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

[2023] SGHC 322

Suit No 30 of 2022

Between

Karan Bagga

… *Plaintiff*

And

Stichting Chemical
Distribution Institute

… *Defendant*

JUDGMENT

[Tort — Defamation — Damages]
[Tort — Defamation — Defamatory statements]
[Tort — Defamation — Justification]
[Tort — Defamation — Malice]
[Tort — Defamation — Malicious falsehood]
[Tort — Defamation — Publication]
[Tort — Defamation — Qualified privilege]

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Karan Bagga
v
Stichting Chemical Distribution Institute

[2023] SGHC 322

General Division of the High Court — Suit No 30 of 2022
See Kee Oon J
7, 8, 10, 11 August 2023

9 November 2023 Judgment reserved.

See Kee Oon J:

Introduction

1 The plaintiff, Mr Karan Bagga ("Mr Bagga" or the "Plaintiff"), commenced HC/S 30/2022 ("Suit 30") and HC/S 71/2022 against the defendant, Stichting Chemical Distribution Institute ("CDI" or the "Defendant") for defamation and malicious falsehood in respect of certain statements made by CDI. Both suits were subsequently consolidated under Suit 30.

Facts

Parties to the dispute

2 At various times, Mr Bagga held and continues to hold several accreditations under schemes run by CDI. CDI is a non-profit-making foundation which is incorporated in the Netherlands and operates out of the

United Kingdom (the "UK"). It runs various inspection schemes for the marine chemical industry: (a) the CDI marine inspection scheme for the inspection of vessels ("CDI-M"); (b) the CDI terminal inspection scheme for the inspection of terminals ("CDI-T"); and (c) the International Marine Packed Cargo Audit Scheme ("IMPCAS"). The board of directors of CDI (the "CDI BOD") is responsible for the overall affairs of CDI. CDI also has executive boards which oversee the day-to-day activities under each scheme, including an executive board which oversees the CDI-M scheme (the "CDI EB"). CDI also has an Accreditation Committee ("CDI AC") which sets out the pre-requisites for accreditation as an inspector under its schemes, reviews inspector performance and activities, and reviews complaints made against inspectors. The general manager of CDI is Mr Howard Newby Snaith ("Mr Snaith").

3 Mr Bagga conducts his business of providing marine surveying services and other marine consultancy work through Noah's Ark Maritime Organisation Pte Ltd ("NAMO"), which is a company incorporated in Singapore. Mr Bagga is the managing director of NAMO.

Background to the dispute

4 Mr Bagga was accredited as a CDI-M inspector on 30 September 2013, and met the qualifying conditions for the CDI-M accreditation on 13 November 2013.[1]

[1] Mr Bagga's Affidavit of Evidence-in-Chief ("AEIC") at para 9; Statement of Claim at para 7; Defence at para 8; Notes of Evidence ("NE") for 7 August 2023 at p 21 line 20 – p 23 line 12.

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5 The process of providing an inspection under the CDI-M scheme runs, generally, as follows:[2]

(a) A shipping company wishing to have a vessel inspected first makes an inspection request to CDI.

(b) CDI nominates the inspector at the top of its rotating list of available inspectors in the applicable zone in which the vessel will be inspected. This nomination system is known as the mechanical rotation system (the "MRS").

(c) CDI contacts the nominated inspector and informs the requesting shipping company of the nominated inspector.

(d) In Mr Bagga's case, he sends a copy of the standard terms of business of NAMO to the shipping company, and the shipping company may accept, negotiate, or decline the said terms.[3]

(e) If the shipping company wishes to appoint the nominated inspector, it agrees on the terms of the appointment directly with the inspector, at which point the inspector will rotate to the bottom of the list in the MRS.

(f) If the shipping company does not wish to appoint the nominated inspector or they are unable to agree on the terms of appointment, the shipping company can submit a "Motivated Reason" ("MR") request to CDI asking that the CDI nominate a second inspector. If CDI upholds this MR request, it identifies the next inspector on the top of the MRS

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2 Mr Snaith's AEIC at para 16.

3 Mr Bagga's AEIC at para 11.

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list. In the event the shipping company agrees to the appointment of the second inspector, the first inspector returns to the top of the MRS list.

(g) Following the completion of the inspection, the inspector's report will be uploaded to the CDI-M database.

6 Between 13 November 2013 and 27 October 2016, the following MR requests were made in respect of Mr Bagga and supported by CDI:

(a) in May 2014, Fleet Management Limited ("Fleet") made a MR request on account of Mr Bagga's proposed inspection fees;[4]

(b) in August 2014, Hong Lam Marine ("Hong Lam") made a MR request due to Mr Bagga's high fees;[5] and

(c) on 19 September 2016, Iino Marine Service Co Ltd ("Iino") raised a MR request on the basis of Mr Bagga's proposed inspection fees.[6]

7 In another instance, Mr Bagga wrote to CDI on 9 June 2014 in relation to an inspection conducted for Norstar Ship Management Singapore ("Norstar"). Mr Bagga sought CDI's assistance to recover his fees, which Norstar had withheld on the basis that the charges were too high. CDI declined to be directly involved in the discussions between Mr Bagga and Norstar, and reminded Mr Bagga to refrain from charging excessive fees.[7]

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4 Mr Snaith's AEIC at para 22.

5 Mr Snaith's AEIC at para 24.

6 Mr Snaith's AEIC at para 25.

7 Mr Snaith's AEIC at para 23.

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8 On 27 October 2016, MTM Ship Management Singapore ("MTM") complained to CDI about Mr Bagga's excessive fees and poor attitude (the "MTM Complaint").[8]

9 Following the MTM Complaint, on 28 October 2016, Mr Snaith wrote to Mr Bagga informing him that his CDI-M accreditation would be suspended while the claims in relation to his excessive fees were being investigated.[9]

10 On CDI's part, Mr Snaith initiated a formal investigation into MTM's allegations against Mr Bagga.[10] He concluded that there were sufficient grounds to establish a pattern of pricing abuse by Mr Bagga and accordingly wrote to the CDI EB on 21 December 2016 informing them of the MTM Complaint and recommending that the CDI EB convene a disciplinary review to decide the status of Mr Bagga's accreditation. All members of the CDI EB agreed with this recommendation.[11] On 9 January 2017, Mr Snaith informed Mr Bagga that the CDI EB invited Mr Bagga to attend an interview. At the meeting, which took place on 26 January 2017 (the "CDI EB Meeting"),[12] Mr Bagga was interviewed and the CDI EB decided to revoke his CDI-M accreditation. Mr Snaith informed Mr Bagga of this on 7 February 2017.[13]

11 Mr Bagga commenced proceedings in the UK against CDI alleging wrongful suspension and revocation of his CDI-M accreditation (the "UK

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8 Mr Bagga's AEIC at para 16; Mr Snaith's AEIC at paras 26–30.

9 Mr Snaith's AEIC at para 34; Mr Bagga's AEIC at para 17.

10 Mr Snaith's AEIC at para 39.

11 Mr Snaith's AEIC at paras 43 and 45.

12 Mr Snaith's AEIC at paras 48–49.

13 Mr Snaith's AEIC at paras 53–54; Mr Bagga's AEIC at para 17.

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proceedings").[14] In the course of disclosure of documents in the UK proceedings, Mr Bagga found that some of these documents contained allegedly defamatory statements.[15] The UK proceedings culminated in a settlement between the parties.[16] Mr Bagga also applied for the English court's permission for subsequent use of the said documents which had been disclosed. CDI consented to this application.[17]

12 Mr Bagga subsequently commenced two actions in Singapore in respect of the same defamatory statements – one on 17 January 2022 for defamation and the second on 27 January 2022 for malicious falsehood. These actions were consolidated under the present claim.

The parties' cases

Mr Bagga's case

13 Mr Bagga claims that the following statements are defamatory:

S/N	Statement	Method, recipient(s) and date of communication
1	I received a formal complaint from a ship operator MTM on the 27th October 2016, in relation to an accredited CDI inspector: Captain Karan Bagga regarding his high inspection fees. This is a serious matter and there have being previous cases of his abuse of inspection fees resulting in previous written warnings from CDI …	Email sent to all members of the CDI EB, namely Mr Jan Antonssen ("Mr Antonssen"), Mr John Kelly, Mr Luc Cassan "Mr Cassan"), Mr James Prazak,

14 Mr Bagga's AEIC at para 20.

15 Mr Bagga's AEIC at paras 21 and 25.

16 Mr Bagga's AEIC at para 22.

17 Mr Bagga's AEIC at paras 23–24.

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	Although the EB is at liberty to immediately withdraw this inspectors CDI-Marine accreditation, doing so could pose an additional risk to CDI-T & IMPCAS audits, as Capt Bagga is also accredited for those schemes. Hence, to mitigate such risk of a "loose cannon" situation as a possible result; then any removal of CDI accreditation should also probably include full removal of his CDI-T and IMPCAS accreditation also. Therefore, although it is for the Executive Board to make its decision; I'm proposing that CDI is cautious in its approach, (based on CDI legal advice received) and would urge the Executive Board to consider the following course of action and advise me if you are in agreement; Although Capt Bagga is already suspended for CDI-Marine inspections CDI also suspends immediately his accreditation with CDI-T and IMPCAS … Captain Bagga was therefore immediately suspended from conducting any further CDI-Marine inspections pending a full investigation, on the basis that his excessively high fees would damage the reputation of CDI. (CDI has the right (and the duty) to suspend an inspector (i.e. to cease nominating an inspector for CDI inspections), if CDI holds a concern that the inspector's behaviour might damage the CDI foundation and/or bring it into disrepute … This particular complaint follows a number of similar issues,	Mr Steven Beddegenoodts, Mr Paul Verschueren ("Mr Verschueren"), on 21 December 2016

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	either listed as complaints or as claims for 'Motivated Reasons' (MR) against Capt Bagga … Having liaised with CDI's lawyer we have established that a pattern of pricing abuse.[18] (the "1st Statement")	
2	The GM advised that the reason this meeting had being called as an Extra Ordinary meeting of the CDI-Marine Executive Board was in view of the number of "Motivated Reasons (MR) for costs" received regarding Capt. Bagga's inspection fees, as well as the number of complaints received regarding Capt. Bagga's inspection fees and invoices for his inspections submitted to CDI. In view of this; Capt. Bagga was placed on suspension from CDI-M activities pending a full investigation and evaluation. The investigation was to establish if the high number of MR and complaints established a pattern of excessive fees for his inspection services; which would be evidence of abusive behaviour likely to endanger the CDI Foundation. … CDI management addressed the aspect relating to his inspection fees in view of previous high number of supported Motivated Reasons submitted to CDI and previous	Email sent to all members of CDI EB on 2 February 2017, attaching the minutes of the CDI EB Meeting which contains the 2nd Statement

[18] Agreed Bundle of Documents Volume 1 of 6 ("1AB") at pp 480–482; Agreed Bundle of Documents Volume 6 of 6 ("6AB") at pp 3030–3033; Statement of Claim at para 36.1.

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		complaints received regarding his inspection cost as well as evidence of his previous invoices for inspection services, which he had shared with CDI. In absolute numbers between 2014 and now, no other CDI inspector than Capt. Bagga has received as many MR/complaints. In view of the high number of claims for MR; the complaints received and inspection invoices submitted by Captain Bagga, which had been passed to CDI; Capt. Bagga was placed on suspension from CDI-M activities pending a full investigation and evaluation. …. **Interview panel review/assessment** The EB reviewed and considered all aspects of the information provided and received, including all the comments made by Captain Bagga. The EB concluded that Captain Bagga's CDI-Marine accreditation should be withdrawn; the EB also discussed the withdrawal period and concluded that no time limit could be set. Consequently, the EB agreed upon the following actions. Action Item 1: To inform Captain Bagga that his CDI-Marine accreditation was revoked with immediate effect, on the basis that they find his inspection fees to be excessive to the extent that they are considered to demonstrate an abusive behaviour likely to endanger the function of the CDI's Foundation and reputation. In addition, there had being no indication	

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	provided by Captain Bagga that he recognised that damage may be caused to CDI by his actions. Action Item 2: The General manager to send a formal written warning to those other (small number of inspectors), who have received more than 1 claim for Motivated Reason, (which has been supported by CDI). To remind them of CDI's operating procedures section 5.5 and the accreditation procedure section 3.0.1, in particular, expressing the EB's concern at the supported claims for MR against them and that Excessive fees for inspection services and costs are considered to be an abusive behaviour likely to endanger the function of the CDI Foundation. The Executive Board may take direct action against inspectors whose abusive behaviour has been established. Action Item 3: The seriousness of excessive pricing will continue to be raised at the annual inspector refresher seminars. Action Item 4: It was recommended that the IMPCAS and CDI-T Operating and Accreditation Manuals incorporate similar wording to that contained within sections 3.01.1 and 5.5 of the CDI-M Operating Manuals. Action Item 4: GM to liaise with CDI's legal advisor regarding structuring a standardised form of text to send to inspectors in relation to a supported claim for Motivated Reason for cost.[19]	

[19] Agreed Bundle of Documents Volume 3 of 6 ("3AB") at pp 1663–1669; 6AB at pp 3152–3158; Statement of Claim at para 36.2.

