinion of KSP in the mind of the hypothetical reasonable reader of the Notice and to cause KSP to be shunned or avoided as a result of these words.

Issue 3: Whether the defence of justification is available to the defendants

The legal principles

54 The legal principles in this area of the law are well settled. The defendant who relies on the defence of justification must plead precisely the meaning which he seeks to justify. As Court of Appeal stated in *Aaron Anne Joseph v Cheong Yip Seng* [1996] 1 SLR(R) 258 ("*Aaron v Cheong Yip Seng*") at [68]:

> On this issue [of justification] it is necessary to consider first what precisely the [defendants] sought to justify. *The law on this point is now quite clear. Where a defendant in a defamation action pleads justification, he must do so in such a way as to inform the plaintiff and the court precisely what meaning or meanings he seeks to justify*: see *Lucas-Box v News Group Newspapers Ltd* [1986] 1 WLR 147, at 153; *Viscount De L'Isle v Times Newspaper Ltd* [1988] 1 WLR 49, at 60 and *Prager v Times Newspapers Ltd* [1988] 1 WLR 77, at 86. All these three cases were decided by the English Court of Appeal and the relevant passages of the judgments of various members of the court were set out and commented on in *Lee Kuan Yew v Davies Derek Gwyn* [1989] 2 SLR(R) 544 at [45] to [48], and it is unnecessary to repeat them here. ... [emphasis added]

55 To succeed in a plea of justification, the defendant need only prove that the substance or gist of the offending words (as opposed to those parts of the offending words which do not add to the sting of the alleged defamation) is true (see *Review Publishing v Lee Hsien Loong (CA)* at [134] and *Gatley on Libel and Slander* (Sweet & Maxwell, 11th Ed, 2008) at para 11.9).

56 If the defendant seeks to justify a defamatory meaning *different* from the meaning propounded by the plaintiff, he must plead clearly the different meaning which he seeks to justify (see *Evans on Defamation in Singapore and Malaysia* (LexisNexis, 3rd Ed, 2008) at p 96):

> Obviously, a defendant to a defamation action is not obliged to ascribe a meaning to the words in issue, for ... the plaintiff must establish the defamatory meaning of the words. However, if a defendant pleads justification, then he must show in his pleadings the meaning which he seeks to justify. The defendant is obliged to plead justification in a way which makes it clear [what] the meaning [which] he seeks to justify [is]. *In situations where the defendant puts forth a defamatory meaning different from that pleaded by the plaintiff, and which he seeks to justify, he must clearly and unequivocally plead the meaning which he seeks to justify*.
>
> [emphasis added]

Justification: the issue to be determined

57 When deciding the issue of justification, I have to decide whether a sufficient proportion of the allegations made in the Notice were factually correct. The sting of the libel was the imputation of KSP's dishonest conduct. So the question which I have to decide is whether the defendants made good on a balance of probabilities the sting of the libel is substantially true. The defendants do not need to prove each and every word is true. The burden is upon the defendants although the defendants are entitled to rely on s 8 of the Defamation Act (Cap 75, Rev Ed 1985) ("the Act") which provides that the failure of a defendant to prove the truth of every imputation against the plaintiff will not be fatal to the plea of justification if the imputations not proved to be true do not materially injure the plaintiff's reputation when regard is had to those imputations which have been proved against the plaintiff.

58 The defendants submit as their fall back argument that the substance or gist of the Notice in each of the defamatory meanings alleged by KSP is substantially true. There are the several aspects to their plea of justification and to support their claim, they raised five points, namely,

(a) The contents of the Notice were factually true and accurate at the material time that it was published;

(b) KSP's declaration of NKY as her spouse at the time of her application to be a member in September 1992 was false;

(c) KSP knew that her declaration of NKY as her spouse at the time of her application to be a SICC member in September 1992 was false;

(d) In any event, KSP had conceded at trial that she had, in fact, not entered into any customary marriage with NKY in January 1982 and, therefore, the position taken by her as regards there being such a customary marriage in the disciplinary proceedings as well as OS 2125/2006 and CA 46/2007 was untrue;

(e) The defendants rely on section 8 of the Act and in any event, they have proven the sting of the alleged libel by reasons of the above facts.

59 The matters upon which I have to focus are those relating to KSP's dishonest conduct. In this respect, points (b) (c) and (d) are relevant and will have to be examined. It is in my view important to note that if, on the evidence, dishonesty is made out from her improper conduct, there still remains the question whether the false declaration was deliberate, and it is usual for that element to coincide with a finding of dishonesty.

(i) No customary marriage in 1982

60 The false declaration related to KSP's marital status *before* the solemnisation and registration of her marriage to NKY on 24 August 2005 in Las Vegas. It is significant that KSP's case before the DC was that there was no false declaration in that NKY was her spouse by virtue of her customary marriage to NKY which she claimed took place in Johor Bahru on 12 January 1982.

61 I start with her email of 7 January 2006 to one Michelle Choy, a staff of SICC: [note: 17]

Please forward this e-mail to the GC as I will now provide some information regarding my marriage.

My husband and I have been happily married for over 20 years and our daughter is already 18 years old. *In 1982, we married in Johore Bahru* where my husband lived and worked, *We*

observed traditional and customary rites in our marriage ceremony, which was witnessed by our very close friends (some of whom I will ask to sumit (sic) affidavits if necessary) and relatives. As traditional marriages were accepted and legal in Malaysia at that time, we had done what was necessary and regarded ourselves as legally and properly married. Everyone who knew us acknowledged us as husband and wife and throughout our over 20 years together, no third party has ever emerged to challenge the validity of our marriage.

