Chan Cheng Wah Bernard and others *v* Koh Sin Chong Freddie and another appeal [2011] SGCA 63

Case Number	: Civil Appeal Nos 210 and 213 of 2010
Decision Date	: 21 November 2011
Tribunal/Court	: Court of Appeal
Coram	: Chao Hick Tin JA; Andrew Phang Boon Leong JA; V K Rajah JA
Counsel Name(s)	: Tan Chee Meng, SC, Chang Man Phing and Alfred Lim (WongPartnership LLP) for the Plaintiffs; Hri Kumar Nair, SC and Melissa Liew (Drew & Napier LLC) for the Defendant.
Parties	: Chan Cheng Wah Bernard and others — Koh Sin Chong Freddie

Tort – Defamation

[LawNet Editorial Note: This was an appeal from the decision of the High Court in [2010] SGHC 324.]

21 November 2011 Judgment reserved

Chao Hick Tin JA (delivering the judgment of the court):

Introduction

1 Before us are two related appeals, an appeal and a cross-appeal, against the decision of the High Court judge ("the Judge") given in a defamation suit (*Chan Cheng Wah Bernard and others v Koh Sin Chong Freddie* [2010] SGHC 324 ("the Judgment")) initiated by four members (the "Plaintiffs") of the 2007/2008 management committee ("the Previous MC") of the Singapore Swimming Club (the "Club") against the President of the 2008/2009 management committee of the Club ("the Current MC").

2 The alleged defamatory statements were published in the minutes of meetings of the Current MC held on 29 October 2008 (the "29 October 2008 Meeting") and on 26 November 2008 (the "26 November 2008 Meeting") respectively:

> **[The "First Statement" (at 29 October 2008 Meeting)]**
>
> President suggested that MC should correct the misrepresentation of facts made by the previous MC to influence the ratification of the expenditure at the last AGM.
>
> **[The "Second Statement" (at 26 November 2008 Meeting)]**
>
> (c) From the foregoing, President summarized the Treasurer's findings as follows:
>
> - That the Club did not need a new water system to rectify the breakdown of the then existing filtration system which led to the shutdown of the competition pool.

- After the installation of the new water system it was found that the filtration pumps needed to be replaced as the backwash water was still dirty. When the filtration pumps were changed, they worked perfectly and the water was clear.

- The Club had purchased the new water system without budget approval.

- Therefore it appeared that the justifiable emergency spending was to replace the filtration pumps at $42K and that would rectify the pool water in the 2 pools and Jacuzzis. The new water system at $168K was a 'nice to have' feature and the capital expenditure spent to install the system without budget approval was unwarranted.

- It could be a case of misrepresentation of facts to the AGM to get ratification for a capital expenditure for a water system that could not be justified under the urgent/emergency reason. The new water system was only an add-on system as the current filtration was still the same as before and there was still a need to replace the pumps.

Where the First Statement and the Second Statement are referred to collectively in this judgment, they will be referred to as the "First and Second Statements".

3 On 29 October 2010, the Judge dismissed the claim with costs, after finding that the natural and ordinary meaning of the words complained of was defamatory but that the Defendant had justified the gist of the defamatory sting. The Plaintiffs have in CA No 210 of 2010 ("CA210/2010") appealed against the Judge's finding on justification and her order on costs, while the Defendant has in CA No 213 of 2010 ("CA213/2010") appealed against the Judge's finding that the words complained of were defamatory.

Background facts

4 The Club was formed in February 1894. The general administration of the Club is under the charge of a general manager who reports to the management committee ("the MC"). At the relevant time (*ie*, in November 2007), the general manager was one Mr Richard Phua ("the Former GM"). The management committee consists of members who have been elected to various posts by the Club's members at an Annual General Meeting ("AGM"), and they hold office for a period of one year from one AGM to the next.

5 The Plaintiffs Chan Cheng Wah Bernard @ Alif Abdullah ("Bernard Chan"), Tan Hock Lay Robin ("Robin Tan"), Chong Tjee Teng Nicholas ("Nicholas Chong") and Ho Bok Kee ("Michael Ho") – were members of the Previous MC who held office from May 2007 to May 2008. During this period, Bernard Chan was the President of the Club, Robin Tan the Vice-President, Nicholas Chong the Honorary Treasurer, and Michael Ho the Facilities Chairman.

6 At the elections held during the AGM in May 2008 ("the 2008 AGM"), the Defendant – Mr Freddie Koh Sin Chong – was elected as President of the Current MC. Three members of the Previous MC – Mr Gary Oon, Mr Mike Chia and Ms Theresa Kay – were re-elected, while several other new persons – including Tan Wee Tin, the Honorary Treasurer ("the Treasurer") – were elected into the Current MC. The Defendant was re-elected as President for a further one year term at the AGM held in May 2009 ("the 2009 AGM"), and continued to hold this position throughout the trial.

7 The dispute arose out of events which occurred in the Club between November 2007 and the end of November 2008. It revolved around the Club's facilities, which include two Olympic-sized swimming pools, namely a recreational pool ("the Recreational Pool") and a pool used mainly for training and competitions ("the Competition Pool"), and two Jacuzzis ("the Jacuzzis").

8 Following complaints from members, the Competition Pool was closed on 10 November 2007 due to contamination. In the same evening, a special meeting of the Previous MC (the "10 November 2007 Meeting") was held to discuss the issue of the contamination. A company called The Water Consultant Pte Ltd ("TWC") gave a presentation on a water system called the Natural Water System ("NWS"). After receiving representations that the cost of installation of the NWS would be lower, both in the short term and in the long run, as compared to the conventional method of sandblasting the filtration tanks, the Previous MC gave its in-principle approval for a package deal offered by TWC ("the TWC Package"), which included the provision of the NWS at both pools, the installation of another system – the mineral water system ("the MWS") – at the Jacuzzis, and the installation of on-demand sanitizer controllers ("the Auto-Dozers") at both pools. The break-down of the TWC Package is as follows:

(a)	MWS for the Jacuzzis	$18,800
(b)	NWS for the Competition Pool	$51,800
(c)	Pipe work modifications and waterproof housing for the Competition Pool	$13,000
(d)	NWS for the Recreational Pool	$51,800
(e)	Pipe work modifications and waterproof housing for the Recreational Pool	$14,000
(f)	Auto-Dozers plus stirrers plus tanks at $9,700 per pool	$19,400
		$168,800

9 We should, at this juncture point out that cl 2.6.1 of the Club's Financial Operating Manual ("the FOM") prohibited any expenditure for goods or services for which no provision had been made in the Club's annual budget. However, the sitting management committee may spend on unbudgeted items by calling an Extraordinary General Meeting ("EOGM") to request a supplementary budget (cl 2.7.1), or approving the expenditure on the basis of it being an "emergency" and subsequently seeking ratification of the expenditure at the next AGM (cl 2.7.2). The Previous MC opted for the latter course, and directed the Former GM to ensure that due diligence was carried out and to negotiate for the best possible terms. After deliberating over two further MC meetings on 27 November 2007 and 6 December 2007, the Previous MC gave its approval to execute the contract with TWC.

10 On 25 May 2008, the expenditure on the TWC Package was put up for ratification at the 2008 AGM, which was attended by 2,159 members and lasted several hours. This matter turned out to be highly contentious and eventually a motion for the formation of a Special Ad-Hoc Audit Committee ("the Audit Committee"), consisting of four Club's members appointed by the Current MC to review the project, was eventually carried with 210 members supporting it. On 8 August 2008, the Audit Committee submitted its Audit Report to the Current MC, after finding that the expenditure was of an emergency nature and that there was no breach of any Club procedures.

11 The Former GM was dismissed in the final week of August 2008, in relation to some other irregularities unconnected to the Club's expenditure on the TWC package. Soon after his departure, a

file titled "Water Consultants" ("the File") was discovered in his office. The Treasurer found several documents which were not disclosed to the Audit Committee and contained information inconsistent with the Former MC's representations at the 2008 AGM. The Current MC asked the Audit Committee to consider these new documents, while the Treasurer was tasked to investigate further.

12 The Treasurer gave updates on his findings at the 29 October 2008 Meeting and the 26 November 2008 Meeting. In the course of the former meeting, the Defendant made the remarks that were later reported in the minutes of the meeting (*ie*, the First Statement). At the later meeting, the Defendant gave a summary of the findings of the Treasurer that were paraphrased in the minutes of the meeting, part of which constituted the Second Statement. Both sets of minutes were posted on the Club's notice board in accordance with the Club's usual practice.

13 In between the two meetings, on 21 November 2008, the Audit Committee, having considered the new documents, decided that there was no need to amend its Audit Report as the new information pertained to technical and financial issues which did not fall within its purview. Nevertheless, the Current MC decided to request the Treasurer to prepare an addendum to the Audit Report ("the Addendum"), which was to be included on the agenda of the 2009 AGM. In the event, the expenditure was not ratified; instead, another resolution was passed to censure the Previous MC for incurring the expenditure and bar its members from holding office in the Club for the next five years. However, the latter resolution was declared, in a separate action, Originating Summons No 826 of 2009, to be void due to procedural irregularities.

Decision below

14 The Judge held that the natural and ordinary meaning of the First and Second Statements was defamatory, as they meant that the Plaintiffs had *intentionally* misrepresented to the Club's members that it was necessary to replace the water filtration system on the basis that it was a matter of urgency and/or an emergency, justifying the expenditure and ratification by the AGM of the same.

15 However, the Judge found that the Defendant was not liable to the Plaintiffs for defamation, as the Defendant had justified the gist of the defamatory sting. This was based upon the finding that the Plaintiffs made the following representations to the Club's members despite knowing that they were untrue, in order to obtain ratification of the expenditure:

(a) that the whole of the expenditure was required to address an emergency;

(b) that after the installation of the NWS, the swimming pools did not require the addition of chemicals;

(c) that the NWS provided mineral water to the pools; and

(d) that third party endorsements had been obtained in respect of the NWS.