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	(the "2nd Statement")	
3	However, in view of the nature of this complaint I referred this matter directly to the CDI-Marine Executive Board. The Executive Board has conducted a full and very detailed assessment of the complaint, which has taken considerable time to complete. In its conclusions the CDI-Marine Executive Board has expressed concern regarding Captain Bagga's inspection fees and has taken measures in order to avoid further complaints in this respect.[20] (the "3rd Statement") (for the purposes of the 3rd Allegation I make no distinction between the allegation that Mr Bagga's fees were "unreasonably exorbitant and/or excessive" and that CDI "established a pattern of pricing abuse against" Mr Bagga)	Email sent to MTM on 9 February 2017; the recipients are Mr Jayanta Dutta, Mr Robert Ord, Mr Vijay Rangroo, Mr Donald Carroll and Mr Neelamohan Padhi of MTM, Mr Terry Frith ("Mr Frith") and Mr Mike Banon ("Mr Banon") of CDI
4	… relating to review of CDI Inspector Capt. Bagga CDI accreditation, as a result of continued pricing abuse regarding his CDI inspection fees. This included a video conference with Bagga, presentations by CDI's Lawyer and GM. In short summary, it was agreed to revoke Capt.	Email to members of the CDI BOD, attaching a document titled "Monthly update of CDI activity March 2017" which contains the 4th Statement

[20] 1AB at p 434; Statement of Claim at para 36.3.

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	Bagga's CDI-Marine Accreditation[21] (the "4th Statement")	
5	Action item 3: The T/M briefly reported at the meeting that CDI Inspector Capt K Bagga had been suspended by the Executive Board on the grounds of alleged high inspection fees following a number of Motivated Reason claims against his inspection fees in late October following a formal complaint from a Ship Operator about this Inspectors inspection fees. Capt. Bagga has been warned of his high costs on a number of occasions by CDI's general manager over the last 24 months. … After much deliberation it was unanimously decided by the Executive Board that Capt. Bagga would have his CDI M accreditation withdrawn. This has since been carried out. (the "5th Statement")	Email sent by Mr Banon to members of CDI AC on 20 November 2017, attaching the minutes of a CDI AC meeting which contains the 5th Statement
6	8.3) Excessive fees complaints GM highlighted that there had been a recent case of abusive cost behavior by one CDI inspector in relation to his inspection fees, (not his travel costs), but his inspection fees. Despite repeated warnings this had continued to the extent that	Email sent by CDI's Ms Mandy to all CDI inspectors and auditors on 20 June 2017, attaching the minutes of an Inspector Working Group meeting

[21] 6AB at p 3239; Statement of Claim at para 36.4.

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	CDI felt it was damaging the functionality of CDI and CDI's reputation … The matter was referred to the CDI-Marine Executive Board, who requested an interview with the inspector, so he could explain his continued abusive pricing actions. In strict compliance with anti-trust and competition guidelines the Executive Board were unanimous in their decision and subsequently revoked his CDI-Marine Accreditation. GM highlighted that inspectors should be aware that the Executive Board takes such matters of pricing abuse very seriously and can and will, take action where its deemed appropriate. Such matters received the support from the IWG with regards to the longevity of CDI and maintaining CDI's reputation.[22] (the "6th Statement")	which contains the 6th Statement[23]
7	An Extra Ordinary meeting of the CDI-Marine Executive Board was held on the 26th January 2017, in view of the number of "Motivated Reasons (MR) for costs" received regarding, (a CDI accredited inspector) Capt. Bagga's inspection fees, as well as in view of the number of complaints received regarding Capt. Bagga's invoices for his inspections. After closely following all legal procedures and providing provision for Captain Bagga to put his case to the Executive Board, it was	Email sent by Mr Snaith to members of the CDI BOD on 11 December 2017 attaching minutes of CDI's "Management Review of the Quality Management System" which contains the 7th Statement

[22] 6AB at p 3244; Statement of Claim at para 36.6.

[23] 6AB at p 3293.

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	unanimously agreed by the EB to revoke Captain Bagga CDI-Marine accreditation, on the basis that they found his inspection fees to be excessive to the extent that they were considered to demonstrate an abusive behaviour likely to endanger the function of CDI's foundation and reputation. In addition, there had been no indication provided by Captain Bagga that he recognised that damage may be caused to CDI by his actions.[24] (the "7th Statement")	
8	GM re-highlighted that the Executive Board of CDI-Marine took action and revoked one CDI-M inspector's accreditation in January 2017 due to repeated excessive fees.[25] (the "8th Statement") (collectively, the "Statements")	Email sent by CDI's Ms Mandy to all CDI inspectors and auditors on 9 April 2018,[26] attaching the minutes of an Inspector Working Group meeting which contains the 8th Statement

14 Mr Bagga's case is that the Statements referred to or were understood to refer to him. In particular, although the 6th and 8th Statements did not make direct reference to him, a reasonable person would infer that they did refer to him, especially as CDI never denied that there was such reference including in their lawyer's letter dated 8 March 2019. Moreover, the recipients of these

[24] 6AB at p 3359.

[25] 6AB at p 3426; Statement of Claim at para 36.8.

[26] 6AB at p 3438.

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Statements were a small and niche group and Mr Bagga was the only inspector whose CDI-M accreditation was revoked on account of excessive fees.[27]

15 Mr Bagga claims that the Statements meant or were understood to mean, *inter alia*, that:

(a) his inspection fees were excessive;

(b) CDI established that he exhibited a pattern of pricing abuse;

(c) he was abusing his position as a CDI-M inspector and taking advantage of CDI's systems by charging excessive fees;

(d) he received and ignored numerous warnings from CDI about his fees;

(e) CDI received complaints about his inspection fees;

(f) CDI has the power to curtail or influence inspection fees charged by inspectors accredited under their schemes and exercised such power "legally and/or fairly and/or reasonably";

(g) CDI conducted a thorough investigation upon receiving the MTM Complaint;

(h) the CDI EB unanimously agreed on suspending and revoking his CDI-M accreditation due to his pricing abuse;

(i) the Inspector's Working Group agreed with the decision to revoke his CDI-M accreditation;

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27 Statement of Claim at paras 38.2–38.3; Reply at para 8.

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(j) CDI adhered to all legal procedures in suspending and revoking his CDI-M accreditation;

(k) his behaviour was damaging to CDI and brought it into disrepute;

(l) he was a risk to other CDI accreditation scheme such that he should be suspended from CDI-T and IMPCAS too;

(m) his excessive pricing was so significant as to warrant CDI singling him out and revoking his CDI-M accreditation; and

(n) he was not a professional and was irresponsible.[28]

16 Mr Bagga says that these allegations are false and defamatory. Mr Bagga submits that his inspection fees were not excessive.[29] In relation to CDI's actions following the MTM Complaint, he argues that CDI sought to mislead its audience so as to make its actions (*ie*, suspending and revoking Mr Bagga's CDI-M accreditation) appear justified and reasonable. In this regard, he argues that CDI inflated the number of warnings or complaints made against him.[30] The singular complaint from MTM was also misconceived as MTM had previously agreed to his terms.[31] CDI also did not conduct a full and detailed investigation into his matter.[32] Mr Bagga further points out that the

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28 Statement of Claim at para 39; Mr Bagga's Written Opening Statement ("WOS") at Annex A.

29 Statement of Claim at paras 43.1, 43.5, 43.6.

30 Statement of Claim at paras 44.1–44.2; Reply at paras 3, 6, 16 and 17.

31 Statement of Claim at para 44.3.

32 Statement of Claim at para 46.

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settlement of the UK proceedings meant that CDI had accepted that their revocation of his accreditation was baseless.[33]

CDI's case

17 CDI denies that it made defamatory statements.[34]

18 CDI claims, in the first place, that the 1st, 2nd, 4th, 5th and 7th Statements were not published, since they were sent only to the CDI BOD, CDI EB or CDI AC. As such, they do not constitute defamatory statements.[35] Furthermore, the 6th and 8th Statements do not expressly refer to Mr Bagga and an ordinary reasonable person would not reasonably understand Mr Bagga to be the subject of those statements.[36]

19 CDI also contests the allegations which Mr Bagga says are made in the Statements: the Statements make no suggestion that Mr Bagga was unprofessional, nor that he took advantage of CDI's systems, nor was he singled out. Instead, CDI claims that the ordinary and natural meaning of the Statements was as follows:

(a) Mr Bagga engaged in excessive pricing behaviour on multiple occasions;

(b) CDI warned Mr Bagga on multiple occasions about his excessive pricing prior to the MTM Complaint;

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33 Statement of Claim at para 43.2.

34 Defence at para 34.

35 Defence at para 39; CDI's Written Opening Statement ("WOS") at paras 18 and 24.

36 Defence at para 36; CDI's WOS at paras 26–27.

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(c) following the MTM Complaint and pending a review of the allegations therein, CDI suspended Mr Bagga's CDI-M accreditation;

(d) CDI conducted a "proper review and/or investigation" into Mr Bagga's excessive pricing behaviour; and

(e) the CDI EB eventually determined that there was a pattern of excessive pricing and resolved that Mr Bagga's accreditation be revoked.[37]

20 CDI avers that the aforesaid meaning of the Statements is true in substance and in fact, which avails CDI of the defence of justification.[38] It also relies on section 8 of the Defamation Act 1957.[39]

21 CDI pleads the defence of qualified privilege. CDI honestly believed in the truth of the Statements.[40] It claims that, since it is responsible for the accreditation of inspectors and auditors under the CDI-M scheme, it has to ensure that inspections carried out thereunder are conducted to a consistent standard globally. The Statements are concerned with an inspector's conduct in carrying out inspections under the CDI-M scheme. Accordingly, CDI had a "legitimate duty and/or interest to communicate", and the recipients of the Statements had a "legitimate interest to receive and/or be informed" of the Statements.[41]

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37 Defence at paras 37–38; CDI's WOS at para 30.

38 Defence at para 42.

39 Defence at para 44.

40 CDI's WOS at para 41(a).

41 Defence at para 52; CDI's WOS at paras 38 and 41.

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22 In response, Mr Bagga says that the Statements are "not true in substance and/or fact" and are thus not protected by the defence of justification.[42]

23 As for CDI's defence of qualified privilege, Mr Bagga claims that CDI did not honestly believe in the truth of the Statements at the time of their publication and instead made the Statements "out of ill-will, spite and/or malice".[43]

24 CDI denies the allegations of malice: it claims to have honestly believed in the truth of the Statements, and denies publishing them out of ill-will, spite or malice towards Mr Bagga, or with any improper purpose.[44]

Issues to be determined

25 The following issues arise for determination in relation to whether Mr Bagga has established a *prima facie* case that he had been defamed by way of the Statements:

(a) Was there publication of the 1st, 2nd, 4th, 5th and 7th Statements?

(b) Do the 6th and 8th Statements refer to Mr Bagga?

(c) Are the Statements defamatory in nature?

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42 Reply at para 10.

43 Statement of Claim at paras 50, 51 and 55; Reply at paras 10 and 18(a).

44 Defence at paras 50–59.

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26 In the event Mr Bagga establishes a *prima facie* case of defamation, it will be necessary then to consider the defences raised by CDI. CDI's invocation of the defence of justification raises the following issues:

(a) What are the 'stings' of the defamation? In other words, what is the main gist or charge of each Statement?

(b) Are the 'stings' true? In other words, is the substance or gist of each Statement true?

27 CDI also relies on the defence of qualified privilege, to which Mr Bagga objects by claiming malice. The following issues arise for consideration:

(a) Did CDI have a legitimate interest in disclosing the information in the Statements?

(b) Did the recipients of each Statement have a legitimate interest in receiving the said Statement?

(c) Did CDI have an honest belief in the truth of the Statements at the time of their publication?

(d) Even if CDI honestly believed in the truth of the Statements, was their publication motivated by a dominant improper motive?

Issue 1: Was there publication of the 1st, 2nd, 4th, 5th and 7th Statements?