When the club, from out the blues, asked for a copy of my marriage certificate, I realised that I did not possess one as customary marriages did not provide for one. As I felt it was too much hassle to explain to the club, my husband and I decided to obtain one from Las Vegas as that is where our second home is. *Even though it is registered in August 2005, it certainly does not mean that we have only been recently married. We married in 1982 and only registered it in 2005 because the club needed something in black and white*.

[emphasis added]

62 In her 8 February 2006 letter to D2 as President of the Club, KSP referred to her 7 January 2006 email and reminded D2:

As I have already explained in my e-mail dated Jan.7, 2005 [sic], my marriage to Dato Ng Kong Yeam took place long before we formally registered it in Las Vegas on Aug. 24, 2005. It was within our rights not to register our marriage when we married in 1982 and we chose not to do so. A piece of paper is not the only proof of a person's marital status.

After 13 years of being members of SICC, I was suddenly asked to produce a copy of my marriage certificate as Mr John Lee (writing under the guise of a "concerned" member) had written to the Club questioning my marital status. I admitted to the GMS that I did not possess one as I was married 23 years ago under traditional customs and laws. …

[emphasis added]

63 To prove that the Charge was groundless, and to lend credence to her claim that she and NKY (a Malaysian) went through a Chinese customary marriage in 1982, KSP provided the DC with four statutory declarations and a written legal opinion dated 7 January 2006 from HAA. The legal opinion was tendered to prove that her customary marriage to NKY was recognised as a legal marriage under Malaysian law. Of the four statutory declarations, one was affirmed by NKY who confirmed that he and KSP went through a customary marriage having observed Chinese customary rites. [note: 18] The other three statutory declarations were from NKY's secretary, friend and sister respectively and they all confirmed knowledge of NKY's Chinese customary marriage to KSP on 12 January 1982 in that they were present at the wedding where the marriage between NKY and KSP was solemnised at the New Hong Kong Restaurant, Johor Bahru according to Chinese customary rites. [note: 19] On the basis of their Chinese customary marriage, HAA opined that such a marriage in accordance with custom entered into before 1 March 1982 would be deemed to be a registered marriage under Malaysian law. [note: 20] Given the strength of the evidence as described, it was not surprising that the Court of Appeal in *Kay Swee Pin v SICC (CA)* concluded that KSP had a valid explanation as to how NKY was her spouse in 1992 when the Las Vegas marriage certificate showed that they were married only in 2005.

64 It is clear from the evidence that KSP was saying to the DC that at the time of her application to join SICC, she was validly married to NKY. This must be so, on any reasonable view, for KSP had

gone to great lengths to submit proof of her customary marriage and its recognition as a legal marriage under Malaysian law at the time she joined the Club.

65 Unfortunately for KSP, in the course of the disciplinary proceedings, SICC found out that KSP was still legally married to KHP on 12 January 1982. The Club wrote to KSP for information on when her marriage to KHP was dissolved. No information was provided by KSP (see [7] above). The Club then got hold of the divorce papers filed in court. The Club learned that the divorce petition was filed by KSP on 23 December 1982, the Decree Nisi granted on 28 November 1983 and the Decree Absolute was granted on 2 March 1984 (see also [8] above). We know from the facts that GC directed the DC to deliberate and make its recommendation on the complaint to the GC "based on the fact that Dato Ng was not [her] spouse". [note: 21] Ultimately, KSP was found guilty and her membership was suspended for one year. Notice of her suspension was placed on several notice boards in the clubhouses. When KSP came to know of the Notice, she wrote to the GC demanding to know the reason for the DC's decision. In her letter of 25 May 2006, KSP queried why the Notice only mentioned the marriage registered in 2005 and not her marriage to the same man on 12 January 1982 in Johor Bahru. KSP again referred to documents she submitted to the DC to prove that her marriage on 12 January 1982 was "proper and legal under existing Malaysian marriage laws". In challenging the Club's ruling on the illegality of her marriage in Malaysia, KSP wrote: [note: 22]

> Just for the information of GC members who may have been misinformed, I have NEVER been convicted by any Court in the world (Singapore included) for committing bigamy. I have never even been charged by anyone for committing bigamy.

66 SICC replied on 7 June 2006 and after setting out the facts and documents produced, went on to state: [note: 23]

> (iii) If the Chinese customary marriage was valid on 12 January 1982 as suggested by you, it would appear that you have 2 valid subsisting marriages at the same time.
>
> …
>
> Based on the above, GC disagrees with you that it should accept the fact that there can be 2 valid marriages existing at the same [time] ..or that it ought to accept your view as insisted by you that your customary marriage is validly solemnised while the other marriage was still in existence.

67 In response to her suspension as a member for one year, KSP filed OS 2125/2006 and in her first affidavit of 14 November 2006 ("the OS affidavit"), she visibly backtracked and did an about turn, departing radically from the position taken in her communications to SICC in January and February 2006 and the statutory declarations submitted to the DC. On oath, KSP admitted in the OS affidavit that there was *no* marriage to NKY on 12 January 1982 because of a legal impediment in her way: she was not free to marry NKY as she was still married to KHP and for that reason did *not* go through with the planned customary marriage after all. The relevant paras of the OS affidavit read as follows: [note: 24]

> 23. In Jan. 1979, I separated from my former husband, Mr Koh Ho Ping after only one year and seven months of marriage. During that time, we had a daughter, who was born in June 1978.
>
> 24. Sometime in mid 1979, I met Mr Ng Kong Yeam.