16 At the same time, the Judge rejected the Defendant's submission that the Plaintiffs had also deliberately misrepresented to Club members that:

(a) the contract with TWC was signed only after a month's due diligence had been carried out;

(b) the Previous MC had obtained satisfactory warranties from the principals, Hydrosmart and

Carefree; and

(c) the Previous MC had carried out research into the NWS.

Issues in this appeal

17 The issues in the present appeal may be categorised under the following heads:

(a) whether the Judge erred in finding that the natural and ordinary meaning of the First and Second Statements is that the Plaintiffs had intentionally misrepresented to the Club members, and is thus defamatory;

(b) if the Statements are indeed defamatory, whether the Judge erred in finding that the Defendant had justified the gist of the defamatory sting; and

(c) if the defence of justification is not made out, whether the Statements were made on an occasion of qualified privilege and, if so, whether the defence is defeated by malice.

Whether the First and Second Statements were defamatory

18 The Plaintiffs pleaded that the First and Second Statements are defamatory based on their natural and ordinary meanings, and did not plead any innuendo. The general principles applicable to the construction of words based on their natural and ordinary meanings are as follows:

(a) the natural and ordinary meaning of a word is that which is conveyed to an ordinary reasonable person;

(b) as the test is objective, the meaning which the defendant intended to convey is irrelevant;

(c) the ordinary reasonable reader is not avid for scandal but can read between the lines and draw inferences;

(d) where there are a number of possible interpretations, some of which may be non-defamatory, such a reader will not seize on only the defamatory one;

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

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

publication.

The above principles may be gleaned from a large number of English and local cases, *eg*, *Lewis v The Daily Telegraph Ltd* [1964] AC 234; *The Capital and Counties Bank Limited v George Henry & Sons* (1881-1882) LR 7 App Cas 741; *Skuse v Granada Television Limited* [1996] EMLR 278; *Chalmers v Payne and another* (1835) 2 Cr M & R 156; *Lim Eng Hock Peter v Lin Jian Wei and another* [2009] 2 SLR(R) 1004 ("*Peter Lim*"), *Oei Hong Leong v Ban Song Long David and others* [2005] 3 SLR(R) 608, *Microsoft Corp and others v SM Summit Holdings Ltd and another and other appeals* [1999] 3 SLR(R) 465; *Review Publishing Co Ltd and another v Lee Hsien Loong and another appeal* [2010] 1 SLR 52, and are usefully summarised in David Price, Korieh Duodu and Nicola Cain, *Defamation: Law, Procedure and Practice* (Sweet & Maxwell, 4th Ed, 2009) ("*Price, Duodu and Cain*") at paras 2-07 and 2-08. In other words, the ordinary reasonable person is very much an average rational layperson, neither brilliant nor foolhardy, and not idiosyncratic in his behavior or disposition.

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

20 The Plaintiffs and the Defendant agree that the natural and ordinary meaning of the First and Second Statements is that inaccurate misrepresentations were made by the Previous MC to Club members. However, the Defendant denies that the Statements also mean that those misrepresentations were made intentionally by the Previous MC in order to deceive the members. Instead, the Defendant argues that (i) misrepresentation can be fraudulent, negligent or innocent, and thus the word "misrepresent" does not necessarily imply any intention, and (ii) a person may say something to influence a result, but may have been mistaken. Thus an assertion that a representation was made for a specific purpose does nothing to elucidate the mind of its maker.

The Judge's findings on meaning

21 The Judge held, at [33] of the Judgment, that the relevant background context that must be considered should not only be confined to the minutes of the 29 October 2008 Meeting and of the 26 November 2008 Meeting, but would include the background to the discussion that took place during the meeting and the ordinary reasonable member's knowledge of that background. The relevant background facts, considered by the Judge in relation to the First Statement, were the following:

(a) the 2008 AGM had attracted a large turnout;

(b) the NWS was discussed on more than one occasion, both Bernard Chan and the Former GM had addressed the meeting on the expenditure of $168,800 and the reasons for it, and there had been a lively debate on the issue;

(c) instead of ratifying the expenditure, the meeting had decided to form the Audit Committee to review the entire process of approval of the expenditure by the Previous MC;

(d) the draft report of the Audit Committee was later circulated to all the Current MC members;

(e) the Treasurer had informed the Chairman of the Audit Committee that the documents and information furnished by the full time management staff of the Club ("the Management") to the Audit Committee might be incomplete and certain documents discovered after the Former GM's dismissal were available to be considered;

(f) the Current MC decided to ask the Audit Committee to revisit the Audit Report;

(g) the Treasurer had informed the Current MC that the documents found in the Former GM's office indicated certain breaches of procedure in the acquisition of the new water filtration system; and

(h) the Treasurer was going to gather the Audit Committee for a meeting to revisit its report, in particular to look into the newly discovered documents and the information contained therein.

These circumstances will be hereinafter referred to as "the wider context".

22 Therefore, the Judge concluded, at [34] and [36] of the Judgment, that the ordinary reasonable and interested Club member would have known that (i) the previous MC sought ratification of the expenditure which was unbudgeted for and justified it on the grounds that the expenditure was incurred to meet an emergency, and (ii) as a result of the Treasurer's investigation, the Current MC had found something untoward in relation to the expenditure. As such, the objective impression formed from the First Statement would be that the misrepresentations were not innocent or negligent but intentional, with the aim of influencing Club members in ratifying the expenditure.

23 With respect to the Second Statement, the Judge found, at [39] of the Judgment, that the phrase "could be" was mere verbiage and would not have changed the meaning derived by the ordinary reasonable and interested member, *ie*, that the Previous MC had intentionally misrepresented the facts. Further, the Judge found that even if the Defendant was only summarising the Treasurer's findings and "making explicit what the Treasurer had implied, on the basis of what he understood the Treasurer to have said", the Defendant would not be excused from responsibility for his defamatory remarks. In response to the Defendant's argument that the Second Statement did not directly attribute the misrepresentations to the Previous MC, the Judge found that the Second Statement necessarily implied that it was the Previous MC that had made the misrepresentations, since the ordinary reasonable member would have known that it was the Previous MC that had sought ratification for the expenditure.

The Defendant's contentions on appeal

24 In CA213/2010, the Defendant took issue with three aspects of the Judge's findings – (i) that

the Judge was wrong to hold that the First Statement should not only be read in the context of the minutes of the 29 October 2008 Meeting, but also in the wider context; (ii) even in the wider context, the natural and ordinary meaning of the First Statement should not be held to bear the meaning which the Judge had attributed to it.; and (iii) the Second Statement should be regarded as no more than a fair summary by the Defendant of what the Treasurer had reported to the Current MC. We will deal with each of these contentions in turn.

(1) The relevant context to the First Statement

25 On appeal, the Defendant argues that the Judge should not have considered the wider context as circumstances germane to the construction of the First Statement as the Judge had no basis to impute to the ordinary reasonable Club member knowledge of those facts. *Peter Lim* (above at [18]) and *Goh Chok Tong v Jeyaretnam Joshua Benjamin and another action* [1998] 2 SLR(R) 971 are cited in support of the proposition that there must be evidence showing widespread dissemination of the relevant information, in particular to persons to whom the alleged defamatory statement is published, in order for that information to be deemed as forming part of the ordinary reasonable person's background knowledge. The Defendant argues that there was no evidence of any widespread dissemination of the facts relied on by the Judge, or that they were within the "common knowledge" of the ordinary reasonable Club member. Instead, the Defendant contends that the contrary was probably true as evidenced by the following:

(a) out of around 10,000 Club's members, only around 2,000 signed the attendance sheet for the 2008 AGM;

(b) in view of the fact that the 2008 AGM lasted seven and a half hours, not all of those 2,000 members would have been present throughout the meeting;

(c) only 307 members voted on the motion to appoint the Audit Committee, and this would serve as the best evidence of the members who actually followed the debate on the NWS;

(d) audio recording of the 2008 AGM showed that the discussion on the NWS and the motion to appoint the Audit Committee took up only a small part of the entire meeting;

(e) minutes of the 2008 AGM were only approved and made available to Club's members at the 2009 AGM, well after the First and Second Statements had been published, so the contents of those minutes could not and would not have formed part of the information available to all Club's members; and

(f) there was no evidence of "widespread dissemination" of minutes of MC meetings prior to 29 October 2008 Meeting, due to the following reasons:

(i) while it is true that minutes of the MC meetings are usually posted on a notice board, it does not follow that they would be widely read; the opposite is probably true, as publication by notices was limited compared to distributed circulars, which would reach

all members;

(ii) minutes were only posted on the Club's notice boards for a short duration and replaced when the minutes of the following MC meeting were available; and

(iii) no evidence was led that Club's members habitually obtained their information from the notice board; to the contrary, there were several other media through which information is disseminated to members, including the Splash magazine (distributed both physically and electronically) and the Club website.

26 In this regard, we would stress that the person from whose perspective one should gauge the sense of a statement is not that of any ordinary Club member but that of an ordinary, reasonable, and reasonably *interested* Club member ("reasonably interested member"). Such a member would likely have attended the Club's AGMs, or have at least acquainted himself with the pertinent issues that are to be decided at these meetings. He would also have been generally aware of information disseminated on the Club's notice boards, including minutes of MC meetings, as the Defendant had himself acknowledged that "it is a *long-standing practice* of the Club for the minutes of the MC meetings to be posted on the Club's notice board to inform members and staff of the Club on issues, discussions and decisions of the MC affecting or relevant to the Club". Furthermore, information about the NWS dispute was available not just from the 2008 AGM or the minutes of MC meetings, but also through the Splash magazine which was distributed to *all Club members*. In particular, the Defendant informed Club members through the "President's Message" in the December 2008-January 2009 issue that the Audit Report did not take into account the newly discovered documents from the Former GM's office and that these documents had been forwarded to the Audit Committee for their review.

27 Given that the evidence is that the dispute over the expenditure on the TWC Package was widely-publicised and hotly-debated within the Club for at least half a year from the 2008 AGM to the two MC meetings where the First and Second Statements were made, the background facts that the Judge relied on would have formed part of the general knowledge of the reasonably interested member, such that the appropriate meaning to be attributed to the Statements should rightfully be considered in the context of those circumstances.

