IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 142

Suit No 99 of 2014

Between

(1) Qingdao Bohai Construction Group Co., Ltd
(2) Qingjian Group Co., Ltd
(3) Qingjian Realty (South Pacific) Group Pte. Ltd.
(4) Du Bo
(5) Yuan Hong Jun

… *Plaintiffs*

And

(1) Goh Teck Beng
(2) Ng Teck Chuan

… *Defendants*

JUDGMENT

[Tort] — [Conspiracy]
[Tort] — [Defamation] — [Corporate plaintiff] — [Trading or business reputation]
[Tort] — [Defamation] — [Defamatory meaning]
[Tort] — [Defamation] — [Justification]
[Tort] — [Defamation] — [Publication] — [Internet defamation]
[Tort] — [Defamation] — [Publication] — [Print media]

[Tort] — [Defamation] — [Publication] — [Publication in jurisdiction] — [Abuse of process]
[Tort] — [Defamation] — [Reference]

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Qingdao Bohai Construction Group Co, Ltd and others
v
Goh Teck Beng and another

[2016] SGHC 142

High Court — Suit No 99 of 2014
Belinda Ang Saw Ean J
15–18, 22–23, 25, 29–30 September; 1–2, 6–7 October 2015; 17 March 2016

21 July 2016 Judgment reserved.

Belinda Ang Saw Ean J:

Introduction

1 This action concerns defamatory material in the print media and on the Internet. The Internet defamation in the present case involves 12 articles posted on several foreign websites ("the Online Articles"). Separately, two articles with content similar to the Online Articles were published in Taiwan on 29 November 2013 in two newspapers ("the News Articles"). Both liability and damages are in issue.

2 At its forefront, the Internet defamation in the present case underscores the anonymity the Internet provides to the Internet user who generates material and posts them on websites. This represents the "dark side" of Internet anonymity. As observed in Matthew Collins, *The Law of Defamation and the Internet* (Oxford University Press, 3rd Ed, 2010) ("*Collins*") (at para 5.63):

> Internet users can, if they so desire, publish defamatory material to the world at large with little or no risk of being identified or traced. Web-based services enable e-mail accounts to be freely opened in false names or 'noms de web'. Material can be posted anonymously to bulletin boards, forums, or web sites from Internet cafés, where users pay a small fee for access to a computer which cannot be traced back to them. Many companies, particular in the United States, offer web hosting services which enable Internet users to establish and maintain web sites without having to disclose their true names or addresses.
>
> …

3 Any legal measure taken in response to those who knowingly publish false and defamatory information on the Internet, at least for now in Singapore, is confined to the Defamation Act (Cap 75, 2014 Rev Ed) and the common law principles concerning defamation. The element of publication in the law of defamation is bilateral. Consequently, publication in the context of the Internet involves two components. The first component of Internet publication has to do with the identity of the publisher. In the present case, therefore, there must be proof of the identity of the Internet user as well as that of the uploading or posting of the Online Articles, and this has to lead to the defendants. The plaintiffs, however, do not rely on electronic evidence to trace the publication of the Online Articles to the defendants. The absence of such evidence means that the publisher of the Online Articles has not been identified and remains anonymous. Thus, an issue for determination in this judgment is whether the publication element in defamation law can be inferred from the circumstances of the case. This judgment will examine whether, in the absence of direct electronic evidence to prove Internet publication, the plaintiffs have met the requisite civil standard of proof based on predominantly circumstantial evidence. Besides the quality of the circumstantial evidence, an examination of the nature and quality of a so-

called admission by the second defendant, to the effect that the defendants are responsible for posting the Online Articles on the Internet, is required.

4 Posting or uploading material on the Internet alone does not constitute publication for the purpose of Internet defamation. The second component of publication for the purpose of Internet defamation requires proof to the requisite civil standard that the offending material was downloaded from a web server by third party readers in Singapore. There is no presumption that material placed on a generally-accessible website has been published to a substantial number of persons (whether within the jurisdiction or elsewhere). In this case, the plaintiffs have limited their claims to publication of the Online Articles in Singapore. It is common ground that Internet defamation occurs in the jurisdiction where the impugned articles are downloaded and read by a third party. In this sense, publication and jurisdiction are linked and will be examined together.

5 These aspects of the present case are what set it apart from most other local cases where the identity of the Internet user who posts the offending material is not in dispute. Examples include *Lee Hsien Loong v Roy Ngerng Yi Ling* [2014] SGHC 230 and *Attorney-General v Au Wai Pang* [2015] 2 SLR 352 (and the decision on appeal in *Au Wai Pang v Attorney-General* [2016] 1 SLR 992), where the defendants were the owners and writers of the blogs where the offensive articles were posted and indisputably downloaded by a number of third party readers in Singapore.

6 In brief, the main legal issue on liability for defamation in the present case is whether the defendants are responsible for the various defamatory publications in the print media and on the Internet. The defendants deny

publication of the offensive material and, in so far as the Online Articles are concerned, urge the dismissal of the action in accordance with the abuse of process principles enunciated in *Jameel (Yousef) v Dow Jones & Co Inc* [2005] QB 946 ("*Jameel*"). If the defendants' submissions on publication are accepted, they would be dispositive of the whole case. It is only if the question of publication is answered in favour of the plaintiffs that the other elements that make up the tort of defamation – that the publication refers to the plaintiffs and conveys the pleaded defamatory meanings – need to be determined and, after liability is *prima facie* established, the defence of justification and the question of damages arise for consideration. This judgment will adopt the approach outlined.

7 The plaintiffs have filed a separate cause of action in conspiracy, but this is not strenuously pursued. This is not surprising since the outcome of their conspiracy claim is very much dependent on proof of the same facts needed to support the defamation claim.

The parties

8 The first plaintiff, Qingdao Bohai Construction Group Co., Ltd ("P1"), is a company incorporated in the People's Republic of China ("PRC") and was established in 1998 under the name Qingdao Century Decoration Co., Ltd. At all material times, P1 was and is in the business of construction and real estate development.

9 The second plaintiff, Qingjian Group Co., Ltd ("P2"), is a company established in 1952 in the PRC. It was formerly known as Qingdao Construction Group Corporation. At all material times, P2 was and is in the

business of construction, real estate development, capital management, logistics and design consulting. P2 was previously a state-owned enterprise but has since become privatised.

10 The third plaintiff, Qingjian Realty (South Pacific) Group Pte. Ltd. ("P3"), is a company registered in Singapore in 2011. At all material times, P3 was and is in the business of building and construction, and has completed a number of projects in Singapore ranging from residential, civil engineering, commercial and institutional to industrial projects.

11 The fourth plaintiff, Du Bo ("P4"), is a Singapore Permanent Resident who was and is at all material times a director of P1, P2 and P3.

12 The fifth plaintiff, Yuan Hong Jun ("P5"), is a citizen of the PRC who was and is at all material times the Chairman of P1.

13 The first defendant, Goh Teck Beng ("D1"), is a Singapore citizen and is the cousin of the second defendant, Ng Teck Chuan ("D2"), who is also a Singapore citizen.

14 The plaintiffs are represented by Mr Lee Eng Beng *SC* ("Mr Lee"). Mr Quek Mong Hua ("Mr Quek") represented the defendants.

The plaintiffs' pleaded case

15 The plaintiffs' pleaded case is that in or around 2002, P1 and P2 began developing various residential projects in the PRC with HuanYu (Qingdao) Development Co., Ltd ("HuanYu"). HuanYu is a joint venture company originally formed by Grandlink Group Pte Ltd ("Grandlink") and Qingdao

High-tech Industrial Park Economic Development and Investment Company. HuanYu's first director is one Goh Chin Soon ("Goh"), a Singaporean who is the uncle of both D1 and D2. Goh holds indirect shareholding interests in HuanYu through his majority shareholding in Grandlink. Goh remains a director and general manager of HuanYu and the chairman and legal representative of a related entity, HuanYu Marina City (Qingdao) Development Co., Ltd ("HuanYu Marina"). It is further contended that D1 is also a shareholder of Grandlink and a director of HuanYu and HuanYu Marina. In or around 2007, HuanYu and P1 and/or P2 and their respective related entities became embroiled in a number of lawsuits which were commenced against HuanYu and HuanYu Marina (collectively, "the HuanYu Group") in relation to a number of construction projects in the PRC. As of the date of the Statement of Claim (Amendment No. 2), the total debt owed by the HuanYu Group to P1 and P2 and their related and/or affiliated companies (collectively, "the Qingjian Group") was approximately RMB 560 million. The plaintiffs plead that against the backdrop of the bitter legal disputes between the Qingjian Group and the HuanYu Group, D1 and Goh began publishing a number of defamatory articles pertaining to the plaintiffs, which have been posted on a number of websites and online forums. I pause to note at this juncture that according to the defendants' computer forensic expert, Peter James Alfred Moore ("Moore"), the hosting location of these websites and online forums were, at the time of his report, in China, Hong Kong and the United States.[1]

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[1] Peter James Alfred Moore's AEIC, Exhibit PM-1, p 25.

16 As stated, the plaintiffs' first claim is in defamation. It is pleaded that in or around the period 21 to 22 November 2013, Xu Bin, the Chief Executive Officer of P2, had, through searches conducted on a number of search engines, discovered approximately 15,000 search results of online articles which were defamatory of the plaintiffs. Xu Bin subsequently wrote to the websites to ask that the defamatory articles to be taken down. Most of the websites responded by removing and/or deleting the defamatory articles. However, despite these measures, various online articles could still be accessed on the World Wide Web. The present suit concerns a total of 12 online articles (*ie*, the Online Articles) which were posted on various websites and which contain untrue, scurrilous and defamatory statements which disparage the character and/or damage the reputation of the plaintiffs. The title and the search terms used to locate the Online Articles, as well as the website links/URLs at which the Online Articles appear, are set out in the following table:

Article	**Title**	**Search terms used**	**Website links/URLs**
1	"Du Bo, Yuan Hong Jun used two channels and double identities to siphon off state assets"	Not pleaded	<http://bbs.todaytex.com/thread-1728499-1-1.html> <http://club.topsage.com/forum.php?mod=viewthread&action=printable&tid=3433437>
2	"Using Two Paths and Double Identity, Du Bo and Yuan Hongjun Embezzled State-owned Assets"	"Du Bo" and "Yuan Hong Jun"	<http://www.51zhijia.cn/read-htm-tid-1691031.html> <http://www.51zhijia.cn/read-htm-tid-1691438-page-e.html> Similar articles at: <http://www.51zhijia.cn/read-htm-tid-1691803.html> <http://www.51zhijia.cn/read-htm-

			tid-1695489.html> <http://www.51zhijia.cn/read-htm-tid-1695492.html>
3	"Shandong Largest State-owned Asset Embezzlement Case Since Founding"	"Du Bo" and "Yuan Hong Jun"; "Qingdao Bohai" and "Du Bo"	<http://newbbs.0731fdc.com/archiver/?tid-569122.html> <http://newbbs.0731fdc.com/forum.php?mod=viewthread&tid=569122&page=1>
4	"Migrating to Singapore Disclosure of the Story Behind Privatization of State-owned Enterprise and Embezzlement of Hundred Billion Assets"	"Du Bo" and "Yuan Hong Jun"	<http://www.rfic.hk/a/xinjiapoyimin/2013/1205/112645.html>
5	"Disclosure of the Story behind Privatization of State-owned Enterprise and Embezzlement of Hundred Billion Assets!"	"Du Bo" and "Yuan Hong Jun"	<http://76078.qsjiancai.com/>
6	"Using Two Paths and Double Identity, Du Bo and Yuan Hongjun Embezzled State-owned	"Du Bo" and "Yuan Hong Jun"	<http://www.mengjingjz.com/forum.php?mod=viewthread&tid=2723>

	Assets"		
7	"Disclosure of the Story behind Privatization of State-owned Enterprise and Embezzlement of Hundred Billion Assets"	"Du Bo" and "Yuan Hong Jun"	<http://blog.sina.com.cn/s/blog_e95c7f8e0101h4yj.html>
8	"Du Bo Is the Legal Representative of the Newly Structured Qingjian Group Co., Ltd"	"Qingdao Bohai Construction Group Co., Ltd" and "Du Bo"; "Qingdao Bohai" and "Du Bo"	<http://www.rfic.hk/a/xinjiapoyimintiaojian/20131219/117755.html>
9	"Shandong Largest State-owned Asset Embezzlement Case since Founding of the Country"	"Qingdao Bohai Construction Group Co., Ltd" and "Du Bo"	<http://www.0565lj.com/read.php?tid-50701.html> Similar articles at: <http://www.0565lj.com/read.php?tid-50704.html> <http://www.0565lj.com/read.php?tid-50706.html> <http://www.0565lj.com/read.php?tid-51424.html> <http://www.0565lj.com/read.php?tid-51428.html>
10	"Shandong Largest State-owned Asset Embezzlement Case since Founding of	"Qingdao Bohai Construction Group Co., Ltd" and	<http://www.letsebuy.com/thread-1311951-1-1.html>

	the Country"	"Yuan Hong Jun"	
11	"Disclosure of the Story of Privatization of State-owned Enterprise and Embezzlement of Hundred Billion Assets"	"Qingdao Bohai" and "Du Bo"	<http://740594.fanqieleyuan.com/>
12	"Disclosure of the Story behind Privatization of State-owned Enterprise and Embezzlement of Hundred Billion Assets!"	"Qingdao Bohai" and "Yuan Hong Jun"	<http://www.0565lj.com/m/index.php?a=read&tid=50704>

17 At the time of the filing of the Statement of Claim (Amendment No. 2), Articles 2, 3, 4, 5, 7, 8, 9, 10, 11 and 12 remained accessible, while Articles 1 and 6 were no longer accessible. A number of the Online Articles (*viz*, Articles 1, 2, 3, 4, 7, 9, 10, 11 and 12) were published in the name of D2. I pause here to note that by the time of Moore's report, fewer articles were accessible.[2]

18 The plaintiffs plead that:

(a) various statements in Articles 1, 3, 9 and 10 are defamatory of all five plaintiffs;

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[2] Peter James Alfred Moore's AEIC, Exhibit PM-1, para 27.

(b) various statements in Article 2 are defamatory of P1, P2, P4 and P5; and

(c) various statements in Articles 4, 5, 7, 8, 11 and 12 are defamatory of all five plaintiffs.

19 The plaintiffs further plead that pursuant to and in furtherance of D1 and D2 acting jointly or severally, the defamatory words in the Online Articles were transmitted and/or caused to be transmitted and published by D1 and D2 and/or published by agents procured by D1 and/or D2 on the World Wide Web. Furthermore, D1 and D2 knew and intended that the Online Articles would be republished and/or that such republication was the natural and probable consequence of D1 and D2's publication of the Online Articles on the World Wide Web.

20 The plaintiffs plead that by reason of the publication of the Online Articles, the plaintiffs have had their reputation lowered in the estimation of right thinking members of the public. As for the alleged defamatory meanings of the Online Articles, they are described in the pleadings and are set out in Annex B of this judgment. For a quick appreciation of the defamatory meanings, it is useful to refer to paragraph 7 of the plaintiffs' closing submissions which reads as follows:

> … the offending articles allege explicitly various acts of criminal and unlawful conduct, corruption, abuse of position and dishonesty on the part of [P4 and P5]. They also allege that [P1, P2 and P3] have been mismanaged or manipulated by [P4 and P5], or that they have had their assets misappropriated or misused by [P4 and P5]. They further allege that [P1, P2 and P3] have been used by [P4 and P5] to implement a grand elaborate scheme of misappropriating state-owned assets.

21 Separately, two newspaper articles (*ie*, the News Articles) with content similar to the Online Articles were published in Taiwan on 29 November 2013 in two newspapers. The News Articles were sent by courier to United Overseas Bank Limited ("UOB Bank") on or about 23 December 2013 and to Oversea-Chinese Banking Corporation Bank ("OCBC Bank") in or around end-December 2013. The plaintiffs plead that it is probable that the News Articles were sent to UOB Bank and OCBC Bank by D1 and/or D2 jointly or severally, or that either or both the defendants had procured a third party to do so.

22 In addition to their claim in defamation, the plaintiffs also bring two alternative claims in conspiracy. In their claim for conspiracy by unlawful means, the plaintiffs plead that D1 and D2 had wrongfully, dishonestly and with intent to injure all or some of the plaintiffs by unlawful means, conspired and combined together to defame the plaintiffs. In their claim for conspiracy by lawful means, the plaintiffs plead that D1 and D2 had conspired and combined together wrongfully and with the sole or predominant intention of injuring the plaintiffs and/or causing loss to the plaintiffs by damaging or destroying the reputation and business interests of the plaintiffs.

23 I pause at this juncture to mention that the plaintiffs' closing submissions and evidence make reference to other online articles on 38 unique websites containing content similar to the Online Articles. Significantly, though, this is not precisely pleaded and, for this reason, I shall say no more about these 38 articles.

The defendants' pleaded case

24 The defendants deny that they published the News Articles and the Online Articles. They plead that in or around October/November 2013, D1 had submitted an online report to the Central Commission for Discipline Inspection of the Communist Party of the PRC ("CCDI") through the official website of the CCDI. The CCDI is the body within the PRC government charged with rooting out corruption and malfeasance among party cadres. D1 had, with the prior consent of D2, used D2's name and NRIC number in the online report ("the CCDI report"). This was because D1 travelled frequently to the PRC and was concerned for his personal safety. The CCDI report concerned the conduct of P2, its group of related companies, and P4 and P5 generally, but did not contain all the details alleged in the Online Articles. D1 does not have a copy of the CCDI report as it had been submitted online directly through the CCDI website.

25 In addition, the defendants deny that the Online Articles had been published in Singapore. The defendants' other denial relates to the plaintiffs' plea that various statements in Articles 1, 3, 9 and 10 as well as Articles 4, 5, 7, 8, 11 and 12 were defamatory of, and had referred to, P3. (Article 2 is not averred to in the pleadings to be defamatory of P3, while Article 6 was no longer accessible at the time of the Statement of Claim (Amendment No. 2) (see [31] below).) Furthermore, the defendants deny that the Online Articles contained statements that meant and/or were understood to bear and/or were capable of bearing the meanings pleaded by the plaintiffs, or any defamatory meaning.

26 The defendants plead that if and in so far as the statements in the Online Articles meant and/or were understood to bear the meanings pleaded by the plaintiffs, they were true in substance and in fact. In this regard, relying on the defence of justification, the defendants plead that P4 and P5 had deliberately and systematically misappropriated the state-owned assets of P2 through various complicated schemes and a web of companies including: (a) P1 and P2; (b) Shandong Haiwei Real Estate Co., Ltd. ("Shandong Haiwei") and Shanghai Heliyuan Investment Co., Ltd. ("Shanghai Heliyuan"); and (c) Guoqing Holdings Group Co., Ltd. ("Guoqing").

27 As for the News Articles, the defendants deny that they had jointly or severally sent the News Articles to UOB Bank or OCBC Bank, or had procured a third party to do so. They plead that the contents of the News Articles are not similar to the Online Articles published in the name of D2.

28 Finally, the defendants deny that there was any conspiracy as pleaded by the plaintiffs.

The parties' agreement

29 Following the close of the trial, parties reached an agreement on a number of points concerning the Online Articles and the News Articles.

30 With regard to the Online Articles, the plaintiffs and defendants agreed that they shall be grouped into the following three categories, and that the contents and meaning of the articles within each category shall be deemed to be the same:

Category	Articles
A	Articles 1, 3, 9 and 10 (with Article 1 being the representative article)
B	Article 2
C	Articles 4, 5, 7, 8, 11 and 12 (with Article 4 being the representative article)

31 So as not to unduly lengthen this judgment, I have annexed the substantive portions of the plaintiffs' English translation of Articles 1, 2 and 4 as Annex A to this judgment. I note that Article 6 was not within the scope of the parties' agreement, and this was probably because Article 6 was no longer accessible and its precise contents could not be retrieved. Indeed, there is no substantive content to Article 6 in the parties' Agreed Bundle.[3] There is only a message that states "Sorry, this topic does not exist or has been removed or is being assessed". I also note that the plaintiffs' claim concerning Article 6 is based on an extract of Article 6 which remains visible from a Google search and which appears to be replicated from Article 2.

32 As regards the News Articles, the plaintiffs and defendants agreed that they shall be deemed to bear the same meaning as the articles in Categories A and C.

33 In addition, the plaintiffs and defendants also agreed on the following:

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[3] AB186.

(a) that the Online Articles and the News Articles shall be deemed to refer to P1 and P2; and

(b) that the Online Articles and the News Articles shall be deemed to refer to, and be defamatory of, P4 and P5.

The defendants in their closing submissions argue that the concession in (b) applies to only some but not every defamatory meaning pleaded by the plaintiffs. As I see it, this reservation does not assist the defendants.

Law of defamation: relevant principles

34 There are three requirements that the plaintiffs have to prove to establish the defendants' liability for defamation: (a) the defendants must have published the material to a third party; (b) the material must refer to the plaintiffs; and (c) the material must be defamatory of the plaintiffs (Gary Chan Kok Yew, *The Law of Torts in Singapore* (Academy Publishing, 2nd Ed, 2016) ("*Gary Chan*") at para 12.010; *Gatley on Libel and Slander* (Alastair Mullis & Richard Parkes eds) (Sweet & Maxwell, 12th Ed, 2013) ("*Gatley*") at para 6.1). If all the three requirements are proved to the requisite standard of proof (*ie*, the balance of probabilities), the defendants may then raise one or more defences, including the defence of justification, to defeat the plaintiffs' *prima facie* cause of action in defamation (*Gary Chan* at para 13.001).

35 The main issue with the Online Articles as well as the News Articles in the present case is the publication element in the law of defamation. Generally, in order to prove that the defendant published the offending material, the plaintiff must establish that the defendant has, by any act, conveyed or communicated the material to at least one other person who has received it. As

can be seen from the legal meaning here, publication for the purposes of the law of defamation is bilateral in nature. In *Golden Season Pte Ltd and others v Kairos Singapore Holdings Pte Ltd and another* [2015] 2 SLR 751, the High Court cited (at [54]) *Dow Jones & Company Inc v Gutnick* (2002) 201 CLR 575 ("*Gutnick*") (at [26]) for the proposition that publication is a bilateral act. Therefore, publication has two components: (a) an act that makes the defamatory material available to a third party in a comprehensible form ("the first component"); and (b) the receipt of the information by a third party in such a way that it is understood ("the second component") (*Wayne Crookes and West Coast Title Search Ltd. v Jon Newton* [2011] 3 SCR 269 at [55]). As the plaintiffs have brought the present suit in Singapore, it is also necessary for the publication to have occurred within Singapore (Doris Chia & Rueben Mathiavaranam, *Evans on Defamation in Singapore and Malaysia* (LexisNexis, 3rd Ed, 2008) ("*Evans*") at p 59).

36 To satisfy the requirements of the first component of publication in the context of Internet defamation, the plaintiff must establish, on the balance of probabilities, that the defendant as the Internet user had uploaded or posted the material on the Internet. In this sense, by uploading or posting the material on the Internet, the defendant had made the offending material available to a third party. This is the first component of publication.