25. In early 1980, Mr Koh Ho Ping and I decided to divorce. Subsequently, we engaged lawyers to handle the matter.

26. Mr Ng Kong Yeam and I decided to get married and after consultation with our respective parents, we decided to have a customary marriage on Jan. 12, 1982 in Mr Ng's domicile (Johore Bahru).

27. As I was informed by my lawyers that my divorce had been filed sometime in 1981 and since my former husband and I agreed that the divorce would be uncontested, *I thought that by the time of my second marriage, my divorce would have been finalised. Hence, the Jan 12, 1982 date was set*.

28. *However, there was an unexpected delay in the courts and my divorce hearing could not be fixed before the date of my intended marriage. Nevertheless, as all the preparations have been made, Mr Ng and I decided to hold the ceremonial dinner for the sake of our parents*.

29. My divorce from my former husband was finally granted in Dec. 1983.

30. *After the decree nisi was made absolute, Mr Ng and I contemplated as to whether we should host another dinner to formalise our marriage. We decided against it as we felt it was unnecessary to repeat what we have already done*.

68 In cross-examination by Mr Ang, KSP confirmed that there was *no* wedding on 12 January 1982, and after her divorce in 1984, she and NKY did *not* go through any kind of ceremony or registration of any marriage until 24 August 2005 when they solemnised and registered their marriage in Las Vegas. [note: 25] I am mindful that her admission on affidavit was on 14 November 2006 well *before* the March 2008 complaint lodged by JL to the Registry of Marriages of her bigamous marriage to NKY and *before* the police started investigating into the complaint of bigamy. [note: 26]

69 At the trial of the libel action, KSP admitted in cross-examination that: (a) there was *no* customary marriage on 12 January 1982 or at anytime thereafter until KSP and NKY registered their marriage on 24 August 2005.; and (b) at the time she filled up the application form to join the Club in 1992 and declared NKY as her spouse, she knew that she was not legally married to NKY and he was not legally her spouse; [note: 27] and (c) KSP believed that at the time she joined the Club, NKY was married to someone else [*ie*, Madam Ling], but she was NKY's second wife, albeit "not legally his second wife". [note: 28]

70 In the light of her own testimony in the OS affidavit and during cross-examination by Mr Ang, the obvious conclusion is that she must have lied to the DC that she and NKY were married in accordance with Chinese custom on 12 January 1982 and that such a marriage was legal under Malaysia law as it was entered into prior to 1 March 1982. In short, KSP advanced a fundamentally dishonest case before the DC. It was based on a lie from the outset and that attempted cover-up of her marital status was partly exposed when the Club found out that she was still married to KHP on 12 January 1982.

71 It is now a convenient juncture to set out her answers to Mr Ang's questions in cross-examination on points (a) and (b) (see [69] above). To repeat, the truth of the matter as admitted by KSP on oath is that KSP and NKY did not marry each other under Chinese custom on 12 January 1982 or at any time thereafter until 24 August 2005 when they solemnised and registered their marriage in Las Vegas. At the time she filled up the application form to join the Club in 1992 and her

decision to declare NKY as her spouse, she was aware that NKY was not legally her spouse: [note: 29]

Q. And as an educate---as an educated and intelligent woman, you knew all along even in 1992---I will go back further to 1982, that if you are married to someone, you cannot enter into another marriage with another person, correct?

A. That is correct.

Q. Right. Even as of 1982, you knew that?

A. Yes.

Q. All right. And you knew that even as of 1982, if you---if you were married to let's say person A, and during the course of the marriage, you try to enter into another marriage with person B, you knew in 1982 that that would be an offence, correct?

A. Yes.

…

Q. Right. So would you agree with me, and I don't think there is any doubt, you could not possibly have legally married Dato Ng in 1982, correct?

A. Yes, and I have admitted that many, many times already.

Q. And you would agree with me that after your divorce petition was made---your divorce was made in 1984, you and Dato Ng did not go through any kind of ceremony or registration of any marriage.

A No.

Q. Right. After 1984.

A. No.

Q. Right. And you only did so---so therefore you would agree with me that based on your answers that you and Dato Ng were never legally married.

A. Yes.

…

Q. And you only became legally married based on your definition in August of 2005---

A. Yes.

Q. ---when you all registered your marriage in---

A. Yes.

Q. ---in Las Vegas Nevada. Correct?

A. Yes.

Q. So in 1992, when you declared Dato Ng to be your husband or your spouse in your application to join the club, you knew that he was not legally your husband. Correct?