28 In order for Mr Bagga to establish CDI's *prima facie* liability for defamation, he must prove that CDI published the defamatory material to a third party (*Gary Chan Kok Yew, The Law of Torts in Singapore* (Academy Publishing, 2nd Ed, 2016) ("*Gary Chan*") at para 12.010; applied in *Qingdao*

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Bohai Construction Group Co Ltd and others v Goh Teck Beng and another [2016] 4 SLR 977 ("*Qingdao*") at [34]). The question, therefore, is whether the CDI BOD, CDI EC, and CDI AC constitute third parties in relation to CDI. I find that they are not third parties in relation to CDI, and therefore the publication requirement is not satisfied in relation to these Statements.

The parties' cases

29 Mr Bagga's case is that all the Statements were published, since CDI accepts that the 3rd, 6th and 8th Statements were published and there was publication of the 1st, 2nd, 4th, 5th and 7th Statements.[45] This is because this latter category of Statements were made "to the external email domain addresses of third party chemical companies".[46]

30 CDI avers that there was no publication of the 1st, 2nd, 4th, 5th and 7th Statements[47] because they were not sent to a third party, instead, they were internally circulated amongst various organs of CDI.[48]

The 1st, 2nd, 4th, 5th and 7th Statements were not published

31 In my view, members of the CDI BOD, CDI EB and CDI AC cannot be regarded as third parties to CDI for the purposes of publication of a defamatory statement.

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45 *Eg*, Statement of Claim at paras 38, 50, 51.2; Mr Bagga's WOS at para 21; Mr Bagga's Written Closing Submissions ("WCS") at para 99.

46 Mr Bagga's WCS at para 99.

47 CDI's WOS at Annex A; Defence at para 39.

48 CDI's WCS at para 8.2.1.

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32 First, these are straightforwardly internal bodies of CDI – this is evident from the documents available. In particular, CDI's "Year Book 2018" introduces the CDI BOD, CDI EB and CDI AC as "The People of the CDI".[49] They clearly perform functions which are core to the operation of CDI, in other words, they are what allow CDI to function.[50] Mr Bagga also admits that CDI is "[m]anaged by" the CDI BOD,[51] and that CDI operates inspection schemes and the schemes are overseen by the CDI EB.[52] Mr Bagga argues that the CDI BOD and the CDI EB cannot be considered internal to CDI because, if that is the case, "all its members – the oil, chemical and gas industry – are internal to the CDI".[53] But Mr Bagga does not offer any basis for this illogical leap in this reasoning which would regard the *entire panoply of companies* in the oil, chemical and gas industry for which members of the CDI BOD and the CDI EB perform work as being internal to CDI. That is neither CDI's assertion nor a necessary implication of CDI's case.

33 Mr Bagga's primary basis for alleging that the CDI BOD, CDI EB and CDI AC are not "organs of CDI" appears to be that the members' email addresses do not reflect a common email domain associated with CDI, instead, the said members use email addresses registered with the respective chemical companies they work for.[54] This is an overly formalistic view.[55] The more

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49 3AB at pp 1188–1189.

50 CDI's WCS at para 8.2.2.

51 Mr Bagga's WOS at para 3.

52 Mr Bagga's WOS at para 3.

53 Mr Bagga's WCS at para 109; Mr Bagga's Written Reply Closing Submissions ("WRCS") at para 20.

54 Notes of Evidence ("NE") for 7 August 2023 at p 20 lines 6 – p 21 line 14; NE for 8 August 2023 at p 27 lines 13–16, p 28 line 23 – p 29 line 1; Mr Bagga's WCS at paras 101 and 106; Mr Bagga's WRCS at para 21.

55 CDI's WCS at para 8.2.5.

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important factor is that, in receiving the Statements, they were acting in their capacities as members of the CDI BOD, CDI EB or CDI AC, as the case may be.[56] There is no basis for Mr Bagga's contrary assertion that the Statements were sent to "various chemical company representatives on behalf of their respective chemical companies … companies [which] acted on their own behalf, not as agents of CDI".[57] The fact that CDI exists for the benefit of these chemical companies also does not mean that the Statements were sent to the recipients in their capacities as employees or agents of those chemical companies.[58]

34 Mr Bagga's attempt to persuade me on this point by pointing out that CDI cannot share pricing information with the CDI EB members[59] is also questionable. It has never been his case, until he put forward his reply closing submissions, that differences in access to documents and records meant that the CDI BOD, CDI EB and CDI AC are external to CDI, and CDI did not have the chance to respond. He has also not adduced evidence to show such a difference in access. Mr Bagga further relies on Mr Snaith's refusal, in an email, to respond to Mr Verschueren's query on what constitutes an acceptable price.[60] But he misconstrues both the email and Mr Snaith's testimony, which say that CDI cannot give any indication on what constitutes a reasonable price *generally*;[61] Mr Snaith did not say that he could not give a price indication *because Mr Verschueren was a member of the CDI EB*.[62]

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56 CDI's WCS at para 8.1.2; CDI's WRCS at paras 3.2.2–3.2.4.

57 Mr Bagga's WCS at para 114; Mr Bagga's WRCS at para 18.

58 Mr Bagga's WCS at paras 118–120; Mr Bagga's WRCS at para 18.

59 Mr Bagga's WRCS at para 19.

60 Mr Bagga's WRCS at para 19; Mr Bagga's WCS at para 46.

61 6AB at p 3076; NE for 10 August 2023 at p 30 line 8 – p 31 line 16.

62 See also CDI's WRCS at para 3.2.9.

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35 Furthermore, Mr Bagga argues that these are third parties to CDI because the Statements "subsequently became the property of those oil and chemical conglomerates"[63] and can be circulated within the chemical companies.[64] However, no effort is made to explain why the concept of dominion or further circulation of the Statements is relevant.[65]

36 Second, there is authority for the proposition that publication of defamatory words by a company or organisation to its employee, director or agent, acting as representatives of the said company or organisation, does not amount to publication for the purposes of defamation (*Halsbury's Laws of Singapore* volume 8(2A) (LexisNexis Singapore) at para 96.078).

37 *Kesavan Engineering & Construction Pte Ltd v S P Powerassets Limited* [2011] SGDC 179 ("*Kesavan*") concerned a plaintiff company which was awarded a contract by the defendant. The defendant claimed that the plaintiff company had failed to deliver certain works and had written a letter to the plaintiff company maintaining that no moneys had been due to the plaintiff company. This letter was addressed to the plaintiff company. The plaintiff company commenced a claim in defamation, which the defendant sought to strike out. The District Judge ("DJ") agreed with the defendant that, since the letter had been read by four persons who were employees or a director of the plaintiff company acting in the ordinary course of business in these capacities, there was no publication of the alleged defamatory material (*Kesavan* at [21], [22] and [30]). I agree with the DJ's reasoning, which I summarise here. Two cases were brought to the DJ's attention: the first case, *Traztand Pty Ltd v*

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63 Mr Bagga's WCS at paras 102–105.

64 Mr Bagga's WCS at paras 104, 105 and 121–122; Mr Bagga's WRCS at para 21.

65 CDI's WRCS at para 3.2.5. See also Mr Bagga's WRCS at paras 20–21.

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Government Insurance Office of New South Wales (1984) 2 NSWLR 598 ("*Traztand*"), held (at 600) that "a publication defamatory of and concerning a company made only to a servant or agent of that company constitutes a sufficient publication of that statement in law". In the second case, *State Bank of New South Wales v Currabubula Holdings* [2001] NSWCA 47 ("*State Bank*"), the Court of Appeal of New South Wales held at [129] that:

> a communication to a company which, because the company can only act by natural persons, is received by someone on behalf of the company in the ordinary course of business, is communication only to the company and does not constitute publication. This is not confined to receipt of the communication by the company's managing director and alter ego, but includes receipt by any employee receiving the communication on behalf of the company.

The DJ preferred and applied the reasoning in *State Bank*, for the following reasons. First, *State Bank* was a Court of Appeal decision which expressly overruled *Traztand* (*State Bank* at [129]) (*Kesavan* at [28] and [31]). Second, the DJ adopted the reconciliation of *State Bank* and *Traztand* proposed by *Gatley on Libel and Slander* (Patrick Milmo QC & W V H Rogers eds) (Sweet & Maxwell, 11th Ed, 2008): where the allegedly defamatory material could result in employees losing confidence in the company, then the communication of the said material to an employee could amount to publication (*Kesavan* at [29] and [30]).

38 I accept that the facts before me are distinguishable from *Kesavan*: for one, the Statements were directed at the members of the CDI BOD, CDI EB or CDI AC specifically, rather than being directed at CDI but read by an employee, director, agent or representative of CDI. Further, the Statements were made by CDI, and not sent by another party to CDI. Finally, CDI is not a company but an organisation. But contrary to Mr Bagga's contention, the facts are not distinguishable from *Kesavan* because "the [CDI] EB, [CDI] AC and CDI

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[BOD] do not act or receive information on behalf of CDI or as CDI's agents"[66] (see [32]–[35] above).

39 None of the abovementioned distinctions interfere with the logic of *State Bank* and *Kesavan,* or render it inapplicable to the facts. In order to constitute a defamatory statement, the Statements must have been published to a third party, in other words, the recipient must be distinct from and external to *both* the defaming and defamed party (*Riddick v Thames Board Mills Ltd* [1977] 1 QB 881 at 898)[67] – the underlying principle in *State Bank* and *Kesavan* deals with this concept of being distinct and/or external. Accordingly, it does not matter that the Statements were directed at members of the CDI BOD, CDI EB or CDI AC (and not CDI) in so far as all of them are regarded as internal to CDI (at [32]–[35]). It also does not matter that CDI was the maker of the Statement rather than the intended recipient since, in both cases, members of the CDI BOD, CDI EB or CDI AC are not "third parties" relative to the CDI. To put it another way, CDI effectively published the Statements to itself.

40 Mr Bagga relies on *T J Systems (S) Pte Ltd and Others v Ngow Kheong Shen* [2003] SGHC 73 ("*T J Systems*") to advance the argument that the chemical company representatives who received the Statements could "legitimately circulat[e] those emails internally to others within the same company".[68] In *T J Systems*, the defendant, who worked for the plaintiff company, sent a letter making defamatory allegations about the plaintiff company. The letter was sent to 15 persons within the plaintiff company. The court found that there was publication to the 15 recipients, but did not find

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66 Mr Bagga's WCS at para 120.

67 See also CDI's WCS at para 8.1.1.

68 Mr Bagga's WCS at paras 104–105.

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conclusive evidence as to whether the email had been further circulated. The case does not lay down a broad proposition that foreseeable republication affords sufficient basis for liability.

41 Accordingly, Mr Bagga's claim fails in relation to the 1st, 2nd, 4th, 5th and 7th Statements.

Issue 2: Do the 6th and 8th Statements refer to Mr Bagga?

42 The parties also disagree as to whether the 6th and 8th Statements refer to Mr Bagga. In order to establish a claim in defamation, Mr Bagga must prove that these statements refer to him (*Gary Chan* at para 12.010; *Qingdao* at [34]).

The parties' cases

43 Mr Bagga claims that the 6th and 8th Statements "make clear reference to [him] by way of inference such that a reasonable person would believe that the defamatory statements referred to [him]".[69] He relies on the facts that he was the first and only CDI-M inspector to have their accreditation revoked;[70] only his name was removed from the "Inspectors" tab on the CDI website in February 2017;[71] and the recipients of the 6th and 8th Statements were a small community of 95 CDI-M inspectors worldwide who access the CDI website on a daily basis.[72] Mr Bagga also says that CDI "accepted liability and [his] identity" and

69 Statement of Claim at para 38.2.

70 Statement of Claim at para 38.7.

71 Statement of Claim at para 38.4; Reply at para 8(f); NE for 8 August 2023 at p 46 lines 14–15.

72 Statement of Claim at para 38.5.

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"never refuted the fact that [the 6th and 8th Statements] refer to [him]" in their letter dated 8 March 2019 (the "8 March 2019 Letter").[73]

44 CDI denies that the 6th and 8th Statements would be understood by reasonable persons to refer to Mr Bagga.[74] It points out that there is no express reference to Mr Bagga and that "given the number of inspectors accredited by the [CDI] at the time, it would not be immediately obvious to a reasonable reader" whom the "inspector" in the 6th and 8th Statements each refers to.[75] Further, since there were other inspectors who previously received warnings for excessive pricing, it was possible that the 6th and 8th Statements referred to other inspectors.[76] CDI further states that it denied all allegations of defamation and reserved all its rights in its 8 March 2019 Letter.[77]

The 6th and 8th Statements do not refer to Mr Bagga

45 I deal first with Mr Bagga's contention that CDI accepted in the 8 March 2019 Letter that the 6th and 8th Statements were understood to refer to Mr Bagga. First, Mr Bagga mischaracterises the contents of the 8 March 2019 Letter. It was not the case that CDI "accepted liability"; instead, it expressly denied liability in respect of the alleged defamation.[78] Mr Bagga further says that, in the 8 March 2019 Letter, CDI "accepted … the Plaintiff's identity", presumably meaning that CDI accepted that the 6th and 8th Statements refer to

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73 Statement of Claim at para 38.3; Agreed Bundle of Documents Volume 5 of 6 ("5AB") at p 2302 (para 3.4).