37 However, uploading or posting the material on the Internet alone is not publication for the purpose of the law of defamation. As observed in *Collins* (at para 5.04):

> …
>
> Where, however, an e-mail message has not been read by any person other than its author and the defamed person, *or a*

> *web page, although technically accessible, has not been visited by any person other than its author and the defamed person*, then publication will not have occurred ...
>
> …
>
> [emphasis added]

38 This leads me to the second component of publication, which requires the plaintiff to establish, on the balance of probabilities, that a third party reader downloaded the material in Singapore. As noted in *Collins* (at para 5.05):

> The claimant bears the burden of establishing publication. That burden can be discharged ***directly***, by proving that *at least one person, other than the claimant, saw, read, or heard the communication*. In appropriate cases it may also be proved ***indirectly***, by an inference that publication must have occurred. There is, however, *no presumption of law that matter appearing on the Internet has been published. There must be a substratum of fact to support an inference of publication*. It is not sufficient for the purposes of proving publication for a claimant simply to allege that defamatory matter was posted on the Internet and was accessible in the jurisdiction of the court. [emphasis added in italics and bold italics]

39 In *Ng Koo Kay Benedict and another v Zim Integrated Shipping Services Ltd* [2010] 2 SLR 860 ("*Benedict Ng*"), the High Court cited (at [26]) two cases – one from Australia and the other from England – on Internet publication for the purpose of defamation law. The cases are *Gutnick* and *Godfrey v Demon Internet Ltd* [2001] QB 201. As explained by Gleeson CJ, McHugh, Gummow and Hayne JJ in *Gutnick* (at [44]):

> In defamation, the same considerations that require rejection of locating the tort by reference only to the publisher's conduct, lead to the conclusion that, ordinarily, defamation is to be located at the place where the damage to reputation occurs. Ordinarily that will be where the material which is alleged to be defamatory is available in comprehensible form assuming, of course, that the person defamed has in that

> place a reputation which is thereby damaged. It is only when the material is in comprehensible form that the damage to reputation is done and it is damage to reputation which is the principal focus of defamation, not any quality of the defendant's conduct. *In the case of material on the World Wide Web, it is not available in comprehensible form until downloaded on to the computer of a person who has used a web browser to pull the material from the web server. It is where that person downloads the material that the damage to reputation may be done. Ordinarily then, that will be the place where the tort of defamation is committed.* [emphasis added]

40 In *Al Amoudi v Brisard and another* [2007] 1 WLR 113 (cited with approval in *Benedict Ng* at [27] and *Zhu Yong Zhen v AIA Singapore Pte Ltd and another* [2013] 2 SLR 478 at [44]), the English High Court held (at [32]–[37]) that following the general rule of publication, there was no presumption of law that there had been substantial publication and the plaintiff bore the burden of proving that the material in question had been accessed and downloaded.

41 To summarise, publication on the Internet can be proved either directly or indirectly. There is no presumption of law that material appearing on the Internet has been published, and it is therefore insufficient for a plaintiff to simply allege that the defamatory material was posted on the Internet and was accessible in Singapore. The second component of the element of publication has to be satisfied.

The News Articles

42 I propose to first deal with the News Articles as this is a discrete point that can be disposed of fairly quickly. The plaintiffs' claim as regards the News Articles does not pertain to the publication of the News Articles *per se,* since these were published in Taiwan. Rather, the plaintiffs' claim appears to

be that it was D1 and/or D2 who had republished the News Articles by having couriered them to UOB Bank and OCBC Bank. In their closing submissions, the plaintiffs also refer to the News Articles having been sent to the Bank of China and one Xu Zhengpeng's evidence to this effect. But this allegation is not pleaded in the Statement of Claim (Amendment No. 2) and, for this reason alone, I do not have to consider it.

43 Generally, liability for defamation may arise when the defendant deliberately draws the attention of others to an existing libel (*Gatley* at para 6.12). Thus, to succeed in their claim, the plaintiffs have to show that the defendants are responsible for drawing the attention of UOB Bank and OCBC Bank to the News Articles. No evidence has been adduced as to how the News Articles got to OCBC Bank. There is only one courier slip before this court. The plaintiffs argue that the courier slip in question is evidence of publication to UOB Bank. They claim that: (a) the News Articles were sent to UOB Bank in Singapore on or about 23 December 2013; and (b) the courier slip was marked for the attention of one Mr Willie Cheng, a member of UOB Bank's senior management. The plaintiffs rely on *Gatley* (at para 6.22) for the proposition that evidence that a libellous letter was sent through post constitutes *prima facie* evidence of publication to the person the letter was addressed to.

44 In my view, this proposition does not assist the plaintiffs on the facts of this case. The proposition being relied upon by the plaintiffs is related to the second component of publication, namely, that a third party received and understood the defamatory information. More to the point, the plaintiffs have to prove that the defendants were the ones responsible for engaging the courier

to despatch the News Articles to UOB Bank and OCBC Bank. In this regard, there is little or no direct evidence to support the element of publication of the News Articles to UOB Bank and OCBC Bank, and I so find.

45 I now turn to what purports to be circumstantial evidence relied upon by the plaintiffs. In the plaintiffs' Statement of Claim (Amendment No. 2), it stated that it was probable that the News Articles were sent by D1 and/or D2 jointly or severally, or that either or both the defendants had procured a third party to send the News Articles to UOB Bank and OCBC Bank, given:

(a) the fact that the content of the News Articles was similar to the Online Articles published in the name of D2;

(b) the proximity of dates between the sending of the News Articles with the issue of a court notice to the local authorities in the PRC, the publication of the Online Articles and an encounter with D2 on 17 December 2013; and

(c) the use of fictitious contact details in the courier slip in relation to the News Articles sent to UOB Bank, which shows that the sender(s) had an ulterior motive in disguising their true identity.

46 The matters outlined in (a) to (c) are assertions or arguments, unless there are facts in evidence upon which an inference of publication by the defendants can be drawn. In other words, it will not suffice to merely plead the matters in (a) to (c) as they would be no more than bare assertions. There must be some evidence to support the matters in (a) to (c) and from which an inference can be drawn in relation to the element of publication by the defendants. With regard to (a), it is noteworthy that the plaintiffs' claim

concerning the News Articles is not about the defendants' involvement in the publication of the News Articles *per se*. Without this "link", the association that the plaintiffs seek to derive from the alleged similarities between the News Articles and Online Articles, in order to infer that the defendants are responsible for sending the News Articles to UOB Bank and OCBC Bank, is somewhat tenuous. As regards (b), the reference to the "court notice" in the pleadings is not clear; it does not give particulars of the court notice in question. Moreover, whether the Affidavits of Evidence-in-Chief ("AEICs") filed by P4 and Xu Bin respectively support this averment is unclear as they do not identify the particular court notice averred to in the Statement of Claim (Amendment No. 2). References in the affidavits to various court notices add to the difficulty. Equally, the encounter with D2 on 17 December 2013 (which is elaborated on below) adds nothing to the alleged "proximity" of date argument. The date of the encounter is a neutral factor; it happened to be the date chosen by the plaintiffs' representatives to visit D2. As for (c), I have already commented on the limited evidential value of the courier slip *vis-à-vis* the element of publication in the law of defamation. On a separate point, I note on the courier slip the sender's name as "Li Li", with the telephone number "13225969406" and the address "No. 6 Mei Ling Road Qing Dao".[4] Fictitious or otherwise, this goes nowhere in suggesting that it was the defendants who are responsible for sending the News Articles to UOB Bank.

Online Articles

47 I will now deal with the claim in respect of the Online Articles. I have already covered the three legal requirements that the plaintiffs have to prove to

[4] Xu Bin's AEIC, p 792.

establish liability for defamation (see [34]–[41] above). The main issue in dispute is the element of publication in the law of defamation.

Relevant principles on corporate plaintiff

48 Before proceeding further, however, a preliminary point should be dealt with. This concerns the fact that P1, P2 and P3 are corporations and not natural persons. In this regard, the defendants referred to *Jameel (Mohammed) and another v Wall Street Journal Europe Sprl* [2007] 1 AC 359 ("*Wall Street Journal*") and *Atlantis World Group of Companies NV and another v Gruppo Editoriale L'Espresso SPA* [2008] EWHC 1323 (QB) ("*Atlantis*") for the proposition that a corporation must prove that it had a reputation in the jurisdiction at the time of publication as a prerequisite for pursuing a libel claim.

49 The defendants accept that there is sufficient evidence that P2 and P3 had the requisite reputation in Singapore, but contend that P1 has failed to prove that it had any reputation in Singapore at the material time (which, in my view, clearly refers to the time of publication). On the other hand, the plaintiffs plead that P1 is the sole shareholder of Welltech Construction Pte Ltd ("Welltech"), a construction company in Singapore. As the holding company of a Singaporean subsidiary, P1 would admittedly have had some indirect connection to this jurisdiction. However, no authority has been cited by the plaintiffs to support the proposition that a connection to this jurisdiction *via* a wholly-owned Singaporean subsidiary is probative of the existence of a trading or business reputation in Singapore.

50 It is trite that a corporate plaintiff in defamation actions cannot be injured in its feelings, and that it can only be "injured in its pocket" (*Basil Anthony Herman v Premier Security Co-operative Ltd and others* [2010] 3 SLR 110 at [65]; *ATU and others v ATY* [2015] 4 SLR 1159 at [28], both citing *Rubber Improvement Ltd. and Another v Daily Telegraph Ltd.* [1964] AC 234 at 262). Unlike individuals, a corporate plaintiff is *not* presumed to have a reputation; it must prove that it has a reputation that is capable of being injured by the alleged libel.

51 Thus, when it comes to damages, there is a threshold question of whether the corporate plaintiff had a trading or business reputation within the jurisdiction, at the material time of the alleged publication, to entitle it to an award of damages for libel (*Wall Street Journal* at [93]–[96]; *Atlantis* at [42]–[50]). This threshold question is a question of fact to be established by evidence (*Atlantis* at [49]).

52 *Gatley*'s comments (at para 8.16) on the right of trading corporations to sue in defamation actions are instructive:

> A trading corporation or company "has a trading character, the defamation of which may ruin it". … Accordingly it may maintain an action of libel or slander for any words which have a tendency to damage it in the way of its business and it is not necessary for it to prove any special damage. … Although a company cannot be injured in its feelings, only in its pocket, and an injury must sound in money, the injury need not be confined to accrued loss of income, for the company's goodwill may be injured. …

53 As pleaded, P1's connection with Singapore is through its wholly-owned subsidiary, Welltech. As the parent company of a Singaporean subsidiary, would P1 have the requisite trading or business reputation in this

jurisdiction to entitle it to an award of damages? From a survey of the case law on this issue, it would seem that this highly depends on the specific facts and circumstances in each case. However it seems that, *prima facie*, being a parent company of a subsidiary in the relevant jurisdiction would not, in itself, give rise to the requisite reputation to pass the threshold requirement.

54 In *Atlantis*, the first plaintiff was a Netherlands Antilles company which brought a libel action with reference to an article published and circulated in England and Wales which was alleged to refer to it. The first plaintiff's claim was dismissed as it had failed to show on the evidence that it had a trading or business reputation in the country at the date of publication. Sir Charles Grey held (at [49]) that it was *not fatal* to the first plaintiff's claim that it did not trade and had never traded in the jurisdiction. However, it had to be shown that the first plaintiff had a trading or business reputation in the country at the date of publication. Based on the evidence led, the connection with the jurisdiction was "non-existent or at least exceedingly tenuous". No actual or intended clients or investors or competitors were called to give such evidence.

55 Similarly, a corporate plaintiff's claim was dismissed in *Multigroup Bulgaria Holding AD v Oxford Analytica Ltd* [2001] EMLR 28 ("*Multigroup*") on the basis that it had failed to show a pre-existing reputation within the jurisdiction. The plaintiff was a Bulgarian company which brought proceedings for libel in respect of two briefs published by the first defendant that contained various allegations of corruption on the part of the plaintiff's subsidiaries with presence in capitals like London, Paris, New York and Zurich. The Bulgarian company was an intermediate holding company in the

Multigroup conglomerate. Eady J dismissed the action on the basis that the plaintiff did not have the requisite reputation in the relevant four jurisdictions. He referred (at [28]) to Lord Keith's holding in *Derbyshire County Council v Times Newspapers Ltd. and Others* [1993] AC 534 (at 547) that "a trading corporation is entitled to sue in respect of defamatory matters which can be seen as having a tendency to damage *it* in the way of *its* business" [emphasis added]. It was held in *Multigroup* (at [34]) that a mere holding company cannot recover in respect of allegations about how subsidiaries conduct their businesses. The highly factual nature of the inquiry was highlighted (at [37]) when it was noted that no particular evidence had been adduced to demonstrate that any one person within the four jurisdictions would have known of the plaintiff's existence as one of the intermediate holding companies within the Multigroup conglomerate. Without further evidence of readers of the publication drawing any links between the conglomerate and the subsidiaries, any "inferential reference or damage" to the holding company because of "ostensible injury" to a subsidiary's reputation was also rejected (at [38]). More importantly, it was noted that there was no evidence adduced to link the holding company's activities to any of the jurisdictions in issue. Factually, the subsidiaries of the Bulgarian holding company had "distinct names and trading identities which reflect[ed] their different commercial activities" (at [40]). This was contrasted with the facts in the case of *Helen Marie Steel and David Morris v McDonald's Corporation and McDonald's Restaurants Ltd* (unreported, EWCA, Pill and May LJJ and Keene J, 31 March 1999) ("*McDonald's*").

56 In *McDonald's*, a case referred to by the defendants, a United States ("US") parent company was able to prove a reputation in England where

business was carried out through a local subsidiary under the McDonald's brand. Both the American ultimate holding company, McDonald's Corporation, and the local subsidiary, McDonald's Restaurants Ltd, had brought libel claims in respect of a six-page leaflet referring to "McDonald's" which was circulated in England. The English Court of Appeal held that a foreign parent company and its subsidiary may each have a distinct reputation and a distinct goodwill within a jurisdiction in which the subsidiary carries on day-to-day business. As McDonald's was generally a well-known name, the use of and reference to "McDonald's" in the English jurisdiction was held by the court to "import to the ordinary reader both the [US] corporation and (if they are different) whatever company runs the local restaurants". Thus, both the US parent company and the local subsidiary were held to have related but distinct reputations in the jurisdiction.

57 However, in the New South Wales Supreme Court case of *Palace Films Pty Ltd v Fairfax Media Publications Pty Ltd* [2012] NSWSC 1136 ("*Palace*"), a local shelf company, despite sharing the name of a business conducted by another company within the same corporate group, was held to be unable to bring a defamation suit to protect the business interest of the other company. Thus, *Palace* underscores the legal proposition that the reputations of different companies are distinct, even when the companies sharing the same trading names are within the same corporate group in the same jurisdiction. Thus, *Gatley* makes the point (at note 82 to para 8.16) that:

> … Where several companies together form a group of companies with very similar names or where there is a holding company and several subsidiaries which share similar names, *identifying which company or companies should bring the claim is important* because unless the defamatory imputation reflects upon the company which brings the claim no action will lie … [emphasis added]

58 In a similar vein, the authors of Brian Neill *et al*, *Duncan and Neill on Defamation* (LexisNexis, 3rd Ed, 2009) express the same proposition (at para 10.02):

> A trading corporation or company may bring an action for defamation in respect of the publication of defamatory matter which affects its business or trading reputation. … A corporation, unlike an individual, is *required to establish that it has a reputation in this jurisdiction as a prerequisite* to pursuing a libel claim. … Where the publication relates to a business with a complex corporate structure care should be taken to bring the claim in the name of a company which (1) would be identified by reasonable readers as the subject of the allegations and (2) is apt to suffer damage to *its own* trading reputation as a result of the publication. [emphasis added]

59 Clearly, the inquiry in establishing the requisite reputation in the local jurisdiction is highly factual and has to be proven with evidence by the foreign corporate plaintiff on a balance of probabilities. From the survey of the cases above, the following non-exhaustive considerations would seem to be relevant as evidence of such requisite reputation:

(a) the evidence of actual or intended clients, investors or competitors (*Atlantis* at [49]);

(b) knowledge of the existence of the foreign corporate plaintiff in the jurisdiction (*Multigroup* at [37]);

(c) presence of international brand recognition in the jurisdiction (*McDonald's*);

(d) similarity of commercial activity and trading identity with related company in the jurisdiction (*Multigroup* at [40], *cf McDonald's* and *Palace* at [36]–[37]); and

(e) the extent of management role by the foreign corporate plaintiff in the related company in the jurisdiction, as opposed to merely owning shares in them, for the alleged publication to be able to have damaged the plaintiff in the eyes of investors in the jurisdiction (*Multigroup* at [31]–[32]).

60 Thus, P1 has to prove in other ways that it had a pre-existing trading or business reputation in Singapore at the time of the publication. *McDonald's* is distinguishable on the facts. In the present case, there is no common brand name to speak of. P1 is a construction company in Qingdao, PRC, and it has not persuaded this court that it has an international reputation. Although P1 and Welltech are in the same industry, Welltech does not use the "Qingdao Bohai" trading name and identity. P1 and Welltech, as separate legal entitles, have distinct and separate reputations. For P1 to have a reputation within the jurisdiction through Welltech, more than this tenuous connection would have to be established on a balance of probabilities. In short, P1 is unable to show that it had a trading or business reputation within the jurisdiction at the time of publication and its claim against the defendants fails on this basis.

Issue of publication: Did the defendants publish the Online Articles?

61 I now come to the main issue in dispute. The defendants deny publishing the Online Articles. On the other hand, the plaintiffs' contention, as I understand it, is that the defendants published or caused to be published, on the Internet and to a substantial number of readers in this jurisdiction, the Online Articles. The reference to "substantial" is taken to mean a sufficient number to justify judgment for damages. It is understood that this formulation is adopted to counter the defendants' argument that this is a suitable case for

the claim to be classified as one of nominal publication, and which should be dismissed in accordance with the *Jameel* doctrine.

62 In the case of Internet defamation, the plaintiffs bear the burden of proving that the Online Articles were uploaded or posted by the defendants (*ie,* the first component of the element of publication) and that the Online Articles were accessed and downloaded by third party readers in Singapore (*ie*, the second component of the element of publication). It is well known that some facts are capable of direct proof, whereas others may be properly proved by inference from circumstantial evidence.

Moore's expert report

63 Before proceeding further, I set out a summary of the key points in Moore's report dated 24 July 2015. In this report, Moore provided his expert opinion on, *inter alia*, whether it could be established that the defendants were the authors of the Online Articles and whether it could be established that the defendants were the persons who posted the Online Articles on the Internet. I note that Moore's definition of "Online Articles" refers to more than just Articles 1 to 12. To the extent that his definition includes Articles 1 to 12, however, this difference in definition is largely inconsequential. I also note that Moore's report had stated that Articles 1 to 12 were made up of 24 website links or URLs, when there were only 22 of these set out in the Statement of Claim (Amendment No. 2). Once again, however, as these 24 website links or URLs included the 22 which were pleaded, this is largely of little significance.

64 The Online Articles were hosted on 19 domains or websites. Of these, four were blogs, 11 were forums, one was a website and three were categorised as "unknown" as they were not accessible. A user account was required to post a message on a forum or a blog.[5] Moore had attempted to create user accounts on the forums and blogs, and had managed to do so on eight of the 11 forums and one of the four blogs.

65 For the forums, the mandatory fields during the user account creation process comprised a username (which did not have to be a real name), a password, an e-mail address (which generally had to be real) and a verification code. Some forums also required other additional information. As for the blog for which Moore had managed to create a user account, this required a registered account in order to comment on a post/article. A PRC mobile phone number was required to complete registration. For international users, an e-mail address was required for registration. Other blogs did not have a comment function and did not have a user registration page.

66 An important part of Moore's report relates to the anonymity of the Internet user, and it reads as follows:[6]

> We noted that ***any Internet user can register and sign up for an account on the forums/blogs***. During the account creation process a user *will not be asked to provide details about themselves or to confirm their identity.* The account name chosen by the user is an alias, a pretend name by which they are known on the forum or blog. [emphasis added in italics and bold italics]

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[5] Peter James Alfred Moore's AEIC, Exhibit PM-1, para 40.

[6] Peter James Alfred Moore's AEIC, Exhibit PM-1, para 50.

67 Moore concluded that the plaintiffs' allegations that the defendants authored and/or posted the Online Articles on the Internet cannot be established. In particular:[7]

(a) The forums, blogs and websites containing the Online Articles were hosted in China, Hong Kong and the United States. The creation of a user account was required to post an Online Article on each forum and blog.

(b) Potentially, any Internet user could set up a user account on each of the forums and blogs.

(c) The user account creation process did not require confirmation of a user's identity.

(d) The user accounts identified as having published the Online Articles were created by unknown individual(s), and therefore the author(s) of the Online Articles were unknown.

(e) The sign-offs found in some of the Online Articles, which state the name, NRIC number and alleged e-mail address of D2, do not necessarily identify D2 as having authored and/or posted the said Online Articles (see [100] below).

(f) Further electronic evidence was needed to trace the source and determine the authorship of the Online Articles.

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[7] Peter James Alfred Moore's AEIC, Exhibit PM-1, para 86.

(g) To date, the plaintiffs had not provided any electronic evidence to demonstrate that the defendants were the authors or source of the Online Articles.

68 Aside from the above, there are also other sections in Moore's report which are relevant to the present case. I will refer to these at the appropriate junctures in this judgment.

The first component of publication

69 It is not disputed that the plaintiffs have not adduced any electronic evidence to establish that the defendants were the publishers who had posted or caused to be posted on the Internet the Online Articles so as to make the Online Articles available to a third party in a comprehensible form. The cogency of electronic evidence in identifying the Internet user who posted the offending material can be gleaned from the cases dealing with the kind of evidence required to establish the responsibility of the defendant.

70 In *Takenaka (UK) Ltd and another v Frankl* (unreported, EWHC (QB), Alliott J, 11 October 2000) ("*Takenaka*"), the issue before the court was whether the plaintiffs had proved that the defendant was the real author and publisher of defamatory e-mails sent over the pseudonymous signature "Christina Realtor". In finding against the defendant, Alliott J relied on the reports of an expert who had conducted a forensic examination and analysis of the laptop computer which the e-mails were traced to. This examination and analysis revealed evidence of the laptop computer's use during the relevant period, and the expert concluded that, on the balance of probabilities, the

defendant was the perpetrator. Indeed, the balance of probabilities had "been reached and exceeded by the evidence recovered from the laptop computer".

71 In *Vaquero Energy Ltd. v Weir* [2006] 5 WWR 176 ("*Vaquero*"), defamatory messages were posted in a chat room, first by "napo9" and, subsequently, by "alec6". The IP addresses for both napo9 and alec6 had undergone change, but the later IP address for alec6 was traced to the defendant's laptop computer. The other IP addresses were traced to a router which hosted several companies, one of which was a company which the defendant shared office space with. Kent J found that all of the postings were done by the defendant: there was no doubt that most of the alec6 postings had come from the defendant's computer and it was clear that those were of the same type and style of the napo9 postings (at [13]).