A. Yes.

[emphasis in bold added]

72 By the time of the libel trial, KSP appeared to be under police investigations for bigamy. In cross-examination, she was asked questioned about the bigamy investigations and her attempts to enlist the help of one Mr Ee Chin Seng ("ECS"), a close acquaintance of NKY, to come forward to tell the police that he was not aware of any customary marriage between NKY and KSP so that his statement would resolve the complaint of bigamy against KSP. In that connection, KSP emailed ECS on 4 April 2008 and 19 April 2008. [note: 30]

73 At the trial, KSP explained that with ECS's testimony, the police would in all likelihood bring to an end the bigamy investigations against her. [note: 31] Initially, KSP was evasive when questioned whether she had informed the police that she had entered into a customary marriage with NKY in January 1982. [note: 32] Subsequently, KSP conceded that she had indeed informed the police that she had *not* entered into a customary marriage with NKY in January 1982. Instead, she clarified that what she had informed the police was that both NKY and herself held a "dinner" on 12 January 1982 to merely acknowledge and "celebrate a commitment to each other" and intention then was that they would get married in the future. KSP explained that the reason why they did not undergo any customary marriage then was because she knew at that time she was still married to KHP. The relevant excerpts of KSP's answers in cross-examination are set out below: [note: 33]

Q. Just listen to my question. **Did you tell the police that you did not enter into a customary marriage in January 1982? Forget about after 84, right?**

A. Yes.

Q. Did you tell the police that you did not enter into a customary marriage on [12] January 1982?

A. I told the police that I had this dinner, definitely I admitted that.

Q. Did you tell the police that it was not a marriage dinner?

A. Yes, I told the police that we did not---we didn't have the normal traditional, you know, like tea offering ceremony, that kind of thing, yes. I did say that.

...

Q. You tried to enter into a customary marriage in January 82.

A. ...I just told the police I had this dinner. The original intention was to announce that we were going to get married, but then because of this legal impediment, we had to, you know, we just had to skip all the formalities, but the dinner ... sorry the dinner was held nevertheless.

...

Q. ... Is it your position that there was no customary marriage in 1982?

A. Yes, it is strictly speaking that, you know, you need to go all through all these rites, I did not go through. So if that constitute there is no customary marriage, then there is no customary marriage.

...

Q. But it never took place, the customary marriage, am I right?

A. But in---**in view of the legal impediment, we---we---at least I felt that I took---what should I say, I took care, you know, not to be---run foul of law, so to speak**, but in my mind, there was the intention and we had it, because it's meant to be, like I said, **an announcement of a commitment to this person, that yes, we intend to---we intend be married**, but because of the legal impediment, we couldn't do it, but that dinner was the intention was---was known, and thereafter, I mean I---I just assumed that---or I deemed myself married to this man and has been ever since.

Q. So on 12th of January 82, the day of the dinner, what you are saying is that while you intended to go through it, a customary marriage, it did not go through at the end because you knew on 12th January 1982, that there was an impediment to you getting married. Is that right?

A. Yes.

...

Q. So---and therefore when you had a dinner, you knew it was not a customary marriage because there was an impediment stopping you from getting married, correct?

A. Yes.

Q. Correct?

A. Yes.

Q. In 1982.

A. Yes.

Q. You were very clear about that.

A. Yes.

[emphasis in bold added]

(ii) Conduct to be inferred

74 Naturally, the contradictory position taken by KSP as regards her alleged customary marriage to NKY in 1982 gives rise to serious doubts as to her credibility and reliability as a witness. The radical

change in her story has undermined and removed the "credible explanation" the Court of Appeal had identified as having been proffered by KSP for declaring NKY as her spouse in the application form in 1992 (*ie*, she was married to NKY according to Chinese custom and deemed a legal marriage under Malaysian law). The declaration in the application form would be untrue and false if the word "spouse" in the application form has a legal connotation, and this was so if KSP was aware of this at the material time.

75 Despite her barefaced inconsistencies, KSP tried to argue before me that, at the time of her application to be a SICC member, she had understood the meaning of the word "spouse" to refer to someone whom she shared a spousal relationship with and not necessarily someone to whom she was married. Her understanding was that one could declare someone as a spousal member to use the Club's facilities even though that person was not a spouse at law. KSP claimed that it was her understanding that a member could even register his girlfriend as a spouse member at SICC as long as he believed that his girlfriend was like a wife to him.

76 Furthermore, KSP said she believed NKY was her spouse and that it was a *mistake* to claim that their relationship was a legal marriage before the DC. The fact of the matter, however, is that there was no genuine mistake: she knew all along that the word "spouse" meant one's lawful husband or wife; in truth and in fact, she was conscious at the time she applied to join the Club in 1992 that she was *not* married to NKY; and she was conscious he was *not* her spouse in the legal sense. This is what she said in answer to Mr Ang's questions: [note: 34]

> Q. Even though he's not your spouse, you can declare him as a spouse to use the club's facilities? Even though he's not legally your spouse, you can declare him.
>
> A. Even though he's not legally a spouse, yes, yes, yes. Definitely that was my belief.
>
> …
>
> Q. And if you honestly believed that, Ms Kay, if you honestly believed that, when the club decided to investigate you in 2005 and 2006 as to whether or not you had falsely declared him as your spouse, you would have just told the truth, "I regarded him as my spouse even though I did not legally marry him in January 82. I regarded him as my spouse." Instead you went through great lengths to put in evidence to show that he was legally married to you, correct?
>
> …
>
> Q. You went through great length in the disciplinary committee proceedings to show that he was legally married to you. You put in Malaysian lawyers, you put in stat docs.
>
> A. That's why I said I believed he was married to me. If the word "legally" is---is should not be there, then I made a mistake. But---
>
> Q. You put there, Ms Kay.
>
> A. Yes, I put it there, that's why I said if I put it there, and I made a mistake. But the fact is I considered him to be my spouse.
>
> Q. So your evidence, Ms Kay, is that doesn't really matter when you joined SICC. Doesn't really matter whether he's your spouse, as long as the person considered the person to be the

spouse, that's okay.