74 Defence at para 36(b); CDI's WOS at para 26.

75 CDI's WOS at paras 26–27.

76 NE for 8 August 2023 at p 44 line 25 – p 45 line 3, p 46 lines 6–11.

77 Defence at para 36(c).

78 5AB at p 2301 (para 3.1).

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Mr Bagga. However, the 8 March 2019 Letter states "it is denied that the Minutes identify your client [*ie*, Mr Bagga] … the Minutes did not name any individual".[79] I therefore reject Mr Bagga's argument that CDI conceded this point.

46 Second, Mr Bagga also appears to misapprehend the law: he relies on CDI's statement in the 8 March 2019 Letter that "it was wholly appropriate [for CDI] to inform [CDI inspectors] of the decision in [Mr Bagga's] case"[80] to show that the 6th and 8th Statements refer, as a matter of fact, to Mr Bagga. But he does not need to establish that the 6th and 8th Statements *in fact* refer to himself, instead, what he needs to show is that *they would lead the recipients to believe* that he was the person referred to at the time of the publication.

47 In considering whether the 6th and 8th Statements refer to Mr Bagga, the test is whether the words used to refer to Mr Bagga are such as would reasonably lead persons acquainted with him, who were aware of the relevant circumstances or special facts, to believe that he was the person referred to at the time of the publication (*Price Waterhouse Intrust Ltd v Wee Choo Keong* [1994] 2 SLR(R) 1070 ("*Price Waterhouse Intrust*") at [18] and [24]; *Review Publishing Co Ltd and another v Lee Hsien Loong and another appeal* [2010] 1 SLR 52 ("*Review Publishing*") at [49]; *Golden Season Pte Ltd and others v Kairos Singapore Holdings Pte Ltd and another* [2015] 2 SLR 751 ("*Golden Season*") at [38], [46] and [61]). This is a mixed question of law and fact, and the following elaboration is instructive (*Knupffer v London Express Newspaper, Limited* [1944] AC 116 at 121, cited in *Mohamed Hussain v Chew How Yang Eddie* [1995] 1 SLR(R) 916 at [36] and *Golden Season* at [46]):

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79 5AB at p 2301 (para 3.2).

80 Statement of Claim at paras 38.2–38.3.

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> The first question is a question of law – can the article having regard to its language, be regarded as capable of referring to the appellant? The second question is a question of fact – Does the article, in fact, lead reasonable people, who know the appellant, to the conclusion that it does refer to him? Unless the first question can be answered in favour of the appellant, the second question does not arise …

48 In my view, the language of the 6th and 8th Statements is capable of referring to Mr Bagga. I turn therefore to the factual question.

49 First, the 6th and 8th Statements were published to all CDI-accredited inspectors and auditors as at 20 June 2017 and 9 April 2018 respectively.[81] Neither Statement expressly identifies Mr Bagga.[82]

50 Second, Mr Bagga puts forward factual assertions to show that a reasonable recipient would understand the 6th and 8th Statements to refer to him, namely, that he was the first and only CDI-M inspector to have their accreditation revoked.[83] But he does not give any evidence to show that a *recipient* of the said Statements would *know* that his CDI-M accreditation was revoked, nor that he was the only inspector to ever have his CDI-M accreditation revoked. The knowledge of relevant circumstances or special facts possessed by the recipient of an allegedly defamation statement is crucial for the purposes of this assessment (*Price Waterhouse Intrust* at [20], [21] and [24]). Although Mr Bagga highlights Mr Snaith's testimony that inspectors within his zone would know that he was a CDI-M accredited inspector,[84] this does not necessarily mean that other inspectors would know that the 6th and 8th

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81 Mr Snaith's AEIC at p 23, 393–400, 420–429; NE for 8 August 2023 at p 44 lines 3–13.

82 CDI's WCS at para 9.2.1.

83 Mr Bagga's WCS at paras 125–128.

84 Mr Bagga's WRCS at para 22.

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Statements refer to him.[85] Mr Bagga's assertion here is insufficient to show that a reasonable person acquainted with him and who was aware of the relevant circumstances or special facts would understand that he was the person referred to in the 6th and 8th Statements at the time of their publication.

51 Third, Mr Bagga also argues that, given the small number of CDI-M inspectors who access the CDI website frequently, the recipients of the 6th and 8th Statements must have noticed that his name was removed from the "Inspectors" tab and thereby appreciated that the said Statements refer to him.[86] But this is all conjecture.[87] Mr Bagga does not provide any evidence to show, for example, that any CDI-M inspector using the CDI website would necessarily look at the "Inspectors" tab, nor that the removal of his name from the "Inspectors" tab must have been noticeable to anyone using the CDI website. To this end, Mr Bagga highlights that only "ninety-five (95) CDI-M inspectors worldwide with 11 CDI-M inspectors based in Singapore … access the CDI website daily", presumably inviting me to infer that the removal of his name would be noticeable. The significance of this number of inspectors based in Singapore is unclear given that no evidence was adduced to suggest that the "Inspectors" tab is sorted or limited by country. I am also not convinced that the removal of one out of 95 names would necessarily be noticeable.[88] I therefore disagree that for this reason the recipients of the 6th and 8th Statements would reasonably have known that these Statements refer to Mr Bagga.

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85 CDI's WRCS at para 4.1.4.

86 Statement of Claim at paras 38.4–38.7; Mr Bagga's WRCS at paras 22–24.

87 CDI's WRCS at para 4.1.6.

88 See also CDI's WCS at para 9.2.3; CDI's WRCS at para 4.1.8.

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52 For the foregoing reasons, Mr Bagga's claim in relation to the 6th and 8th Statements must fail as they do not refer to him.

Issue 3: Are the Statements defamatory in nature?

53 I next turn to consider whether the Statements are defamatory in nature. Applying *Lee Hsien Loong v Review Publishing Co Ltd and another and another suit* [2009] 1 SLR(R) 177 at [47] (see also *Aaron Anne Joseph v Cheong Yip Seng* [1996] 1 SLR(R) 258 ("*Aaron Anne Joseph*") at [51]), the Statements are defamatory if they:

> … tend to lower the plaintiff in the estimation of right thinking men in general (*Chiam See Tong v Xin Zhang Jiang Restaurant Pte Ltd* [1995] 1 SLR(R) 856), or if they would expose him to hatred, contempt or ridicule (*Jeyaretnam Joshua Benjamin v Goh Chok Tong* [1983–1984] SLR(R) 745), or would cause him to be shunned or avoided (*Mohd Onn Muda v Saniboey Mohd Ismail* [1998] 1 CLJ 569).

54 As part of the assessment, the court also has to determine the objective meaning of each Statement based on the general knowledge of an ordinary reasonable person among the recipients (*Halsbury's Laws of Singapore* vol 8(2A) (LexisNexis) at para 96.034; *Chan Cheng Wah Bernard and others v Koh Sin Chong Freddie and another appeal* [2012] 1 SLR 506 ("*Chan Cheng Wah Bernard*") at [19], [26] and [27]; *Price Waterhouse Intrust* at [25]–[26]). Furthermore, the search for such meaning should also not be confined to a literal or strict meaning of the words used, but may include reasonable inferences or implications (*A Balakrishnan and others v Nirumalan K Pillay and others* [1999] 2 SLR(R) 462 at [29]).

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The parties' cases

55 Mr Bagga's case is that all of the Statements are defamatory as they make the following allegations:[89]

S/n	Allegation	Statement(s)
1	That the Plaintiff was not a professional and his character was irresponsible and risky, that he was a risk to the other CDI accreditation schemes to the extent that he should be suspended from the other two accreditation schemes in addition to CDI-M.	1st, 2nd, 6th
2	That the Plaintiff's behaviour was damaging the CDI foundation and bringing it into disrepute.	1st, 2nd, 6th, 7th
3	That the Plaintiff's inspection fees were unreasonably exorbitant and/or excessive and the Defendant had established a pattern of pricing abuse against the Plaintiff;	1st, 2nd, 3rd, 4th, 6th, 7th
4	That the Plaintiff was abusing his position as, inter alia, a CDI-M accredited inspector by charging unreasonably exorbitant and/or excessive inspection fees;	1st, 2nd, 3rd, 4th, 6th, 8th
5	That the Plaintiff was generally taking advantage of the Defendant's systems to earn unreasonably exorbitant and/or excessive inspection fees;	1st, 6th

[89] Statement of Claim at para 39; Mr Bagga's WOS at Annex A.

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6	That the Plaintiff had been warned of his exorbitant costs on numerous occasions over the last two years.	5th
7	That the Plaintiff had received, and subsequently ignored, numerous warnings from the Defendant about his inspection fees; (for the purposes of the 7th Allegation I leave aside the allegation that the warnings *were ignored*, because Mr Bagga pleads only that the allegation concerning *numerous warnings* is defamatory)[90]	1st, 2nd, 6th, 7th
8	That the Defendant had received several complaints about the Plaintiff's inspection fees;	
9	That the Defendant had raised several complaints about the Plaintiff's inspection fees;	1st, 2nd, 6th, 7th
10	That the Defendant has the power to curtail and/or influence the inspection fees charged by CDI-accredited inspectors and auditors, and it has exercised such power legally and/or fairly and/or reasonably;	
11	That the Defendant had conducted a thorough investigation upon receiving the Complaint;	

[90] Statement of Claim at para 44.

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12	That the CDI-EB had unanimously agreed on suspending and revoking the Plaintiff's CDI-M Accreditation due to his alleged cost abusive behaviour;	5th, 6th, 7th
13	That the Inspector's Working Group agreed with the decision to revoke the Plaintiff's CDI-M Accreditation;	6th
14	That the Defendant had adhered to all applicable legal procedures in suspending and, subsequently, revoking the Plaintiff's CDI-M Accreditation; and	
15	That the Plaintiff's exorbitant pricing was so significant that it warranted the Defendant's singling out of the Plaintiff and revoking the Plaintiff's CDI-M Accreditation.	1st, 2nd, 4th, 6th, 7th, 8th

(collectively, the "Allegations" and, individually, the "1st to 15th Allegations").

56 Mr Bagga claims that the Allegations are "false, inaccurate, untrue, unjustified, misleading, and altogether unfair, and tend to lower [his] professional and personal business and/or reputation in the estimation of right-thinking members of society."[91] In particular, he says that the 9th–12th Allegations mislead the recipients of the respective Statements and make CDI's actions appear justified, proper and reasonable.[92]

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91 Statement of Claim at paras 43–47; Mr Bagga's WCS at para 8.

92 Statement of Claim at paras 46–47.

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57 CDI denies that the Statements "bore and/or were understood to bear and/or were capable of bearing the meanings or any of the other meanings [set out as the Allegations above], or any defamatory meaning".[93] Instead, CDI pleads that the Statements:

> meant and/or were understood to mean that:
>
> a. The Plaintiff had engaged in excessive pricing behaviour on multiple occasions.
>
> b. Pending review of the Plaintiff's conduct, in particular the allegations of excessive pricing behaviour, the Defendant suspended the Plaintiff's accreditation.
>
> c. The Defendant conducted a proper review and/or investigation into the Plaintiff's conduct, in particular the allegations of excessive pricing behaviour.
>
> d. Further to the Defendant's review and/or investigation, the CDI-M Executive Board ultimately determined that there was a pattern of excessive pricing on the Plaintiff's part, and resolved that the Plaintiff's accreditation be revoked.[94]

The 1st, 2nd, 4th –8th Statements are defamatory in nature

58 I need not consider whether the 8th, 10th, 11th and 14th Allegations are made in the Statements nor whether they are defamatory, as Mr Bagga does not plead his case as to where these Allegations were made.[95] In his pleadings, he does not particularise the specific Allegation made in each Statement. When he does identify the Allegations made in each Statement in his opening statement, there is no mention of these four Allegations. I note however that the 8th Allegation is effectively subsumed in the 7th Allegation and consider that below. In any case, I do not think that the 10th, 11th and 14th Allegations are defamatory. Even if they lend credibility to the other purportedly defamatory

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93 Defence at para 37.