72 In *Applause Store Productions Ltd and another v Raphael* [2008] EWHC 1781 (QB) ("*Applause Store*"), the plaintiffs were one Mathew Firsht and his company, Applause Store Productions Ltd. On 19 June 2007, a Facebook profile was created in the name of Mathew Firsht. On the next day, a Facebook group called "Has Mathew Firsht lied to you?" was set up. The bulk of the defamatory material was contained in the group. Neither the profile nor the group was set up by Mathew Firsht. Both were set up using a computer with the defendant's IP address. Only two computers could have used this IP address: the defendant's desktop computer, and his girlfriend's laptop computer, which he had often used. The issue before the court was whether the defendant was responsible for putting up the false profile and for creating the group. In finding that the defendant was responsible for the creation of the Facebook material, the court relied on, *inter alia*, an activity log for the

defendant's IP address, which appeared to show a sequence of activity using the Facebook user identities of the defendant, his girlfriend and "M Firsht". The defendant's claim that the deed was done by one or more of the strangers who were at his flat at the relevant time was rejected.

73 Finally, in *Warman v Grosvenor* (2008) 92 OR (3d) 663 ("*Warman*"), the plaintiff sought to stop the defendant's two-year "campaign of terror" against him, achieved through postings on the Internet and personal e-mails. As the defendant had failed to file a Defence, he was noted in default under the relevant civil procedure rules, and this meant that he was deemed to have admitted the truth of all allegations of fact made in the Statement of Claim. Notwithstanding this, Ratushny J had some "initial concerns as to the reliability of the plaintiff's identification of the defendant as the author of the postings and the e-mails" (at [12]). Nonetheless, he was satisfied on the evidence that the plaintiff had proved the defendant to be the author of the postings and the e-mails (at [13]), noting (at [14]) as follows:

> The following evidence is particularly persuasive. In 1996 by way of an Internet posting, a person who identified himself as William Grosvenor called on "mature ladies" to contact him at a certain address in Edmonton. This was the same address used to serve the Statement of Claim on the defendant with the same name. The defendant of the same name responded, giving this same address in his Notice of Intent to Defend. The e-mails began on January 16, 2008, which was the day after the Statement of Claim had been served on the defendant. The first of the e-mails repeated, in the same words, the invitation to others to harm the plaintiff and the links to the plaintiff's former home address combined with an aerial photograph, as had been contained in some of the previous postings. The further e-mails have continued some of the same patterns exhibited by the postings in terms of their style, content and obsessions.

74 As can be observed, in three of the above cases, the defendant's identity was established through the use of electronic evidence: *Takenaka* (forensic examination and analysis); *Vaquero* (IP addresses); and *Applause Store* (activity log for defendant's IP address). That said, this does not mean that electronic evidence is the *only* means by which the responsibility of a defendant for material appearing on the Internet can be established. Indeed, electronic evidence was not relied on in *Warman*. However, as Alliott J cautioned in *Takenaka,* cogent evidence is needed to meet the requisite standard of proof in order to discharge the burden of proof. Typically, the use of electronic evidence to link a defendant to any particular material appearing on the Internet would be the most obvious way to achieve this requirement of cogency, since such evidence is objective in nature. If a plaintiff chooses to rely on *other* evidence, then he must ensure that such evidence is similarly cogent. In this regard, I note that the evidence in *Warman* pointed almost inexorably to the conclusion that the defendant was the perpetrator.

75 In his report, Moore helpfully set out the non-exhaustive steps that might have been taken to confirm the author and first publisher of the Online Articles:[8]

> … *Electronic records of this activity may be captured by the website host, Internet providers and the electronic devices from which the posts were made.* ***These electronic records may provide sufficient details as to the author of a given post.***
>
> The methodologies and technical information required to confirm the author of the Online Articles may be a lengthy process and may include but are not limited to the steps below:

[8] Peter James Alfred Moore's AEIC, Exhibit PM-1, paras 70–72.

> a) Obtain log data from the sites hosting the Online Articles. The log data may include metadata of the user account and the IP address(es) used by the account that made the post.
>
> b) Perform a trace of the IP address(es). The results of a trace may identify an Internet Service Provider ("ISP") or organisation responsible for the IP address, such as SingTel or StarHub, if the author was in Singapore,
>
> c) Obtain log data from the ISP or the organisation responsible for the identified IP address. The log data from an ISP may help to identify the person or organisation who was assigned the IP address at the dates and times the post(s) were made.
>
> d) Once a person or business has been identified, potentially relevant electronic devices in their possession may be secured and analysed to demonstrate the articles were authored from the devices in their possession or control.
>
> Our understanding is that for sites located in China, one will need to report a crime to the law enforcement authority and they will possibly obtain the requested logs and computers. To our knowledge, the [plaintiffs] have not made such requests to the authorities in China or obtained these logs for the Online Articles.
>
> [original emphasis omitted; emphasis added in italics and bold italics]

76 As stated, the plaintiffs did not employ any of the steps outlined above to obtain the relevant electronic records in this case. Instead, they have decided to rely on D2's alleged admission and circumstantial evidence. The issue is whether the alleged admission and circumstantial evidence (either individually or collectively) achieve the cogency mentioned by Alliott J in *Takenaka*. In my view, they do not, and I so find. Putting it another way, the "balance of probabilities" test applies and the plaintiffs have not, in my judgment, satisfied the test. Let me elaborate.

(1) D2's alleged admission

77 The plaintiffs argue that D2 had admitted to posting the Online Articles on the Internet, and that he had made the admission on 17 December 2013 to two of the plaintiffs' representatives, one of whom was Xu Bin. It is not in dispute that the conversation was videoed and audio-recorded (without D2's knowledge). The following excerpt from the plaintiffs' English translated transcript[9] is set out in the Statement of Claim (Amendment No. 2). I have added italics and bold to the parts of the excerpt which, at first blush, suggest D2's admission to the posting:

> B: Are you Mr Ng Teck Chuan?
>
> Ng: Yes. Everyone knows. You are also from Qingdao Jianshe (Qingdao Development)?
>
> B: Yes. From Qingdao Development. Let's sit and chat.
>
> Ng: Wait a while.
>
> B: Let's chat. Everyone knows (laughs). Recently discovered that Qingdao Jianshe (Qingdao Development) is known more …
>
> …
>
> B: We are from Qingjian.
>
> Ng: I know. A Singaporean contacted me earlier. What's his name … (producing a name card)
>
> B: He may be our business partner.
>
> Ng: Yes, he should be.
>
> B: Yes, he is our partner in Singapore. We cooperated in a number of projects. ***Is the article on the internet posted by you?***
>
> Ng: ***My cousin and I.***
>
> B: Your cousin?

[9] PBD623–626.

Ng: Did it in Qingdao?

B: You posted in Qingdao?

B: Do you know us? Do you have any investment in Qingdao with us?

Ng: It's my cousin. My cousin is Danny. Wu Deming.

B: Oh, Wu Deming is your cousin?

Ng: The child of my mother's brother.

B: Yes cousin (biao ge) is your mother's brother's child. What did you think about? We do not have any conflict with you, do we? Why did you post all these?

Ng: The details I need to discuss with him (We Deming) and see what he says. I did not expect your visit and do not know what to say.

B: Oh you need to discuss with him .. Take it easy. We just come here to ask some questions. Do you have any investment dispute in Qingdao?

Ng: Too much to say. Not just in Qingdao.

B: You have investment in other parts of China?

Ng: Wuhan, Shenyang, Harbin, other cities of Shandong. In Xiamen … mainly construction?

B: Hotel? Your cousin is also in Qingdao?

Ng: Yes, he is in Qingdao. We have office there.

B: HuanYu? We cannot find it. We now have legal proceedings with HuanYu and are looking for HuanYu. The court also cannot find them.

Ng: I just went there. Their office is still there.

B: Where is their office? Where is their office?

Ng: I am not certain about the location. You may email to their company if necessary.

B: What is their email address?

…

Ng: ***I just talked with my cousin. He said that you may email him if necessary. He did most of the things and I just have no idea what it is about.***

B: ***But the article has been posted in your name.***

Ng: ***I consented to that.***

B: ***Oh, you consented. It was in your name. So we want to ask you, and we are also concerned that maybe other person used your name without your knowledge.***

Ng: ***I consented to that.***

B: Then what is the relationship between you and Wu Zhenshun?

Ng: Uncle.

B: Younger brother of my mother. Did he arrange for both of you to do that?

Ng: I am not clear. Wu Deming knows better. Later he will call and give you his email. You may email him if necessary.

…

B: ***Did you write that article?***

Ng: ***He let me read it and I roughly know the content. You'd better contact him directly. He is personally involved.***

B: Oh .. Does he have investment partner there? HuanYu has substantial investments .. Please ask him if it is convenient to meet us.

Ng: He is now in Japan.

[emphasis added in bold italics]

78 The defendants' case *apropos* the alleged admission to the posting is that it was at best a misunderstanding. The material posted on the Internet was never expressly nor clearly identified and the important differences among: (a) the plaintiffs' translated transcript (above); (b) the defendants' translated video transcript; and (c) the defendants' audio transcript indicate that the court cannot be certain about what was being referred to. D2 had believed that he was being asked about the CCDI report, and not the Online Articles.

79 I make two broad points in general. First, the inquiry into what transpired begins with an appreciation of the setting in which the conversation between D2 and the plaintiffs' representatives took place. It was an unannounced visit to the coffee shop where D2 worked as a coffee shop attendant; it was not a meeting conducted in the context of an attempt to openly discuss or resolve a defamation dispute which both sides were fully aware of. No defamation dispute had arisen or been declared prior to 17 December 2013. It was only after the encounter on 17 December 2013 that the pre-litigation demand letters and Writ of Summons were issued. All in all, the context in which the conversation was recorded and all other surrounding circumstances would have an important bearing on the reliability of what has been characterised as D2's admission that the Online Articles were posted on the Internet by D1 and D2. One consideration here appears to be whether or not the admission was ambiguous (Jeffrey Pinsler, *Evidence and the Litigation Process* (LexisNexis, 5th Ed, 2015) ("*Pinsler*") at para 5.097).

80 Second, the inquiry is whether the alleged admission is admissible in evidence under the Evidence Act (Cap 97, 1997 Rev Ed) ("EA"). Admissions are statements (oral or documentary) which suggest any inference about any fact in issue or relevant fact, and which are made by persons under certain circumstances (s 17(1) of the EA). These circumstances are mentioned in ss 18 to 20 of the EA. An admission may be proved as against the person who made them or his representative in interest (s 21 of the EA).

81 For convenience, I now set out the relevant portions of ss 17, 18 and 21 of the EA:

> **Admission and confession defined**

> 17.—(1) An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons and under the circumstances hereinafter mentioned.
>
> …
>
> **Admission by party to proceeding or his agent, by suitor in representative character, etc.**
>
> **18.**—(1) Statements made by a party to the proceeding or by an agent to any such party whom the court regards under the circumstances of the case as expressly or impliedly authorised by him to make them are admissions.
>
> …
>
> **Proof of admissions against persons making them and by or on their behalf**
>
> **21.** Admissions are relevant and may be proved as against the person who makes them or his representative in interest …

82 Admissions are not conclusive proof although estoppels may be raised (s 31 of EA). *Pinsler* (at para 5.100) notes on s 31 that:

> … The point here is that the party in a civil case or the accused in a criminal case is free to dispute the validity of the matters stated. The party in a civil case might allege that he was mistaken or that the facts are untrue. The accused might deny the truth of some of the details which he stated. *The weight of an admission is a matter for the determination of the court and is dependent on all the circumstances of the case.* … [emphasis added]

83 *Pinsler* (at paras 5.097 and 5.098) provides a simple and helpful illustration as to how these provisions work in conjunction with one another. The passage is long, but I set it out in full as it is instructive to the case at hand:

> The connection between ss 17, 18 and 21 in civil proceedings may [*sic*] illustrated by the following example. *D* is sued for breach of contract for allegedly failing to deliver goods to *P* in the time stipulated in the contract. *D* apologised to *P* for being

> late. *D*'s employee tells *P* that delivery was late because transport could not be arranged. *D*'s apology may be regarded as a statement which suggests an inference as to a fact in issue, namely that he was in breach of contract for being late. Accordingly, the statement is an admission by virtue of s 17(1) and can be proved under s 21 against *D* because he is a party to the proceeding, a condition laid down by s 18(1). The admission is not conclusive of the facts admitted to, but in the absence of ambiguity it is likely to be given significant weight. Where ambiguity does arise, the court will determine the appropriate weight, if any, to be attributed to the evidence. …
>
> As to *D*'s employee's statement (in the above example), the issue is whether it can be used against *D* at the trial. The court will have to determine whether the employee was 'expressly or impliedly' authorised by *D* to make this statement as required by s 18(1). If *D* told his employee to inform *P* of the reason for late delivery, this would be express authorisation and the statement could be proved against *D*. The situation is less clear with regard to implied authorisation and has given rise to a number of cases. Much depends on the position of the employee in *D*'s business concern and his relationship to *D*. … In *Edward v Brookes (Milk)*, it was held that the apparent authority of the maker of the statement may be a sufficient basis for the admission of the statement against the party. The effect of this would be that if someone holds himself out as having authority on behalf of a company or employer and the circumstances are not inconsistent with this representation, then any statements which he makes may bind the company or employer. In *D*'s case, his employee's statement is unambiguous and, if admitted, may carry significant weight.

84 It is clear from *Pinsler*'s illustration that adverse admissions are relevant facts and are hence admissible in evidence against the maker of the statements (*ie*, D2) and no one else (such as D1). Pursuant to s 18(1) of the EA, D2's statements can only be used against D1 if D2 was authorised by D1 to make those statements. In this case, there was neither suggestion nor evidence of this.

85 I now come to the statements made by D2 that are offered as D2's admission that D1 and D2 are responsible for posting the Online Articles. The defendants have characterised D2's responses as a "misunderstanding" in that D2 was thinking that the plaintiffs' representatives were asking about the CCDI report, and not the Online Articles. Irrespective of the terminology in the transcript, it is fairly clear from reading the excerpt of the transcript set out at [77] above that D2's statements, which must be taken in their entirety, are ambiguous. This affects the reliability of the statements offered as admissions. Let me elaborate.

86 D2 was at work in the coffee shop when the plaintiffs' representatives came. I gather from Mr Lee that in "large parts" of the video recording, D2 was seen walking away from the plaintiffs' representatives to attend to "other things", and that there was no conversation during these moments.[10] In this context, D2's conversation with the plaintiffs' representatives was not a continuous dialogue as it was interrupted intermittently. For convenience, I set out in the table below the statements in italics and bold of the above excerpt and the immediate circumstances in which these statements were made:

Statement	**Time in video**	**Immediate Circumstances**
B: ... Is the article on the internet posted by you? Ng: My cousin and I. ("**Statement 1**")	01:23	D2 had previously left to get what appears to be a name card. He returned at around 01:09. This part of the conversation therefore took place about 14 seconds after

[10] Transcripts (16 September 2015), p 36.

		his return.
Ng: I just talked with my cousin. He said that you may email him if necessary. He did most of the things and I just have no idea what it is about. B: But the article has been posted in your name. Ng: I consented to that. B: Oh, you consented. It was in your name. So we want to ask you, and we are also concerned that maybe other person used your name without your knowledge. Ng: I consented to that. ("**Statement 2**")	06:07	D2 had previously walked off while on his handphone. He returned at around 05:42. This part of the conversation therefore took place about 25 seconds after his return.
B: Did you write that article? Ng: He let me read it and I roughly know the content. You'd better contact him directly. He is personally involved. ("**Statement 3**")	10:07	D2 had previously walked off while on his handphone. He returned at around 09:55 but appeared to still be on the phone until around 09:59. This part of the conversation therefore took place about 8 seconds after that.

87 As stated at [79], the question of whether or not the alleged admission is ambiguous is an important consideration. Admissions must be clear if they are to be used against the person making them (Sudipto Sarkar & V R Manohar, *Sarkar's Law of Evidence in India, Pakistan, Bangladesh, Burma & Ceylon* (Wadhwa and Company Nagpur, 16th Ed, 2007) ("*Sarkar*") at p 422). In order to constitute an admission in law, the statement should be *ex facie*

unequivocal and categorical and not vague (*Sarkar* at p 425). Yet, these cannot be said of D2's alleged admission. I now turn to examine this issue of ambiguity. In my judgment, D2's alleged admission is ambiguous and is hence unreliable. Accordingly, no weight should be accorded to it.

88 First, D2's so-called admission is not clear as to D2's role in the posting of the "article". In their closing submissions, the plaintiffs are quick to highlight the following part of D2's cross-examination:[11]

> Q. The gentleman on the right, extreme right, was asking whether the article on the internet was posted by you. And then you said in Mandarin, "I and my cousin.". Correct?
>
> A. All the while I was thinking about the CPIB.
>
> Q. Can I just record your answer is: yes, you did say "I and my cousin"?
>
> A. Yes.

89 The plaintiffs' highlighting of **Statement 1** is wholly unsurprising for the simple reason that in **Statement 1**, D2 had openly stated that he (and D1) had posted the "article". However, this clarification in the witness box of **Statement 1** does not improve the plaintiffs' position.

90 Besides **Statement 1**, the court has to take note of what D2 had subsequently said in **Statement 2** and **Statement 3**. In **Statement 2**, D2 said that it was D1 who "did most of the things" and that he himself "[had] no idea what it is about". He said that he had consented to the "article" being posted in his name. I note that this part of **Statement 2** is somewhat ambiguous: it is not clear if D2 was saying that his consent was to the article *being posted* or if he

[11] Transcripts (29 September 2015), p 53.

was saying that his consent was to the article being posted *in his name*. The difference here is one of emphasis and appears fine, but it is nonetheless significant as to its meaning. The later part of **Statement 2** clarifies, however, that D2 had meant the latter (*ie*, that he had consented to the article being posted *in his name*). In **Statement 3**, D2 then said that he had read the "article" and roughly knew its contents, but it was D1 who was "personally involved". In **Statement 2** and **Statement 3**, D2's responsibility *apropos* the "article" is much reduced. Indeed, all he could be said to be responsible for was consenting to the "article" being posted in his name.

91 Simply put, D2's so-called admission, when read as a whole, is neither clear nor categorical. It is equivocal as to what his role in the posting of the "article" was. Specifically, D2 had at one point (*ie*, in **Statement 1**) stated that he *had posted* the "article" (along with D1), but at other points (*ie*, in **Statement 2** and **Statement 3**) stated that he had simply *consented* to the "article" being posted in his name and that it was D1 who presumably did everything else. From this analysis, there is merit in D2's evidence that in his conversation with the plaintiffs' representatives, he was thinking about the CCDI report and not the Online Articles.

92 This leads me to the subject-matter of D2's so-called admission. In this regard, I agree with the defendants that the subject-matter of the alleged admission was never expressly nor clearly identified. Even by the plaintiffs' version of the English translated transcript, which I have excerpted above at [77], the "article" is never identified. This raises several matters that do not come with answers. For instance, was the "article" defamatory to begin with? If it was defamatory, was it one of the Online Articles? If it was one of the

Online Articles, which one was it? With these questions remaining unanswered, how can the requisite civil standard of proof, *vis-à-vis* the element of publication in the law of defamation, be satisfied?

93 To the defendants, the reference to the "article" in the transcripts is not even clear. The defendants have set out the differences in the three versions of the English translated transcripts in a table, and I reproduce the most significant portions below (with emphasis added):

Plaintiffs' translated transcript[12]	**Defendants' translated video transcript**[13]	**Defendants' translated audio transcript**[14]
Is the *article* on the internet posted by you?	That one…*the*... *one sent online*, did you send it?	…. *some pieces posted on the internet*, did you post them?
But the *article* has been posted in your name.	Your name was used over the *internet*?	Then… your name was used on the *net*….
Did you write that *article*?	Were the *materials* written by you?	That… was that *material* written by you? That *material*…

94 This comparison table shows that the subject-matter of the conversation is not free of ambiguity. Additionally, as pointed out by the defendants, the different versions of the English translated transcripts are unclear as to whether the subject-matter was in the singular or plural.

95 Moreover, the evidence also does not suggest that D2 was shown the Online Articles during this conversation on 17 December 2013. At trial, Xu

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[12] PBD623–626.

[13] DBD452–455.

[14] DBD464–470.

Bin gave evidence that he had brought along an envelope containing "about two to three articles", and that he had asked D2 why he had published "the articles". Xu Bin's evidence is that he showed D2 "a copy of the article":[15]

> Q: Did you show him a copy of the article?
>
> A: Yes, but he did not read it in detail.
>
> Q: How did you show him the article? Was it in print?
>
> A: I had brought along an envelope. It was a white envelope. There were a few variations of the defamatory articles, but I remember that there were about two to three articles contained in the envelope.
>
> And as I approached the coffee shop, I had asked him with the articles placed on the envelope why he had published the articles.
>
> Q: And you are telling us that he immediately admitted that he did it together with his cousin?
>
> A: Yes, from what I remember.

96 However, there is no mention in Xu Bin's AEIC of an envelope containing articles that was brought to the coffee shop. Neither is an envelope or articles identifiable in the video recording. In light of all this, the subject-matter of D2's admission is equivocal.

97 For these reasons, I find that there is no admission that D1 and D2 had posted the Online Articles on the Internet.

(2) Appearance of D2's name in some of the Online Articles

98 The plaintiffs have made it clear in their closing submissions that they are not contending that the mere fact that some of the Online Articles cited D2

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[15] Transcripts (16 September 2015), p 33.

as author and set out his personal and contact details is conclusive proof that the defendants published the Online Articles. However, they are relying on this fact to trace, by inference, the Online Articles to the defendants.

99 Specifically, the plaintiffs rely on the fact that many of the Online Articles were attributed to D2 by way of "sign-offs" at the end of the Online Articles. By way of an example, Article 1 ended as follows:

> I am NGTECH CHUAN, Singaporean, male, 42 years old. My Singapore IC number is SXXXX486J, contact method: batman777777@outlook.com

Similar attributions are also found in Articles 2, 3, 4, 7, 9, 10, 11 and 12.

100 Moore's evidence, which I accept, is that these "sign-offs" were typed in and are *part of the text* of the Online Articles and that, accordingly, they could have been typed in by someone else and do not establish that D2 had authored and/or posted the Online Articles.[16] Whilst the plaintiffs acknowledge that this attribution is not conclusive proof that the defendants published the Online Articles, I do not accept that the "sign-offs" in D2's name provide a reasonable basis to draw an inference that the defendants are responsible for posting the Online Articles (*ie*, the first component of the element of publication).