A. No, I considered him to be my spouse, that's why I put him as my spouse. I didn't put anyone else but him.

Q. So if there is a male club member who has a girlfriend and in his mind he believed that this woman who he---was his girlfriend only is his because they have a spousal type relationship, he can register her as a spouse member.

A. I am sure the club has registered many such members. That is –

…

Q. KSP, your case is that you could register Mr Ng as a spouse because as far as you are concerned, he is your spouse, whether you are legally married to him or not, correct?

A. Yes.

Q. So my question is, if what you say is even logical, any club member who has a girlfriend and he honestly believed that as far as he was concerned, "She's like my wife", he can register as a spouse.

A. I am sure.

…

Q. So that is perfectly okay, as far as you are concerned?

A. Yes.

…

Q. I see. That is your honest evidence?

A. Yes.

Q. **I suggest to you, Ms Kay, that that cannot be your honest evidence because if that was the case, you would have just told the club, when you were investigated as to whether or not you had made a false declaration, you would have just told the club, "He's not legally married to me but this is what happened". Instead, you went to great length to show that he was legally married to you. Your true understanding therefore, was that "spouse" literally means you are validly---you are husband or wife under a valid marriage and you knew that**.

A. **Mr Ang, I cannot agree with you more, that is what I should have done. That is what I really should have done. But ---**

[emphasis in bold added]

77 Mr Ang's observation, which I agree with, is that the only logical reason why KSP had furnished the legal opinion and statutory declarations to the DC was because she accepted and knew that the word "spouse" in the application form meant one's husband or wife under a valid marriage, and,

logically and on any reasonable view, that must have been her understanding way back in 1992 when she declared NKY as her spouse in the application form. As pointed out in [68] and [69] above, KSP has admitted that there was no marriage to NKY according to Chinese custom on 12 January 1982, and there was also no marriage to NKY in 1992. Notably, KSP admitted that NKY was still married to someone else (*ie*, Madam Ling) at the time she joined the Club in 1992, and that she was his "second wife", albeit not legally so: [note: 35]

> Q. Now, and you believed that you were the second wife to Dato Ng.
>
> A. Yes.
>
> Q. And---so let me try to understand this, Ms Kay. Your evidence in a nutshell is that you believed that at the time you joined the club that Dato Ng was married to someone else [*ie* Madam Ling], but you were his second wife.
>
> A. Yes.
>
> Q. But not legally, not legally his second wife. Is that your evidence?
>
> A. Yes.

Earlier, KSP had agreed that in 1992 when she declared NKY as her spouse in the application form, she was aware that he was not legally her husband. She said in answer to Mr Ang's questions: [note: 36]

> Q: So in 1992, when you declared Dato Ng to be your husband or your spouse in your application to join the club, you knew that he was not legally your husband. Correct?
>
> A: Yes.
>
> Q: So to say that he was your husband, in 1992, when you joined the club, that's actually false, right?
>
> A: He was the spouse…as far as…in my mind, he was my spouse.

78 In my view, KSP is not a reliable witness, and I treat her evidence with caution. Her case in OS 2125/2006 and CA 46/2007 was that if the Club had asked her in 1992 to submit a marriage certificate before NKY could be registered as a spousal member, the couple could easily have complied by registering their marriage then as both were free to do so (see *Kay Swee Pin v SICC (CA)* at [57]). We now know from her evidence in cross-examination that there is no truth in the case previously advanced by KSP: even though her divorce from KHP was finalised by 1984, NKY was, nevertheless, still married to Madam Ling in 1992, and, accordingly KSP could not have submitted a marriage certificate if the Club had insisted on one in 1992. It was KSP's case, gathered from the transcripts of the proceedings before Tay Yong Kwang J, that she discussed her marital status with her sister when she came to the part of the application form where KSP was required to put down the name of "spouse to be registered" as user of the Club facilities. Even if KSP, for the sake of argument, had doubts as to whether she could name NKY as her spouse in the application form (and I have already found against KSP on that point in so far as KSP knew at that time that "spouse" meant a spouse under a valid marriage), the onus, in my view, was on KSP to clarify with the Club its position since she was required to sign a declaration that "all the information given [in the form] is true". It was obvious from her submissions before Tay J that the approach which she decided to take was to name

NKY as her spouse, and should the Club query her, she would then decide whether to proceed with the application or withdraw her nomination of NKY as a spousal member, or register her marriage to NKY ("the approach"). I make two points. First, it is telling from the three options that she was aware that the term "spouse" in the application form was referable to the applicant's husband or wife under a valid marriage. Second, KSP's decision to chance it, so to speak, by naming NKY as her spouse. From what she said, it appears quite clear to me that she considered and assessed the risk of telling a lie in her application form, and decided to take that risk in the knowledge of the approach which she had decided she would adopt towards the Club's reaction as discussed with her sister.

79 In my view, KSP was aware, and I so find, that at the time she applied to join the Club, she appreciated that the term "spouse" in the application form did not mean the applicant's companion, partner or escort but the applicant's husband or wife under a valid marriage. I also find that KSP's declaration of NKY as her spouse in the application form for the purpose of registering him as a user of the Club's facilities was deliberate and false. It was contrary to the undertaking she gave in the application form that all information provided are true. She could have filled up the form without naming NKY as her spouse but she did not – she knowingly made the declaration and submitted the form with the false information to the Club. In the circumstances, at the risk of repetition, her dishonest conduct lay in her declaring NKY as her spouse on her membership application form even though she knew at that time that she was not married to NKY, coupled with her decision to take the risk of making that false declaration after discussing with her sister how she should respond if the Club were to ask for documentary proof of her marriage to NKY. As it turned out, there was no immediate query from the Club - the lie was found out 13 years later when the Club charged her. From that perspective, her conduct was dishonest. In meaning, her conduct could fairly be described as cheating and was dishonest. Therefore, the sting of the Notice is substantially true, and the defence of justification is made out.