94 Defence at para 38. See also CDI's WCS at paras 7.2–7.3.

95 See also CDI's WRCS at para 2.3.5.

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Allegations made by CDI against Mr Bagga, this does not make the 10th, 11th and 14th Allegations defamatory. Further, it is unhelpful that Mr Bagga does not identify which Statements make the 10th, 11th and 14th Allegations as the knowledge possessed by the recipient is a relevant factor to assessing if a Statement is defamatory.

59 I find the 1st Statement defamatory in nature. I disagree that the 4th, 5th and 9th Allegations are made therein, since nothing is said of Mr Bagga's abuse of his position as a CDI-M accredited inspector, nor his taking advantage of CDI's systems, nor any complaints raised by CDI. I agree that the 1st Statement makes the 2nd, 3rd and 7th Allegations, the latter half of the 1st Allegation regarding his suspension from other accreditation schemes, and the latter half of the 15th Allegation concerning his revocation. These are clearly defamatory: they indicate that Mr Bagga was charging exorbitant fees despite repeated warnings and, by virtue of that, caused damage to the reputation of another entity.[96] The revocation also suggests that his wrongdoing was of significant gravity. These would, to my mind, tend to lower Mr Bagga in the esteem of right-thinking members of society generally.

60 I find the 2nd Statement defamatory in nature. The 1st, 4th, 7th and 8th Allegations are not borne out in the 2nd Statement since it does not say anything of Mr Bagga's professionalism or character, his suspension from other accreditations, his abuse of his position as a CDI-M accredited inspector, warnings which he ignored and complaints raised by CDI. I agree that the 2nd Statement makes the 2nd and 3rd Allegations, and the second half of the 15th Allegation concerning his revocation, and these are defamatory for the reasons stated above.

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[96] Mr Bagga's WCS at para 10.

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61 Mr Bagga has not shown that the 3rd Statement is defamatory in nature. I disagree that it makes the 3rd and 4th Allegations. All the 3rd Statement says is that the CDI EB "has expressed concern regarding [Mr Bagga's] inspection fees" and does not state that they are exorbitant or excessive. It also says nothing of Mr Bagga abusing his position as a CDI-M accredited inspector. In my view, the 3rd Statement does not tend to lower Mr Bagga in the esteem of right-thinking members of society generally.

62 The 4th Statement is defamatory as it speaks of his "continued pricing abuse" and the revocation of his CDI-M accreditation and thereby makes the 3rd Allegation and the latter half of the 15th Allegation – these are defamatory for the reasons explained above. But I disagree that it bears out the 4th Allegation.

63 I find that the 5th Statement is also defamatory as it bears out the 6th Allegation and the 12th Allegation in so far as it is concerned with the revocation of Mr Bagga's CDI-M accreditation, and both Allegations are defamatory as they suggest, respectively, that he engaged in numerous instances of behaviour which warranted warnings, and that his wrongdoing was so egregious as to attract a unanimous decision to revoke his accreditation.[97] These tend to lower Mr Bagga in the esteem of right-thinking members of society generally.

64 The 6th Statement makes the 2nd, 3rd, 7th Allegations, the 12th Allegation concerning the revocation of Mr Bagga's CDI-M accreditation, and the latter half of the 15th Allegation, all of which are defamatory for the reasons

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97 Mr Bagga's WCS at para 12.

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stated above.[98] It does not, however, make the 1st, 4th, 5th, 9th and 13th Allegations. The 6th Statement does not say that Mr Bagga was not a professional, nor that his character was irresponsible and risky, nor that he was abusing his position or taking advantage of CDI's systems, nor that CDI raised complaints about his fees. I also find that, properly understood, the 6th Statement states that the Inspector's Working Group supported that "[the CDI EB] takes such matters of pricing abuse very seriously and can and will, take action where it is deemed appropriate", and not that the Inspector's Working Group agreed with the decision to revoke Mr Bagga's CDI-M accreditation.

65 The 7th Statement is defamatory in nature as it made the 2nd and 3rd Allegations, part of the 12th Allegation concerning the revocation of Mr Bagga's CDI-M accreditation, and the latter half of the 15th Allegation which are defamatory for the reasons stated above.[99] Although not explicitly stated by Mr Bagga, I also note that it makes the 8th Allegation. However, the 7th Statement does not make the 7th and 9th Allegations as it makes no mention of warnings issued to Mr Bagga or complaints raised by CDI.

66 I find that the 8th Statement is defamatory as it includes the latter half of the 15th Allegation, which is defamatory as explained above. I disagree with Mr Bagga that it makes the 4th Allegation since it does not say anything about his abuse of his position as a CDI-M inspector. I also note that although Mr Bagga does not explicitly say this, the 8th Statement makes the 3rd Allegation.

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98 Mr Bagga's WCS at para 12.

99 Mr Bagga's WCS at para 12.

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Mr Bagga has not proven his case in defamation

67 I summarise my findings at this juncture. I find that Mr Bagga's claim in relation to the 1st, 2nd, 4th, 5th and 7th Statements fails for lack of publication, his claim in relation to the 6th and 8th Statements fails because they do not refer to Mr Bagga, and his claim in relation to the 3rd Statement fails because it is not defamatory in nature.

68 These findings are dispositive of the matter as Mr Bagga has not established a *prima facie* case of defamation based on the Statements. There is therefore, strictly, no need for me to assess the defences raised by CDI and Mr Bagga's further claim of malice. Nonetheless, if I may have erred in my findings above and in the interest of completeness, I address these issues briefly. I first consider CDI's defence of justification.

Issue 4: Are the Statements justified?

69 In order to invoke the defence of justification, CDI must prove the truth of the substance or gist of the offending words – in other words, the "sting" of the defamation (*Review Publishing* at [134]; *Chan Cheng Wah Bernard* at [44]; *Golden Season* at [85]). If an allegedly defamatory publication has more than one "sting", then CDI has to justify all the "stings", otherwise it will be held liable for the unjustified "stings" (*Arul Chandran v Chew Chin Aik Victor JP* [2000] SGHC 111 at [136]).

70 The "stings" that are relevant for consideration are those which I have found to be borne out in the Statements, namely, the 2nd, 3rd, 6th, 7th Allegations, part of the 12th Allegation on the revocation of Mr Bagga's accreditation and the latter halves of the 1st and 15th Allegations. Accordingly, I consider below whether the following are true:

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(a) latter half of the 1st Allegation: Mr Bagga was a risk to the other CDI accreditation schemes to the extent that he should be suspended from the other two accreditation schemes in addition to CDI-M;

(b) 2nd Allegation: Mr Bagga's (excessive pricing) behaviour was damaging the CDI foundation and bringing it into disrepute;

(c) 3rd Allegation: Mr Bagga's inspection fees were unreasonably exorbitant and/or excessive and CDI had established a pattern of pricing abuse against Mr Bagga;

(d) 6th Allegation: Mr Bagga was warned of his exorbitant costs on numerous occasions over the last two years;

(e) 7th Allegation: Mr Bagga received numerous warnings from CDI about his inspection fees;

(f) part of the 12th Allegation: the CDI EB unanimously agreed on revoking Mr Bagga's CDI-M accreditation due to his alleged cost abusive behaviour; and

(g) latter half of the 15th Allegation: Mr Bagga's exorbitant pricing was so significant that it warranted CDI revoking his CDI-M accreditation.

71 It falls for my consideration whether, within the confines of their pleadings, CDI has succeeded in proving the facts averred in the particulars and, on the basis of these facts, in justifying the "stings" (*Aaron Anne Joseph* at [70]).

72 It is hence apposite to set out CDI's plea of justification in its defence and ascertain the meanings it seeks to justify:

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> 42. If and insofar as the [Statements] in their natural and ordinary meaning bore and/or were understood to bear the meanings set out in paragraph [38] above, they were true in substance and in fact and the Defendant relies on the defence of justification.
>
> …
>
> a. The Plaintiff had in fact engaged in excessive pricing behaviour.
>
> b. In this regard, since the Plaintiff's accreditation in 2013, the Defendant was made aware of at least 7 separate instances of excessive fees relating to the Plaintiff from at least 5 distinct shipping companies. The Defendant repeats paragraphs [15] and [16] above.
>
> c. The fact that the Plaintiff engaged in excessive pricing behaviour made was detrimental to the reputation, functionality and longevity of the CDI-M Scheme. The Defendant repeats paragraph [23] above [which also refers to paragraphs [24] and [25].]
>
> d. Pending a review process, the Defendant placed the Plaintiff on immediate suspension on 28 October 2016. The Defendant repeats paragraph [17] above [which states that as early as 27 June 2014, following the issue with Norstar … the Defendant had informed the Plaintiff that similar incidents in the future might establish a "pattern of excess".]
>
> e. Following the review process, the CDI-M Executive Board met on 26 January 2017 to consider the information gathered during the review. The Defendant repeats paragraph [18] above.
>
> f. The CDI-M Executive Board ultimately determined that there was a pattern of excessive pricing on the Plaintiff's part, and resolved that the Plaintiff's accreditation be revoked. The Defendant repeats paragraph [19] above.
>
> 43. Further and/or alternatively, if and insofar as the Words in their natural and ordinary meaning bore and/or were understood to bear any of the meanings set out in paragraph 39 of the Statement of Claim, they were true in substance and in fact. The Defendant repeats the particulars set out in paragraph [42] above.[100]

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100 Defence at paras 42–43.

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73 It appears, however, that CDI later took a narrower view of what it had to justify. CDI submits that the "sting" of the Statements is singularly that "[Mr Bagga] had engaged in a pattern of excessive pricing", which it says is justified.[101]

74 My analysis proceeds as follows: I address each pleaded justification to, and in the order of, the Allegations set out above at [55] and consider whether CDI has proven the facts it claims to be true. I then consider whether, on the basis of those facts, the "stings" in the Statements are justified.

Whether Mr Bagga was a risk to the other CDI accreditation schemes to the extent that he should be suspended from two other accreditation schemes in addition to CDI-M

The parties' cases

75 CDI's case is that it is true in substance and in fact that Mr Bagga was a risk to other CDI accreditation schemes such that he should be suspended from CDI-T and IMPCAS schemes as well.[102] Mr Bagga disagrees. He says that this allegation is false.[103]

The 1st Allegation is not justified

76 Mr Snaith gave evidence that he did propose to have Mr Bagga's IMPCAS and CDI-T accreditations suspended, for the following reason:

> A. … my concern was … that if there was a genuine concern, which there was, that [Mr Bagga] was damaging the reputation of CDI under CDI[-M], then that damage could also be happening under CDI-T and in IMPCAS and, therefore, the

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101 CDI's WCS at para 10.3.3; CDI's WRCS at para 5.1.1.

102 Defence at para 43.

103 Statement of Claim at paras 36, 39.1 and 40.

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> feeling was to suggest that, put that forward and for -- for consideration that should we, if we feel that that is damage that's happening under CDI[-M], and we've suspended him, should that be extended to CDI-T and IMPCAS to prevent damage happening there and that was why that was put in there.[104]

77 Mr Snaith added that:

> A. … because, potentially, there could have been a risk. Clearly, [Mr Bagga] was unhappy with CDI. Things have gone on here which have resulted in his suspension. This has now been put forward to the executive board. We don't know what is happening under CDI-T and IMPCAS, so, therefore, it was something that we felt perhaps this should be considered by the executive board.

78 I am unable to agree with CDI that, objectively assessed, Mr Bagga posed such a risk to the CDI-T and IMPCAS schemes that his accreditations thereunder should be suspended. CDI advances no explanation for such suspicions beyond identifying it as a possibility.

79 I therefore find that the 1st Allegation, made in the 1st Statement, is not justified.

Whether Mr Bagga's excessive pricing behaviour was detrimental to the reputation, functionality and longevity of the CDI-M scheme

The parties' cases

80 CDI's case is that Mr Bagga's excessive pricing behaviour was detrimental to the reputation, functionality and longevity of the CDI-M scheme.[105] It points to rules that are in place against excessive pricing under the

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104 NE for 11 August 2023 at pp 32–34.

105 Defence at para 42(c).

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CDI-M scheme, specifically, section 3.0.1 of the CDI-M Accreditation Manual (the "Accreditation Manual").[106]

81 Mr Bagga denies the truth of the Statements. Apart from a denial that his inspection fees were exorbitant, he does not specifically address the truth or otherwise of this assertion in his pleadings.[107]

The 2nd Allegation may be justified only if Mr Bagga was found to have engaged in excessive pricing behaviour

82 At trial, Mr Bagga was referred to section 3.0.1 of the Accreditation Manual,[108] which reads as follows:

> 3.0.1 Excessive Fees
>
> Excessive fees for inspection services and costs are considered to be an abusive behaviour likely to endanger the CDI Foundation; the Executive Board may take direct action against inspectors whose abusive behaviour has been established.

and "Guidance notes relating to Inspectors Terms & Conditions for CDI inspections" (the "Guidance Note").[109]

83 At trial, Mr Bagga did not disagree that excessive pricing behaviour (if found to be true) was in fact detrimental to the reputation, functionality and longevity of the CDI-M scheme.[110]

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106 Defence at paras 23–25 and 42(c).