(2) The First Statement's meaning in the wider context

28 The Defendant asserts that, even if the First Statement is viewed in the wider context, it would not convey to the reasonably interested member the impression that the Previous MC had deliberately misrepresented in order to influence ratification of the expenditure. In particular, the Defendant refers to the minutes of the 29 October 2008 Meeting, the 2008 AGM and the minutes of MC meetings prior to 29 October 2008.

29 With respect to the minutes of the 29 October 2008 Meeting, the Defendant argues that the reasonably interested member would not logically have understood those minutes as suggesting that the Current MC was accusing the Previous MC of any improper behavior for the following reasons:

(a) the First Statement was made in the course of a presentation by the Treasurer on the NWS;

(b) it was clear that it was the Former GM who was being implicated of wrong-doing;

(c) the only reference to the Plaintiffs was a question as to why Robin Tan had pre-signed a cheque before the relevant invoice was issued;

(d) the members present at the MC meeting did not suggest any improper conduct on Robin Tan's part and even went so far as to offer an innocent speculation, *ie*, that he might have done so in order to help TWC with liquidity issues;

(e) one of the members, who was a member of the Previous MC as well as the Current MC, Gary Oon, was present at the meeting. There was nothing to suggest that he was asked to explain or account for the Previous MC's decision to incur the expenditure; and

(f) the discussion immediately prior to the First Statement only touched on the Current MC's belief that inaccurate facts had been presented to the Club members at the 2008 AGM, and did not attribute any improper motive to any member of the Previous MC.

30 However, a careful scrutiny of the minutes of the 29 October 2008 Meeting reveals that:

(a) at the start of the meeting, the minutes of the previous MC meeting (on 8 October 2008) was amended to include the Rules Chairman's observations, with respect to Tan's pre-signing of a cheque, that the haste of payment was "*rather unusual* [emphasis added]" and that the raising of Purchase Orders only at the time of payment was "*in contravention of operating procedures* [emphasis added]";

(b) the Rules Chairman noted that "the *only urgency* was to replace the pumps and not to put in a new system [emphasis added]";

(c) the Treasurer reported that two water experts had given the view that the NWS system was "an *add on equipment* to improve the efficiency of the existing filtration system [emphasis added]";

(d) two further pieces of "*[m]isinformation* in Annual Report 2007/8 [emphasis added]" as to the benefits of the NWS system by Bernard Chan and Michael Ho were pointed out;

(e) it was noted that in the contract, a specified equipment plus installation was excluded but the quoted price remain the same, and that these were "*common glaring anomalies* [emphasis added]" that had also arisen in an earlier contract; and

(f) the Defendant suggested that, if the Audit Committee did not wish to revisit their audit, a panel should sit with the Audit Committee to "*probe and investigate into the issue further and go through the process dealings and procedures, how they agree to the price and what due diligence had been done* [emphasis added]".

Therefore, the inevitable conclusion was that the First Statement was made at a meeting where suspicions of wrong-doing had clearly been cast on the part of the Previous MC in respect of the contract with TWC, and it is necessary and proper to view the First Statement in that setting.

31 The Defendant also argues that there was "no reason for the ordinary and reasonable Club member to understand that the First Statement meant that the Previous MC had deliberately made misrepresentations to the Club members, even with the background knowledge of what had happened during the 2008 AGM" and in support thereof he highlights the following considerations:

(a) the primary concern of Club members at the 2008 AGM was whether proper procedures had been followed in the purchase, and there were no suggestions of any deliberate misrepresentations by the Previous MC; and

(b) any suspicions on the part of the Club members were directed towards TWC.

32 However, we must point out that the circumstances surrounding the 2008 AGM only serve to provide part of the background to the dispute over the NWS. This is because by the time the First Statement was made, new documents and other information had been discovered from the office of the Former GM which appeared to have aroused the suspicion of the Current MC towards the Previous MC. Therefore it is necessary to construe the First Statement in the light of this background as well.

33 Finally, in this regard, the Defendant further argues that the minutes of MC meetings prior to 29 October 2008 – particularly those of 27 August 2008, 24 September 2008 and 8 October 2008 – showed that the Current MC was alleging wrong-doing by the Former GM whose employment was terminated with immediate effect on grounds of grave misconduct, and not the Previous MC.

34 It is true that at that point (*ie*, before the meeting of 29 October 2008) the Current MC was satisfied that the Former GM had misconducted himself in relation to a distinct, separate contract unconnected to the TWC Package (see above at [11]). However, as far as the present matter involving the NWS was concerned, the same minutes show that, during that period, the Treasurer's investigations were still ongoing and he was still corresponding with the Audit Committee and the Current MC on the appropriate steps to be taken. No explicit suggestion of wrong-doing, apart from the discovery of inconsistencies and non-disclosure, could justifiably be made at that stage. We would also observe that the Defendant's argument that it was the Former GM, and not the Previous MC, who was being implicated of any wrong-doing in the First Statement is contradicted by the clear words of that Statement which states "misrepresentation of facts *made by the previous MC*".

35 Therefore, viewing the First Statement against this entire backdrop, we are unable to accept the Defendant's contention that that statement could not reasonably be construed to mean that the Defendant had suggested that the Previous MC had deliberately made the misrepresentation to mislead the Club members at the AGM. Looking at the state of play at that point, we are satisfied that the Defendant was obviously seeking to find fault with the Previous MC with regard to the purchase of the NWS.

(3) The Second Statement

36 With respect to the Second Statement, the Defendant repeats the same arguments that had been rejected by the Judge – (i) the Defendant was merely summarising the Treasurer's presentation on the NWS at the 26 November 2008 Meeting; (ii) the Treasurer himself did not allege any deliberate misrepresentation by the Previous MC, but had only implicated the Former GM instead; and (iii) the Defendant had in fact watered down what the Treasurer had said by his use of the phrase "could be".

37 These arguments could be briefly dealt with. From the minutes of the 26 November 2008

Meeting, it is apparent that the Defendant was not merely summarising the Treasurer's presentation; he was in fact giving his own take as to the Treasurer's findings by characterising them in the minutes as "a case of misrepresentation of facts to the AGM to get ratification for a capital expenditure for a water system that could not be justified under the urgent/emergency reason". The purpose or object of the Second Statement can be discerned from a paragraph in the minutes which reads:

> (e) President suggested that the discrepancies discovered by the Treasurer be documented in an addendum to the Special Audit Report to be released to the general membership. *Should there be findings of any irregularities in contract award and payment, the matter ought to be reported to the relevant authorities.* [emphasis added]

38 The second sentence in the quote above would undoubtedly convey the impression to a reasonably interested member, upon reading the Second Statement, that the Defendant suspected the Previous MC of wrong-doing and was prepared to report them to the relevant authorities if the relevant evidence was found. This impression is reinforced by an earlier comment by the Treasurer that "[i]t would seem that there was *a concerted effort* made to acquire the Natural Water System." The clear implication was that the misrepresentations were intentionally made by the Previous MC in order to obtain ratification of the expenditure.

39 While we note that the Defendant has argued that "[t]his is not a case of [the Defendant] repeating a defamatory statement to third parties" as the Defendant "was only summarising to others what [the Treasurer] had said to *the very same people* [emphasis added]", the Defendant would have been aware that the minutes of the meeting would be published on the Club's notice board and thus be read by Club members generally, and not just by those who had attended the MC meeting.

40 It seems to us that the Second Statement clearly implicated the Previous MC, and not the Former GM, as it states "…misrepresentation of facts to the AGM *to get ratification for a capital expenditure*". As it was the Previous MC, and not the Former GM, who was seeking ratification of the expenditure, any allegations of misconduct would necessarily relate to the former and not the latter.

41 Finally, like the Judge, we do not think that the mere use of the tentative phrase "could be" would be sufficient to detract the reasonably interested member from construing the Second Statement according to its ordinary sense, bearing in mind (i) the fact that this was the second time (following the 29 October 2008 Meeting) that the Defendant had accused the Previous MC of misrepresenting to Club members for the purposes of obtaining ratification of the expenditure, and (ii) other references to the Previous MC's wrong-doing within the same minutes (see above at [37] and [38]).

Conclusion on meaning

42 In the result, we find that the meaning which the First and Second Statements bear to a reasonably interested member of the Club, having regard to the wider context, is the higher of the two meanings pleaded by the Plaintiffs (see [30] and [37] of the Judgment), *ie*, suggested dishonesty and misconduct on the part of the plaintiff when they sought ratification of the expenditure at the AGM 2008. Therefore, the Defendant's appeal in CA213/2010 as to the meaning of the First and Second Statements is dismissed.

Whether the Defendant had justified the gist of the defamatory sting

43 We now turn to consider the second main issue in this appeal (see [17] above). It is trite law that it is an absolute defence in a civil defamation claim that the imputation is true or substantially

true. A defamatory imputation is presumed to be false, and the burden of proof falls upon the defendant to plead and show that it is true. The meaning that is proved to be true must be that which the relevant statement is held to bear (*ie* the higher meaning in the present case), and the defence will not succeed if a materially less serious meaning is proved to be true. It is the imputation contained in the words which has to be justified, not the literal truth of the words, nor some similar charge not contained in the words.

44 The defendant has only to prove the "sting" of the charge, and some leeway for exaggeration and error is given. As stated by Burrough J in *Edwards v Bell* (1824) 1 Bing 403 at 409:

> ... it is sufficient if the substance of the libellous statement be justified; it is unnecessary to repeat every word which might have been the subject of the original comment. As much must be justified as meets the sting of the charge, and if anything be contained in a charge which does not add to the sting of it, that need not be justified.

See also Gatley on Libel and Slander (Patrick Milmos & W V H Rogers eds) (Sweet & Maxwell, 11th Ed, 2005) at para 11.9 and *Aaron Anne Joseph and others v Cheong Yip Seng and others* [1996] 1 SLR(R) 258 at [73].

45 In the present case, the sting of the charge is essentially that the Previous MC had *deliberately* misrepresented the circumstances relating to the expenditure on the TWC Package *with the aim* of deceiving the Club members into ratifying the expenditure. While some other minor allegations may be inferred from the First and Second Statements to which we will allude later, we will first deal with the sting of the charge.