Section 8 of the Defamation Act

80 I have already concluded that the plea of justification succeeds in relation to the meanings that I have found. In addition, I have not found in favour of KSP on meaning (5). In the circumstances, there is no need for the defendants to rely on s 8 of the Act.

Other matters

81 For completeness, I now turn to the remaining aspects of the defendants' plea of justification, namely, the contents of the Notice were factually true and accurate at the material time.

82 It is not disputed that the Notice substantially reproduced the Charge that was preferred against KSP in the SICC disciplinary proceedings, and that it accurately summarised the outcome of the disciplinary proceedings at the time of its publication. At the time the Notice was put up on the notice boards, KSP had in fact been found guilty of the Charge and SICC had, *inter alia*, suspended KSP's membership for a period of one year as stated in the Notice. For that reason, the contents of the Notice, so the defendants argue, were factually true and accurate at the material time it was published. On my part, for the reasons below, this part of the defendants' plea of justification is misconceived.

83 The defendants' argument ignored the fact that the Notice was inherently defective because the underlying Charge was bad, and held to be so on judicial review by the Court of Appeal. As stated, the suspension order against KSP was declared to be invalid on the three broad grounds set out at [16] – [18] above. The defendants cannot argue that the contents of the Notice were factually true and accurate at the time it was published. The fact remains that (a) the Charge itself

was illegal at the outset; and (b) the process was found wanting on grounds of breaches of natural justice as well as procedural impropriety in the conduct of the disciplinary proceedings. This meant that the Notice could and should never have been published in the first place. All that the defendant is able to say is that as a matter of SICC's records: (a) SICC brought disciplinary proceedings under Rule 34 on the Charge against KSP; (b) the Club found KSP in breach of Rule 34; (c) the Club, amongst other things, suspended her membership for one year; and (d) notice of KSP's suspension was given to members of the Club. Based on all these facts in evidence, the defendants cannot go beyond asserting that the Notice is substantially true in so far as its repeats the Club's *conclusion* that KSP was guilty *but* it is *not* substantially true that KSP was *actually* guilty.

84 Before moving to the next point, I should comment on the legality of the Charge. The Court of Appeal concluded in *Kay Swee Pin v SICC (CA)* at [81] that the Charge was illegal as KSP was not a member of the Club at the material time and could not have been charged for cheating the Club under Rule 34(a). However, the Court of Appeal pointed out at [81] that the outcome would be different

> … if there is evidence to show that [KSP] was aware in 1992, or at any time thereafter up to the time she was asked to furnish her marriage certificate, that her customary marriage to NKY was invalid, but did not inform the Club. In our view, an "act" for the purposes of r 34(a) would include a deliberate omission to disclose an act prejudicial to the interests of the Club.

We now know from KSP's admission in the witness box that KSP and NKY did not undergo any customary marriage on 12 January 1982 as previously contended, and she did not inform the Club of this fact. If these factors had been made known to the Court of Appeal in CA 46/2007, its conclusion as to the legality of the Charge would have been different.

Conclusion on the justification issue

85 For the reasons given, the plea of justification succeeds in relation to the meanings that I have found.

Issue 4: Whether the defendants' plea of qualified privilege can succeed

86 For completeness, I now consider the defence of qualified privilege should a higher tribunal take a different view on the applicability of the defence of justification. For present purposes, the discussions here assume that the words written in the Notice are untrue. The basis of the defendants' claim to privilege is set out in para 13 of the Defence (Amendment No 1).

The legal principles

87 The legal position is summarised in *Halsbury's* at para 240.155 as follows:

> The defence of qualified privilege attaches to the occasion which the words are published, rather than to the words themselves. It would be contrary to the purposes for which qualified privilege exists if the law applied an objective test of relevance to every part of the defamatory matter, as a precondition of the existence of privilege. Words wholly unconnected with and irrelevant to the occasion may not be privileged; but generally, irrelevant and unnecessary words having some relation to the occasion will be within the privilege but will constitute evidence of express malice.

Paragraph 240.155 quoted above was recently approved and followed by the Court of Appeal in *Lim Eng Hock Peter v Lin Jian Wei* [2009] SGCA 48 at [34] ("*Peter Lim (CA)*).

88 The determination of whether an occasion is one of qualified privilege is one of law. An occasion which may warrant the invocation of the defence of qualified privilege is where the person who makes a communication has an interest or a duty, legal, social or moral, to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it (see *Adam v Ward* [1917] AC 309 at 334, followed in *Yeo Nai Meng v Ei-Nets Ltd* [2004] 1 SLR(R) 73; *Halsbury's* at para 240.152).

89 The burden of proof is on the defendant to prove that the occasion of publication is one of qualified privilege (see *Maidstone Pte Ltd v Takenaka Corp* [1992] 1 SLR(R) 752 at [32]). However, the protection afforded by qualified privilege will be lost if the publication is made with malice. The burden of proof is on the plaintiff to show that the defendant, in publishing the words complained of, was actuated by malice.

Were the words complained of by KSP published on an occasion of qualified privilege?

90 The authorities show that communications and adjudications between members of an association and a domestic tribunal within the association have long been held to be privileged (see *Gatley* at para 14.45).