101 As explained, there is no electronic evidence to trace the posting of the Online Articles on the Internet to the defendants, and if the defendants were out to harm the plaintiffs' reputation, it would surely be incongruous and illogical for the defendants to leave a trail by mentioning D2's name and

[16] Peter James Alfred Moore's AEIC, Exhibit PM-1, p 19.

particulars on the Online Articles. The plaintiffs suggest that there is nothing puzzling with the "sign-off" method as it would help to lend some credibility to the Online Articles if they were not anonymous and an identified person was willing to be named as their author and publisher. This reasoning is untenable: why should credibility be a concern to the author and publisher if, as the plaintiffs say, the articles are defamatory? The first component of publication is not about who is named in the Online Articles; it has to do with finding and identifying the person who posted the Online Articles for the purpose of the law of defamation. As I see it, no proper inference can be drawn from the "sign-offs" appearing on some of the Online Articles.

(3) Motive to publish

102 I now come to the plaintiffs' contention that the defendants, in particular D1, had a motive to publish the Online Articles. To support this contention, the plaintiffs highlighted a number of points which can be summarised as follows:

(a) Disputes between the Qingjian Group and the HuanYu Group: The plaintiffs submit that the HuanYu Group was embroiled in a number of legal disputes with the Qingjian Group in the PRC. The HuanYu Group had apparently owed the Qingjian Group a debt of about RMB 560 million.[17] As a result, the Qingjian Group obtained, in 2013, a number of court orders from the PRC courts to freeze the assets of the HuanYu Group, as well as certain compensation sums payable to the HuanYu Group by the local authorities.

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[17] Xu Bin's AEIC, para 9.

(b) D1's relationship with the HuanYu Group: The plaintiffs submit that D1 had been actively involved in the business operations of the HuanYu Group in the PRC from the 1990s up to the present day. D1 was apparently a director of HuanYu from 1994 to 2004, and has been a director of HuanYu Marina from 1998. Further reliance was placed on: (i) two legal agreements which D1 had purportedly signed on behalf of HuanYu in 2004 and 2012; and (ii) D1's purported commencement of court proceedings in 2005 to reinstate himself as chairman of HuanYu.

(c) D1's relationship with Goh: The plaintiffs submit that Goh is the one controlling the business of the HuanYu Group. D1 and Goh "are not just related by blood as uncle and nephew, but have also had longstanding business dealings with each other from about 1994 to 2001". Although there was some disagreement between D1 and Goh in the 2000s, the parties had since reconciled.

(d) D1's relationship with one Cai Youcang ("Cai"): The plaintiffs submit that D1 had a long-standing relationship with Cai, a director of HuanYu.

(e) The defendants' interests in Shin Hwa Cheong: The plaintiffs submit that both defendants have had associations with a company known as Shin Hwa Cheong, which is related to the HuanYu Group. D2 is apparently a shareholder of Shin Hwa Cheong, while D1 was apparently a director of Shin Hwa Cheong in 1995.

(f) The defendants' admissions on motive: The plaintiffs submit that D1's motive for wanting to inflict injury is evident from the

> evidence of both D1 and D2 at trial. D1 had testified that he had told D2 that P4 had "eaten money from Mr Cai's office".[18] D2 had testified that D1 had told him that "[P4] and Qingjian were eating the company's monies and he wanted to lodge a report against them".[19]

103 It is necessary to understand the plaintiffs' contention that the circumstances bear out the defendants' motive to publish the Online Articles. For this, I refer to the plaintiffs' closing submissions where it is submitted that:[20]

> Since late 2013, the [defendants] have had the strong motive to inflict revenge against the Qingjian Group and the [plaintiffs], given the disputes between the Qingjian Group and [the HuanYu Group] in the [PRC] and the Qingjian Group's obtaining of court orders freezing [the HuanYu Group's] assets in the [PRC] …

104 By the plaintiffs' submissions, the defendants' motive to publish the Online Articles had to do with the defendants' revenge against the Qingjian Group. Proof of revenge is relevant when such an accusation is made. Thus, revenge has to be proved not only from the disputes in the PRC but also from evidence of other facts which make it sufficient to draw the inference of revenge.

105 I am not persuaded that the matters in [102(a)] to [102(f)] (whether individually or collectively) assist the plaintiffs on the question of whether the defendants had a motive to publish the Online Articles. Where the defendants

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[18] Transcripts (30 September 2016), p 89.

[19] Transcripts (29 September 2016), p 61.

[20] Plaintiffs' closing Submissions, para 56(c).

are said to have revenge in mind, and this revenge is to be proved by inferences, the plaintiffs have to satisfy the civil standard of proof by showing that the inferences which appear from the circumstances outlined in [102(a)] to [102(f)] make revenge in the defendants' minds at least more probable than not. I find that the "balance of probabilities" test is not satisfied. There is no evidence of revenge or facts in evidence to draw the inference of revenge from.

106 I will first deal with the matters outlined in [102(f)]. This point is a non-starter. Those so-called admissions were made in the context of the CCDI report, and it simply does not follow from there that D1 had wanted to inflict reputational harm on the plaintiffs.

107 As for the matters in [102(a)] to [102(e)], the defendants do not deny that D1 had a previous relationship with the HuanYu Group, but they submit that it cannot be concluded that D1 had any sufficient interest or involvement in the HuanYu Group's litigation with the Qingjian Group. According to D1, his directorships in HuanYu and HuanYu Marina were non-executive in nature and he was not involved in the operation of the businesses in the PRC.[21] At trial, D1 did appear to accept that he had helped out in the affairs of HuanYu for some time in 2004,[22] and on one occasion in 2012,[23] but this, in my view, does not detract from the need to show D1's interest (whether pecuniary or proprietary) in the outcome of the litigation with the Qingjian Group.

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[21] Goh Teck Beng's AEIC, paras 13–14.

[22] Transcripts (30 September 2015), p 20.

[23] Transcripts (30 September 2015), pp 44–50.

108 Even though Goh was related to D1, and both had worked together for a long time, it is not really disputed that at the end of 2004, both men had fallen out and were on bad terms.[24] It was only around 2011 that the estranged relationship between D1 and Goh had begun to thaw.[25] Although Mr Quek in closing submissions described D1's relationship with Goh now as cordial, the former seems to be on better terms with Goh's wife. In my judgment, D1's relationship with Goh is not evidence to support the presence of motive to publish the Online Articles.

109 As for D2, no real submission has been advanced *vis-à-vis* any motive on his part, except for his supposed interest in Shin Hwa Cheong. Indeed, D2 is a coffee shop attendant and he was unlikely to have either active involvement in the HuanYu Group or interest (whether pecuniary or proprietary) in the outcome of the dispute with the Qingjian Group.

110 Evidence which shows that the defendants have a revengeful propensity is relevant. However, the fact of the matter is that these disputes, relationships and interests, *even if all true*, are simply insufficient to reasonably infer that the defendants felt aggrieved and vengeful against the plaintiffs such that they wanted to inflict harm on them. As stated, the plaintiffs' turn of phrase in their closing submissions is a motive to "inflict revenge against the Qingjian Group and the [plaintiffs]". There has to be evidence that singles out D1 (or D2) as the perpetrator. Having earlier rejected the evidentiary value of D2's so-called admission, I find that there is nothing else which can identify D1 (or D2) for this purpose. In this regard, I have

[24] Transcripts (30 September 2015), pp 28–29.

[25] Transcripts (30 September 2015), pp 30 and 35.

already concluded that there is no imputation to be made from the mere mention of D2's name on some of the Online Articles (see [98]–[101] above).

(4) Other grounds relied on by the plaintiffs

111 The plaintiffs would be aware that they have to meet the requisite civil standard of proof, and have asked the court to take into consideration other series of facts, namely, the allegedly incredible account as to how D2's name came to be used to file the CCDI report and the defendants' reliance on the defence of justification. These facts, so the argument develops, give rise to an inference that the defendants must be the persons responsible for the publication of the Online Articles.

112 The plaintiffs reject the defendants' explanation as to how the defendants had come to lodge the CCDI report. The plaintiffs' first point is that there is no evidence that D1 had been told of any serious or specific wrongdoing on the part of P4, and that there was no premise for his assumption that P4 had earned a modest salary. In this regard, D1's account is that the impetus for him lodging the CCDI report was a dinner meeting with Cai, his former business associate. D1 describes what Cai had told him in his AEIC as follows:[26]

> … Cai then told me that [P4] is a very shrewd man and there was very strong prevailing market talk that he had, in collaboration with others, become the owner of state-owned companies which have been privatised. It was only then that I was told [the HuanYu Group] projects had turned sour after I left [the HuanYu Group]. These projects had purportedly incurred very substantial losses such that [the HuanYu Group] was asked to contribute financially to these losses,

[26] Goh Teck Beng's AEIC, paras 21–22.

> instead receiving a share in the expected profits. Cai said that they could not believe this could happen because under the joint venture, [the HuanYu Group] contributed the substantial lands, and [P4], representing the PRC party, was in charge of the development and sale of the completed projects, which appeared to have been very successful.
>
> Cai then asked if I knew that [P4] and [P2] were also seeking to expand aggressively into the Singapore market. He went on to tell me that [P4] had amassed substantial personal wealth and had even managed to obtain Singapore Permanent Residency … for himself and his family with the intention to relocate to Singapore. …

113 In my view, while there is no explicit reference to any unlawful act in the above two paragraphs, it is clear that this is what is being suggested. At trial, D1 stated that he believed that these two paragraphs conveyed the meaning that there was misappropriation,[27] and I accept his evidence in this regard. Furthermore, D1 had subsequently in his AEIC referred to the possibility that P2 and P4's operations in Singapore were linked to "possible unlawful activities back in the PRC",[28] and it is clear from this that he had thought that P4 was engaged in illegal conduct. As for D1's assumption that P4 had earned a modest salary, I do not consider this to be so implausible and unreasonable an assumption that it should be disbelieved outright.

114 The plaintiffs' second point is that D1's evidence on the contents of the CCDI report is unsatisfactory. There was no purpose in filing the CCDI report if the contents were as generalised as D1 testified to be so. Notably, however, the CCDI report was lodged close to two years ago, in late 2013, and it is not implausible that D1 is not able to now recollect the details. More importantly,

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[27] Transcripts (30 September 2015), p 69.

[28] Goh Teck Beng's AEIC, para 24.

the plaintiffs' own evidence is that the CCDI had commenced investigations into the allegations made in the Online Articles.[29] This, in my view, verifies and lends credence to the existence and submission of the CCDI report with enough information to warrant an investigation.

115 The plaintiffs next highlight that if, as he claims, D1 was motivated to lodge the CCDI report out of his sense of patriotism to Singapore and his concern for the protection of the construction industry and the promotion of the public interest in Singapore, he should have then filed a report with the Singapore authorities rather than the CCDI. At trial, D1 explained his decision as follows:[30]

> Q. Then, if you were truly patriotic, the first thing you would have done is to report to the Singapore authorities, wouldn't that be so?
>
> A. No. If you had stayed in China you would know that this is not the case. The place of the illegal activities was in China, so of course the local government or the government where the activities had taken place would have the most authority or resources to investigate into the matter. That is my reason for doing so.

I agree that there is a logical basis for D1's explanation: if the alleged misappropriation had taken place in the PRC, then the CCDI would be the proper authority that should have been alerted.

116 The plaintiffs then question the defendants' reasons for using D2's name for the CCDI report. They point out that D1 stated in his AEIC that this was because he was concerned not so much about himself but for his wife and

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[29] Du Bo's AEIC, para 178; Yuan Hong Jun's AEIC, para 11.

[30] Transcripts (30 September 2015), pp 75–76.

extended family in the PRC. However, in the Defence (Amendment No. 1), it is stated that this was because D1 travelled frequently to the PRC and was concerned for his personal safety. I do not, however, consider this discrepancy to be material. The fact is that D1 was concerned over the possible ramifications of the CCDI report, to himself, his wife and her family, and he stated this in no uncertain terms at trial.[31] The plaintiffs also make the point that D2 was also travelling to the PRC, and the implication here seems to be that he should have had the same concerns. Under cross-examination, D2 explained that this was because P4 did not know him.[32] In my view, this is not an incredulous excuse.

117 Finally, the plaintiffs also raise the argument that the defendants had refused to ask Moore to retrieve a copy of the CCDI report, which is a piece of evidence which could potentially be very favourable to the defendants' case. In a letter to the court dated 9 March 2016, which was after closing submissions were filed, the defendants' lawyers wrote to court, highlighting that this request that Moore retrieve a copy of the CCDI report was first made by the plaintiffs' lawyers in a letter to the defendants' lawyers dated 26 August 2015, and that the defendants' lawyers had replied on 2 September 2015. In their reply, the defendants' lawyers had stated that the defendants were prepared to accede to the plaintiffs' request on two conditions, one of which related to the payment of Moore's charges. No reply was forthcoming from the plaintiffs until the middle of the trial on 30 September 2015, when the plaintiffs wrote back to say that they were not agreeable to the conditions.

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[31] Transcripts (30 September 2015), p 89.

[32] Transcripts (29 September 2015), p 35.

In brief, it is somewhat of a mischaracterisation to say that the defendants had "refused" to ask Moore to retrieve a copy of the CCDI report.

118 The final ground which the plaintiffs rely on is the defendants' reliance on the defence of justification. The plaintiffs argue that there is no plausible reason why the defendants would incur time, effort and expense to investigate and prove the truth of defamatory statements that they did not publish. On the other hand, D1 explains the defendants' reliance on the defence of justification in his AEIC as follows:[33]

> … I … consulted our first set of lawyers on how we could exonerate ourselves. At that point, I was advised that if we could find evidence showing that the meanings of the statements in the Articles were true in substance and in fact, we would then also be able to plead the defence of justification. This would be an alternative backup defence to our primary defence that we did not publish the Articles as alleged or at all. Upon learning this, I sought legal assistance in the PRC to carry out investigations into the conduct of the [plaintiffs] and the background to the Articles, since these were matters that occurred in the PRC.

119 I make a few points. First, the plaintiffs' argument conflates publication, which is an element of liability, with defences to libel, which arise only after a *prima facie* case of liability is established. Second, the defence of justification is about the truth of the libel and telling the truth has nothing to do with good motive or good faith. In any event, the defendants' reliance on the defence of justification is a result of the suggestion of their former lawyers.

120 As a final point, I note that the plaintiffs also appear to suggest that the defendants' position on the defamatory nature of the Online Articles is

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[33] Goh Teck Beng's AEIC, para 43.

inconsistent with their case that they are not responsible for the publication of the Online Articles. This point, however, is not seriously pursued, and rightly so.

(5) Conclusion on the first component of publication

121 All things analysed and evaluated, I find that the defendants are not responsible for the first component of the element of publication. If anything, the grounds relied on by the plaintiffs, taken collectively, could raise some *suspicion* that the defendants could have been the ones responsible for the publication of the Online Articles. Notably, however, the civil standard of proof is not satisfied by evidence giving rise to a mere *suspicion*. With this conclusion, the plaintiffs' claim in defamation against the defendants fails.

The second component of publication

122 Although my conclusion concerning the first component of publication is sufficient to dispose of the plaintiffs' claim in defamation, I will nevertheless proceed to consider, for completeness, the second component of publication. As stated earlier, the plaintiffs cannot simply allege that the Online Articles were posted on the Internet and were accessible in Singapore.

123 First, for there to be publication in traditional defamation law, the defamatory material must be communicated to a third party reader in a manner that it is comprehensible. In other words, the third party to whom the defamatory material is communicated must be capable of understanding it. As *Gatley* puts it (at para 6.1):

> … It is not sufficient that the matter has been merely communicated to the third party: it is also necessary that it be

> communicated in such a manner that it may convey the defamatory meaning and that persons acquainted with the claimant could understand it to refer to him. If, therefore, a defamatory letter was handed to a person who could not read or who could not read the language in which it was written, there would be no publication …
>
> …

124 In *Gutnik*, the High Court of Australia held (at [26]) that harm to reputation is done when a defamatory publication is comprehended by the reader; until then, no harm is done by it. In most cases, defamatory material is received by a third party using his eyes to read or view it. If the third party cannot understand it (for example, where the defamatory material is written in a foreign language), then that is a separate concern, one that would, on its own, bar a finding of publication.

125 Second, and as stated earlier, there is no presumption of law that material appearing on the Internet has been published and, as such, the plaintiffs have to prove that the material in question had been accessed and downloaded by a third party reader (see the cases referred to at [40] above).

126 Third, the tort of defamation is committed where publication takes place and the parties accept that material on the Internet is published at the place where it is downloaded. The parties have also proceeded on the basis that Singapore is the appropriate and convenient forum, and that the governing law of the tort is Singapore law. The location where the material was downloaded and read in this case were the same, and this is to be distinguished from a case where the material on the Internet was downloaded in one jurisdiction and then read later as a computer printout at another time and in another jurisdiction (see, generally, Dan Svantesson, "The 'place of action'

defence – A model for cross-border Internet defamation" [2003] Australian International Law Journal 172).

127 Moving on, I will first deal with direct proof of the second component of publication, and then indirect proof. As stated, the standard of proof is still the balance of probabilities.

(1) Direct proof of the second component of publication

128 The question in the present case is whether at least one person, other than the plaintiffs, had downloaded and accessed the Online Articles in Singapore. In this regard, the plaintiffs rely on the evidence given by five of their witnesses. However, not all of the five witnesses were able to testify to downloading the Online Articles.

129 First, the plaintiffs rely on the evidence of one Li Guo Dong ("Li"), the Manager of the Human Resource department of P3. Li had joined P3 in February 2015.[34] His evidence is that he was first made aware of various articles published online concerning the plaintiffs in or around November 2013 as he had heard his colleagues talking about them in the office.[35] As a result, Li conducted a search using both of the search terms "Du Bo" and "Qingjian Group" and came across numerous articles concerning the plaintiffs.[36] The contents of these articles were very similar to one another and to Articles 1, 2 and 4.[37] Notably, it is precisely for this reason that I am unable to accept

[34] Li Guo Dong's AEIC, para 3.

[35] Li Guo Dong's AEIC, para 4.

[36] Li Guo Dong's AEIC, paras 5–6.

[37] Li Guo Dong's AEIC, para 8.

Li's evidence as direct proof of publication. Li's evidence is that he had come across articles with *contents that were very similar* to Articles 1, 2 and 4; it is not his evidence that he had come across Articles 1, 2 and 4, or indeed the rest of the Online Articles, *themselves*. Under cross-examination, Li was unable to confirm that he had actually seen Article 1 itself,[38] and it would not be unreasonable to suppose that, had he been asked, this would have been his response *vis-à-vis* Articles 2 and 4 as well.

130 This is significant. Li's evidence is being relied on by the plaintiffs as direct proof of publication in Singapore. On first principles, Li must be able to say that he had downloaded, in Singapore, the very articles that are being complained of (*viz*., the Online Articles). Yet, Li could only say that he had come across articles with contents that were very similar to Articles 1, 2 and 4. Consequently, the inexorable conclusion is that even if I were to accept Li's evidence in its entirety, the plaintiffs have not shown, on a balance of probabilities, that Li had indeed downloaded the Online Articles (or any of them) in Singapore.

131 The second witness whose evidence is being relied on for direct proof of publication is one Ouyang Jing ("Ouyang"), the Head of Business Development of P3. Ouyang had joined P3 in 2011. His evidence is that he had first read the defamatory articles published online concerning the plaintiffs in or around November or December 2013. At that time, the Qingjian Group was considering a joint project with Surbana International Consultants Pte Ltd ("Surbana"), and a meeting was held in November 2013 between P4 and the Surbana management, which Ouyang attended. Ouyang had taken the

[38] Transcripts (23 September 2015), p 37.

initiative to conduct some due diligence on the meeting's attendees following the meeting.[39] To this end, he conducted searches online using the terms "Du Bo" and "Qingjian Group" and came across numerous articles concerning the plaintiffs.[40] The articles featured very similar content. In his AEIC, Ouyang exhibited Articles 1, 2 and 4 as "[s]amples of the contents of the articles" which he recalled reading.[41] In this regard, Ouyang's evidence is similar to Li and, for the same reason, I am not able to accept it as direct proof of publication. To Ouyang, Articles 1, 2 and 4 were merely samples of the *contents* of the articles he had come across, rather than the *articles* themselves. In addition, I am also doubtful of the veracity of Ouyang's account, as there was no valid reason for Ouyang to conduct "due diligence" on his *own side* in the Surbana negotiations.

132 The third witness who gave evidence for the plaintiffs on this point is one Xu Zhengpeng, the Vice President of Guotsing Holding (South Pacific) Investment Pte. Ltd.. Xu Zhengpeng's evidence is that in or about mid-December 2013, when he was in Qingdao, he had heard his friends talking about articles on the Internet which were defamatory of the plaintiffs. One of them had asked him if he knew anything about the articles, and that prompted Xu Zhengpeng to search the Internet for articles on the plaintiffs, first in Qingdao and subsequently when he returned to Singapore. Articles 1, 2 and 4 were among the articles that Xu Zhengpeng had read.[42] I accept this as direct proof of publication of Articles 1, 2 and 4 in Singapore.

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[39] Ouyang Jing's AEIC, para 4.

[40] Ouyang Jing's AEIC, para 5-7.

[41] Ouyang Jing's AEIC, para 8.

[42] Xu Zhengpeng's AEIC, para 5.

133 The fourth witness being relied on by the plaintiffs in this regard is Xu Bin. Xu Bin's evidence is that he was informed by P2's administrative operations department of information concerning articles that were defamatory of the plaintiffs.[43] As a result, between 21 and 22 November 2013, Xu Bin conducted searches on a number of search engines using the search terms "Qingjian", "Du Bo", "Bohai" and "Yuan Hongjun" in various combinations.[44] Xu Bin's searches turned up approximately 15,000 results.[45] Xu Bin accessed the links to some of the search results and subsequently telephoned various website administrators to request that they take down the articles that were hosted by them.[46] He also lodged formal complaints with the Qingdao Municipal Public Security Bureau and the Qingdao Municipal Cultural Law Enforcement Bureau and through the complaints website maintained by the relevant regulatory authorities in the PRC.[47] Despite these measures, various defamatory articles could still be accessed on the World Wide Web in or around December 2013.[48] At this juncture, Xu Bin's evidence in his AEIC takes a curious turn and he states as follows:[49]

> … Some of the online articles which were accessible as of the date of the [plaintiffs'] filing of its Statement of Claim on 23 January 2014 are pleaded at paragraphs 17 and 19 of the Statement of Claim, and labelled as Articles 1 to 12 (the "Online Articles"). These articles, which the [plaintiffs] had retrieved as at the filing of the Statement of Claim, as well as

[43] Xu Bin's AEIC, para 18.

[44] Xu Bin's AEIC, para 19.

[45] Xu Bin's AEIC, para 20.

[46] Xu Bin's AEIC, paras 20 and 22.

[47] Xu Bin's AEIC, para 23.

[48] Xu Bin's AEIC, para 24.

[49] Xu Bin's AEIC, para 24.