107 Reply at para 10.

108 Agreed Bundle of Documents Volume 2 of 6 ("2AB") at p 1140.

109 2AB at p 1170.

110 NE for 7 August 2023 at p 29 lines 1–10.

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84 Second, section 3.0.1 of the Accreditation Manual and the Guidance Note constitutes evidence that excessive pricing would be detrimental to the reputation, functionality and longevity of the CDI-M scheme. It suggests that CDI was aware of the risk posed by inspectors' pricing abuse to the reputation of CDI, and took it so seriously as to make express reminders to inspectors about it. This would suggest that Mr Bagga's excessive pricing behaviour, if found to be true, was detrimental to the CDI-M scheme.

85 However, this would not lead without more to the conclusion that the 2nd Allegation made in the 1st, 2nd, 6th and 7th Statements is justified. It would only be so if it could justifiably be said that Mr Bagga did engage in excessive pricing behaviour.

86 In this connection, CDI avers that Mr Bagga did, in fact, engage in excessive pricing behaviour, and points to seven separate instances of excessive fees, which are (a) Fleet's MR request; (b) Norstar withholding payment on account of Mr Bagga's excessive inspection fees and charges; (c) Hong Lam's MR request; (d) Iino's MR request; and (e) the MTM Complaint, which concerned three inspections, namely, of the "MTM Tokyo", "MTM New York" and the "Chembulk Minneapolis" (the "Seven Instances").[111] It also points to the fact that CDI did, through Mr Snaith, give Mr Bagga multiple warnings to refrain from excessive pricing.[112] Furthermore, CDI argues that Mr Bagga's fees were objectively excessive when compared to other inspectors.[113]

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111 Defence at paras 15, 16, 42(a)–42(b), 45–46; CDI's WOS at para 34; CDI's WCS at para 10.4.2.

112 CDI's WOS at para 34; CDI's WCS at para 10.4.3.

113 CDI's WCS at paras 10.4.4–10.4.6.

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87 Mr Bagga disagrees and claims that his inspection fees were not unreasonably exorbitant and did not constitute abusive cost behaviour.[114] In support of this, he says that CDI's settlement of the English proceedings between the same parties indicates CDI's acceptance that its revocation of Mr Bagga's accreditation was without basis.[115] Furthermore, he points out that other inspectors have charged higher fees than him and were warned by CDI, but did not eventually face punitive action.[116] Furthermore, Mr Bagga points out that he never received complaints from any other clients in relation to his or NAMO's charges.[117] Lastly, he says that the MTM Complaint is wholly misconceived as MTM already agreed to NAMO's terms prior to engaging NAMO.

The 2nd and 3rd Allegations are not justified

88 I find that CDI has not successfully justified its assertion that Mr Bagga's inspection fees were unreasonably exorbitant. CDI does not satisfactorily explain what makes certain inspection fees or costs excessive. Its reliance on a vague and general reference to inspectors' past experience conducting and charging for inspections is insufficient to establish that Mr Bagga's inspection fees and costs were excessive. CDI's reliance on the Seven Instances and warnings or reminders given to Mr Bagga also do not show that Mr Bagga's fees were excessive.

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114 Statement of Claim at para 43.1.

115 Statement of Claim at para 43.2.

116 Statement of Claim at para 43.3.

117 Statement of Claim at para 43.5.

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(1) Inadequate basis for finding inspection fees excessive

89 First, CDI's evidence is that it cannot and does not prescribe a benchmark price for reasonable inspection fees or other prices[118] and inspectors cannot ask each other for their prices.[119] Nonetheless, CDI says that it can make an assessment that particular fees are exorbitant, and did assess that Mr Bagga's inspection fees were unreasonably exorbitant, on the following bases:

(a) inspectors rely on their past experience to inform their understanding of a reasonable price for an inspection;[120]

(b) the MR system, which allows ship operators to file, *inter alia*, an MR for cost;[121]

(c) instances where, although a ship operator and an inspector have agreed the terms and conditions of the inspection, ship operators approach CDI claiming that the price reflected on the invoice is too high;[122] and

(d) CDI receives inspectors' terms and conditions and invoices, which informs its understanding of a reasonable price for an inspection.[123]

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118 NE for 10 August 2023 at p 8 lines 13–19.

119 NE for 10 August 2023 at p 8 lines 10–12, 21–24.

120 NE for 10 August 2023 at p 8 line 25 – p 10 line 10, p 13 lines 3–23, p 15 lines 7–15, p 17 line 8 – p 18 line 7; CDI's WRCS at para 5.4.2.

121 NE for 10 August 2023 at p 11 lines 6–20; CDI's WRCS at para 5.4.2.

122 NE for 10 August 2023 at p 11 line 23 – p 12 line 18, p 14 lines 17–24.

123 NE for 10 August 2023 at p 16 line 11 – p 17 line 7.

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90 However, there are numerous difficulties with this approach to proving what objectively constitutes an excessive price. CDI does not apprise the court of the range of fees CDI-M inspectors might charge for inspections, does not make reference to such a range in order to identify a benchmark price beyond which it regards as excessive, and also does not explain its reasons for ascertaining certain prices as excessive. Absent these, its reliance on inspectors' past experiences is inadequate, and serves only to prove what a reasonable price is *in the eyes of CDI*, and not *as a matter of fact*.[124] I agree with Mr Bagga that it is not helpful that CDI also does not adopt a definition of "excessive".[125] On CDI's own case, it does not have the full range of fees an inspector might charge for a ship inspection, from which what may be considered an "excessive" price could perhaps be determined.[126] In my view, this does not go show that Mr Bagga's inspection fees were, in fact, excessive.

91 CDI also submits that Mr Bagga's fees "were *objectively* excessive when benchmarked against those of other inspectors".[127] However, the "benchmark" adopted by CDI for this comparison was the "average total inspection cost" obtained from 29 MR requests.[128] First, a sample size of 29 inspections brought to CDI's attention cannot provide a comprehensive and accurate view of the range of inspection costs of CDI-M inspections, nor of, applying the same logic, inspection fees. Second, although Mr Bagga's invoiced amounts do appear to be significantly higher than the "average total inspection

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124 See also Mr Bagga's WCS at paras 38–48; Mr Bagga's WRCS at para 10.

125 Mr Bagga's WCS at para 37.

126 NE for 10 August 2023 at p 16 lines 11–18; Mr Bagga's WCS at para 56.

127 CDI's WCS at para 10.4.4. See also NE for 11 August 2023 at p 86 lines 12–17.

128 CDI's WCS at paras 10.4.4–10.4.5.

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cost", this does not necessarily mean that his inspections fees or inspection costs were *excessive*.

92 For the foregoing reasons, any argument on the basis of a comparison between Mr Bagga's and other inspectors' inspection fees does not assist in determining whether his fees were, as a matter of fact, excessive.[129]

(2) The Seven Instances

93 Second, CDI relies on the Seven Instances to say that Mr Bagga engaged in excessive pricing behaviour.[130]

94 In my view, these Seven Instances do not prove that Mr Bagga did, in fact, engage in excessive pricing behaviour. Instead, all they show is that *the respective ship operators*, and in some instances *CDI, took the view* that Mr Bagga's prices were excessive.

95 I also decline to infer from the various MRs and complaints against Mr Bagga that he must therefore have been charging excessive prices.[131] CDI receives more than 2000 inspection requests every year, and most inspectors do more than the minimum of six inspections per year to retain their accreditation.[132] Seven allegations of excessive pricing over the course of 2014 to 2016 are not sufficient to prove that Mr Bagga charged exorbitant inspection fees.

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129 *Eg*, NE for 10 August 2023 at pp 32–35, 53–55, 56–58, 119–123; Statement of Claim at para 43.3; CDI's WRCS at para 5.4.5.

130 CDI's WCS at para 10.4.

131 See also Mr Bagga's WCS at paras 21–25, 28 and 30.

132 NE for 10 August 2023 at p 41 line 24 – p 42 line 1.

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(3) Reminders and warnings

96 CDI points to the fact that "Mr Snaith had reminded the Plaintiff against excessive pricing, and highlighted that the CDI EB would react accordingly should the need arise".[133] This also does not prove that Mr Bagga did, in fact, charge exorbitant inspection fees, and shows only that CDI, through Mr Snaith, took the view that Mr Bagga did charge exorbitant inspection fees and informed Mr Bagga of their position.

(4) Settlement in the English proceedings

97 I reject Mr Bagga's contention that CDI's settlement of the English proceedings between the same parties indicates CDI's acceptance that its revocation of Mr Bagga's accreditation was without basis, and therefore that he did not charge excessive prices.[134] Mr Bagga does not adduce any evidence to support this argument. In any case, the consent order between the parties in full and final settlement of Mr Bagga's claim in England was silent as to whether Mr Bagga charged excessive prices.[135]

98 By virtue of the foregoing, CDI has not shown that Mr Bagga engaged in excessive pricing behaviour. Accordingly, CDI has not justified the "sting" in the 2nd Allegation and the first half of the 3rd Allegation, namely, that Mr Bagga's inspection fees were unreasonably exorbitant and/or excessive.

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133 CDI's WOS at para 34. See also CDI's WCS at para 10.4.3.

134 Statement of Claim at para 43.2.

135 6AB at pp 3589–3590.

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The latter half of the 15th Allegation is not justified

99 It follows that CDI cannot also prove that Mr Bagga's exorbitant pricing was so significant that it warranted CDI revoking his CDI-M accreditation. I therefore find that the latter half of the 15th Allegation, made in the 1st, 2nd, 4th, 6th, 7th and 8th Statements, is not protected by the defence of justification.

Whether CDI warned Mr Bagga against excessive pricing on numerous occasions

The parties' cases

100 CDI's case is that Mr Bagga was warned of his exorbitant inspection fees on numerous occasions over the last two years. It points to emails on 9 June 2014; 27 June 2014; 13 August 2014 in relation to Hong Lam's MR request; 18 August 2014 and 23 September 2016 in relation to Iino's MR request.[136]

101 Mr Bagga asserts that CDI did not administer any warnings to him. He points to the fact that the aforesaid emails were not "warning letters" or "formal warnings", because they were not sufficiently officious.[137]

The 6th and 7th Allegations are justified

102 First, I find that several emails from Mr Snaith contain, in substance, CDI's warnings to Mr Bagga, for him to refrain from charging excessive inspection fees:[138]

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136 Defence at paras 17, 42(d), 43 and 47; CDI's WOS at para 34; CDI's WCS at para 10.4.3.

137 Mr Bagga's WCS at paras 82–90.

138 CDI's WRCS at para 5.3.6.

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(a) The email from Mr Snaith dated 9 June 2014 was in response to Mr Bagga's email of the same date seeking assistance to recover payment from Norstar. Mr Snaith's email "reminds" Mr Bagga of section 3.0.1 of the Accreditation Manual (see [82] above) and draws Mr Bagga's attention to the introduction of "CDI Guidance for Inspectors Terms and Conditions", which appears to refer to the Guidance Note.[139] This does not read clearly as a warning not to charge excessive prices. Instead, it appears to be a reminder, especially as there is nothing therein which cautions against or admonishes of certain acts.

(b) Mr Snaith's email to Mr Bagga dated 27 June 2014 includes the line "I hope that no additional similar incidents will have to be included in that file which might establish a pattern of excess".[140] This constitutes Mr Snaith giving Mr Bagga cautionary advice to refrain from excessive pricing thereafter, and is thus a warning.

(c) Mr Snaith's email dated 13 August 2014[141] again notifies Mr Bagga to refrain from putting forward excessive inspection fees and is hence a warning as well.

(d) I do not consider Mr Snaith's email of 18 August 2014[142] to be a warning. Instead, it is primarily aimed at responding to Mr Bagga's prior email and, specifically, clarifying that a "willingness to negotiate" cannot supplant the need to ensure that inspection fees are reasonable.

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139 5AB at p 2819.

140 5AB at p 2818.

141 5AB at p 2831.

142 5AB at p 2837.