Misrepresentation on emergency expenditure

46 The Defendant alleged the Previous MC had deliberately misrepresented, through statements in the Annual Report and in the Booklet accompanying the Annual Report ("the Booklet") and at the 2008 AGM, that the entire expenditure of $168,800 was an emergency expenditure. The alleged misrepresentations were set out at [46] of the Judgment, citing from the Defendant's case:

(a) Various representations in the Annual Report *viz*:

(1) Item 9(a) of the Agenda issued for the 2008 AGM stated:

SPECIAL BUSINESS

9. Items for Ratification (Appendix D)

To ratify expenditures [*sic*] approved by the Managing Committee for the following purposes:

(a) Installation of Natural Water System to the Competition Pool, Recreational Pool and 2 Jacuzzis;

...

(2) In [Bernard Chan]'s message to the members in the Annual Report, he stated that the previous MC had completed the "installation of the natural water system in our Club" and that the Club was the first in Singapore to have "clean, natural water in both our pools and

mineral water in our Jacuzzis".

(3) As part of a feature in the Annual Report marking the Club's milestones over the previous year, it was stated:

February 2008

Newly installed water system supplies healthy, mineral water for the Club's pools and Jacuzzis, making the Club the first in Singapore to have such a system.

(4) The fourth plaintiff approved the following statement in the Annual Report about the system that had been installed in the Club:

Club's Water Filtration System

The Club's dilapidated water filtration system, which has been giving problems for some time now, finally broke down. After much deliberation on the best way to put this problem to rest, the Sub-Committee decided to install a brand new filtration system incorporating Hydrosmart Technology. This system adds resonance frequencies to the water making it soft, removes scales and prevents algae. Furthermore it does away with the need for chemical additives. Members now enjoy the benefits of mineral water in our swimming pools and Jacuzzis.

(b) Various representations in the Booklet accompanying the Annual Report ("the Booklet") *viz*:

(1) In Appendix A, as part of the Summary of Decisions made at the 6 December 2007 Meeting, it was stated:

1. Installation of Natural Water System

MC approved the signing of the contract for the New Water System after information were [*sic*] obtained on (sic) the Water Consultant:

• Letter from Paul Pearce, Managing Director of Hydrosmart certifying that Hydrosmart International Pty Ltd is the sole global manufacturers of the resonance frequency treatment.

• Letter from Hydrosmart International Pty Ltd. certifying that Water Consultant Pte Ltd was appointed the exclusive distributor for the Natural Water system in Singapore since 2006. Hydrosmart had also given an undertaking that they would put into place a support system to maintain all installations and would honour the 5 year warranty.

A clause had been added in the contract to specify that should the system failed [*sic*] to achieve the desired results, Water Consultant would install a new system. Also if the system failed the water test they would refund the cost to the Club.

(2) In Appendix B, the statement that the expenditure of $168,000 on the water filtration system was a "mandatory replacement" (it should be noted that both in Appendix B and Appendix D, the amount stated for which ratification was sought was $168,000 and not the full contract sum which was $168,800); and

(3) In Appendix D regarding the presentation made by TWC on 10 November 2007:

> At about the same time [as the Competition Pool was closed], Water Consultant Pte Ltd were promoting their new water technology that would produce natural water for our pools and mineral water for our Jacuzzis. ...
>
> Water Consultant Pte Ltd offered to install the NWS for both our swimming pools as well as our Jacuzzis at the cost of SGD168k. GM was asked to check the background of the company and get some form of guarantee from their principal ...
>
> No open tender was called for because Water Consultants were the sole agents for the technology ...

(c) Statements made at the 2008 AGM by [Bernard Chan] during his summing up before the ratification of the expenditure was put to the vote.

47 The Judge found, at [47] and [52] of the Judgment, that these statements would generate two related impressions to Club's members – (i) the NWS was installed in both pools as well the Jacuzzis such that only one system was purchased, and (ii) the whole of the $168,800 was spent to solve an emergency. These representations were in turn held to be untrue, at [53] of the Judgment, based on the reasons that: (i) it was common ground that two systems rather than one were purchased, and (ii) only the problems faced by the Competition Pool justified an emergency expenditure. The Judge was of the opinion that there was no emergency with the Jacuzzis, the money spent on the Auto-Dozers was not really necessary to deal with the problem in the Competition Pool, and it was questionable whether the recreation pool had any problem that could not be solved by the purchase of new pumps.

48 At the trial and in this appeal, the Plaintiffs argue that the Previous MC had viewed the "emergency" in a broader context of ensuring that there would be no further or repeated closure of pools in the near future, and had thus decided on a holistic approach when the NWS was presented by TWC as a package which would address the problems at both the pools and the Jacuzzis. Such other problems, which were then noted, included:

(a) the Recreational Pool's filtration system was showing signs of chokage and its pumps were tripping frequently;

(b) after the closure of the Competition Pool, the Recreational Pool faced the additional strain of coping with the additional training swimmers, the impending school holidays in December, as well as swimming events planned for the beginning of 2008; and

(c) the Jacuzzis faced problems of murky water and a chlorine odour.

49 This explanation was rejected by the Judge on the ground that the Previous MC had not informed the Club members that it had taken this "holistic approach" or that the contract for the expenditure comprised several distinct components or that the NWS could have been purchased for the Competition Pool alone. She also found that the Plaintiffs were aware that some components of the expenditure were unrelated to the emergency at the Competition Pool and that it was not possible to justify the entire sum as emergency expenditure. Accordingly, the Judge concluded that

the Defendant's defamatory allegations against the Plaintiffs were justified in this respect.

50 It cannot be denied that in some of the statements quoted in [46] above, there are errors or statements which show confusion in the mind of the maker(s). For example at para (a)(1) of the quotation at [46] above, there are the statements "Installation of Natural Water System to the Competition Pool, Recreational Pool *and 2 Jacuzzis* [emphasis added]" and "[m]embers now enjoy the benefits of mineral water *in our swimming pools* and Jacuzzis [emphasis added]". These are of course not correct as the NWS is not installed in the Jacuzzis. Neither is mineral water provided to the pools. However, at para (a)(2), there is the correct statement "clean, natural water in both our pools and mineral water in our Jacuzzis". However, the sting which the defendant has to justify (see [45] above) is not so much that there were errors in the Annual Report or its Appendix, but that the Plaintiffs had uttered the erroneous statements deliberately, knowing that they were false and that by such falsehood, the Plaintiffs had hoped to hoodwink the AGM into ratifying the expenditure. While the Judge was conscious of the distinction between innocent/negligent misrepresentation on the one hand and fraudulent misrepresentation on the other, we are, with respect, and for the reasons alluded to below, unable to agree with her that there is sufficient evidence to show that the erroneous statements were made deliberately with a view to deceiving the AGM. Here, we would stress that even the Defendant had admitted that he had no evidence to suggest that those erroneous statements were made intentionally.

51 At this juncture, we pause to make one other observation. Under the Rules of the Club, the responsibility for managing the day-to-day affairs of the Club is entrusted to the MC. It is not for this court to substitute its views as to how a problem confronted by the Club and as resolved by the MC should be addressed. It is equally clear the fact that the Current MC would have addressed the problem differently does not mean that the approach taken by the Previous MC was wrong or was not taken in good faith. It is trite law that when a decision of the management committee of a club is in dispute, the court should not embark upon a minute scrutiny of the correctness of the decision, but should only consider whether the decision was *intra vires* and *bona fide*. This principle was stated by Lord Justice Brett in *Dawkins v Antrobus* (1881) LR 17 Ch D 615 at 630:

> The only question is, whether [the decision] was done *bona fide*. Now, it is true that an element, in considering whether a matter has been done in good faith, is the question whether what has been done is really beyond all reason. If that were so it would be evidence of want of good faith; but even where that [unreasonableness] exists, it is not a necessary conclusion that there has been want of good faith, for, even after having come to the conclusion that a decision was wholly unreasonable, one might be convinced … that nevertheless there was no malice – that what was done was done in good faith. Therefore the mere proof that it is contrary to reason is no sufficient ground for the interference of the court.

52 The limited scope for the court's intervention in club decisions made by the management committee is also emphasised in David Ashton and Paul Reid, *Ashton and Reid on Club Law* (Jordan Publishing Limited, 2005) at para 5-20:

> When the committee's (or the members') conduct has come under the scrutiny of the courts, the courts themselves have been at pains to point out that they do not sit in judgment on this conduct. In club cases, provided the committee has the exclusive competence to make the decision in question, the court will not look to see whether any decision was right or reasonable; it will suffice if the impugned decision was in accordance with club rules and was done honestly and not in excess of jurisdiction …

53 If a club decision was made intra vires and bona fide, an aggrieved member would have resort

only to internal remedies within the decision-making processes of the club. This is pointed out in Jean Warburton, *Unincorporated Associations: Law and Practice* (Sweet & Maxwell, 2nd Ed, 1992) at p 78:

> From time to time, a member will become dissatisfied about the way in which the association are being run or the direction they are taking. If the rules of the association and the general law are being followed, the member's only remedies are to raise questions and put motions at the annual general meeting, to try to get sufficient members together to call a special general meeting and to endeavour to get himself elected to the committee. If there has been a breach of the rules or the general law relating to the conduct of meetings, the member can look to the court for assistance …

54 Therefore, if the Previous MC's decision to purchase the TWC Package under the emergency provision in cl 2.6.1 was made *intra vires* and in good faith, the court should be slow to find that the MC's decision to regard the entire expenditure of $168,800 as an emergency expenditure was wrong.

(1) Intra Vires

55 Paragraph 2.7.2 of the FOM, which provides for emergency expenditure by the MC, states:

> In case of emergency, [MC] may approve and subsequently seek approval from [GM] [sic] in the [AGM].