> their corresponding certified English translations, are exhibited hereto and marked as Exhibit "XB-9". [original emphasis omitted]

Xu Bin's evidence is unsatisfactory for two reasons. First, Articles 1 and 6 were already pleaded as being inaccessible in the original Statement of Claim filed on 23 January 2014. Second, it is unclear if Xu Bin *himself* had accessed the Online Articles, as Xu Bin only refers to the Online Articles being retrieved by the plaintiffs. Be that as it may, and in any event, I am unable to accept Xu Bin's evidence as direct proof of publication for a more fundamental reason: there is no evidence that Xu Bin, who resides in the PRC,[50] had accessed the Online Articles (if he did access them) *in Singapore*. Unlike Xu Zhengpeng, who clearly stated that he had accessed Articles 1, 2 and 4 in Singapore, Xu Bin gave no evidence to similar effect and in fact appeared evasive when asked about this during cross-examination:[51]

> Q. If you go to the next item, which is the alleged defamatory articles, allegedly published by the defendants, look at paragraph 18. Is it correct that you were informed by some staff of the 2nd plaintiff about the defamatory articles?
>
> A. Yes.
>
> Q. And these staff were specially tasked to look out for any articles that might have an effect on the 2nd plaintiff?
>
> A. It's part of their job.
>
> Q. They saw these articles when they were working in China?
>
> A. Yes.

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[50] Transcripts (15 September 2015), p 5.

[51] Transcripts (15 September 2015), pp 18–19.

> Q. So after they informed you, you also went into the Internet to look for these articles.
>
> A. Yes.
>
> Q. So you accessed this from your office in China?
>
> A. I cannot remember.

In their closing submissions, the plaintiffs argue that this is an assumption which is not borne out on the evidence and not put to Xu Bin. But the fact is that the burden of proof lies squarely on the plaintiffs and, in the present instance, this burden is not discharged.

134 The final witness whose evidence is being relied on is one Wang Yu, the general manager of a company which had business dealings with P3. Wang Yu's evidence is that sometime in or around early 2014, he was alerted to various articles published online concerning the plaintiffs. Wang Yu took it upon himself to investigate and monitor the allegations as he was in charge of the business relations between his company and the Qingjian Group in Singapore.[52] Wang Yu came across many of such online articles.[53] In his AEIC, he exhibits Articles 1, 2 and 4 as "a small sampling of which extracts of information [he] recall[s]".[54] The obscure meaning of this phrase was made no clearer during the trial, where Wang Yu repeatedly vacillated on his position concerning whether he had seen Articles 1, 2 and 4 themselves or merely articles with similar content.[55] In these premises, I do not consider it more probable than not that Wang Yu had seen Articles 1, 2 and 4 themselves. In so

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[52] Wang Yu's AEIC, para 21.

[53] Wang Yu's AEIC, para 23.

[54] Wang Yu's AEIC, para 23.

[55] Transcripts (23 September 2015), pp 71–73.

far as he could equally have merely seen articles with similar content, his evidence is not direct proof of publication for the reasons already stated above.

135 To summarise, the only witness whose evidence I accept as direct proof of publication is that of Xu Zhengpeng, and this is only in relation to Articles 1, 2 and 4. This is a convenient juncture to flag out the defendants' argument that this is a suitable case to classify the claim as one of nominal publication, and which should therefore be dismissed in accordance with the *Jameel* doctrine. Generally, publication to one person will suffice though the scale of the publication will affect the damages. However, *Jameel* has applied the abuse of process principle as a gloss on, or an exception to, this rule. I will return to the *Jameel* doctrine below at [144]−[149].

(2) Indirect proof of the second component of publication

136 The plaintiffs argue that publication of the Online Articles in Singapore can be inferred on account of: (a) their accessibility on the Internet; and (b) the results of using search terms on search engines. Again, the starting point in relation to the accessibility of the Online Articles on the Internet is that there is no presumption of law that material appearing on the Internet has been published, and it is therefore insufficient for a plaintiff to simply allege that the defamatory material was posted on the Internet and was accessible in Singapore by a substantial number of third party readers. There must be some facts in evidence to support an inference of publication in Singapore to a substantial number of third party readers.

137 First, there is no evidence that the Online Articles were found on websites which were frequented by Singapore-based Internet users. Xu Bin's

evidence is that in or around December 2013, Article 2 had been read by 627 viewers, Article 8 by 363 viewers, Article 9 by 894 viewers and Article 11 by 256 viewers.[56] Moore in his report stated that including repeat readers, Article 3 was read 5121 times, while Article 7 was read 306 times.[57] These figures, however, do not indicate the number of viewers or readers from Singapore. But what is clear, in my view, is that these figures are insignificant in the grand scheme of the things that is the Internet, which would, presumably, have millions, if not billions, of users worldwide. Flowing from this, I agree with the defendants that the low number of viewers or readers renders it unlikely that any significant number of visits were from Singapore-based Internet users. This is all the more so when one considers the fact that none of the domains hosting the Online Articles were located in Singapore,[58] suggesting that the websites were not even intended for a Singapore-based audience. In *Benedict Ng*, Lai Siu Chiu J noted (at [31]) that there was no evidence as to the number of Singapore-based subscribers for one of the websites in question (which was *designed for Singapore and Malaysia subscribers*) and its general viewership. On that basis, Lai J did not think it would be safe to draw an inference of publication in Singapore, as it would be "tantamount to recognising a rebuttable presumption of publication". Given that the websites where the Online Articles were found were unlikely to have been designed for Singapore-based Internet users, Lai J's reasoning applies *a fortiori* in the present case.

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[56] Xu Bin's AEIC, para 28.

[57] Peter James Alfred Moore's AEIC, Exhibit PM-1, p 29.

[58] Peter James Alfred Moore's AEIC, Exhibit PM-1, p 25.

138 As regards the other ground relied on by the plaintiffs, *ie*, the results of using search terms on search engines, two cases are relied upon by the plaintiffs. In *Steinberg v Englefield and another* [2005] EWCA Civ 288 ("*Steinberg*"), Sedley LJ, with whom Longmore and Ward LJJ agreed, found (at [21]) the inference of substantial publication of a defamatory letter to be irresistible, given that it was accessible to anyone who fed the plaintiff's name into a standard search engine and was also readable by anyone who accessed the defendant's own professional website. In *Gregg v O'Gara* [2008] EWHC 658 (QB) ("*Gregg*"), King J, in an application for summary judgment, considered (at [52]) that any jury would draw the irresistible inference that the two defamatory articles in question, which had been posted online, had been widely published within the jurisdiction. King J relied on the fact that the defendant's website containing the defamatory material was immediately accessible to anyone who fed the words "Yorkshire Ripper" into a standard search engine. He also highlighted that the Yorkshire Ripper was a topic of continuing interest to members of the public and that the plaintiff himself had been contacted by various people who had become aware of the defamatory allegations.

139 In my view, however, these cases do not assist the plaintiffs. As pleaded by the plaintiffs, the Online Articles were all located by entering a *combination* of search terms into search engines. This is with the possible exception of Article 1, for which it is not clear how the plaintiffs had located it. In this regard, Li's evidence is that he had "found no relevant information" (much less the Online Articles) when he used the search term "Du Bo" on its own.[59] Similarly, Ouyang agreed that if he simply used the search term "Du

Bo" on its own, he probably would not find anything about P4 because there are many people called "Du Bo" in China, and this was why he did not use the search term "Du Bo" on its own.[60] The present case is therefore immediately distinguishable from *Steinberg*. There is no evidence that feeding any of the plaintiffs' names, *individually*, into a standard search engine would reveal the Online Articles. At least in so far as P4 is concerned, the evidence is in fact to the contrary.

140 But what then is the rule concerning the use of a combination of search terms? In *Benedict Ng*, there was evidence that the defamatory material could be found on the Internet by using both the plaintiffs' name as one search term, and that conducting a search using the search term "dafni, benedict ng, rajathurai suppiah" would reveal the defamatory material on two major search engines. Lai J thought (at [31]) that in the case before her "it would be *highly unusual for any person to conduct a search by combining two or three names in the search field*" [emphasis added], and accordingly did not believe that such a fact warranted the inference that substantial publication had taken place in Singapore.

141 In a similar fashion, *Gregg* is distinguishable from the present case. As was alluded to by Lai J in *Benedict Ng* (at [31]), that case concerned a search of the *subject-matter* of the defamatory material rather than the name of the plaintiff. Like in *Benedict Ng*, there is no evidence of such a search term having been used here.

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[59] Transcripts (23 September 2015), p 47.

[60] Transcripts (25 September 2015), p 20.

142 For the reasons stated, the second component of publication is satisfied in respect of Articles 1, 2 and 4 by virtue of the evidence of Xu Zhengpeng, a third party reader in Singapore. Be that as it may, the first component of publication is not satisfied. Consequently, the plaintiffs have not proved, on the balance of probabilities, that the defendants are responsible for the publication of the Online Articles in Singapore.

143 My finding on a sole third party reader in Singapore leads me on to the *Jameel* doctrine. Before going there, however, I propose to briefly address the observation in *Collins* (at para 5.06) that "[w]here a claimant proves that matter appearing on the Internet has been published to one or more persons, it may be inferred that the matter was published more widely". In my view, this observation does not assist the plaintiffs for the simple reason that the drawing of an inference in such a case must still be dependent on the existence of a substratum of fact(s) to support the drawing of such an inference. For the reasons stated at [137]–[141] above, no such inference can be drawn in the present case.

(3) Abuse of process

144 I now come to the *Jameel* doctrine. In this regard, the defendants argue that there has been no real and substantial tort in so far as the Online Articles are concerned, and that for this reason the claim should be struck out as an abuse of process under the *Jameel* doctrine. Given my finding above, it is perhaps apposite to consider this argument in greater detail. In this connection, the plaintiffs have failed to show any real or substantial tort committed in this jurisdiction. Accordingly, the *Jameel* doctrine is another basis on which the plaintiffs' claim in defamation may be dismissed.

145 In the context of defamation, the abuse of process doctrine stemmed from the decision of the English Court of Appeal in *Jameel*. That case proceeded on the basis that there were only publications to no more than five individuals, three of whom were part of the plaintiff's camp, within the jurisdiction. The Court of Appeal struck out the plaintiff's claim on the basis that there was no real and substantial tort, observing as follows (at [69]–[70]):

> If the claimant succeeds in this action and is awarded a small amount of damages, it can perhaps be said that he will have achieved vindication for the damage done to his reputation in this country, *but both the damage and the vindication will be minimal*. ***The cost of the exercise will have been out of all proportion to what has been achieved.*** The game will not merely not have been worth the candle, it will not have been worth the wick.
>
> If we were considering an application to set aside permission to serve these proceedings out of the jurisdiction we would allow that application on the basis that the five publications that had taken place in this jurisdiction *did not, individually or collectively, amount to a real and substantial tort*. Jurisdiction is no longer in issue, but, subject to the effect of the claim for an injunction that we have yet to consider, we consider *for precisely the same reason* that it would not be right to permit this action to proceed. ***It would be an abuse of process to continue to commit the resources of the English court, including substantial judge and possibly jury time, to an action where so little is now seen to be at stake***. …
>
> [emphasis added in italics and bold italics]

146 In Singapore, *Jameel* was considered by the Court of Appeal, albeit in *obiter*, in *Yan Jun v Attorney-General* [2015] 1 SLR 752. The Court of Appeal cautioned (at [118]) that:

> It is also pertinent to note that since *Jameel* was decided under a set of procedural rules which are fundamentally different from those in Singapore … and because it entails – in part, at least – the (potentially far reaching) proposition that an action may be struck out on the basis that the *publication* of the defamatory material is *limited*, or the *amount* claimed as

> damages is *de minimis*, the principle enunciated in that case should be approached with the *necessary circumspection* by the Singapore courts. … [emphasis in original]

147 However, the Court of Appeal eventually acknowledged (at [120]) the applicability of the general principles of *Jameel* in Singapore, and proceeded to apply it to the facts of the case:

> … In light of our decision above at [111]–[114], it is, *strictly speaking*, not necessary for us to decide whether the Judge was correct in following *Jameel*. That having been said, there is a relatively significant body of authority in England endorsing the general principle established in *Jameel*, *viz*, that a claim which discloses no real and substantial tort is liable to be struck out for being an abuse of process of the court, and the real concerns (as we have seen above) relate to its *application*. This last-mentioned point is not surprising in view of the fact that the line-drawing required is not only fact-centric but may also be difficult to effect in borderline situations. ***Further, and leaving aside the differences in the rules of civil procedure between England and Singapore,* Jameel *also contains some* general principles *that may be applicable in the Singapore context.*** Hence, applying the principle in *Jameel* to the facts of the present case, we would be of the view that this was far from being a borderline situation and that the Judge was therefore correct in following and applying *Jameel* and holding that the Appellant's claim in defamation did not disclose a real and substantial tort. This would have served as a *yet further* reason as to why the Appellant's claim in defamation should fail. [emphasis in original in italics; emphasis added in bold italics]

148 In *Atlantis*, it was held, albeit in *obiter* (at [56]), that although abuse of process is more commonly a ground for striking out a claim *before* trial, it is open to the court in a suitable case to dismiss a claim *at* trial on the ground that it constitutes an abuse of process. Reliance was placed on the observations of the English Court of Appeal in *Lonrho PLC. and Others v Fayed and Others (No. 5)* [1993] 1 WLR 1489 (at 1493D–F and 1502D–E).

149 Given the conclusion reached above that the first component of the element of publication is not established on the balance of probabilities, there is no liability for the tort in the present case. Be that as it may, I venture to state that the *Jameel* doctrine can serve as an additional reason to dismiss the action since it can be said that no real and substantial tort was committed in this jurisdiction. The only proof of the second component of publication comes from the evidence of Xu Zhengpeng (and, furthermore, only in relation to Articles 1, 2 and 4). Consequently, the publication in Singapore would have been very exceedingly limited and restricted.

Issue of reference: Do the Online Articles refer to the plaintiffs?

150 As stated in [34], in order to establish liability, the Online Articles would have to refer to the plaintiffs. In this connection, the parties have agreed that the Online Articles refer to P1, P2, P4 and P5. Thus, a remaining issue on liability that affects P3 is whether the Online Articles refer to P3, *ie*, Qingjian Realty (South Pacific) Group Pte. Ltd.. There is reference to "Qingjian Group Singapore company" in the Online Articles and the question is whether these words are reasonably capable of referring to P3. In the end, I find that the Online Articles do not refer to P3 and this finding is another reason for dismissing the action in so far as P3 is concerned. These are the reasons for my conclusion on the issue of reference.

151 The plaintiffs allege that the articles in Categories A and C refer to P3. In Article 1 (the representative article in Category A) and Article 4 (the representative article in Category C), the reference in question is a reference to "Qingjian Group Singapore company". For completeness, the plaintiffs do not plead that Article 2 (the only article in Category B) is defamatory of P3, and

so no question of reference arises here. Further or alternatively, the plaintiffs plead that, by way of innuendo, "Qingjian Group Singapore company" meant and/or was intended to refer to P3. In this regard, they rely on two "facts". First, they argue that readers of the statement, particularly readers in Singapore, would know that P3 is one of the more established affiliates of P1 and/or P2 in Singapore. Second, they claim that P3 is also known by the public at large to be actively involved in building a name for itself for mass-market condominiums and executive condominiums in Singapore under the "Qingjian Realty" brand.

152 I agree with the defendants that the words "Qingjian Group Singapore company" are not capable of referring to P3, especially in the light of 18 other companies registered in Singapore with the name "Qingjian" at the material time. This means that P3 would have to rely on innuendo to establish the element of reference in the law of defamation. In other words, no reasonable reader without special knowledge would have understood "Qingjian Group Singapore company" to refer to P3.

153 I am of the view that Articles 1 and 4 would not lead a reasonable reader to the conclusion that P3 is being referred to. The key allegation in Articles 1 and 4 is that P4 had relied on "Qingjian Group Singapore company" to obtain permanent residency in Singapore. In Article 4, reference is also made to "Qingjian Group Singapore company" being a "twin brother" of P2 in Singapore established by P4 and P5. In these contexts, however, a reasonable reader would be none the wiser even if he had knowledge of the two "facts" which are being relied on by the plaintiffs. In other words, even if these two

"facts" were true, I do not consider that they go any way towards establishing that "Qingjian Group Singapore company" refers to P3.

154 To my mind, "Qingjian Group Singapore company" was used in a *descriptive* sense. In other words, while the author had intended to refer to a specific company, he chose not to identify it by its actual name. Hence, "Qingjian Group Singapore company" can equally refer to *any one* of the 18 Singapore entities with the name "Qingjian" apart from P3.

155 Even if "Qingjian Group Singapore company" was intended to identify a specific company, I agree with the defendants that a reasonable reader would conclude that this referred to a company by the name of Qingjian Group Co., Ltd. Singapore Branch instead, as the name of this company was closer to "Qingjian Group Singapore company" than any of the other "Qingjian" Singapore entities, including P3. In this regard, it is telling that in the plaintiffs' letters of demand to the defendants dated 15 January 2014,[61] the plaintiffs' lawyers made a demand on behalf of P1, P2, P4 and P5 *and Qingjian Group Co., Ltd. Singapore Branch*. Notably, no claim was advanced on behalf of P3 in these letters.

156 In this connection, I note that three of the plaintiffs' witnesses have stated that they understood "Qingjian Group Singapore company" to refer to P3. Two of them – Li[62] and Ouyang[63] – are employees of P3, while one of them – Wang Yu[64] – is the general manager of a company which had business

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[61] AB429-440.

[62] Li Guo Dong's AEIC, para 7.

[63] Ouyang Jing's AEIC, para 7.

dealings with P3. Quite apart from the fact that these witnesses have an ongoing relationship with P3, the fact is that their understanding is of little consequence to the issue at hand. The test for reference is ultimately an *objective* one. In *Gatley*, it is stated (at para 7.3) that:

> …
>
> Where the claimant is referred to in an indirect way or by implication it will be a question of degree how far evidence will be required to connect the libel with him. At one extreme, if there is a libel on "the Prime Minister" that officer does not need to produce witnesses to testify that they know who he is. At the other extreme, the claimant may only be identifiable by reason of extraneous facts which are not generally known, in which case there is no actionable publication unless it is shown that the words were communicated to persons with such knowledge. *Even in the latter type of case, however, it is not enough that the recipients of the statement did understand it to refer to the claimant: the issue is whether reasonable people with their knowledge would so understand it.*
>
> …
>
> [emphasis added]

157 As I have already stated, Articles 1 and 4 would not lead a reasonable reader to the conclusion that they refer to P3. In my judgment, therefore, the articles in Categories A and C do not refer to P3. Consequently, P3's claim in defamation against the defendants fails for this additional reason.

Issue of meaning: Are the Online Articles defamatory?

158 As stated in [34], the plaintiffs have to establish that the Online Articles are defamatory of the plaintiffs. The legal principles on defamatory meaning are not controversial.

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[64] Wang Yu's AEIC, para 22.

159 I begin with P3. It is not the plaintiffs' pleaded case that Article 2 (the only article in Category B) is defamatory of P3. Given my conclusion that "Qingjian Group Singapore company" is not a reference to P3, the articles in Categories A and C cannot be defamatory of P3. However, even if I were to assume, for the sake of argument, that the words "Qingjian Group Singapore company" are a reference to P3, I find that the articles in Categories A and C are not defamatory of P3. I will elaborate on this point.

160 The particular paragraph in Article 1 (the representative article in Category A) being relied on as regards P3 reads:

> Relying on Qingjian Group Singapore company, [P4] has obtained Singapore permanent residency and his entire family has even migrated to Singapore. They own several mansions and their assets reach tens of billions. [P5] and other members have also completed migration procedure. According to research, the entire senior management of [P2] are the main investors of Qingjian Group Singapore company. Their assets have been transferred overseas and they own the citizenship of Singapore.

Read in the context of the rest of Article 1, the paragraph quoted above is not defamatory of "Qingjian Group Singapore company". P4's "reliance" on "Qingjian Group Singapore company" is left completely unexplained and could be innocuous. Similarly, that the entire senior management of P2 are the main investors of "Qingjian Group Singapore company" says nothing about the latter.

161 As regards Article 4 (the representative article in Category C), references to "Qingjian Group Singapore company" appear at two points. The first is that P4 and P5 have established a twin brother of P2 in Singapore. This says nothing about P3. As for the second reference, to the effect that P4 has

obtained Singapore permanent residency by relying on "Qingjian Group Singapore company", my conclusion in the preceding paragraph applies equally here.

162 I now move on to the remaining plaintiffs, P1, P2, P4 and P5. It appears from the Statement of Claim (Amendment No. 2) that these plaintiffs rely only on the natural and ordinary meaning of the Online Articles in making out their case against the defendants. The substantive portions of the plaintiffs' English translation of Articles 1, 2 and 4 are annexed to this judgment in Annex A, and the parts which are pleaded as defamatory are emphasised in italics and bold therein. In my view, the identified statements in the Online Articles are capable of conveying the defamatory meanings set out at [163]–[165] below.

Article 1

163 I start by looking at Article 1 (the representative article in Category A). In my view, Article 1 was capable of conveying defamatory meanings. In its natural and ordinary meaning, Article 1 alleged that P4 and P5 had, through various means, dishonestly used P1 to misappropriate the state-owned assets of P2. P2 was formerly a state-owned enterprise but, as a result of this scheme, had become a personal company owned by P4 and P5 and others. In so far as P1 and P2 were concerned, the suggestion was that they were complicit in this scheme. As a corporate plaintiff with no trading or business reputation in Singapore, P1 cannot be defamed by Article 1. However, such allegations are defamatory of P2, P4 and P5 in so far as they plainly lowered P2, P4 and P5 in the estimation of right-thinking members of society generally.

Article 2

164 Moving on to Article 2 (the only article in Category B), Article 2 was capable of conveying defamatory meanings. In its natural and ordinary meaning, Article 2 alleged that the privatisation of P2 was a result of a scheme by P4 and P5 to misappropriate state-owned assets and that P1 and P2 were complicit in this scheme. Moreover, P4 and P5 had absconded or were planning to abscond by migrating to Singapore. The allegations were of unlawful conduct, corruption, abuse of position and dishonesty on the part of P4 and P5, as well as mismanagement or manipulation of P1 and P2 by P4 and P5. As a corporate plaintiff with no trading or business reputation in Singapore, P1 cannot be defamed by Article 2. However, such allegations clearly lowered P2, P4 and P5 in the estimation of right-thinking members of society generally and are therefore defamatory.

Article 4

165 As regards Article 4 (the representative article in Category C), I am of the view that in its natural and ordinary meaning, Article 4 alleged the same thing as Article 2, *ie*, that the privatisation of P2 was a result of a scheme by P4 and P5 to misappropriate state-owned assets and that P1 and P2 were complicit in this scheme. Moreover, P4 and P5 had absconded or were planning to abscond by migrating to Singapore. The allegations were of unlawful conduct, corruption, abuse of position and dishonesty on the part of P4 and P5, as well as mismanagement or manipulation of P1 and P2 by P4 and P5. As a corporate plaintiff with no trading or business reputation in Singapore, P1 cannot be defamed by Article 4. Again, however, these

allegations clearly lowered P2, P4 and P5 in the estimation of right-thinking members of society generally and are therefore defamatory.