91 In *Thompson v New South Wales Branch of the British Medical Association* [1924] AC 764, the articles of association of the respondent provided for the expulsion of a member by a resolution of its council at a general meeting. A resolution expelling the appellant from membership was duly carried by the council and confirmed by a general meeting. The resolution was then subsequently communicated in writing by the secretary to the other members of the association. The appellant brought an action against the respondent for damages alleging, *inter alia*, defamation in respect of a circular sent out by the respondent, containing the terms of the resolution passed by the council.

92 The Privy Council held that the occasion of the publication of the resolution was privileged and that the appellant's action in defamation failed. In this regard, the Privy Council held at p 782:

> It is quite obvious, however, that the publications relied on in these three counts were made on privileged occasions. The association had obviously an interest and a moral, if not legal, duty to communicate to its members the information that the resolution to expel the appellant had been carried, and the members had a corresponding interest in receiving the information.

93 Likewise, the Notice in the present action is an example of a communication between a domestic tribunal of an association (the GC of SICC) and its members of the outcome of disciplinary proceedings involving a member. The defendants had a duty to communicate to the SICC members the information set out in the Notice. The SICC members also have a corresponding interest in the outcome of the concluded disciplinary cases involving other SICC members.

94 On the evidence, the defence of qualified privilege is not lost by the fact that persons other than SICC members could have seen the notice on SICC's premises. As the editors of *Gatley* clarified at para 14.66:

> [It is] a general rule that the defendant should be careful to make his communication only to those persons who have a legitimate interest or duty in relation to the subject matter…However, *if strict reciprocity were essential, society and its business could not be conducted*, as others without a direct interest in the communication are regularly employed in helping to make the communication and it would be impossible to communicate if every defamatory communication had to be confined to those with a direct duty or interest in relation to its subject-matter. For

these reasons, *communications to persons without such an interest or duty are nevertheless privileged if they are published reasonably, in the ordinary course of business, and no more widely than is required for the effective making of the communication, and if they would be privileged but for such incidental publication*.

95 In this case, the Notice was placed on three notice boards in SICC's clubhouses. I agree with the defendants that the notice boards were a practical and convenient mode of communication between SICC and its members. It is SICC's standard operating practice to put up notices, such as the Notice in question here, on its notice boards to summarily inform SICC members of the outcome of concluded disciplinary hearings involving SICC members. According to Edwin Lee, [D6] who is president of Chinese Swimming Club, the practice of putting up notices is common and is also adopted in the Chinese Swimming Club.

96 In my view, the posting of the Notice was no different from past cases involving SICC members and there is no basis for saying that the publication of the Notice was used for an improper purpose. In the circumstances I have described, the publication of the Notice was, and I so find, on an occasion of qualified privilege. The fact that the Notice may have been seen by visitors other than SICC members on SICC's clubhouses does not defeat the defence of qualified privilege as the mode of publication of the Notice was on the notice boards within the clubhouses. It was practical, reasonable, and did not go beyond the exigency of the occasion.

Did the defendants act with malice in publishing the notice?

97 As stated, the burden of proof of proving malice rests on KSP. Honesty and good faith on the part of the defendants are presumed at law and KSP has the burden of rebutting it. *Gatley* states at para 35.27:

> A defendant need not give any evidence that the words complained of were published "bona fide and without prejudice" for so much is presumed in his favour if the occasion is privileged.
>
> > "It is clear that it is not for the defendant to prove that he was acting from a sense of duty, *but for the plaintiff to satisfy the jury* [or Judge in the context of Singapore] *that the defendant was acting from some other motive than a sense of duty."*
>
> [emphasis added]

98 The law on malice in the context of qualified privilege has been clearly set out in the leading case of *Horrocks v Lowe* [1975] AC 135 ("*Horrocks*"), which has been adopted and cited with approval by the Singapore courts on numerous occasions. In *ABZ v Singapore Press Holdings Ltd* [2009] 4 SLR(R) 648, the High Court summarised the principles stated in *Horrocks* at [63]:

> (a) A defendant is entitled to the defence of qualified privilege unless some *dominant and improper motive* on its part is proved. In general, *motive* here equates to the use of a privileged occasion for some purpose other than that for which the privilege is accorded by law. It bears emphasising that in order for the defence to be defeated, the desire to injure the plaintiff must be the *dominant* motive for the defamatory publication.
>
> (b) As long as the defendant is acting in accordance with a sense of duty or in *bona fide* protection of his own legitimate interests, its knowledge that a statement will injure the plaintiff does *not* destroy the defence.

(c) If the defendant publishes untrue defamatory statements *recklessly*, *ie*, without considering or caring whether these statements are true or not, it will be deemed to have known that they are false. In this regard, carelessness, impulsiveness or even irrationality in arriving at a belief that the statements are true is *not* to be equated with recklessness.

(d) Notwithstanding a positive belief in the truth of what is published, the defence will be defeated if it can be proved that the defendant misused the occasion for some purpose other than that for which the privilege is accorded by law.