56 However, there is no definition of "emergency" in the FOM. While reference may be made to the standard dictionary definition of "emergency", *eg*, Oxford Dictionary of English (John Simpson ed) (Oxford University Press, 3rd Ed, 2010) defines it as "a serious, unexpected, and often dangerous situation requiring immediate action", this definition while helpful, does not completely eliminate controversy. One could equally take a broad or narrow view of the circumstances that could fall under that definition. By holding that in relation to the present matter that the only emergency which occurred was in relation to the Competition Pool, the Judge implicitly took a narrow interpretation of what could constitute an "emergency"; on the other hand, the Previous MC had taken a broad view of things when they sought to characterise the further problems listed at [48] above as part of the "emergency".

57 As mentioned earlier at [54], the court should not too readily substitute its opinion as to what constitutes an "emergency" for that of the Previous MC, unless the latter is clearly unreasonable. Here, the Previous MC's decision was not shown to have been unreasonable. *A fortiori*, gross unreasonableness was not proven. One must bear in mind that this is a swimming club and it is vital that there should be no interruption in the availability of those facilities to its members. That would be something which its members would expect the MC and the Management to ensure. It is reasonable for the MC not to wait until the occurrence of an actual breakdown before an emergency could be regarded to have arisen, provided that there was some basis for the MC to arrive at that decision. Given the demands of the impending school holidays and swimming events at that time, we are satisfied that the Previous MC had made a fair assessment, based on the reports of the Management, that there was a broader emergency which included the problems with the Recreational Pool and which required immediate attention.

(2) Good Faith

58 We now turn to the question as to whether the Previous MC's assessment that the entire expenditure was justified as an emergency expenditure was made in good faith. We note that at no time was the Previous MC accused by the Current MC or the Club's members of dishonesty or

wrongdoing or had in any way received any benefits from the transaction.

59 It would appear that the Previous MC had made the decision to purchase the TWC Package in the honest belief that it was in the best interests of the Club. In cross-examination, Bernard Chan, who was the first plaintiff at the trial below and the President of the Previous MC, explained the perceived need to take a holistic approach to the problems facing the Club:

> Q: Let's not change what the GM was telling you. What the GM told you was that the recreational pool will fail eventually in a matter of months. He never said days. So the emergency you were dealing with was how to get the competition pool up and running again and to deal with irate –
>
> A: I disagree.
>
> Q: – members?
>
> A: I disagree. The GM is telling us what he sees of the problem in his context. *As the president of the club I viewed the whole thing totally differently. It is more holistic. We are running a club that needs to be functioning full-time perfectly with a minimum of unnecessary complaints, disasters, et cetera aside.* This was what concerned me, regardless of what the GM is saying this pump and all that. So that was where I was coming from personally.
>
> …
>
> A: I took the matter of months to be a warning about a possible and impending problem, repeat of the problem. There was no guarantee given to me and none that I would have believed if somebody was to say that it will only happen, don't worry, it will only happen in four months and nothing less, I wouldn't accept that… *so, there is no reason for me to believe that, unless we do something about this, it's not going to happen again next week. So I just went ahead with what I thought to be the best holistic solution to the club…*
>
> [emphasis added]

60 The transcript of the 10 November 2007 Meeting, wherein the Previous MC had first deliberated over the issue, also reveals that the Previous MC had honestly believed the expenditure was justified as an emergency and that they had, in fact, decided against funding the expenditure by virement so as not to convey the wrong impression to Club's members that this was a discretionary expenditure:

Bernard Chan:	If we need to spend something, we approve something, you don't take from here and do. So this one, you may have to give back. *It doesn't matter if you don't spend but the principle is let's look at that because of the use and the project and not because there's money here to take over there…*
[Former GM]:	Yeah.
Bernard Chan:	…which is the impression you will create, to the AGM know, just because you all got money only, you all want to spend. And the fact is you make so much money here, you'd spend it any way you want. You know, I mean, to me that is not the point. *My point is, if it needs to be done, we stand behind it and get it approved, finished – the whole sum.* Never mind the virement. The small sums are different.

Gope Ramchand:	Virement always creates that impression that because you have some money it's an easy way to spend it…
Bernard Chan:	*…let's not be afraid of approving things…*
[Former GM]:	*Genuinely needed…*
Bernard Chan:	Yeah, yeah, yeah. So, never mind the virement. *But because the MC can stick its neck out and say in an emergency, it was very, very important. This was the case. You know, I mean the pool closed. That was an emergency what?*
Man:	Yeah, yeah, yeah.

61 In this regard, it must be borne in mind the fact that the Previous MC (and indeed every MC) was largely made up of layperson volunteers who met once or twice a month to oversee the management of the Club and who would rely substantially on the Management for the day-to-day administration of operational and technical matters. Quite naturally, the Previous MC had relied on the Former GM and the staff in the Facilities Department for their understanding of the nature and extent of the problems with the Club's pools as well as the suitability of the various solutions available, before making the decision to purchase the TWC Package. The Former GM had recommended to the Previous MC that the Club obtain the whole package and there has been no suggestion that the Previous GM had made this recommendation because of some self-interest. At the presentation on 10 November 2007, the representatives of TWC also pointed out that the water quality of the men's Jacuzzi was not very good. The Management had also informed the Previous MC that there were frequent complaints about the water in the Jacuzzis.

62 It is also apparent that the Previous MC was under the honest impression that they were purchasing the TWC Package as an entire discounted package and, as such, there was no bad faith involved in the decision to include non-essential items such as the MWS for the Jacuzzis and the Auto-Dozers. Although a representative from TWC, Mr Jeremy Rawles, had testified that TWC would have been agreeable to the installation of the NWS for only the Competition Pool, the transcript of the 10 November 2008 Meeting, where TWC had given a presentation to the Previous MC, and the correspondence between the Former GM and TWC show that TWC was marketing to the Club a "one-time special package" at a "special one-time cost". Indeed, at the presentation Ms Sylvia Chan from TWC said:

> No, the quote is not the original this year. Early this year, as Michael has said, it was much higher but we said that you know, we come to see you so many times, and we're prepared to give you a *special one-time cost*, but please do not share this outside because then we will have problems with the other people we have quoted. [emphasis added]

63 Accordingly, when Bernard Chan, Michael Ho and Robin Tan each testified that they had believed that they were obtaining a discount by purchasing the entire package, they had a basis for that belief. It is common knowledge that business enterprises would from time to time resort to the strategy of a "package deal" to promote sales. As a purchaser, it often makes commercial sense to effect a purchase on a package basis as that is invariably more cost-effective even though it may consist of necessary items as well as some "nice-to-have" items. While the package here included some useful items (though not urgently required), such a purchase should not render improper the decision of the Previous MC to make the purchase. We would emphasise that the expenditure on the Jacuzzis and the Auto-Dozers each constituted only about 10% of the entire expenditure. Bearing in

mind the one-off offer by TWC as a package, we think the Previous MC was acting well within its discretion to regard these two minor items as being very much part of the emergency. It is not denied that the expenditure on the Jacuzzis and the Auto Dozers has enhanced the facilities of the Club for the enjoyment of its members. There were no complaints thereafter. Therefore, the Judge was not quite correct to state at [63] of the Judgment that "there was ... no suggestion by TWC during its presentation that it was selling the Club a package".

64 Finally, we note that while the Audit Committee had, in their Audit Report, considered the argument that only the NWS for the Competition Pool was necessary as being a "real emergency", it nevertheless determined that the entire expenditure was justified. The relevant portion of the Audit Report is as follows:

> One of the audit members raised the rationale of installing all 3 systems, when only 1 was in a real emergency. Management replied that the Recreational Pool filter was in an equally bad shape, and if the sand filter failed abruptly on the second pool, members will be upset with another round of pool closures. The committee felt that this is a reasonable assessment of the situation by the Management and Ex-MC.

Although the Audit Report was compiled before the discovery of the new documents from the office of the Previous GM, the Audit Committee repeatedly stated, on 12 September 2008, 20 September 2008, 3 November 2008 and 21 November 2008, that it was standing by its conclusions in the Report after considering the new information and despite being repeatedly implored by the Current MC to amend the Report. After receiving the draft Addendum from the Current MC on 6 April 2009, the Audit Committee responded, on 5 May 2009, that the Addendum raised many issues that required further investigation for another 3 to 4 months, and that the Audit Report should be considered as a "Conditional Report" pending the further investigation. However, the Current MC declined to give the Audit Committee the opportunity to conduct the further investigation, and instead went ahead to table both the Audit Report and the Addendum at the 2009 AGM.

65 At this juncture, we would underscore the fact that the special Audit Committee was established at the 2008 AGM to look specifically into this matter. Its membership consisted of members with expertise or experience in building and construction. Notwithstanding the fact that the Audit Committee had exonerated the Previous MC of any wrongdoing in relation to the expenditure and had maintained its stand even after the Treasurer had drawn its attention to the documents found in the office of the Previous GM, the Defendant continued his "witch-hunt". This whole episode smacked of nit-picking or fault-finding, or worse, that the Defendant had an agenda of his own against the Plaintiffs, culminating in the utterance of the two statements which are the subject of the present defamation suit.

66 Interestingly, it will be recalled that the Defendant has strenuously argued that the two statements could not, and should not, be construed to bear the meaning asserted by the Plaintiffs, *ie*, that they had *deliberately* made the erroneous statement in order to deceive the AGM into ratifying the expenditure, which was the sense found by the court below and which we have herein endorsed. The Defendant has argued that the offending statements only meant that the Plaintiffs had made those erroneous representations and not that they had deliberately done so to deceive. Pertinently, in cross-examination, the Defendant effectively admitted that he did not know of any basis to allege that the erroneous statements were deliberately made with that aim in mind. In the circumstances, we could not see how it can be said that the sting in the two defamatory statements has been justified. Indeed, while we recognise that there was some confusion or inaccuracies in the representations made by the Plaintiffs to the 2008 AGM, they were due to misconception or neglect in vetting the drafts put up by the Management.