Conclusion on the plaintiffs' case with respect to the Online Articles

166 Based on the foregoing, the plaintiffs have failed to make out a *prima facie* case of defamation against the defendants in so far as the Online Articles are concerned. With respect to the issue of publication, the plaintiffs have failed to establish the first component of publication. Moreover, while the second component of publication is technically satisfied, the plaintiffs' claim in defamation falls to be dismissed pursuant to the *Jameel* doctrine. In addition to these reasons, which apply *vis-à-vis* all the plaintiffs, P1's claim also fails as P1 has no trading or business reputation in Singapore. At the same time, P3's claim also fails as the Online Articles do not refer to P3. In any event, the Online Articles are not defamatory of P1 and P3.

The Justification Issue

167 In light of my conclusions thus far on liability, it is, strictly speaking, not necessary for me to comment on the defence of justification which arises only after a *prima facie* case of liability is made out. Nonetheless, I propose to comment on aspects of the defence of justification. The trial proper was dominated by this defence, and parties have also submitted at great length on it. I do not propose to comment on the issue of damages as this is generally only covered in submissions.

168 It is not controversial that the burden of proof in establishing the defence of justification lies squarely on the defendant (*Gatley* at para 11.4; *Gary Chan* at para 13.003; *Evans* at pp 85–86). To successfully establish the

defence of justification, the defendant need only prove the truth of the *substance* or *gist* of the offending words (as opposed to those parts of the offending words which do not add to the sting of the alleged defamation) (*Review Publishing Co Ltd and another v Lee Hsien Loong and another appeal* [2010] 1 SLR 52 at [134]). Thus, some leeway is given for exaggeration and error (*Chan Cheng Wah Bernard and others v Koh Sin Chong Freddie and another appeal* [2012] 1 SLR 506 ("*Bernard Chan*") at [44]). However, in no way does this leeway suggest that the burden is easily discharged.

169 The defence of justification is not established by showing tenuous circumstantial evidence and inferences (*Evans* at p 87). At the same time, while the standard of proof remains the balance of probabilities, the sting of the libel in this case is misappropriation of state-owned assets. Needless to say, such an accusation is a serious matter and cogent evidence is needed to establish, on the balance of probabilities, the truth of the accusation. The oft-quoted statement in the cases is that the more serious the allegation, the less likely it is that the event occurred. Consequently, the stronger the evidence must be before the event's occurrence can be established on a balance of probabilities. Furthermore, in the context of defamation, the defence will not succeed if a materially less serious meaning is proved to be true (*Bernard Chan* at [43]). As explained in *Gary Chan* (at para 13.005):

> … Where the defamatory imputation is that the plaintiff is guilty of a serious crime, the defendant will have to justify the statement by showing the plaintiff's culpability in respect of that crime. If the defamatory imputation is one with a lower level of defamatory meaning, such as that the plaintiff is under suspicion of a crime, the defendant will be able to justify the statement by showing that the plaintiff had acted in

> a manner which would have caused a reasonable observer to be suspicious. ...

170 In the course of their submissions, the defendants have referred to the evidential burden of proof shifting to the plaintiffs. As with most civil cases, the evidential burden would shift or alternate from one party to the other in the course of a trial according to the nature and strength of the evidence offered in support of or in opposition to the main fact to be established (see, for example, *Ong and Co Pte Ltd v Quah Kay Tee* [1996] 1 SLR(R) 782 at [19]). More importantly, however, the legal burden of the defence of justification remains squarely on the defendants. If the state of the evidence is such that at the end of the trial the court is left in an uncertain position, the court may rule that the assertions have not been made out (see, generally, *Rhesa Shipping Co. S.A. v Edmunds ("The Popi M")* [1985] 1 WLR 948). It is open to the court to say that the evidence leaves the court in doubt as to whether the event occurred or not, and that the party who bears the legal burden of proving that the event occurred has failed to discharge that burden.

171 The sting of the Online Articles is that P4 and P5 had in fact misappropriated state-owned assets and that P1 and P2 were complicit in the misappropriation. The defendants' central case is that the P4 and P5 had deliberately and systematically misappropriated the state-owned assets of P2 through various complicated schemes and a web of companies including: (a) P1 and P2; (b) Shandong Haiwei and Shanghai Heliyuan; and (c) Guoqing. Before this court, the parties have dealt with the alleged misappropriation in various stages, and I propose to adopt the same approach. At the outset, I note that the defendants have, in their closing submissions, abandoned a number of allegations which they had pleaded in their Defence (Amendment No. 1). That

being the case, I will focus on the defendants' case as set out in their closing submissions.

172 As my comments below will show, what the defendants have sought to do was to highlight a particular transaction, and then invite this court to draw an inference of illegality or impropriety by arguing that the defendants have done enough to shift the evidential burden to the plaintiffs but the plaintiffs have not adduced enough evidence to "pass back" the evidential burden to the defendants. The fallacy of this argument is dealt with in greater detail below.

173 One point ought to be made at this juncture and this concerns the defendants' repeated allegation that P4 and, to some extent, P5 had not given consideration for the shares they acquired. As will be seen below, this is a key fact relied upon by the defendants at various points. What must be remembered, however, is that the legal burden of establishing the truth of the allegation (*viz*., the non-payment for the shares) is on the defendants (ss 103–105 of the EA; see also the Court of Appeal's decision in *Cooperatieve Centrale Raiffeisen-Boerenleenbank BA (trading as Rabobank International), Singapore Branch v Motorola Electronics Pte Ltd* [2011] 2 SLR 63 (at [30]–[31]) and more recently in *SCT Technologies Pte Ltd v Western Copper Co Ltd* [2016] 1 SLR 1471 (at [16]–[18])).

Changes in shareholders of P1

June 1998: Founding and initial capitalisation of P1

174 P1 was registered on 18 May 1998 and had its business license issued on 2 June 1998.[65] Its original name was Qingdao Century Decoration Co., Ltd.

This was later changed to Qingdao Zero Zero One Decoration Co., Ltd on 8 May 1999, and subsequently to Qingdao Zero Zero One Engineering Co., Ltd on 28 September 1999. P1 had an initial registered capital of RMB 5 million and its shareholders were P2 and P4, each holding 40% and 60% of the shares respectively.[66] The defendants' case is that P4 did not contribute anything towards his RMB 3 million share and that the funds were instead provided by P2. The plaintiffs, on the other hand, contend that the capital contribution towards the 60% shareholding in P1 was paid by a group of staff members of P1 or P2 and registered in the name of P4 as their nominee ("the informal shareholding arrangement").

175 The state of the evidence on this aspect of the argument is as follows. First, D1 had, at trial, conceded that he has no documentary evidence to show that P4 did not pay for the capital contribution in his name.[67]

176 Second, the evidence bears out the existence of the informal shareholding arrangement. Evidence of the informal shareholding arrangement was given by P4,[68] P5[69] and one Wang Linxuan[70], a director of P3 who was previously in the employ of P1. All of them were part of the informal shareholding arrangement. Taken together, their evidence is that P4 was appointed to be the nominee to hold the shares of P1 on behalf of various

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[65] Yuan Hongjun's AEIC, para 37.

[66] Exhibit D1.

[67] Transcripts (1 October 2015), p 28.

[68] Du Bo's AEIC, paras 85–89.

[69] Yuan Hongjun's AEIC, paras 40–44.

[70] Wang Linxuan's AEIC, paras 12–14.

employees of P1 or P2 and that he continued to be their representative until the Staff Shareholding Committee of P1 ("SSC") was formally constituted. The informal shareholding arrangement was a common feature of the state-owned enterprises during the material time, and was intended to give employees a stake in the state-owned enterprises to promote contribution and productivity.[71] The sum paid by each individual was collected and deposited in P1's corporate banking account on 8 May 1998. P4 had himself contributed RMB 200,000[72], P5 more than RMB 10,000[73] and Wang Linxuan about RMB 10,000 to 20,000.[74] In this regard, I note that the defendants do not dispute the existence of the SSC that was later constituted. This goes some way in showing the existence of the informal shareholding arrangement in so far as it is likely that it was a precursor to the SSC.

177 Significantly, the existence of the informal shareholding arrangement is also borne out by the documentary evidence. First, in the minutes of the Board of Directors and Board of Supervisors Preparatory Meeting of P1 held on 25 June 1998,[75] it is indicated that the total share capital of RMB 5 million included "[i]nternal employees' shares" of RMB 3 million. The number of subscribers is stated as 49 persons, including P4, with a subscription amount of RMB 3 million. There is a handwritten document which has been put forward as minutes of what appears to be the same meeting although the venue appears to be different.[76] The defendants' objection that this is a

[71] Wang Linxuan's AEIC, para 12.

[72] Transcripts (17 September 2015), p 25.

[73] Transcripts (22 September 2015), p 66.

[74] Transcripts (25 September 2015), p 38.

[75] AB456–458.

"contradictory" record as it does not mention the informal shareholding arrangement is rhetorical.

178 Second, the minutes of the Founding cum First Shareholders' Meeting of P1 held on 28 June 1998[77] show that there were 38 shareholders (who collectively held RMB 4.21 million or 84% of the total share capital of P1) in attendance. Two other shareholders were absent. This number of shareholders (total of 40) would make no sense if the informal shareholding arrangement did not exist. The defendants highlight that the original date of this document was 21 March 1999 and that this date had been struck out and replaced with 28 June 1998. The argument was that this "backdating" indicates that the informal shareholding arrangement was a later invention. In response, the plaintiffs submit that the more probable explanation is that the wrong date was typed, and the correct date was then inserted by handwriting.[78] In my view, this is a plausible explanation. Even if the correct date was 21 March 1999, this document still indicates that there were at least 40 shareholders of P1 as of that date. The fact that there is no documentation produced now to show the existence of the informal shareholding arrangement is not, in itself, fatal. The shareholders' arrangement was, as its name suggests, an *informal* one, and the defendants' expert, Xu Ying, had agreed that there was no legal requirement for such documentation.[79]

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[76] AB449–452.

[77] AB465–467.

[78] Plaintiff's closing submissions, para 265.

[79] Transcripts (6 October 2015), pp 57–58.

179 The defendants claim, rhetorically, that it "may not matter much" whether there was the informal shareholding arrangement, as P4, P5 and Wang Linxuan were unlikely to have access to the amounts of money which they say they invested. At trial, P4 stated categorically that before 1995, his total annual income was about RMB 15,000 from his employment with P2[80] and that, in any case, his wages and income would have "completely satisfied" his contribution of RMB 200,000.[81] As for P5, his evidence is that his annual income in 1996 was around RMB 20,000.[82] As for Wang Linxuan, his evidence is that he had used his own money, as well as money borrowed from his parents, for his contribution.[83]

180 The alleged misappropriation of state-owned assets stemmed from the defendants' contention that P4 did not pay for the shares in his name. The burden of proof concerning non-payment is on the defendants (see [173] above). Besides, even if the informal shareholding arrangement did not exist and/or P4 and P5 and Wang Linxuan did not have access to the amounts of money which they say they invested, it plainly does not follow that the funds were instead provided by P2.

181 The defendants point to a certificate dated 18 May 1998 that was purportedly issued by P2[84] and agreeing that P4 "may contribute RMB 3

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[80] Transcripts (16 September 2015), p 69; (17 September 2015), p 25; (18 September 2015), p 44.

[81] Transcripts (17 September 2015), p 26.

[82] Transcripts (22 September 2015), p 7.

[83] Transcripts (25 September 2015), p 38.

[84] AB480.

million in his personal name as registered capital (60%) to apply for the registration of [P1]". The defendants contend that as this certificate post-dates the date on which the capital payments were made, it makes no sense unless P2 was "giving its blessing for funds which it had already contributed itself to be treated as the funds of P4 (either in his own right or as nominee for a group of employees)". In response, the plaintiffs argue that the certificate was simply P2's acknowledgment of its approval of the informal shareholding arrangement. I agree with the plaintiffs that the certificate does not say that P2 paid for the 60% shareholding in P1. In my view, the purport of the certificate is, at best, ambiguous.

182 A final document that ought to be considered at this stage is a Capital Verification Report dated 15 May 1998.[85] According to this Capital Verification Report, out of P1's registered capital of RMB 5 million, RMB 3 million was contributed by P4. According to Xu Ying, up till 2014, the Capital Verification Report was a document required by the PRC company registration authority for the formation and registration of a company and had to be issued by a PRC-qualified accounting firm in accordance with PRC accounting principles. The accounting firm would examine the capital account of the company and the wiring proofs to verify that the capital contributions were made through the shareholders' accounts to the company. However, the accounting firm was not required to inspect the *original sources* of such funds.[86] This appears to have been accepted by the plaintiffs in their closing submissions. That being the case, the Capital Verification Report dated 15

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[85] AB1284–1286.

[86]Xu Ying's AEIC, Exhibit XY-1, para 17.

May 1998 is of no assistance to both parties: it only confirms that the capital contributions were made through P4's account; it does not reveal whether the source of funds in P4's account was from P2 (*per* the defendants' case) or the informal shareholding arrangement (*per* the plaintiffs' case). In this regard, the parties' extensive submissions on the reliability and evidential value of the Capital Verification Reports do not assist either party.

June 2001: P1's first capital increase

183 21 June 2001 was the date of P1's first capital increase. P1's capital was increased from RMB 5 million to RMB 10 million. The shareholding as between P2 and P4 remained unchanged at 40:60.[87] The defendants' case is that P4's contribution of RMB 3 million was funded by P1 itself, whereas the plaintiffs contend that this was paid by the group of staff shareholders pursuant to the informal shareholding arrangement.

184 In making their claim, the defendants rely solely on a bank-in slip dated 13 June 2001 attached to a Capital Verification Report dated 15 June 2001[88] showing that the RMB 3 million was paid out of P1's account with Agricultural Bank East Branch and into P1's account with Agricultural Bank City South Branch. The Capital Verification Report itself,[89] however, explains as follows:

> Shareholder [P4's] capital contribution of RMB 3 million was collected by [P1] on 13 June 2001 and deposited into the

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[87] Exhibit D1.

[88] AB1307.

[89] AB1298–1306.

> account of [P1] at China Agricultural Bank Qingdao City South Branch. …

This lends credence to the plaintiffs' case that the RMB 3 million was paid into P1's corporate banking account, and was later transferred to P1's capital verification account. Indeed, this explains why the bank-in slip showed the funds as originating from P1. But once again, the Capital Verification Report (this time including the attached bank-in slip) is of no assistance to both parties in so far as it leaves unanswered the real question concerning the original source(s) of the RMB 3 million. The defendants, having relied on the bank-in slip alone, have therefore failed to discharge their burden of proof. Putting it another way, the defendants have not provided countervailing evidence to challenge P4's evidence, which is that the sum of RMB 3 million was collected from the staff shareholders and paid into P1's corporate account.[90] Having earlier accepted that the informal shareholding arrangement did in fact exist, this is, in all likelihood, a continuation of this arrangement. This analysis is moreover consistent with Wang Linxuan's evidence[91] that he had contributed an estimated sum of RMB 60,000 for this first capital increase.[92] His inability to provide an exact figure of his contribution is understandable given the number of years that had passed since then.

March 2002: P1's second capital increase

185 On 6 March 2002, P1's capital was increased for a second time, this time by RMB 10 million, bringing its total capital to RMB 20 million. The

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[90] Du Bo's AEIC, para 96.

[91] Wang Linxuan's AEIC, para 14(b).

[92] Transcripts (25 September 2015), p 54.

additional funds were invested in the name of P4, resulting in his shareholding increasing to 80%.[93] The defendants' case is two-fold. First, they claim that the new capital attributed to P4 was in fact paid by P1. Second, they claim that the dilution in P2's shareholding (now 20%) was brought about without the requisite State authority.

186 With respect to the defendants' first claim, the defendants rely on a bank-in slip dated 5 March 2002[94] attached to a Capital Verification Report dated 6 March 2002.[95] The bank-in slip shows that the RMB 10 million was paid out of P1's account with Agricultural Bank East Branch and into P1's account with a bank whose name was illegible on the document. The defendants argue that this is sufficient to prove the defendants' case. But once again, however, the Capital Verification Report itself explains why this is the case:[96]

> As of 5 March 2002, [P1] has received [P4's] payment of RMB 10 million, being the total amount of the newly increased registered capital, which was deposited on 5 March 2002 into the RMB account … at China Agricultural Bank Qingdao City South District Branch Donghai Road Sub-branch Office, this being the sum of RMB 10 million.

Although worded in slightly different terms, the purport of this is clearly the same as the earlier Capital Verification Report of 15 June 2001 (see [184] above). It explains why the bank-in slip shows the funds as originating from P1: the RMB 10 million was paid into P1's corporate banking account, and

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[93] Exhibit D1.

[94] AB1334.

[95] AB1326–1333.

[96] AB1332.

this was later transferred into P1's capital verification account. As before, however, neither the Capital Verification Report nor the bank-in slip attached shows the original source(s) of the funds. The defendants' case, based on the bank-in slip alone, is therefore not established.

187 The defendants have no other countervailing evidence to challenge P4's evidence that this second capital increase was contributed by the staff shareholders pursuant to the informal shareholding arrangement. The monies were collected from these members and deposited into P1's corporate account.[97] Wang Linxuan's evidence is similar,[98] and at trial he stated that he had contributed around RMB 200,000 to 300,000 during this second capital increase.[99]

188 As for the defendants' second claim, reliance is placed on Xu Ying's evidence that the dilution of P2's shareholding in P1 from 40% to 20% was a change which had to be evaluated by a qualified valuation firm, submitted to the relevant state-owned assets administration authority for approval and registered with the relevant local governments.[100] The likelihood, according to the defendants, is that the requisite approval was not sought or granted, and that the State authorities were "kept in the dark" about this. The quality of this evidence is not enough to shift the evidential burden to the plaintiffs, let alone discharge the defendants' legal burden. As against the defendants' contention, the plaintiffs' expert, Cao Jun, testified that since the rules and regulations

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[97] Du Bo's AEIC, para 100.

[98] Wang Linxuan's AEIC, para 14(c).

[99] Transcripts (25 September 2015), p 58.

[100] Xu Ying's AEIC, Exhibit XY-1, paras 48 and 52.

pertaining to the administration of state-owned assets in force at that time did not expressly require the approval of the relevant authorities in charge of the administration of state-owned assets for this type of situation, this capital increase did not violate any mandatory rules under any law or regulation, and no approval from the relevant authorities in charge of the administration of state-owned assets was required for this capital increase.[101]

May 2003: Transfer of shares to the SSC and Qingdao Construction Group Real Estate Co., Ltd ("QCGRE")

189 On 13 February 2003, P1's name was changed to Qingdao Construction Group Zero Zero One Engineering Co., Ltd. On 26 May 2003, there was a significant change in P1's shareholding, and this took place by way of two main transactions:[102]

(a) First, P4 (who previously held 80% of P1's shares) transferred 70% of P1's shares to the newly-established SSC of P1 and 10% of the same to QCGRE.

(b) Second, P2 (which previously held 20% of P1's shares) transferred all of its shares to QCGRE.

The result is that the SSC now held 70% of P1's shares, while QCGRE held the remaining 30%. As of 16 January 2003, the SSC had 107 members, including P4, P5 and Wang Linxuan.[103]

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[101] Cao Jun's AEIC, Exhibit CJ-1, para 57.

[102] Exhibit D1.

[103] AB560–566.

190 The defendants' case involves two allegations. First, the defendants allege that through this transaction, P4 received RMB 16 million for the shares in P1 for which he had never paid. Second, they allege that P1 misrepresented its capital position to the authorities when seeking approval for this transaction.

191 With respect to the first allegation, the defendants rely on an Equity Transfer Agreement dated 18 May 2003 which states that P4 was the transferor of the shares worth RMB 16 million.[104] Against this, the plaintiffs' case is that, pursuant to the informal shareholding arrangement, the RMB 16 million received from the transfer was distributed by P1's finance department to the individuals for whom P4 held P1's shares or issued directly to the SSC.[105] A somewhat similar position was maintained by P4 at trial.[106]

192 The difficulty the defendants face in making out their case is the need for cogent evidence since misappropriation of state-owned assets is a serious allegation. The Equity Transfer Agreement does not assist the defendants because all it shows is that P4 was the transferor of the shares. In the informal shareholding arrangement, P4 was the appointed nominee and it is reasonable that the proceeds of the transfer were subsequently paid out to its members; indeed, it would be wholly unimaginable that the members of the informal shareholding arrangement were content to let P4 retain all the proceeds of the transfer despite their earlier contributions.

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[104] AB580–582.

[105] Du Bo's AEIC, para 119.

[106] Transcripts (18 September 2015), p 51.

193 What is also being alleged by the defendants is that P1 was simply handing out shares without consideration to favoured employees. The basis for this is alleged admissions by P4 and Wang Linxuan at trial that the number of shares allotted to the members of the SSC were not reflective of the sums they had paid, but determined by factors such as length of service, seniority and performance. I note that while P4 had seemingly admitted initially that each person's entitlement to the shareholding had nothing to do with his contribution,[107] he subsequently clarified, in no uncertain terms, that there was a "corresponding" relationship between the contributions of the members of the SSC and their allocation of shares.[108] As for Wang Linxuan, his evidence is simply that different people in the company were allocated different number of shares based on factors such as their period of service and position within the company.[109] This methodology does not mean that the allocation of shares was not reflective of the amount contributed by the members of the SSC. Rather, one plausible reading of the evidence is that Wang Linxuan was instead referring to the decision-making process behind how many shares each member of the SSC *could* subscribe for in the first place, *before* they paid for these shares. In this regard, I note that the Member List of the SSC[110] only has a column for each member's "Funding Amount"; it does not have a column for the number of "shares" he has. To my mind, this suggests that the governing criterion amongst the members was the amount he had contributed. In any event, even if the number of shares allotted to the members of the SSC

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[107] Transcripts (17 September 2015), pp 33–34.

[108] Transcripts (18 September 2015), p 49.

[109] Transcripts (25 September 2015), pp 62–63.

[110] AB560–566.

was not reflective of the sums they had paid, this is still a far cry from the defendants' allegation that P1 was handing out shares without consideration to favoured employees.

194 As for the defendants' second allegation, reliance is placed on a Reply Regarding Qingdao Zero Zero One Engineering Co., Ltd's Transfer of State-Owned Shares sent by the Qingdao State-owned Assets Supervision and Administration Commission to P2.[111] This document is dated 21 April 2003 and it approves the transfer of P2's shares to QCGRE. However, it states that P1 has a registered capital of RMB 10 million, of which P2 held 40% of the shares. The defendants argue that this document indicates that P2 had misstated its capital position, and that this misrepresentation is consistent with a reluctance on the plaintiffs' part to let the authorities know that the state-owned interest in P1 had already been significantly diluted. On the other side, the plaintiffs' position is that no such misrepresentation had been made to the authorities.