99 With respect to D4, D5, D9, D11 and D12, it was KSP's own evidence under cross-examination at trial that they have not acted with any improper motives and did not have intention to harm or injure KSP in the conduct of the disciplinary proceedings against her. [note: 37] KSP's own admissions, at the very least, will clearly prevent any finding of malice as against D4, D5, D9, D11 and D12. As the Court of Appeal observed (*per curiam*) in *Nirumalan K Pillay & Ors v A Balakrishnan & Ors* [1997] 1 SLR(R) 953 at [33]:

> In our opinion, where two or more persons have participated in the publication of a defamatory article and all of them are sued and they rely on the defence of fair comment or qualified privilege, *the plaintiff, in order to defeat the defence and succeed in his claim against* each and every *defendant must prove express malice on the part of* each *of the defendants. If he fails to show that any one of them was actuated by express malice, then the defence of* that defendant *will succeed and he will not be liable;* as for the other defendants, if the plaintiff succeeds in showing express malice on their part, then in the absence of any other defence succeeding, they will be liable. [emphasis added]

100 *Horrocks* was approved and applied in *Peter Lim (CA)*. Applying these principles to the facts of the present case, it is clear that the defendants' publication of the Notice was *not* actuated by malice. The evidence adduced at trial shows that there was never any ill will, spite, malice and/or improper motive on the part of the defendants in respect of KSP in the publication of the Notice. Moreover, it is also important to note that it was only after the Court of Appeal's decision in OS 2125/2006 that the defendants found out that the decision of the GC to suspend KSP's membership was wrong. At the material time, the defendants' publication of the Notice was in accordance with its standard operating practice of informing SICC members of the outcomes of disciplinary hearings.

101 The fact that Notice concerned a suspension order that was subsequently declared invalid by the Court of Appeal would not undermine the defence of qualified privilege. Lord Diplock made clear in *Horrocks* that the protection afforded by the defence of qualified privilege would be illusory if it could be forfeited by the use of inaccurate language or by slopping reasoning. The Court of Appeal's remarks in *Peter Lim (CA)* are apposite. Chan Sek Keong CJ said at [41]:

> Consistent with the value of reputation in society, it is not surprising that the law does not countenance a defendant deliberately publishing a defamatory statement by affording him the protection of qualified privilege. The rationale underpinning the privilege is that because the defendant has a moral, social or legal duty to disclose the information and the recipient has an interest in receiving it, he should not be penalised for making an honest mistake. This will be the case where the defendant publishes statements which he genuinely believes to be true and accurate. He cannot claim the protection of privilege, whatever his dominant intention or motive may be, if he knows that what he has written or said was untrue. As Lord Diplock said (see [36] above):
>
> > … for no sense of duty or desire to protect his own legitimate interests can justify a man in

telling deliberate or injurious falsehoods about another, save in the exceptional case where a person may be under a duty to pass on, without endorsing, defamatory reports made by some other person.

102 The Court of Appeal's criticism of the GC's irrational and illogical analysis was, *inter alia*, on the improper procedural lapses which peppered the disciplinary proceedings and the breach of natural justice (see [16]-[18] above). There was, however, no suggestion of improper motives on the part of the GC. The fact remains that the defendants held an honest belief in the truthfulness of what they wrote in the Notice, and they have not misused the occasion for any purpose other than that for which the occasion was privileged. In other words, there was no improper motive in the publication of the Notice (see *Peter Lim (CA)* at [38]). As I have stated, the whole purpose of the Notice was to inform the members of the outcome of the disciplinary proceedings against one of the members of the Club.

103 In the light of the overall evidence adduced at trial, the evidence do not bear out KSP's assertion that the defendants were actuated by malice in the publication of the Notice. Therefore, the defence of qualified privilege would have been available to the defendants.

Result

104 For the reasons stated, KSP's libel action fails and is dismissed with costs.

[note: 1] 4AB 1504

[note: 2] 4AB 1434

[note: 3] 4AB 1525

[note: 4] 4AB 1528

[note: 5] 4AB 1530

[note: 6] 4AB 1530

[note: 7] 4AB 1142

[note: 8] [2008] SGHC 143

[note: 9] Defendants' closing submissions para 72

[note: 10] Defendants' closing submissions para 76

[note: 11] Plaintiff's closing submissions, paras 47 & 48

[note: 12] Plaintiff's closing submissions , para 56

[note: 13] Plaintiff's closing submissions, para 37

[note: 14] Plaintiff's closing submissions, para 41

[note: 15] Plaintiff's closing submissions, para 45

[note: 16] Defendants' closing submissions, para 79

[note: 17] 4AB 1506

[note: 18] 4AB 2038

[note: 19] 4AB 2040-2045

[note: 20] 4AB 1434

[note: 21] 2AB 362-363

[note: 22] 3AB 705

[note: 23] 3AB 706

[note: 24] 2AB 244

[note: 25] Transcripts of Evidence 10 November 2009, pp 40 & 46

[note: 26] Defendants' closing submissions, para 49

[note: 27] Transcripts of Evidence 10 November 2009, p 46

[note: 28] Transcripts of Evidence dated 10 November 2009, 48

[note: 29] Transcripts of Evidence dated 10 November 2009, pp 8, 45-46.

[note: 30] 3AB pp 667, 983.

[note: 31] Transcripts of Evidence dated 10 November 2009, pp 25-26.

[note: 32] Transcripts of Evidence dated 10 November 2009, pp 48-49.

[note: 33] Transcripts of Evidence dated 10 November 2009, pp 50-53.

[note: 34] Transcripts of Evidence dated 10 November 2009, pp 48, 68-70.

[note: 35] Transcripts of Evidence dated 10 November 2009, p48

[note: 36] Transcripts of Evidence dated 10 November 2009, p46

[note: 37] Transcripts of Evidence dated 10 November 2009, pp 80-81.

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