67 The following is provided as an illustration. There was confusion as to whether one system or two systems were installed for the pools and the Jacuzzis. One of the causes of the confusion could have been due to Jeremy Rawle of TWC who talked about "natural mineral water", confusing the two systems, the natural water system (for the pools) and the mineral water system (for the Jacuzzis). At the opening of the Competition Pool, a banner was put up by TWC stating: "The Competition Pool is open now you can swim in Natural Mineral Water". The Plaintiffs should not be entirely blamed if they had thought that it was one system that they had purchased for the Club. This mistake or error is hardly of any consequence. The important thing is that they got what they purchased, *ie*, natural water for the two swimming pools and mineral water for the Jacuzzis. Moreover, if the Plaintiffs had intended to mislead and deceive that there was only one system, Appendix D to the Annual Report would not have referred to the two systems. In this regard, we think that care must be exercised by the court in scrutinising the evidence of the Plaintiffs to differentiate between evidence indicating their knowledge at the time of the trial and their knowledge at the time of the alleged misrepresentations. We are satisfied that the Previous MC had acted in good faith in this matter and had held the honest belief that the entire expenditure was in the best interests of the Club and was justified as an emergency. The Judge said that she was not convinced that the Recreational Pool had problems which could not be resolved by buying new pumps. Even if that were the case, it does not detract from the fact that the Previous MC, in accepting the recommendation of the Management in buying the package, did so in good faith and in the interest of the Club. It is not for the court to substitute its views for the decision of the management committee of a club unless that decision can be shown to be plainly wrong or was reached in bad faith (see [54] above). More will be said about this issue of intent to deceive on the part of the Plaintiffs when we address some other subsidiary erroneous statements (see [68] below).

Other peripheral misrepresentations

68 We now move to consider the less significant misrepresentations which were allegedly made by the Previous MC. The representations were that:

(a) after the installation of the NWS, the swimming pools did not require the addition of chemicals;

(b) the NWS would provide mineral water to the pools; and

(c) third party endorsements had been obtained in respect of the NWS.

(1) Representation that the NWS did not require chemicals

69 In the Annual Report, it was stated: "Furthermore, [NWS] does away with the need for chemical additives". This statement is erroneous. The evidence shows that, while the amount of chlorine that needed to be added to the pools was reduced after the NWS was installed, the need for chlorine was far from being "done away with" as 67.5% of the original amount of chlorine added was still necessary. On appeal, the Plaintiffs made the point that chemical additives, apart from chlorine, were indeed done away with as traditional chemicals such as alum and soda ash no longer needed to be added to the swimming pools. While that may be so, the fact remains that chlorine is still needed to be added to the pools, though of a lesser quantity. To that extent, a misrepresentation was made. But that is not the critical issue.

(2) Representation that the NWS provided mineral water to the pools

70 The offending statement in the Annual Report reads: "Members now enjoy the benefits of

mineral water in our swimming pools and jacuzzis". This is clearly wrong as mineral water was provided only to the Jacuzzis as a result of the MWS, but not in the two pools. Again the critical question is whether this statement was made deliberately to deceive, knowing that it was false (also see [67] above).

(3) Representation that there were third party endorsements

71 This misrepresentation arose out of an exchange at the 2008 AGM. One of the Club's members, one Mr Ken Lee, had asked whether any third-party opinion on the NWS was obtained. In response, Bernard Chan said that they had contacted the manufacturers of the system in Australia. The Former GM confirmed that they had (i) obtained referrals from the YMCA in the US and other areas that had used the same system, and (ii) spoken with the Marina Mandarin Hotel and the Negara Hotel who also used the system. Bernard Chan then added that they had checked on references for the system. This was also a clear misrepresentation as none of those organisations had in fact used the NWS; instead, each had only used the MWS and given feedback on that system.

72 At this juncture, we should add that Sylvia Chan and Jeremy Rawle had also inadvertently contributed to the erroneous impression in the mind of the Plaintiffs when they said the following at the presentation:

> Sylvia Chan: And if you see, what Meritus Negara did was to put its big signboard at the pool, so people know, the guests know that they are getting a very good healthy pool. So that means the hotel cares for their guests. And when they have overseas swimmers and they go there, they swim in the pool, then they will call us and say can they buy the equipment and bring home, because they want a chlorine free pool at home as well. We've done that.
>
> Jeremy Rawle: Even on their website, they tell you, come to our hotel, you swim in *natural water*.
>
> [emphasis added]

It would be seen that both of them were referring to natural water in the swimming pool of Hotel Meritus Negara. Interestingly, Sylvia also referred to "chlorine free pool". This could also explain why the Plaintiffs made the mistaken representation at the 2008 AGM that with the installation of the NWS in the pool, chlorine would not be needed.

73 While we have found that the Plaintiffs did make these three minor misrepresentations, the more critical aspect to consider, as far as the defence of justification is concerned, is whether the Defendant has shown that those misrepresentations were *intentionally* made (knowing they were not correct) *with the aim of deceiving the 2008 AGM into ratifying* the expenditure.

Whether the Plaintiffs had any intention to misrepresent or dishonest motive to influence the ratification of the expenditure

74 We have at [50] above highlighted the difference between a false statement made intentionally and that made due to inadvertence or oversight. Apart from the circumstances referred to in [58]-[67] & [72] above, the following are some additional circumstances which are pertinent to the issue.

75 First, we note that the Plaintiffs did not attempt to conceal the fact that the entire sum of $168,800 was not spent on the Competition Pool but also on the Recreational Pool and the Jacuzzis –

the Powerpoint slide flashed when the ratification of the expenditure came up for discussion at the 2008 AGM stated "Installation of Natural Water System to the *Competition Pool, Recreational Pool and 2 Jacuzzis*" [emphasis added]. It would have been clear to a Club member attending the 2008 AGM that the entire expenditure was not only in relation to the closure of the Competition Pool but also to deal with the problems related to the Recreational Pool and the Jacuzzis.

76 While the above-mentioned statement on the Powerpoint slide is not correct, as the MWS, not the NWS, was installed in the Jacuzzis, that could not have been an intentional misrepresentation by the Plaintiffs that only one system was purchased. Appendix D in the Booklet had clearly made two references, on the cover page and in a heading of one page, to "the installation of the Natural Water System in our pools *and a Mineral Water System in the Jacuzzis*" [emphasis added]. While the Judge observed that these two references would not have alerted the Club's members to the fact that there were two different systems when there were many other statements which pointed to only one system being purchased, the fact remains that these two references provide clear evidence that the Plaintiffs did not have any intention or motive to deceive the Club's members – if they did, they would not have mentioned the installation of the MWS. In this regard, we note the evidence of Michael Ho and the Former GM that the Annual Report, with its many erroneous references to only one system, was substantially drafted by the Facilities staff under the supervision of the Former GM and not by the Previous MC. While Michael Ho had vetted the draft, he relied heavily on the Facilities staff and the Former GM, who were the ones with the technical and operational expertise, to prepare the draft.

77 Secondly, the Judge had also observed, at [51] of the Judgment, that the summing up by Bernard Chan at the 2008 AGM "would have reinforced any impression that the members had obtained from the Annual Report and Booklet that the expenditure had been used to purchase one system which had the result of solving the problems in both the pools and in the Jacuzzis". The content of the summing up is as follows:

> So we move to item 9 first, which is to ratify expenditures approved by the Management Committee. First one is the *installation of the Natural Water System in the pools and Jacuzzis*, at 168,000.
>
> I think there's been quite a, a lot of discussion on this earlier, but the question at hand is, why did the MC approve this expenditure ahead of the AGM, whilst there was no budget for it. And to explain the issue, the situation came about very suddenly when one day the pool water turned green, and uh, there was influx of complaints from members about their children getting rashes and uh drinking, swallowing green water and so on and so forth. And upon investigation, we discovered what you already know, as the pumps and filters, *well not all of them*, but uh, have started to break down.
>
> Uh the pools was [*sic*] then immediately closed to avoid any further mishaps. And in the month or so that ensued, we went through the routine that you already know about and finally decided on this particular system which was in our minds above all the other points that were discussed, really the cheaper alternative compared to having to change the filters and the sand and we (shortblast) – sandblast them and everything for a real heavy price, without, and ending up with technology that is really 30 to 50 years old. *So it was felt that the 168,000, uh, after the due diligence was carried out, was the way to go, and up to today, we have had good comments from this, and the water is crystal clear not only in the pools but also in the Jacuzzis*, the big advantage being that the smell of chlorine and your potentially bleached hair and red skin and all are all done away with, so we ask that members ratify this, because it was done, a decision had been made to avoid uh, problems, health problems, you know, which were thrust upon us, you know, like a disaster (unclear). Nothing we could do about it, so I (open it to the House). Thank

you.

[emphasis added]

78 We recognise that while Bernard Chan could have been clearer in his summing up, it seems to us that his focus was on explaining the event which gave rise to the expenditure. While he was certainly not accurate in stating that the NWS was also installed for the Jacuzzis, that does not *per se* suggest that he had deliberately told a lie; it could well be that he merely made a slip (see [72] above for a similar slip by the representatives of TWC). We are not persuaded that Bernard Chan had any intention to misrepresent to the 2008 AGM that the NWS was the only system installed at the pools *and the Jacuzzis* when in the Annual Report there were references to both the NWS and the MWS. Apart from the fact that he was mistaken or confused, we cannot see any reason why he would deliberately want to make such an incorrect statement. It would be utter stupidity for Bernard Chan to intentionally mislead in such a way. After all, he had honestly stated that the emergency expenditure was incurred for both pools as well as the Jacuzzis, and not just for the Competition Pool. He was also candid about the fact that not all the pumps and filters of the pools have broken down. His omission to mention the holistic approach is hardly critical as he did mention that works were carried out for the two pools and the Jacuzzis. In short, there was no conceivable cause for him to want to deceive.

79 Thirdly, in finding that the defence of justification was made out, the Judge relied (see [50] of the Judgment) upon the following piece of evidence from Bernard Chan:

> Q: So again, it's quite clear in your summing up that you portrayed the entire 168,000 as an emergency spend; that's how you sold it to the members – agreed?
>
> A: Yes. Yes.
>
> Q: And you therefore accept it was wrong of you not to tell them that some components of the 168,000 had nothing to do with the emergency?
>
> A: In hindsight, yes maybe I should have mentioned.