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(e) Mr Snaith's email dated 23 September 2016, read with the prior MR requests and emails from Mr Snaith to Mr Bagga, is also a warning. It reminds Mr Bagga of prior instances where CDI supported MR requests filed by ship operators against Mr Bagga on account of his excessive inspection fees and warns him not to put forward excessive inspection fees.[143]

I therefore disagree with Mr Bagga that the "tenor of the emails"[144] do not demonstrate that they are warnings.

103 I also disagree with Mr Bagga that, because the aforesaid emails had not "taken the *form* of any warnings"[145] [emphasis added], they are therefore not warnings. Mr Bagga does not explain why CDI was obliged to issue formal warnings, nor why the references to "warnings" in the Statements were necessarily references to "formal warnings".

104 In the circumstances, CDI did warn Mr Bagga against excessive pricing on several occasions.

105 Third, Mr Bagga points to one line from an email sent by Mr Cassan to, amongst others, Mr Snaith, which reads "[i]t is not clear to me if the inspector received warnings that his behavior could lead to suspension". Relying on this, Mr Bagga alleges that Mr Snaith's failure to "respond … to this specific comment" shows that the said emails were not warnings.[146] I disagree. Mr Cassan's email does not suggest that "formal warnings" must have been

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143 5AB at p 2888.

144 Mr Bagga's WCS at para 82.

145 Mr Bagga's WCS at para 82.

146 Mr Bagga's WCS at para 85; 6AB at p 3093.

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issued to Mr Bagga. Instead, it reflects his concern as to whether Mr Bagga had been given notice that his behaviour could lead to a suspension of his accreditation. This concern was adequately addressed, as evidenced in Mr Cassan's reply email thereafter, which states "[w]hen all aspects are taken in consideration I support further actions taken against Capt. Bagga".[147]

106 On the totality of the evidence, CDI has proven that it had warned Mr Bagga against excessive pricing on numerous occasions, namely, on 27 June 2014, 13 August 2014 and 23 September 2016. Accordingly, CDI has justified the 6th and 7th Allegations, which are made in the 1st, 5th, and 6th Statements.

Whether the CDI EB unanimously agreed on revoking Mr Bagga's CDI-M accreditation due to his alleged cost abusive behaviour

The parties' cases

107 It is CDI's case that the CDI EB determined that Mr Bagga displayed a pattern of excessive pricing and unanimously resolved to revoke his CDI-M accreditation.[148]

108 Mr Bagga claims that this is not true.[149] Instead, he says that two CDI EB members were not involved in the decision to revoke his CDI-M accreditation.[150]

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147 6AB at p 3091.

148 Defence at paras 42(f), 43 and 50.

149 Statement of Claim at paras 39.10 and 47.

150 Statement of Claim at para 47.3(c); Mr Bagga's WCS at para 96.

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The part of the 12th Allegation concerning revocation is justified

109 I find that the decision by the CDI EB to revoke Mr Bagga's CDI-M accreditation was unanimous.

110 The fact that Mr James Prazak and Mr John Kelly were not present at the CDI EB Meeting does not detract from this, because, in satisfaction of the by-laws of CDI, a quorum of four CDI EB members was reached at the said meeting.[151] Although the said by-laws did not form part of the evidence (save that their existence is affirmed in CDI's "Year Book 2018"[152] and the CDI-M Operating Manual),[153] Mr Bagga did not raise any challenge to Mr Snaith's testimony in this regard. Mr Bagga also does not contend that the proper procedures were not complied with nor that the voting was improper.[154]

111 CDI has proven the truth of the part of the 12th Allegation concerning the revocation of Mr Bagga's CDI-M accreditation, which is made in the 5th, 6th and 7th Statements.

CDI has only established a partial defence of justification

112 By virtue of the foregoing, even if Mr Bagga had made out his claim in defamation in relation to the 5th Statement, I find that the defence of justification would apply. The defence of justification would not, however, apply to the 1st, 2nd, 4th, 6th, 7th or 8th Statements as they make either the

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151 Mr Snaith's AEIC at paras 95–96; 3AB at pp 1663–1669; NE for 11 August 2023 at p 64 line 20 – p 67 line 4, p 68 lines 15–23.

152 3AB at p 1187 (Article 14).

153 3AB at p 1432 (Section 1.6).

154 NE for 11 August 2023 at p 69 lines 2–9.

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latter half of the 1st Allegation, the 2nd and 3rd Allegations, or the latter half of the 15th Allegations, which CDI has not proven to be true.

Issue 5: Are the Statements protected by qualified privilege?

113 CDI avers that, even if the Statements are found to be defamatory, they were published on occasions of qualified privilege.[155]

114 Mr Bagga objects for two main reasons. First, he says that the 5th, 6th and 8th Statements are not protected by qualified privilege because none of the recipients had any legitimate interest in receiving any of the Statements and CDI exceeded the exigency of each occasion of qualified privilege.[156] Second, the Statements were made with malice, which defeats the defence of qualified privilege.

The 1st–4th and 7th Statements were published on occasions of qualified privilege

115 I find that the defence of qualified privilege is made out regarding the 1st–4th and 7th Statements.

116 First, I am persuaded that the CDI EB had a legitimate interest in receiving the 1st and 2nd Statements, MTM the 3rd Statement, and the CDI BOD the 4th and 7th Statements.[157] I reproduce the "purpose[s] of publication" set out by CDI:

> [concerning the 1st Statement] CDI's General Manager was informing the [CDI] EB about the [MTM] Complaint, the suspension of the Plaintiff's accreditation, the outcome of the

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155 Defence at para 52(c); CDI's WCS at paras 11.1.4–11.1.5.

156 Reply at para 18; Mr Bagga's WCS at paras 211–217.

157 CDI's WCS at paras 11.2.1–11.2.2(d) and 11.2.2(g).

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> investigations, and making recommendations on the proposed course of action.
>
> [concerning the 2nd Statement] CDI's General Manager was sending the minutes of [the CDI EB M]eeting, convened to decide on [Mr Bagga's] accreditation, to the members of the [CDI] EB.
>
> [concerning the 3rd Statement] CDI's General Manager was updating the complainant, [MTM] about the outcome of CDI's investigations into the [MTM] Complaint.
>
> [concerning the 4th and 7th Statements] CDI's General Manager was providing an update to the CDI [BOD] about the affairs of CDI, which at the time included the then-recent suspension and revocation of [Mr Bagga's] accreditation.[158]

117 Second, Mr Bagga does not object to this, instead, he says that qualified privilege does not arise only in relation to the 5th, 6th and 8th Statements.[159]

The 5th Statement was published on occasion of qualified privilege

118 CDI states that Mr Banon had a duty to send the 5th Statement to the CDI AC because he was "the Technical Manager and Chairman of the [CDI AC] … [and] also had responsibility for recording the minutes of meeting", and the CDI AC had an interest in receiving the 5th Statement since it:

> deals with the accreditation of inspectors, including making recommendations to the [CDI] EB on whether inspectors ought to be accredited. By extension, when an inspector's accreditation has been revoked, given that it relates to the issue of accreditation, this would have been a matter to which the [CDI AC] would have a corresponding interest in knowing about.[160]

119 Mr Banon's evidence is that, notwithstanding that the revocation of Mr Bagga's CDI-M accreditation did not fall within the purview of the CDI AC,

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158 CDI's WCS at paras 11.2.1. See also CDI's WCS at paras 11.2.2.

159 Mr Bagga's WCS at paras 211–217.

160 CDI's WCS at para 11.2.2(e)(ii).

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he considered it "part of his job scope [to keep] the [CDI AC] apprised of matters relating to the status of the accreditation of inspectors, including [Mr Bagga]", and therefore he had a legitimate interest in circulating, and the recipients had a legitimate interest in receiving, the 5th Statement.[161]

120 However, Mr Bagga disagrees, because the CDI AC does not oversee accreditation matters concerning inspectors' fees, which are overseen by the CDI EB.[162] To support this, he says that, although CDI asserts that the CDI AC reviews complaints made against inspectors, this does not extend to "reviewing matters relating to inspectors' fees".[163]

121 I find that the 5th Statement is protected by qualified privilege. I do not think that the information which CDI AC has an interest in receiving ought to be so tightly confined as to say that it has no interest in receiving information concerning non-technical matters pertaining to accreditations. I accept Mr Banon's explanation that he had a duty to keep the CDI AC apprised of "matters relating to the status of the accreditation of inspectors".[164] Mr Banon's evidence that he circulated the 5th Statement "for information"[165] is consistent with my finding.

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161 Mr Snaith's AEIC at paras 18 and 20.

162 Mr Bagga's WCS at paras 212–213.

163 Mr Bagga's WCS at para 214.

164 See also CDI's WRCS at para 6.1.3(a).

165 NE for 11 August 2023 at p 125 lines 3–6; p 132 line 24 – p 133 line 4.

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The 6th and 8th Statements were published on occasions of qualified privilege

122 CDI claims that it had a duty to circulate the 6th and 8th Statements to ensure that "all its accredited inspectors and auditors knew about the importance of not charging excessive fees for inspections and how seriously this was treated by CDI". It also states that all CDI inspectors and auditors (*ie*, the recipients) had an interest in receiving these Statements because "the same restrictions against excessive pricing applied to [them]" and to learn "of the gravity of charging excessive fees … because they had to be aware of the potential consequences to themselves and others".[166]

123 Mr Bagga objects because CDI "does not … explain the basis for [the recipients'] interest [in receiving the said Statements]".[167] There is also no reason to circulate the 6th and 8th Statements to inspectors and auditors under the CDI-T and IMPCAS schemes since those are separate schemes.[168]

124 I find in favour of CDI in this respect. Neither the 6th nor 8th Statements identify or refer to Mr Bagga, and are instead focused on warning inspectors and auditors to refrain from charging excessive prices. I accept the reasons for which CDI submits it had a legitimate interest in conveying the information to the recipients, who had a legitimate interest in receiving the information. I note that the relevance of excessive pricing in CDI's other schemes is corroborated by Mr Snaith's testimony cited at [76]–[77] above.

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166 Defence at para 52(c)(iii); CDI's WCS at para 11.2.2(f) and 11.2.2(h); CDI's WRCS at para 6.1.3(b).

167 Mr Bagga's WCS at para 216; Mr Bagga's WRCS at para 40.

168 Mr Bagga's WCS at para 217; Mr Bagga's WRCS at para 41.

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125 I therefore find that the defence of qualified privilege *prima facie* applies to all the Statements. But Mr Bagga submits that they were published with malice, which, if correct, would defeat the defence of qualified privilege. I address this below.

Issue 6: Were the Statements published maliciously?

126 It is Mr Bagga's case that CDI published the Statements maliciously, because it did not have any "honest belief in the truth of the [Statements] … and/or … was motivated by a dominant improper motive".[169]

127 Mr Bagga further claims that the Statements were made for two improper purposes. First, to display to ship operators that CDI had control of inspectors' fees and discourage inspectors from deciding their prices independently, with the ultimate goal of improving the relationship between CDI and ship operators and benefit socially and financially therefrom.[170] Second, to injure Mr Bagga.[171]

128 CDI denies that it published the Statements maliciously. On the contrary, it had an honest belief in the truth of the Statements, and did not publish them out of ill-will, spite or malice towards Mr Bagga.[172] It also denies any dominant improper motive in publishing the Statements.

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169 Reply at paras 18(a) –18(b).

170 Statement of Claim at paras 52–53.

171 Statement of Claim at para 54.

172 CDI's WRCS at para 7.1.2.

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CDI honestly believed in the truth of the Statements

129 I reject Mr Bagga's assertion that CDI "had no honest belief in the truth of the [Statements]".[173] CDI's defence of qualified privilege is not defeated for this reason.

Whether CDI had any influence on inspection fees

130 First, Mr Bagga says that CDI recognised that it did not have the power to influence Mr Bagga's pricing.[174] CDI's possible contravention of rules, as a matter of logic, is however distinct from and irrelevant to the inquiry as to whether CDI *subjectively believed* in the truth of the Statements. Furthermore, Mr Bagga's argument might be more persuasive if it could be shown that CDI was cognisant of such rules and was aware of its breach of those rules. But the evidence suggests that CDI was aware of the applicable anti-competition laws, and was careful to avoid breaching those laws. Mr Snaith's evidence reflects this.[175] This is also corroborated by an email from Mr Snaith to Mr Verschueren on 23 December 2016.[176]

131 In the circumstances, CDI did not have any reason not to believe in the truth of the Statements, and there is thereby no barrier to its belief, as a matter of fact, in the truth of the Statements.

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173 Statement of Claim at para 50; Reply at paras 10, 18(a) and 18(e)(ii).