195 The Reply Regarding Qingdao Zero Zero One Engineering Co., Ltd's Transfer of State-Owned Shares does not further the defendants' case. The point to be made is that this document was sent by the authorities and there is nothing to suggest that the mistakes as to P1's capital position were a result of the misrepresentation of any of the plaintiffs. The mistake could equally have been a result of the authorities relying on old records. In this regard, I note that the document states P1's name as Qingdao Zero Zero One Engineering Co., Ltd even though its name had already changed to Qingdao Construction Group Zero Zero One Engineering Co., Ltd as of 13 February 2003. Even if the

[111] AB2106.

mistake was a result of wrong information provided by the plaintiffs, this was probably inadvertent since, as Cao Jun pointed out, all information regarding P1's share capital increase and shareholding interests were a matter of public record which the authorities in the PRC could easily verify.[112]

May 2005: Transfer of QCGRE's shares to the SSC and individual shareholders

196 On 8 May 2005, QCGRE transferred 26% of P1's shares to the SSC and 4% of the same to three individuals, Liu Wei, Zhong Zhao Hai and Tao Guan Si. With this transfer, the SSC held 96% of P1's shares, while the three individuals held the remaining 4%.[113] According to the defendants, this transfer was significant as, since QCGRE was majority-owned by P2, the latter was thereby relinquishing its last indirect interest in P1.

197 The defendants' case is that the transfer took place for no consideration. First, this assertion has not been pleaded in the Defence (Amendment No. 1). In any event, and this is the second point, the defendants' case is clearly unsupportable as there is simply no evidence that the transfer took place for no consideration. Reliance is placed by the defendants on the Equity Transfer Agreement dated 8 May 2005,[114] which the defendants say refers to payment but does not attach any terms of payment. But the fact is that this document plainly contemplates payment for the transfer and, in the normal course of business, payment would have followed its execution. The defendants bear the burden of proving non-payment.

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[112] Cao Jun's AEIC, Exhibit CJ-1, para 72.

[113] Exhibit D1.

[114] AB603–605.

June 2005: P1's third capital increase

198 On 8 June 2005, P1's capital was increased by RMB 40 million to RMB 60 million.[115] The defendants allege that the "likelihood" is that this capital increase was "substantially funded" by P1 and/or P2. Once again, however, this assertion has not been pleaded.

199 Be that as it may, the defendants' case is, in any event, not borne out by the evidence. The defendants claim that there must be "considerable doubt" as to whether the members of the SSC could have afforded such a large investment from their own means, but this is clearly a speculative assertion. This is especially so in light of P4's evidence that as the original shareholding was already confirmed, "everyone had to pay up" during this capital increase.[116] Likewise, Wang Linxuan's evidence is that he had contributed to this capital increase.[117] I should add, at this juncture, that the plaintiffs have additionally sought to rely on the Capital Verification Report for this capital increase[118] which stated that the RMB 40 million was received from the SSC and the three individual shareholders. However, I have not given any weight to this piece of evidence. As stated earlier, the Capital Verification Reports do not reveal anything about the original source(s) of the funds.

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[115] Exhibit D1.

[116] Transcripts (17 September 2015), p 57.

[117] Transcripts (25 September 2015), p 67.

[118] AB1342–1343.

June 2007: Transfer of shares to Qingdao Bohai Investment Co., Ltd. ("QBI") and individual shareholders

200 On 29 June 2007, the SSC transferred its entire shareholding in P1 to QBI, while the three individual shareholders transferred their shares to QBI and three other individuals (*viz*., P5, Ren Xiao Qing and Wang Xianmao). The end result was that 98% of P1's shares became owned by QBI, while the remaining 2% were owned by the three individuals.[119] It appears that QBI was owned by 17 individual shareholders, including P4, P5 and Wang Linxuan, who owned, respectively, 24.81%, 9.31% and 3.9% of the shares therein.[120]

201 The defendants' case is that this transaction was ultimately not funded by QBI or its named shareholders, but by P1, since it was P1 that came up with the money to capitalise QBI during its incorporation. The defendants allege that QBI had falsely stated that the funding for its initial capitalisation had come from its 17 individual shareholders and, in this regard, refer to the Decision on Administrative Penalty issued by the Administration for Industry and Commerce on 28 July 2008.[121] The substance of this document seems to be that QBI had wrongly stated that the cheque issuers for its registered capital of RMB 60 million were 17 individuals when the cheque issuer was actually P1. The document further states that this "constitutes an act of violation through using other deceitful means to hide important facts to obtain company registration". QBI had thus violated the Companies Act of the PRC and was fined accordingly.

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[119] Exhibit D1.

[120] Exhibit D3 (amended).

[121] DCB119.

202 The plaintiffs, on the other hand, contend that this transfer was part of a restructuring exercise.[122] Wang Linxuan's evidence appears to be that the 17 individual shareholders of QBI were the nominees of the SSC,[123] and that it was the members of the SSC who had contributed the RMB 60 million in setting up QBI.[124] The plaintiffs claim that the Decision on Administrative Penalty was a result of an administrative error[125] and that, in any event, it was eventually rectified. With regard to this latter point, the plaintiffs say that after the Decision on Administrative Penalty, the shareholders of QBI had paid their respective contributions directly, as evidenced by an Audit Report dated 16 August 2008.[126] On this point, the defendants argue that this rectification was likely to have been merely cosmetic, *ie*, P1 simply channelled its funds through the 17 individual shareholders.

203 In any case, the Audit Report, like the Capital Verification Reports, does not show the original source(s) of the funds. The plaintiffs' evidence, as set out above, is that it was the members of the SSC who had contributed the RMB 60 million in setting up QBI and that the situation which gave rise to the Decision on Administrative Penalty was an administrative error that was eventually rectified. To my mind, that the members of the SSC should be the ultimate owners of QBI is simply a continuation of the state of affairs from the SSC and the informal shareholding arrangement that preceded it, albeit in a

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[122] Plaintiffs' closing submissions, para 338; Yuan Hongjun's AEIC, para 68; Transcripts (25 September 2015), p 78.

[123] Transcripts (25 September 2015), pp 72–73.

[124] Transcripts (25 September 2015), p 78.

[125] Du Bo's AEIC, para 133; Transcripts (25 September 2015), p 78.

[126] AB1369–1381.

slightly different form (in that the shares were now held by QBI and not by the SSC or in accordance with the informal shareholding arrangement).

204 In any event, even if I were to take the defendants' case at its highest, there still remains an obstacle for the defendants. It follows from [196] above that, by the defendants' own case, P1 was, by this time, a fully private company. Thus, there were simply no state-owned assets to speak about by this stage, much less any misappropriation of the same.

205 A so-called second string in the defendants' bow is the allegation that the Share Transfer Agreements for this transaction make no mention of QBI or the three individuals giving any consideration for the shares they were to acquire. It is not clear how this is intended to sit with the defendants' case that the transfer was ultimately funded by P1, since this latter case clearly contemplates consideration having been provided. In any event, apart from the fact that this has not been clearly pleaded, the evidence does not bear this out. The Share Transfer Agreements[127] state the value of the shares being transferred and it can be inferred from this that payment was contemplated. Elsewhere, the defendants allege that QBI's acquisition of P1 for RMB 60 million was a transaction at a "severe undervalue". The simple answer to this is that the defendants have not adduced any satisfactory evidence to back up their claim that, as of June 2007, P1 was "worth much more".

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[127] AB649–655.

Changes in shareholders of P2

September 2007: Partial privatisation of P2

206 P2 started out as a fully state-owned entity. This changed on 27 September 2007, when P2's shares were transferred from the State to a number of entities:[128]

(a) 30% of P2's shares were transferred to Shandong Haiwei. The original plan was for Shandong Haiwei to hold these shares on trust for two American companies,[129] but this plan fell through due to the US subprime crisis. The result was that Shandong Haiwei held these shares in its own name.[130]

(b) 55% of P2's shares were transferred to five other companies, including QCGRE and P1, who held 35% and 6% of P2's shares respectively.[131]

(c) 15% of P2's shares were transferred to the State Owned Assets Supervision and Administration Commission of the Qingdao Municipal Government ("SASAC").

207 P2's registered capital was RMB 300 million.[132] The defendants' case is that Shandong Haiwei had acquired its shares in P2 without paying any of

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[128] Exhibit D1; AB1348–1349.

[129] Du Bo's AEIC, para 158–159; Cao Jun's AEIC, Exhibit CJ-1, para 95.

[130] AB953–954.

[131] AB1348–1349.

[132] Du Bo's AEIC, para 156; Exhibit D1.

the RMB 90 million it was supposed to contribute, and that P4 was able to bring this about through abusing his position. The plaintiffs' position is that the payment of RMB 90 million was made by Shandong Haiwei. I should also note that while parties are at variance over the legality of the arrangement between Shandong Haiwei and the two American companies and have submitted on this at some length, this is largely unnecessary. The fact is that the arrangement never materialised. I will therefore focus my comments solely on the primary allegation in the defendants' case, *ie*, whether, through P4's alleged abuse of position, Shandong Haiwei had acquired its shares in P2 for no consideration. I note at the outset that this allegation has not been expressly pleaded by the defendants. The defendants have two arguments in this regard.

208 The defendants first submit that while the Capital Verification Reports purport to record Shandong Haiwei as having made the necessary payments in September 2007 and January 2008, they do not attach any receipts and are unreliable evidence. As I have mentioned earlier at [182], Xu Ying's evidence is that while the accounting firm issuing the Capital Verification Reports did not have to inspect the original sources of funds, it would examine the capital account of the company and the wiring proofs to verify that the capital contributions were made through the shareholders' accounts to the company.[133] In other words, the Capital Verification Reports were only issued after the *flow* of funds had been ascertained. Thus, the Capital Verification Reports dated 27 September 2007[134] and 4 January 2008[135] show that there was a flow of RMB 90 million from Shandong Haiwei's accounts to P2. There is no

[133] Xu Ying's AEIC, Exhibit XY-1, para 17.

[134] AB1348–1349.

[135] AB1353–1355.

countervailing evidence from the defendants to support their claim that Shandong Haiwei's shares in P2 was acquired for no consideration. If there is any question at all, this has to do with the *original source* of this consideration, but this is *not* the case run by the defendants.

209 Moreover, the decision to allow Shandong Haiwei to hold 30% of P2's shares in its own name despite the non-materialisation of the trust arrangement was made at a shareholders' meeting on 22 December 2008.[136] The plaintiffs argue that it would have been "impossible" for the other shareholders to have agreed to allow Shandong Haiwei to do so if it had not made full payment of its capital contribution. While "impossible" may be putting the matter too far, there is certainly merit to this submission. I note, critically, that the SASAC appears to have been represented at this meeting.[137]

210 The defendants' second submission is that the RMB 90 million allegedly paid by Shandong Haiwei dwarfed Shandong Haiwei's own capitalisation, which was supposedly RMB 50 million. This is nothing more than a speculative suggestion.

October 2012: Transfer of Shandong Haiwei's shares to Shanghai Heliyuan

211 On 31 October 2012, Shandong Haiwei transferred its 30% share in P2 to Shanghai Heliyuan.[138] There were some other shareholding changes as well, including an increase in P1's shares in P2, but these are not relevant for present purposes as the defendants' case do not rest on them. Their case is that

[136] AB953–954.

[137] AB953–954.

[138] Exhibit D1.

P4 had caused Shandong Haiwei to transfer its shares for no consideration. The plaintiffs disagree.

212 The Notice of Approved Registration for Shanghai Heliyuan dated 22 October 2012[139] indicates through what appears to be an attached application form that Shanghai Heliyuan's two shareholders were P4 (holding 99.5% of Shanghai Heliyuan's shares) and one Cao Shujian (holding 0.5% of the same). The Share Transfer Agreement between Shandong Haiwei and Shanghai Heliyuan dated 31 October 2012[140] states the transfer price as RMB 111.22 million to be paid in instalments. Apart from two initial payments totalling RMB 6 million, which were to be paid within 30 days of the agreement, the remaining instalments were to be paid within a time period of approximately eight years. At trial, P4 confirmed that Shanghai Heliyuan was still paying for this transfer.[141]

213 The defendants, however, have not produced any satisfactory evidence to make out their case. They allege that the price and terms of payment were exceptionally favourable to Shanghai Heliyuan. It is not clear why this is the case. Crucially, this allegation, assuming it were true, runs *contrary* to the defendants' primary case that *no consideration* was given for the transfer. The defendants also allege that it is inconceivable that, within a month of incorporation, Shanghai Heliyuan could have built up assets sufficient to pay the initial RMB 6 million. But this is, once again, a conjecture and, even if true, does not automatically lead to the conclusion that no consideration was

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[139] AB958–960.

[140] AB963–964.

[141] Transcripts (18 September 2015), p 15.

given for the transfer. At trial, D1 said that his basis for saying that no consideration was given was that he did not see any proof of payment.[142] This is plainly an inapt and unacceptable attempt to shift the evidential burden to the plaintiffs.

December 2012: Transfer of shares to Guoqing

214 Sometime in December 2012, the shareholders of P2 incorporated Guoqing in order to hold their shares in P2. A small amount of additional capital was contributed by a company called Qingdao City Construction Design Institute Co., Ltd, with the result that Guoqing held 99.9% of the shares in P2.[143] It is agreed that there was no material change in the ultimate shareholding of P2.

215 In their pleadings, the defendants had originally alleged that Guoqing was used by P4 and P5 to "systematically" effect the transfer of P2's assets out of the PRC to abroad, in particular to establish various entities in Singapore with the name "Qingjian". This has been abandoned by the defendants in their closing submissions and, for this reason, it is not necessary for me to say anything more about it.

P4 and P5's move to Singapore

216 The defendants finally allege that P4 and P5 had made use of their positions in P2 in their respective applications for permanent residency in Singapore. I need not consider this allegation for the simple reason that, even

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[142] Transcripts (2 October 2015), p 21.

[143] Exhibit D1; Defendants' closing submissions, para 174.

if true, it does not go towards justifying the sting in the Online Articles. The reference to P4 and P5's permanent residency application in Article 1 and Article 4 is in the context of their reliance on "Qingjian Group Singapore company", and not P2. Likewise, the reference in Article 2 to the entire family of P4 having obtained permanent residency in Singapore makes no mention of P2. Moreover, this allegation plainly does not justify the imputation in Articles 2 and 4 that P4 and P5 had absconded or were planning to abscond by migrating to Singapore.

P4 and P5's involvement

217 Central to the defendants' case is the claim that throughout the aforementioned stages from state-owned enterprise to private ownership, P4 and P5 had simultaneously held a number of powerful appointments in key organisations, including P1, P2, the SSC, QCGRE, QBI, Shandong Haiwei and Shanghai Heliyuan. The suggestion is that P4 and P5's holding of these positions had allowed the various transactions to take place. The defendants' submission is that given P4 and P5's "remarkable nexus of power", the possibility of shareholders, other directors or supervisors intervening to thwart their alleged plans "must have been so remote as to be negligible", and that it is reasonable to infer that, where necessary, P4 and P5 were able to persuade others to join them in their alleged scheme.

218 Plainly, the involvement of P4 and P5 in the aforementioned transactions is a critical part of the defendants' case. These transactions alone would not justify the defamatory imputations of the Online Articles if they were carried out without the involvement of P4 and P5. However, having found above that the defendants have not even shown that these transactions

were improperly carried out, it is not necessary for me to deal with P4 and P5's involvement in the relevant organisations at the various stages. In any event, the defendants' claims in this regard are unacceptably speculative, for there is no objective evidence showing P4 and P5 had indeed used their positions to put into effect these transactions.

Conclusion on the justification issue

219 In light of the assessment above, the defendants have not established the defence of justification. This view is nonetheless moot seeing that the plaintiffs have not succeeded on the issue of liability.

The claims in conspiracy

220 The plaintiffs' claims in conspiracy are on the basis that both conspiracy by unlawful means and conspiracy by lawful means are made out on the evidence. What is clear is that the plaintiffs' claims in conspiracy (both by unlawful means and by lawful means) are premised on the defendants having published the Online Articles and/or the News Articles. To succeed in these claims, the plaintiffs have to show that the defendants combined to publish and did publish the offensive material. As I have found that the defendants are not responsible for the publication of both the Online Articles and the News Articles, it follows that the claims in conspiracy must also fail.

Conclusion

221 The plaintiffs' action against the defendants is dismissed. However, my inclination is to discount the costs recoverable by the defendants, who

have failed in establishing the defence of justification, which was an issue that occupied much of the time at trial. I will therefore hear parties on costs.

Belinda Ang Saw Ean
Judge

Lee Eng Beng *SC*, Wendy Low and Cherrin Wong (Rajah & Tann Singapore LLP) for the plaintiffs;
Quek Mong Hua, Anthony Wong and Teo Wei Ching (Lee & Lee) for the defendants.

Annex A

Article 1 (Category A)[144]

The well-known state-owned enterprise, Qingdao Construction Group Co., Ltd was once the flagship of state-owned enterprise in Qingdao. Local government had provided great care and the citizens had provided great honour to it. The group's chairman, Mr Du Bo had served as (people's representative) repeatedly in Qingdao City, in Shandong Province and in mainland China. Later Qingjian Group moved to Singapore, its foreign businesses bloomed, with enormous amount of funds flowing overseas. Just when this state-owned enterprise was gaining its prosperity, a news shocked the whole island city: ***Qingjian withdrew itself from state-owned enterprise, becoming a personal company owned by Du Bo, Yuan Hongjun and some other personnel.*** Qingjian Group, a company carried the unlimited expectations of citizens from the island city, was partitioned. ***How did this well-known state-owned enterprise which held billions of dollars in assets get misappropriated by individuals? Through investigations, we have discovered this major case of a planned, organised and step-by-step misappropriation of state-owned asset which involved more than ten years of planning by about ten people.***

Looking at the industrial and commercial profile of Qingjian Group and its related companies, one could be dazzled by the information. However, ***we have extracted the following from these information to enable readers to find out some clues, thereby disclosing the story behind the case of misappropriation of state-owned asset by Du Bo, Yuan Hongjun and others.***

Company 001 – the Main Vessel of Embezzlement of the State-owned Assets by Du Bo and Others

On 18 May 1998, 40-year-old Du Bo, former general manager of Qingdao Construction Materials Corporation and current general manager of Qingdao Construction Group, had never thought that he would become a billionaire one day, walking into the Great Hall of People and participating in politics with the identity of national (people's representative), leading the enterprise and the whole family to migrate to South East Asia

[144] AB133–137.

and joining Singapore's upper society through his status in one of the strongest five hundred enterprises in China.

On 18 May 1998, Du Bo had in his personal name and acted jointly with Qingdao Construction Group established Qingdao Century Decoration Co., Ltd. ***Qingjian Group provided its office without payment*** and its businesses were also related to Qingjian Group. But Du Bo, who held 60% of shares, represented individual interests of tens of Qingjian's core members. After many revisions, Century Decoration changed its name to Qingdao 001 Decoration Co., Ltd and Qingdao 001 Engineering Co., Ltd (hereinafter referred to as "001").

001 was the main vessel led by Du Bo in embezzling the huge amounts of state-owned assets of Qingjian. Currently, the company is the main shareholder and actual controller of Qingjian's shares. However, when looking back at the history, almost all individual shareholders of 001 had not contributed any fund. For the past ten years, they utilised the state-owned economic status of Qingjian to obtain financing, based on the security of state-owned assets and obtained other financial advantages and utilised the biased funding policy given by Qingdao City to the state-owned economic entities of the construction group, becoming the main entity of Qingjian from a parasite raised internally by the state-owned enterprise, completely achieved the target of embezzling the huge sum of state-owned asset.

In 2001 and 2002, 001 conducted two capital increments. Its registered capital was increased from 5 million to 10 million and eventually to 20 million. Du Bo's shareholding ratio was also increased from 60% to 70%, in other words, the total capital contributed was 14 million, in which 3 million and 8 million of the capital contributed during the two capital increments were funded by 001 on his behalf. Du Bo and the majority of shareholders who he represented had not contributed a single cent.

In February 2002, with the agreement of Du Bo and others and without complete land information, Qingjian transferred a 433.64m2 property which was located at No. 19, Chengkou Road, Shibei District, Qingdao City to 001 through unorthodox procedures. This property had been provided to 001 for use freely.

In 2003, in order to deceive the public and obtain loan without interest or with low interest from Qingjian even

more conveniently, Du Bo and others changed the name of 001 to Qingdao Construction Group 001 Engineering Co., Ltd. This enabled them to use the name of "Qingdao Construction Group" or "Construction Group" publicly.

In the same year, in order to draw in the competent core team, Du Bo transferred all his 14 million shares to part of the core staffs of Qingjian Group in the name of state-owned enterprise restructure. At the same time, he also transferred Qingjian Group's remaining 30% to the staffs. Since then, 001 was no longer a state-owned enterprise and became a private company.

In 2005, 001 once again obtained the property right previously owned by Qingjian through the back door. The property of 1413.41 m2 was located at No. 1, Dexian Road, Qingdao.

Later, 001 conducted capital increment repeatedly. By 2010, its registered capital was increased to 100 million yuan, and was increased to 200 million yuan by Haiding Investment, a related enterprise held by 001's staff. In December 2011, 001 changed its name to Qingdao Bohai Construction Group Co., Ltd.

To realize a more standardized and reasonable private economic control over Qingjian, the main members of the Conference of All Share Holding Employees (hereinafter referred to a CSHE) of 001 with Do Bo as the leader, established Qingdao Bohai Investment Co., Ltd and completely took up the shares of the CSHE of Bohai Construction, which formed 98% of Bohai Construction's shareholding.

Bohai Investment had insufficient resources at first, but it also displayed the main features of Du Bo and others in developing a private enterprise by utilising state-owned resources. The legal representative of the company was Du Bo. It was established in 2007 with 17 people including Du Bo, Yuan Hongjun and Ren Xiaoqing as its shareholders. Its registered capital was RMB¥60 million, in which Du Bo had contributed RMB¥14.886 million, equivalent to 24.81%; Yuan Hongjun had contributed RMB¥5.583 million, equivalent to 9.31% while Ren Xiaoqing had contributed RMB¥6.705 million, equivalent to 11.18%.

In July 2008, Administration for Industry and Commerce of Qingdao made an administrative penalty decision – Qing Gong Shang Jing San Chu Zi (2008) No. 32 Administrative Penalty Decision. Bohai Investment was fined RMB¥150 thousand.

According to the decision, when Bohai Investment was processing company registration, its registered capital of RMB¥60 million was transferred from the account of Qingdao Construction Group 001 Engineering Co., Ltd at Qingdao Ningxia Road Sub-branch of China Everbright Bank to the capital verification account of Qingdao Bohai Investment Co., Ltd at Qingdao Hi-Tech Park Sub-branch of China Construction Bank in 27 times. The drawer stated on the transfer cheque of Qingdao Ningxia Road Sub-branch of China Everbright Bank and the second copy (proof of lender) of the bank-in slip of Qingdao Hi-Tech Park Sub-branch of China Construction Bank was Qingdao Construction Group 001 Engineering Co., Ltd, while the verification report submitted by Bohai Investment for industrial and commercial registration stated that the drawers of the third copy (receipt notice) of the bank-in slip of Qingdao Hi-Tech Park Sub-branch of China Construction Bank were the 17 shareholders who were natural persons. This was inconsistent with the actual situation. The above act of the concerned parties had constituted the illegal act of using other fraud and concealing important facts to obtain company registration.