We do not think this answer in any way indicates that Bernard Chan had deliberately withheld information or had intentionally uttered a falsehood with a view to deceiving the AGM. We would emphasise that the words "maybe I should have" were said in an answer given with the benefit of hindsight. Recognising at the time of the trial that he could have done better in his address to the 2008 AGM is certainly no evidence that he had deliberately withheld information.

80 As regards the issue of third-party endorsements of the NWS, although the Judge found that the Plaintiffs endorsed or permitted a misrepresentation by the Former GM in this respect by failing to correct the wrong impression given, it was clear from the transcript of the discussion that they were relying on the Former GM to ensure the accuracy of the representation. While there is evidence that (i) the Plaintiffs were shown a letter from the Marina Mandarin Hotel stating the MWS, instead of the NWS, was used and that (ii) TWC had informed the Plaintiffs during its presentation that the Club would be the first party to have the NWS in Singapore, there were several months intervening between those events, which occurred in November 2007, and the 2008 AGM in May 2008 and, as such, we accept that such non-crucial information could well have slipped the mind of the average person and had in fact slipped the mind of the Plaintiffs.

81 For the same reason, with respect to the misrepresentation that the NWS does away with the

need for chemical additives, we note that the Plaintiffs were informed at the same TWC presentation that the pool would have to "maintain at least ... 1% chlorine that the [National Environment Agency] requires" even with the NWS installed. While Bernard Chan had claimed at the 2008 AGM that "the big advantage" of the NWS was that "the smell of chlorine and your potentially bleached hair and red skin and all are all done away with", the fact is that the amount of chlorine necessary was indeed reduced. Moreover, all the other chemical additives are indeed no longer needed. In any event, this is hardly a critical matter and he need not have said those things to obtain ratification by the AGM.

82 With respect to the misrepresentation that the NWS provided mineral water to the pools, we have no difficulty in accepting the Plaintiffs' explanation that this was an inadvertent oversight as the second paragraph of Appendix D did state that "... new water technology that would produce *natural water for our pools and mineral water for our Jacuzzis* [emphasis added]", and Bernard Chan had also stated in his address in the Annual Report that the Club is "now the first Club in Singapore to have *clean, natural water in both our pools and mineral water in our Jacuzzis*" [emphasis added]. It should be noted that the Judge herself had concluded that "the overall picture that a member reading item 1 of Appendix D would have had was that *a single system* was purchased which provided the benefits of *natural water for the pools and mineral water for the Jacuzzis*". It would appear that the Judge was actually taking issue with the misrepresentation that a single system was purchased, rather than that of mineral water being provided to the pools.

83 In this regard, we must also allude to one other fact highlighted by Robin Tan and Michael Ho in their evidence, which is that the atmosphere of the 2008 AGM was rather heated where many questions were asked, many members wanted to speak, and the proceedings were running very hurriedly and even they themselves were not conscious that misrepresentations were made. This can be seen from the evidence of Robin Tan, under cross-examination, where he said the following:

> Q: … if a question was asked of the system and the membership was given the wrong facts and you know it was wrong, by not speaking up you would be allowing them to be misled?
>
> A: I disagree with you, because, like I said, it depends on intention, maybe it was mentioned out of mistake, because in an AGM, the committee, the staff are all quite under a lot of pressure, you know, a lot of questions –

The same can be gleaned from the cross-examination of Michael Ho, where he said the following:

> Q: Why didn't you correct the position?
>
> A: It doesn't occur to me that I need to correct.
>
> Q: Let me understand that answer. In other words, you understood or you knew it was inaccurate, but it didn't occur to you to correct it?
>
> A: Your Honour, the meetings runs [sic] – the proceeding runs very fast and there are lots of speakers who want to speak and all that, and even – even listening to it, it might not occur to me that they have made that mistake. Only on hindsight and reading the transcripts I realise oh, yes, they actually mean the different system.

84 Therefore, in our judgment we are satisfied that the Plaintiffs, Bernard Chan, Robin Tan, Nicholas Chong and Michael Ho did not have an intention to misrepresent or a dishonest motive to influence the ratification of the expenditure. As we have mentioned in [66] above, the Defendant admitted that he did not have any basis to say that the Plaintiffs, in particular, Bernard Chan, made

the misrepresentation deliberately with a view to deceiving the members attending the 2008 AGM. This explains why the Defendant fought so hard to urge the Judge to find that the two Statements did not bear the defamatory sense attributed by the Judge to them. Accordingly, we find that the Defendant's defamatory allegation, *ie*, the Plaintiffs had *intentionally* misrepresented to the Club's members *in order to* obtain ratification of the same, is not justified.

Whether the Statements were made on an occasion of qualified privilege and, if so, whether the defence is defeated by malice

85 In the light of our decision above that the Defendant has failed to justify the sting of the two defamatory statements, there is a need for us to consider whether the statements were made on an occasion of qualified privilege and if so, whether the privilege is inapplicable because of malice on the part of the Defendant. The Judge did not have to rule on these points as she had held that the Defendant had succeeded in his defence of justification. We should also add that these issues relating to qualified privilege were also left unaddressed by both parties in their submissions in the present appeals.

86 The nature of the defence of qualified privilege is explained in *Gatley on Libel & Slander* (Patrick Milmo and W V H Rogers eds) (Sweet & Maxwell, 11th Ed, 2008) ("*Gatley*") at para 14.1:

> There are circumstances in which, on grounds of public policy and convenience, less compelling than those which give rise to absolute privilege, a person may yet, without incurring liability for defamation, make statements of fact about another which are defamatory and in fact untrue. These are cases of qualified privilege… For a very long time these cases primarily concerned communications of a "private" nature, commonly arising out of the necessities of some existing relationship between the maker of the statement and the recipient. Protection was granted if the statement was "fairly warranted by the occasion" (that is to say, fell within the scope of the purpose for which the law grants the privilege) and so long as it was not shown by the person defamed that the statement was made with malice, i.e. with some indirect or improper motive, which was typically established by proof that the defendant knew the statement to be untrue, or was recklessly indifferent as to its truth…

87 In deciding whether the First and Second Statements were made on an occasion of qualified privilege, the "ultimate question" is whether they were "fairly warranted by the occasion": *Gatley*, at para 14.9. The court's approach is cogently explained in *Bashford v Information Australia (Newsletters) Pty Ltd* (2004) 204 ALR 193 at [63]:

> …the court must consider all the circumstances and ask whether *this* publisher had a duty to publish or an interest in publishing *this* defamatory communication to *this* recipient. It does not ask whether the communication is for the common convenience and welfare of society. It does not, for example, ask whether it is for the common convenience and welfare of society to report that an employee has a criminal conviction. Instead, it asks whether this publisher had a duty to inform this recipient that the latter's employee had been convicted of a particular offence and whether this recipient had an interest in receiving this information. That will depend on all the circumstances of the case. Depending on those circumstances, for example, there may be no corresponding duty and interest where the conviction occurred many years ago or where it could not possibly affect the employment. [emphasis in original]

In the recent decision of the Privy Council on an appeal from Jamaica in the case of *Seaga v Harper* [2009] 1 AC 1, Lord Carswell (at [5]) put the circumstances under which qualified privilege could arise in these terms:

...[whether] there is a duty, legal, social or moral, or sufficient interest on the part of the [defendant] to communicate [the offending words] to recipients who have a corresponding interest or duty to receive them, even though they may be defamatory...

88 Given that the MC of the Club has a duty to safeguard the interests of the Club and thus a corresponding duty to inform the Club's members of any misrepresentations made to them in order to influence their ratification of an expenditure, it is clear to us that the First and Second Statements were made on an occasion of qualified privilege. The question that remains is whether or not the Defendant was actuated by malice in publishing the First and Second Statements so as to deprive him of the defence of qualified privilege.

89 The law on malice was set out by Lord Diplock in *Horrocks v Lowe* [1975] AC 135 at 149—150:

... It [*ie*, the privilege] *is lost if the occasion which gives rise to it is misused*. For in all cases of qualified privilege there is some special reason of public policy why the law accords immunity from suit-the existence of some public or private duty, whether legal or moral, on the part of the maker of the defamatory statement which justifies his communicating it or of some interest of his own which he is entitled to protect by doing so. *If he uses the occasion for some other reason he loses the protection of the privilege*.

So, the motive with which the defendant on a privileged occasion made a statement defamatory of the plaintiff becomes crucial. The protection might, however, be illusory if the onus lay on him to prove that he was actuated solely by a sense of the relevant duty or desire to protect the relevant interest. So he is entitled to be protected by the privilege unless some other dominant and improper motive on his part is proved. 'Express malice' is the term of art descriptive of such a motive. Broadly speaking, it means malice in the popular sense of a desire to injure the person who is defamed and this is generally the motive which the plaintiff sets out to prove. But to destroy the privilege the desire to injure must be the dominant motive for the defamatory publication; knowledge that it will have that effect is not enough if the defendant is nevertheless acting in accordance with a sense of duty or in bona fide protection of his own legitimate interests.

The motive with which a person published defamatory matter can only be inferred from what he did or said or knew. If it be proved that he did not believe that what he published was true this is generally conclusive evidence of express malice, 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.

...

Even a positive belief in the truth of what is published on a privileged occasion-which is presumed unless the contrary is proved-may not be sufficient to negative express malice if it can be proved that the defendant misused the occasion for some purpose other than that for which the privilege is accorded by the law. The commonest case is where the dominant motive which actuates the defendant is not a desire to perform the relevant duty or to protect the relevant interest, but to give vent to his personal spite or ill will towards the person he defames. If this be proved, then even positive belief in the truth of what is published will not enable the defamer to avail himself of the protection of the privilege to which he would otherwise have been entitled…

[emphasis added]

90 In *Lim Eng Hock Peter v Lin Jian Wei and another and another appeal* [2010] 4 SLR 331, this Court further clarified that malice may be proven in two ways – (i) the defendant's knowledge of falsity, recklessness, or lack of belief in the defamatory statement; and (ii) where the defendant has a genuine or honest belief in the truth of the defamatory statement, but his dominant motive is to injure the defendant or some other improper motive. There, Chief Justice Chan Sek Keong said, at [38],

> *Apropos* the first error, Lord Diplock's statement was made in the context of the defendant having a genuine or honest belief in the truth of what was published on an occasion of qualified privilege. It is only in this context that the question of whether there was a dominant motive to injure the plaintiff becomes relevant. The dominant motive test has no relevance if the defendant has no honest belief in the truth of what he is publishing. The fact that the defendant did not have a dominant motive of injuring the plaintiff did not necessarily mean that the publication of the defamatory statements was not made with malice. The word "malice" is used in a special sense in the law of defamation. If a defendant knows that what he is publishing is false, there is express malice in law. In the other parts of his speech, Lord Diplock referred to other instances of improper motives which would destroy the privilege, such as personal spite or the abuse of the occasion to obtain some private advantage unconnected with the duty or the interest which constitutes the reason for the privilege. In such instances, the defendant would lose the benefit of the privilege *despite his positive belief that what he said or wrote was true*. Where the defendant had no belief that what he published was true or, worse, if he knew that what he published was untrue (as in the present case), it would have been an *a fortiori* case that the protection of the privilege would have been lost. [emphasis in original]

91 In the present case, there is some doubt over whether the Defendant had a genuine or honest belief in the truth of the First and Second Statements. In particular, the Defendant had acknowledged, in his cross-examination, that at the time of the making of the Statements, he had not formed an opinion as to whether or not the Plaintiffs had made the misrepresentations deliberately. At the minimum, this would imply a reckless disregard for the truth. The relevant portions of his cross-examination are as follows:

> [Cross-examination of the Defendant, 16 March 2010]
>
> Q: As of 29 October 2008, Mr Koh, did you have any reason to believe that the representations or inaccuracies that were made at the AGM in 2008 or appendix D or the annual report were done deliberately?
>
> A: *Deliberately? No, I never formed an opinion.*
>
> Q: So, at that point in time, you still did not know whether those representations were innocent or deliberate?
>
> A: Yeah, I didn't form – I didn't come across – I didn't form an opinion of that.
>
> [Cross-examination of the Defendant, 17 March 2010]
>
> Q: – it was, "a case of misrepresentation of facts … to get ratification", did you think the previous MC had done so deliberately?
>
> A: I – I said earlier, the – whether it was deliberate or not, we didn't even think about it. It wasn't –

Court: No, we're talking about you, not "we" any more.

A: Oh, me. It said it – it never crossed my mind whether it was deliberate or not.

…

Court: So you are saying they made false statements.

A: Yes.

Court: One.

A: That's a fact.

Court: Number two, they made false statements in order to get a result; right?

A: Yes.

Court: But they may not have known that those statements were false.

A: They may not have known, yes.

Court: Is that what you are saying?

A: That time, yeah.

Court: That's what you are saying. I'm asking you.

A: *Oh. That's why I say at that time it didn't cross my mind whether they knew or they didn't know, so they may not have known.*

Court: They may not have known?

A: Yes.

[emphasis added]

92 We will now refer to some of the circumstances which indicated motive. First, despite the Defendant's claim that he had not formed an opinion on the issue of whether the Plaintiffs made misrepresentations deliberately at the time of the making of the Statements, he made repeated insinuations of wrong-doing by the Plaintiffs during that period. At the Club's "Thank You and Welcome Dinner" on 1 August 2008, which was even before the discovery of the File, the Defendant made the following remarks about the Plaintiffs' absence from the event in his speech:

> The absence of the outgoing MC members at tonight's function, is unfortunate. *I leave it to you to make your own judgments and draw your own conclusions.* [emphasis added]

These remarks insinuated that there was a sinister reason behind the Plaintiffs' absence, *eg*, that they were guilty of wrong-doing and could not face the Club's members. It is worthy of particular note that the Defendant's speech, including these remarks, was further published in the Club's Splash magazine, posted on the Club's website, and circulated to every member by post together with the monthly statement of accounts. Despite an attempt by Mr Vincent Clement Especkerman, the Marketing and Communications Executive of the Club, to delete these remarks, they were re-instated by the Defendant with slight amendments. It is clear that the Defendant's intention was to put the Plaintiffs in a negative light among the Club's members. We would also note that at that juncture, the Audit Committee, which was charged by the 2008 AGM to look into the expenditure, had yet to make its report.

93 Secondly, very much the same intention may be discerned from the Defendant's statements at the time of the making of the Second Statement. In the minutes of the 26 November 2008 Meeting, the paragraph subsequent to the Second Statement recorded:

> (e) President suggested that the discrepancies discovered by the Treasurer be documented in an addendum to the Special Audit Report to be released to the general membership. *Should there be findings of any irregularities in contract award and payment, the matter ought to be reported to the relevant authorities.* [emphasis added]

The suggestions of "irregularities in contract award and payment" and a possible need for the matter to be "reported to the relevant authorities" insinuated wrong-doing by the Plaintiffs. In the course of cross-examination of the Former Treasurer and of the Defendant, it transpired that the Defendant did in fact file a report to the Corrupt Practices Investigation Bureau against, *inter alia*, the fourth Plaintiff, Michael Ho.

94 Thirdly, notwithstanding that the Audit Committee charged by the 2008 AGM to look into the expenditure had exonerated the Previous MC, the Defendant and the rest of the Current MC were determined to embark on a "witch-hunt" against the Plaintiffs by conducting their own investigations into the expenditure, and repeatedly beseeching the Audit Committee to amend the Audit Report, despite the Audit Committee's repeated refusal to do so. Let us elaborate. In the minutes of the 27 August 2008 MC Meeting, it was reported that the draft Audit Report, which included the finding that the expenditure was within the definition of "emergency", had been distributed to the Current MC, but the Treasurer would be seeking certain clarifications from the Audit Committee. In the minutes of the 10 September 2008 MC Meeting, it was reported that the Treasurer had informed the Chairman of the Audit Committee ("the Chairman") of alleged inconsistencies between the executive summary and the body of the Audit Report and the Chairman had replied that these were not major issues; however, additional documents were to be forwarded to the Audit Committee for further consideration. On 12 September 2008, the Chairman sent an email to the financial controller of the Club, forwarded in turn to the Treasurer, wherein he asserted the genuineness of documents and information looked at as well as the independence of the Audit Committee. On 19 September 2008, the Treasurer sent emails to the Chairman and the financial controller, wherein he clarified that the Current MC was taking issue with the incompleteness, not the genuineness, of documents and information looked at. On 20 September 2008, the Chairman sent an email to the Treasurer and the financial controller, wherein he stood by the accuracy of the Audit Report and accused the Current MC of attempting to influence the Report "for personal interest". On 26 September 2008, the Defendant sent an email to all three members of the Audit Committee to request that they consider new information for inclusion in the Audit Report. On 3 Nov 2008, a meeting was held between the Audit Committee, the Current MC and the financial controller, wherein the Treasurer presented a summary of his new findings and, in response, the chairman of the Audit Committee commented that (i) the Former GM was empowered by the Previous MC to award the contract, (ii) it was not shown that technically NWS was unsuitable for the pools; and (iii) there was no money lost from the alleged issues with cheques. In response to an email request from the Current MC for a written response from the Audit Committee, the Chairman sent an email stating that (i) financial and payment issues raised were best handled by the Treasurer, (ii) an expert or consultant should be engaged to verify the effectiveness of the NWS, (iii) their conclusion that it was an emergency expenditure remained unchanged, and (iv) they did not see a need to amend the Audit Report. On the same day, the Defendant emailed the Chairman, asserting that the latter had missed the point completely in his email and that the Current MC would "decide on what is necessary to provide a general report to the general membership". Subsequently, the Addendum was prepared by the Current MC and presented to the members at the 2009 AGM, despite the Audit Committee's request for three to four months to

conduct further investigation. From this chain of correspondences, it is evident that the Current MC, including the Defendant, had, from the beginning, decided to indict the Plaintiffs of wrong-doing, and was determined to proceed to do so themselves when they failed to persuade the Audit Committee to their position.

95 Fourthly, the Defendant repeatedly attempted to formally censure the Plaintiffs after the Club's members at the 2008 AGM voted not to ratify the expenditure. When a member at the AGM, Mr Mano Subnani, asked whether non-ratification of the expenditure and censure of the Previous MC might be included in the same motion, the Defendant replied: "If the motion is not ratified, then the House will propose the second motion." Therefore, it is clear that the Defendant had intended to move the censure of the Plaintiffs as a consequential motion, even though the censure was not included on the agenda for the 2008 AGM. Indeed, the Defendant was about to propose the censure motion himself after the vote on ratification, as he said: "Next motion … proposed from the MC", when the Rules Chairman, Mr Eric Ng, interjected and suggested that the censure be proposed by the House so that it would "not be seen that it is the current MC seeking a vendetta against the previous MC". Later, Mr Mano Subnani raised the issue that the censure motion might be defective for lack of notice; however, the Defendant decided to go ahead with the vote anyway. As mentioned earlier, this resolution was eventually declared void on 14 October 2009 in a separate action, OS 826/2009, due to the lack of notice. Subsequently, the Defendant promptly worked to have the same censure resolution re-tabled within days in the agenda for the EOGM of 15 November 2009, despite a suggestion by the Plaintiffs and other members to defer the resolution until the conclusion of the present proceedings.

96 For the reasons set out above in [91] to [95], we are satisfied that the Defendant's dominant motive for publishing the Statements was to injure the Plaintiffs, whether out of personal spite or as follow-up actions after having made ratification of the expenditure an election issue during the 2008 AGM. Indeed, there is overwhelming evidence that the Defendant was determined, on the pretext that the expenditure was irregular, to soil the reputation of the Plaintiffs in the eyes of the members of the Club. Therefore the defence of qualified privilege is not available to the Defendant on account of malice.

Conclusion

97 For the reasons given above, we allow the Plaintiffs' appeal in CA210/2010 and dismiss the Defendant's appeal in CA213/2010. There will be judgment for the Plaintiffs for damages and costs. Damages shall be assessed. The Plaintiffs shall have their costs here and below on the standard basis, with the usual consequential orders.

Copyright © Government of Singapore.