From Qingjian to Bohai – Du Bo and others had successfully transformed Qingjian from state-owned enterprise to private-owned enterprise

Qingjian Group was a state-owned enterprise established under Qingdao municipal government's approval in 1994. By July 2005, Qingdao Group owned 29 different enterprises, leading in construction, construction materials, real estate property, road and bridge construction and other areas, with its total assets reaching up to RMB¥2.6 billion.

In 2007, upon restructuring, Qingjian Group became a joint stock company. The enterprise changed its name to Qingjian Group Co., Ltd but kept "Qingdao Construction Group Co., Ltd" as its secondary name. The legal representative of the newly restructured Qingjian Group Co., Ltd was Du Bo, who was the chairman of the company. The registered capital of the company was RMB¥300 million, in which Qingjian Group Real Estate Co., Ltd (Qingdao Qingjian Holdings) held RMB¥105 million of shares with shareholding ratio of 35%; Qingdao Construction Group 001 Engineering Co., Ltd (later known as Qingdao Bohai Construction Group Co., Ltd) held RMB¥18 million with shareholding ratio of 6%. Other shareholders included ShangdongHaiwei Real Estate Co., Ltd (30%), State-owned Assets Supervision and Administration Commission of Qingdao Municipal Government (15%),

Qingdao Haide Road and Bridge Engineering Co., Ltd (6 million, 2%), Beijing Chengyutai Business Co., Ltd (15 million, 5%), Beijing ZhongheLidun Enterprise Management Co., Ltd (21 million, 7%).

The fund needed for Qingjian's share restructuring came from the loan borrowed from China Development Bank by Qingjian Co., Ltd. On 31 July 2012, Qingjian Group Co., Ltd borrowed equity loan of RMB¥200 million from China Development Bank by pledging 86.66% shares in its subsidiary Qingdao Haiding Investment Guarantee Co., Ltd and 100% shares in Qingjian Group Co., Ltd. Another related company guaranteed by Haiding Investments, being Qingdao Haiding Innovative Equity Investment Enterprise (limited liability partnership), conducted capital increase onto 001 on the same year, increasing the registered capital of 001 to RMB¥200 million.

Qingdao Construction Group Real Estate Co., Ltd, a major shareholder which held 35% shares in Qingjian, had a registered capital of RMB¥50 million. Former Qingjian Group held 33% of shares (state-owned shares) while the legal representatives of CSHE held 67%. In 2007, when Qingjian group was conducting restructure into a joint stock company, the entire state-owned shares of Qingjian Real Estate was withdrawn, all RMB¥50 million of shares were held by the legal representatives of CSHE. In May 2008, it changed its name to Qingdao Qingjian Holdings Co., Ltd.

001 had specifically established Shandong Haiwei Real Estate Co., Ltd. The company's registered capital was RMB¥10 million, in which 001 funded RMB¥4.5 million, equivalent to 45%; Qingdao Construction Group Real Estate Co., Ltd funded RMB¥4.5 million, equivalent to 45%; 7 persons including Yuan Hongjun took up the other 10%; Shandong Haiwei held 30% of shares in Qingjian.

Qingjian Real Estate Co., Ltd had also cooperated with Huang Jiagao, Gong Guanglei and others to establish Qingdao Haide Road and Bridge Engineering Co., Ltd, which held 2% of shares in Qingjian. In 2008, Qingjian Real Estate transferred its shares to Qingjian Group Co., Ltd at RMB¥7.25 million. Currently, the company's registered capital is increased to RMB¥41 million, in which Huang Jiagao increased his fund to RMB¥14.47 million, equivalent to 35.29%; increased capital to RMB¥9.6 million, equivalent to 23.41%; the contribution of Qingjian Co., Ltd remains unchanged, but its shareholding ratio is decreased to 17.07%; The contribution of Second Engineering Co., Ltd of The Third Engineering Group of China

Railway also remains unchanged but its shareholding ratio is decreased to 14.63%.

In 2001, 001 established Qingdao 001 Haida Engineering Co., Ltd (its current name being Qingdao 001 Haida Engineering Services Co., Ltd).

The company was established with approval from Qingdao Construction Group. Its registered capital was RMB¥600 thousand, in which took up 50% while the company staff took up 50%. Its legal representative was Wang Chunliang (held 30% of shares). In 2006, the company changed its name to Qingdao 001 Haida Engineering Services Co., Ltd.

After the completion of restructuring in 2008, Qingjian Holdings had completely become a private economic entity held by Du Bo, Yuan Hongjun and other core personnel. Qingdao Construction Group Real Estate with Du Bo being its legal representative and Qingjian 001 Engineering Co., Ltd with Yuan Hongjun as its legal representative appeared frequently. ***The former shareholder of these two companies was the state-owned enterprise Qingjian Group and almost all the shareholders of the final shareholding companies of Qingjian Group involved these two companies. If we continue tracing the case, Du Bo's and Yuan Hongjun were the shareholders of all companies and they had eventually become the real major shareholders of Qingjian with Qingjian CSHE which was supported by Du Bo help them to pass off the fish eyes for pearls. Was this perfect acquisition truly due to Qingjian's failure to resist which eventually led to its acquisition?*** What is the truth?

Qingjian Group was a benchmarking enterprise moulded by the municipal government of Qingdao City, and was once the leader of Qingdao state-owned enterprise system. Qingdao municipal government had been supporting it for years, letting it become a competitive enterprise with core competitiveness and have its total assets increased exponentially. Since Du Bo became the chairman of Qingjian, he bought over core members of the group, established subsidiary business counterparts Qingdao Construction Group Real Estate Co., Ltd and Qingdao Construction Group 001 Engineering Co., Ltd with the assets of Qingjian Group, with himself, Yuan Hongjun and other core members or their companies being their shareholders. ***By utilising his power in Qingjian Group, Du Bo subcontracted all projects contracted by Qingjian to the two companies above. Funds needed for the contracts were borrowed from Qingjian Group after***

the latter had borrowed loan from bank. After settlement of project, the two companies returned loan capital with very low interest to Qingjian Group. At the same time, Du Bo and Yuan Hongjun established several companies which were related to construction. Through false invoice issuance, false reporting of engineering quantities, raised unit price and other methods, these companies increased their costs, causing book loss to project, eventually causing loss to their shareholder Qingjian Group. Day by day, the two companies became stronger and stronger and eventually acquired their parent company perfectly. Du Bo, Yuan Hongjun and others became the final beneficiaries of this acquisition.

Relying on Qingjian Group Singapore company, Du Bo has obtained Singapore permanent residency and his entire family has even migrated to Singapore. They own several mansions and their assets reach tens of billions. Yuan Hongjun and other members have also completed migration procedure. According to research, the entire senior management of Qingjian Group are the main investors of Qingjian Group Singapore company. Their assets have been transferred overseas and they own the citizenship of Singapore.

The privatization of Qingdao Construction is just a tip of the iceberg of the embezzlement of state-owned assets during reform and opening up process. However, with its embezzlement amount of up to several billions, it has taken the first place in Shangdong since founding of the country***. As the helm of a state-owned enterprise, Du Bo has led the core team members to become rich through complete privatization of a state-owned enterprise which had a bright future and obtained great support from the government. However, if looking at its development process, from 1998 to 2008, it was indeed deliberately planned. We also believe that in the wake of uprooting corruption, even if these parasites have transferred the embezzled state-owned assets overseas, they will still be subject to punishments and sanctions.***

I am NGTECH CHUAN, Singaporean, male, 42 years old. My Singapore IC number is SXXXX486J, contact method: batman777777@outlook.com.

[emphasis in original in bold; emphasis added in bold italics]

Article 2 (Category B)[145]

[City Construction] Using Two Paths and Double Identity, Du Bo and Yuan Hongjun Embezzled State-owned Assets

Not long ago, news regarding "Singapore Sengkang EC land with 6 bidders, Qingjian International Made the Highest Bid" has occupied the main page of all papers. This news report specifically emphasized that Qingjian International (Nanyang) Group Development Pte Ltd, a subsidiary of the Chinese-funded enterprise Qingjian Group in Singapore, made the highest bid, which was 245.58 million dollars, equivalent to 331 dollars per square feet. Many people were confused, why has this state-owned Qingjian Group, which is very well-known in China, become a private limited company? This privatization of Qingjian Group is attributable to a group under Du Bo and Yuan Hongjun. In mainland China, other than being the chairman and CEO of Qingjian Group, Du Bo was also dubbed with many titles, such as Vice President of Construction Industry Association of Shandong, PhD in Management, engineering technology application researcher, State Council specialist with special allowance, doctoral tutor of Tongji University, etc. and even (people's representative) representing the people and fighting benefits for the people! ***However, he played double roles inside and outside the country, planning with Yuan Hongjun for more than 10 years to embezzle the hundred billion state-owned assets!***

In 1994, upon approval from Qingdao municipal government, Qingjian Group was established with state-owned status. In 2007, it was restructured to joint stock company and the enterprise changed its name to Qingjian Group Co., Ltd, keeping Qingdao Construction Group Co., Ltd as its secondary name. The legal representative of the newly restructured Qingjian Group Co., Ltd was Du Bo, serving as the chairman. In December 2007, Qingjian Group announced Strategy "1123", its plan for globalization became clearer. In its regional strategy, it has made South East Asia with focus on Singapore as one of its key development market. In business model, it will realize breakthrough in the business model with Singapore DBSS and other new projects. At the same time, it will integrate and inter-transfer resources in the domestic and overseas markets. While accumulating experiences for development and construction of affordable housing in China

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through operating DBSS projects, it will transfer out funds, technologies, talents and other advantages from China and use its operating experiences in China to support overseas development. Along with the announcement of Strategy "1123", Qingjian Group speeded up its plan in overseas developments, establishing a Qingjian Group Singapore company. In 2008, the Qingjian Group Singapore company successfully bidded for a private apartment lot located at Bishan Street 24 with S$135.89 million (equivalent to RMB¥680 million). Being the first Chinese contractor winning a DBSS (Design, Build and Sell Scheme) project, Qingjian Group became the first foreign enterprise to successfully bid for a private apartment project in Singapore! By this, the reputation of Qingjian Group has been renowned overseas! ***By utilizing the overseas development strategy of Qingjian Group, Du Bo laid a good foundation for the development of Qingjian Group Singapore company. His actual intention was to pave the way to privatize Qingjian Group! He utilized the power of state-owned enterprise to earn interests and seek development for his own company!!***

After advancing into Singapore in the name of Chinese officer and state-owned enterprise, Du Bo and Yuan Hongjun started to implement their plan! Qingjian Group owned 7 subsidiaries, they were Qingjian Group Real Estate Co., Ltd, Qingdao Construction Group 001 Engineering Co., Ltd, Shandong Haiwei Real Estate Co., Ltd, State-owned Assets Supervision and Administration Commission of Qingdao Municipal Government, Qingdao Haide Road and Bridge Engineering Co., Ltd, Beijing Chengyutai Business Co., Ltd, Beijing Zhonghe Lidun Enterprise Management Co., Ltd. ***Since serving as the chairman of Qingjian, Du Bo drew in core members of the group, established subsidiary business counterparts Qingdao Construction Group Real Estate Co., Ltd and Qingdao Construction Group 001 Engineering Co., Ltd in the name of Qingdao Group with Du Bo, Yuan Hongjun and other core members or their companies serving as their shareholders. By utilising his power in Qingjian, Du Bo subcontracted all projects contracted by Qingjian to the two companies above. Funds needed for the contracts were borrowed from Qingjian Group, after the latter had borrowed loan from bank. After settlement of project, the two companies returned loan capital with very low interest to Qingjian Group. At the same time, Du Bo and Yuan Hongjun established several companies which were related to construction. Through a series of actions, these***

companies increased their costs, causing book loss to project, eventually causing loss to their shareholder, Qingjian Group. By this, they have successfully embezzled the hundred billion state-owned assets!

In mainland China, Du Bo and Yuan Hongjun represent the state-owned enterprise, and have served as national (people's representative); in Singapore, Du Bo and Yuan Hongjun are the representatives of Chinese outstanding businessmen, occupying all main pages of papers, becoming the new celebrities in Singapore's construction industry! They have planned these paths and played these two roles very well! ***Now, the entire family of Du Bo has obtained Singapore permanent residency, holding state-owned assets and flaunting wealth in Singapore! Yuan Hongjun is also actively planning his migration and escape!***

I am a Chinese with a sense of justice. ***I do not wish to see the state-owned assets of China being partitioned by the evil acts and behind the legitimate appearance of Du Bo and Yuan Hongjun! As a Singaporean, I love my country and I do not wish my country's business circle to have illegal traders like Du Bo and Yuan Hongjun, damaging the normal order of market economy! I am appealing relevant departments to contact me as soon as possible to punish evildoers and promote righteousness!***

I am NGTECH CHUAN, Singaporean, male, 42 years old. My Singapore IC number is SXXXX486J, contact method: batman777777@outlook.com.

[emphasis in original in bold; emphasis added in bold italics]

Article 4 (Category C)[146]

Migrating to Singapore Disclosure of the Story of Privatization of State-owned Enterprise and Embezzlement of Hundred Billion Assets

In this era of fighting against corruption, the country has ordered to strictly forbid those office whose family has migrated overseas from escaping the country. However, without bothering the laws, Du Bo and Yuan Hongjun have migrated to Singapore at this critical time. They walked on the edge of cliffs, transforming a state-owned enterprise into private-owned besides transferring a hundred billion asset to overseas. They found the most suitable country to migrate to. For them, this was only a piece of cake. They have established a twin brother of Qingjian Group, the top five hundred enterprise in China, in Singapore – a Qingjian Group Singapore company.

Some of you might ask who Du Bo and Yuan Hongjun are [...] and who they are to furiously play with the bottom line of laws? However, back in Shandong Qingdao, everyone knows about Du Bo, Yuan Hongjun. They have seen how this state-owned enterprise was being privatized and how its hundred billion asset was being embezzled. These two persons are very well-known, they are the big bosses in the construction industry in Qingdao! Qingdao Construction Group is the flagship of Shandong state-owned enterprise, attracting great attention from local government [...] and great love from the citizens. The chairman of the group, Du Bo, has repeatedly served as (people's representative) for Qingdao City, Shandong Province and the country, and thereby be dubbed with many beautiful titles, in reality migrated to Singapore. ***With this beautiful titles and praises, he has however silently planned a conspiracy to transfer the state-owned assets overseas!*** Just when Qingjian Group announced to the world about its move to Singapore with its growing foreign businesses and countless victories, one news shocked the whole island city! ***Qingjian withdrew itself from state-owned enterprise, becoming a personal company owned by Du Bo, Yuan Hongjun and some other personnel. [...] Qingjian, a company carried the unlimited expectations of citizens from the island city, was partitioned!***

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How Qingjian Group, this well-known state-owned enterprise with ten billion of assets died out in a second? Look at Singapore. Through investigations, […] we have discovered this major case of planned, organised and step-by-step misappropriation of state-owned assets which involved more than ten years of planning by about ten people!

Looking at the industrial and commercial profile of Qingjian Group and its related companies, one could be dazzled by the information. There is only one method. ***However, we have discovered some clues from these information and disclosed the truth regarding the embezzlement of state-owned assets conducted by Du Bo, Yuan Hongjun and others to you.***

In 1994, […] upon approval from Qingdao municipal government, Qingjian Group was established as a State-owned enterprise. […] In 2007, it was restructured to joint stock company and the enterprise changed its name to Qingjian Group Co., Ltd, keeping Qingdao Construction Group Co., Ltd as its secondary name. […] The legal representative of the newly restructured Qingjian Group Co., Ltd was Du Bo, serving as the chairman. […] The registered capital of the company was RMB¥300 million, in which Qingjian Group Real Estate (Qingdao Qingjian Holdings) held RMB ¥10,000 of shares with shareholding ratio of 35%; Qingdao Construction Group 001 Engineering Co., Ltd (later known as Qingdao Bohai Construction Group Co., Ltd) held RMB¥18 million with shareholding ratio of 6%, invest and migrate. Other shareholders included ShangdongHaiwei Real Estate Co., Ltd (30%), State-owned Assets Supervision and Administration Commission of Qingdao Municipal Government (15%), Qingdao Haide Road and Bridge Engineering Co., Ltd (6 million, 2%), Beijing ChengyutaiBusiness Co., Ltd (15 million, 5%), Beijing ZhongheLidun Enterprise Management Co., Ltd (21 million, 7%).

The names of these subsidiaries are different […] but if you continue investigating, it is not difficult to discover the shadows of Du Bo, Yuan Hongjun and others appearing everywhere. These subsidiaries were actually established by Du Bo and Yuan Hongjun! ***Through false invoice issuance, false engineering amount reporting, raised unit price and other methods, these companies increased their costs, […] causing book loss to project, eventually causing loss to their shareholder, Qingjian Group. Day by day, […] and year by year, […] the two companies became stronger […] and eventually acquired their parent company perfectly.***

> ***Du Bo, Yuan Hongjun and others became the final beneficiaries of this acquisition.***
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> ***Relying on the Qingjian Group Singapore company, Du Bo has obtained Singapore permanent residency [...] and his entire family has even migrated to Singapore. They own several mansions and their assets reach tens of billions. According to reliable information, Yuan Hongjun is also actively applying for migration, putting on an interesting show as an officer whose entire family has migrated escaping overseas with state-owned assets!***
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> As a human with a sense of conscience, I do not want to stay silent. ***My silence will definitely bring more state-owned assets to loss to other country and foster the violation acts of these officers!*** I am appealing relevant departments to contact me as soon as possible, and to return a fresh world to the public!
>
> I am NGTECKCHUAN, Singaporean, male, 42 years old. My Singapore IC number is SJ, contact method: superma_very@
>
> [emphasis in original in bold; emphasis added in bold italics]

Annex B

Articles 1, 3, 9 and 10 (Category A)

In their natural and ordinary meaning, the above statements in Articles 1, 3, 9 and 10 meant and/or would be understood to mean that:

(a) The 1st Plaintiff was the main vehicle which the 4th and 5th Plaintiffs had made use of to collectively misappropriate the state-owned funds and/or assets of the 2nd Plaintiff, and was therefore complicit in the 4th and 5th Plaintiffs' scheme to embezzle the state-owned funds and/or assets of the 2nd Plaintiff;

(b) The 2nd Plaintiff had been complicit in the 4th and 5th Plaintiffs' alleged misappropriation of its assets, by *inter alia*, allowing bank loans which it had taken out to fund the projects undertaken by two companies set up by the 4th Plaintiff (i.e., Qingdao Construction Group Real Estate Co., Ltd and Qingdao Construction Group Zero Zero One Engineering Co Ltd (the "Subsidiaries")), to be repaid to it at an extremely low interest rate;

(c) The 3rd Plaintiff, being a Singapore-incorporated company, had been used to facilitate 4th and 5th Plaintiffs' illicit transfer of the 2nd Plaintiff's assets out of the P.R.C. into Singapore;

(d) The 4th Plaintiff had committed fraud by increasing his shareholding in the 1st Plaintiff when the funds contributing to the capital increase in the latter was attributable to the 2nd Plaintiff;

(e) The 4th and 5th Plaintiffs were corrupt and/or untrustworthy and their credibility is questionable;

(f) The 4th and 5th Plaintiffs had sought to pass off the 1st Plaintiff as the 2nd Plaintiff by changing the name of the former, so as to deceive and/or confuse the public into thinking that the 1st Plaintiff was the 2nd Plaintiff or associated with and/or related to the 2nd Plaintiff;

(g) The 4th and 5th Plaintiffs had collectively misappropriated the state-owned assets and/or embezzled the funds of the 2nd Plaintiff, through:

i. allegedly dubious property transfers from the 2nd Plaintiff to the 1st Plaintiff;

ii. the use of various entities which they had set up, including the 1st Plaintiff, to obtain loans from the 2nd Plaintiff without interest or at low interest rates;

iii. the setting up of a number of construction related companies to exaggerate the cost of carrying out the contracts which were obtained by the 2nd Plaintiff and awarded to the Subsidiaries by the 4th Plaintiff through a misuse of his position in the 2nd Plaintiff as its director; and/or

iv. the funnelling of funds borrowed by the 2nd Plaintiff to the Subsidiaries set up by the 4th Plaintiff, in order for the Subsidiaries to carry out the said contracts awarded to it ; and/or

v. fabricating and/or falsifying documents, such as issuing false invoices, recording false quantities and marking up unit prices of the projects awarded to the Subsidiaries, so as to create book loss of the said projects, and ultimately, to cause losses to the 2nd Plaintiff.

[original emphasis omitted]

Article 2 (Category B)

In their natural and ordinary meaning, the above statements in Article 2 meant and/or would be understood to mean that:

(a) The 1st and 2nd Plaintiffs had been complicit in the 4th and 5th Plaintiffs' alleged misappropriation of the 2nd Plaintiff's state-owned funds and/or assets;

(b) The 4th and 5th Plaintiffs were corrupt and/or untrustworthy and their credibility is questionable;

(c) The 4th and 5th Plaintiffs conducted their business dealings and trading activities illegally;

(d) The 4th and 5th Plaintiffs had conspired to misappropriate the state owned assets and/or to embezzle the funds of the 2nd Plaintiff through:

i. the setting up of a number of construction related companies to exaggerate the cost of carrying out the contracts which were obtained by the 2nd Plaintiff and awarded to the Subsidiaries by the 4th Plaintiff through a misuse of his position in the 2nd Plaintiff as its director; and/or

ii. the funnelling of funds borrowed by the 2nd Plaintiff to the Subsidiaries set up by the 4th Plaintiff, in order for the Subsidiaries to carry out the said contracts awarded to it ; and/or

iii. fabricating and/or falsifying documents by issuing false invoices, recording false quantities and marking up unit prices of the projects awarded to the Subsidiaries, so as to create book loss of the said projects, and ultimately, to cause losses to the 2nd Plaintiff.

(e) The 4th and 5th Plaintiffs had absconded or are planning to abscond from the P.R.C. to Singapore to avoid being prosecuted for corruption and/or embezzlement in the P.R.C.

Articles 4, 5, 7, 8, 11 and 12 (Category C)

In their natural and ordinary meaning, the above statements in Articles 4, 5, 7, 8, 11 and 12 meant and/or would be understood to mean that:

(a) The 2nd Plaintiff had been complicit in the 4th and 5th Plaintiffs' alleged misappropriation of its assets;

(b) The 4th and 5th Plaintiffs were corrupt and/or untrustworthy and their credibility is questionable;

(c) The 4th and 5th Plaintiffs had conspired to misappropriate the state owned assets and/or to embezzle the funds of the 2nd Plaintiff, by issuing false invoices, recording false quantities and marking up unit prices of the projects awarded to various companies set up by the 4th and 5th Plaintiffs, so as to ultimately cause losses to the 2nd Plaintiff, which was a shareholder in these companies; and

(d) The 4th and 5th Plaintiffs had absconded or are planning to abscond from the P.R.C. to Singapore to avoid being prosecuted for corruption and/or embezzlement in the P.R.C.