174 Reply at paras 18(c).

175 Mr Snaith's AEIC at para 109; NE for 10 August 2023 at p 21 lines 11–18; NE for 10 August 2023 at p 28 lines 2–11; NE for 10 August 2023 at p 29 lines 4–12; NE for 10 August 2023 at p 36 lines 16–22.

176 6AB at p 3076; NE for 10 August 2023 at p 30 line 3 – p 32 line 5.

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Where there was inconsistent treatment of inspectors

132 Second, Mr Bagga argues that CDI did not have an honest belief in the Statements, because its inconsistent treatment of inspectors shows that the treatment of Mr Bagga was malicious and discriminatory.[177] But Mr Bagga appears to miss the fact that CDI suspended and later revoked his accreditation because of a *pattern* of excessive inspection fees; on that basis, a comparison of Mr Bagga's inspection fees against a *particular* inspection by another inspector is not meaningful.[178]

Whether Mr Bagga's suspension was discriminatory

133 Third, Mr Bagga claims that CDI did not honestly believe in the truth of the Statements and instead made them maliciously, and this is evident from CDI's discriminatory suspension of Mr Bagga. To this end, he says that the single MTM Complaint and MR requests did not provide grounds for suspension of a CDI-M inspector.[179]

134 Mr Bagga does not explain his allegation that the suspension was discriminatory, specifically, he does not identify the basis on which he claims he was treated prejudicially, and instead seems to take the position that any unfavourable action against him must be discriminatory simply because it is unfavourable to him.[180]

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177 Statement of Claim at paras 51.5–51.6.

178 CDI's WRCS at para 7.4.9; NE for 10 August 2023 at p 53 line 18 – p 55 line 7; Agreed Bundle of Documents Volume 4 of 6 ("4AB") at p 1937; NE for 11 August 2023 at p 53 line 11 – p 54 line 14; 2AB at p 738; NE for 11 August 2023 at p 54 line 20 – p 55 line 4; 4AB at p 2122.

179 Reply at para 18(n).

180 5AB at pp 2939–2940; NE for 7 August 2023 at p 76 line 13 – p 77 line 7.

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135 Mr Bagga alleges that CDI discriminated against him on the basis of his nationality.[181] However, he does not seem to say that this discrimination motivated his *suspension*, and appears content to make this criticism of CDI *generally*. Mr Bagga's contention is that CDI "called attention to [his] nationality for no apparent reason in an email dated 13 January 2017 titled, 'Bagga nationality ?'" and which includes the query "Could one of you tell me Bagga's nationality? Possibly from his inspector records?".[182] CDI explained that this was a check Mr Snaith made as a follow up to Mr Bagga's own query to CDI concerning visa issues.[183] The documentary evidence corroborates this. Mr Bagga informed CDI that he would have difficulty travelling to the CDI EB Meeting in person due to visa issues on 12 January 2017,[184] and Mr Snaith made the internal query as to Mr Bagga's nationality on 13 January 2017 at 3.30pm.[185] Mr Snaith's query was reasonable and it does not evidence CDI's discrimination against Mr Bagga.

136 I therefore reject Mr Bagga's argument that CDI did not have an honest belief in the truth of the Statements because they were discriminatory.

137 Mr Bagga claims that the single MTM Complaint and MR requests did not provide grounds for suspension of a CDI-M inspector, therefore his "suspension was discriminating" and CDI did not have an honest belief in the truth of the Statements.[186] But Mr Bagga sets out numerous reasons for his

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181 Statement of Claim at para 51.4.

182 Statement of Claim at para 51.4; 4AB at p 1867; Mr Bagga's AEIC at paras 38 and 43.

183 NE for 8 August 2023 at p 8 line 3 – p 9 line 5; Mr Snaith's AEIC at para 111; CDI's WCS at paras 12.3.6.

184 6AB at pp 3137–3138.

185 4AB at p 1867.

186 Reply at para 18(n); Mr Bagga's WCS at para 140.

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disagreement with CDI's decision to suspend him and says that CDI must therefore have been operating maliciously and not honestly believed in the Statements – but the reasons Mr Bagga has for *disagreeing* with his suspension do not say anything about CDI's *subjective belief* in the truth in the Statements.

138 Mr Bagga also says that CDI's malice is evident from its inflation of the number of complaints raised against Mr Bagga.[187] Mr Bagga's characterisation of these as "ballooned figures"[188] is exaggerated. I do not agree with CDI that this can be overlooked simply because it was "the substantive point [that Mr Bagga had multiple complaints of excessive pricing against him] … which mattered".[189] Crucially, however, I do not think the inflation of the number of upheld MR requests *by one instance*, and the number of occasions where Mr Bagga charged more than US$10,000 *by one instance*, is suggestive of malice.

Whether the recipients of the Statements could consider the suspension and revocation of Mr Bagga's accreditations

139 Fourth, Mr Bagga says that CDI took advantage of the fact that none of the recipients of the Statements were on CDI's payroll and hence had little time and resources to scrutinise the suspension and revocation of Mr Bagga's accreditations.[190] Mr Bagga says that the recipients would not independently consider the suspension and revocation of his accreditations. But the majority of the Statements were made after his CDI-M accreditation was revoked. The

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187 Mr Bagga's WCS at paras 134–139, 194; 5AB at p 2895; NE for 11 August 2023 at p 113 lines 11 – p 116 line 18; Mr Bagga's WRCS at para 29.

188 Mr Bagga's WRCS at para 2.

189 CDI's WRCS at paras 7.4.3, 7.4.15.

190 Reply at para 18(e).

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only statement to which this could be applicable is the 1st Statement, but the CDI EB members attended the CDI EB Meeting *to contemplate* the revocation of Mr Bagga's accreditation, so the 1st Statement was unlikely to have "misled, deceived or coerced" them. In any case, the effect of CDI's actions on the recipients of the Statement has nothing to do with whether CDI made the Statements honestly believing in their truth.

Correspondence with Mr Bagga

140 Fifth, Mr Bagga says that the correspondence concerning the suspension and revocation of his accreditation, his application for re-accreditation and his appeal on compassionate grounds reflect CDI's ill-will, spite and malice towards him.[191] I disagree. None of the foregoing suggest that CDI harboured any malice towards Mr Bagga and thereby published the Statements with no honest belief in them:

(a) For the reasons explained above, I disagree that the events leading up to the suspension of Mr Bagga's CDI-M accreditation evince any malice.

(b) Mr Bagga also contends that CDI delayed following up with MTM, because, after Mr Snaith's initial email on 28 October 2016, which went unanswered, he only sent a chaser email on 25 November 2016.[192] While four weeks is a substantial amount of time, I do not think it proves that CDI was acting with malice. I accept Mr Snaith's explanation that he did check if he had received a response from MTM

191 Statement of Claim at paras 51.7–51.8.

192 Mr Bagga's WCS at para 147.

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and that he was occupied with the other steps that had to be taken in relation to Mr Bagga's matter.[193]

(c) Specifically, Mr Bagga says that Mr Snaith's enquiry about his position on the MRS list,[194] instead of following up with MTM, "smack[ed] of malicious intent since it would prolong the period time that he would have to wait for an inspection even further, after the suspension was lifted".[195] It does not seem to me, however, that sending one enquiry email would significantly prolong the time taken for Mr Bagga to do another inspection if his suspension were lifted.

(d) Mr Bagga claims that CDI's malice is evidenced by its lying to him via an email on 7 December 2016 that "formal proceedings" had already begun.[196] Mr Snaith explained that these consisted of the following and that he was not misleading Mr Bagga:

> I initiated a formal investigation into the allegations raised by [MTM]. As part of this process:
>
> (a) I reviewed all previous instances of [MR] claims raised against [Mr Bagga] for costs reasons, and the correspondence with [Mr Bagga] in relation to the [MR] claims;
>
> (b) I considered the documents provided by [MTM] in support of the [MTM] Complaint, and had various exchanges with [MTM] to get to the bottom of the allegations;
>
> (c) I consulted with CDI's lawyers for the purposes of evaluating if the Plaintiff's actions in excessive charging amount to "abusive behaviour" such that the CDI EB can take the relevant action against [Mr Bagga] (for the

193 NE for 10 August 2023 at p 182 line 20 – p 185 line 5; CDI's WRCS at para 7.4.8(a).

194 1AB at p 419.

195 Mr Bagga's WCS at paras 147–148.

196 Mr Bagga's WCS at para 146.

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> avoidance of doubt, CDI does not waive privilege in this regard); and
>
> (d) I considered the information which CDI had on hand on industry standards for fees charged. In this regard, such information would come from other inspectors or ship operators who submit information to CDI, instances in which [MR] claims were raised against other inspectors, publicly available information on costs in the industry, including external audit fees, classification society surveyor's fees, and SIRE inspection fees.[197]
>
> …
>
> A. There were discussions with the lawyers is one. I discussed with the chairman. Things were being forwarded and put together for the accreditation committee. There were action items which my lawyer had given me to do which were quite extensive, so, yes, there was a -- there was a lot going on.[198]

I accept Mr Snaith's unchallenged evidence.

(e) It is also opportunistic for Mr Bagga to rely on Mr Snaith's testimony that he could not recall evidence to claim that he did not inform any CDI EB member of Mr Bagga's matter.[199] Mr Snaith testified that:

> A. The CDI board were aware. The submissions to the executive board probably had not been made at that time -- I'm trying to think when the executive board meeting was -- but the chairman of the executive board is also the director -- yeah, I think he -- when was this -- 2016. He was also one of the directors -- I think he was either chairman or director at the time on the board, but the board were aware.[200]

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197 Mr Snaith's AEIC at para 39.

198 NE for 11 August 2023 at p 8 lines 6–11. See also NE for 11 August 2023 at p 9 lines 3–12.

199 Mr Bagga's WCS at paras 183 and 187.

200 NE for 11 August 2023 at p 11 lines 6–23.

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> …
>
> I am really certain that I had telephone conversations with -- certainly with the chairman.[201]

Mr Bagga does not give me any reason to doubt Mr Snaith's evidence. Nonetheless, I recognise that Mr Snaith stated that he "formally inform[ed]" the CDI EB of the MTM Complaint on 21 December 2016.[202]

(f) I disagree that Mr Snaith telling Mr Bagga that he expected the matter to be resolved by the end of 2016 is evidence of malice.[203] While it was unlikely that the matter could be resolved by the end of 2016, I do not think it suggests malice. Furthermore, the evidence shows that, however unrealistic that prediction was, Mr Snaith took steps to try and achieve it.[204] Mr Snaith also rightly pointed out that this was a "hope".[205]

(g) Mr Bagga also says that CDI's malice is evident from the fact that Mr Snaith chose not to raise the MTM Complaint earlier so that it could be considered at a CDI EB meeting in November 2016, and did not "suggest or contemplate the prospect of" another meeting before the next CDI EB meeting in May 2017.[206] I do not think the first point suggests malice, as the MTM Complaint was made on 27 October 2016 and preparation had to be done before a CDI EB meeting was

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201 NE for 11 August 2023 at p 12 lines 22–24.

202 Mr Snaith's AEIC at para 43.

203 Mr Bagga's WCS at paras 149 and 185; 6AB at p 3008.

204 6AB at p 3118.

205 NE for 11 August 2023 at p 18 lines 21–15.

206 Mr Bagga's WCS at paras 147 and 188; Mr Bagga's WRCS at para 29.

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convened.[207] I also find that any contention of malice is rebutted by the fact that the CDI EB did convene an earlier meeting (*ie*, the CDI EB Meeting on 26 January 2017), instead of waiting until May 2017.[208]

(h) I further reject Mr Bagga's claim that Mr Snaith misled the CDI EB:[209] as discussed above at [102]–[104], Mr Bagga was warned multiple times.

(i) Mr Bagga suggests that Mr Snaith's proposal to suspend Mr Bagga's IMPCAS and CDI-T accreditations also evince malice.[210] I disagree. Mr Snaith appeared genuinely concerned when he made that proposal. In any case, CDI did not eventually suspend those accreditations.

(j) I also disagree that malice is evident from the fact that Mr Snaith "steer[ed] the CDI EB towards revoking [Mr Bagga's] CDI-M accreditation [by] putting this unprecedented action in their minds".[211] I accept Mr Snaith's evidence in this regard:

> A. What I explained to [the CDI EB] was the issue of why we can't talk about pricing. We even had advice from our lawyer whose specialism is Competition Law in the EU. *This is the information which is provided to them and the executive board made their decision by themselves.*[212]
>
> [emphasis added]

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207 CDI's WRCS at para 7.4.8.

208 CDI's WRCS at para 7.4.8(b).

209 Mr Bagga's WCS at para 152.

210 Mr Bagga's WCS at para 156.

211 Mr Bagga's WCS at para 157.

212 NE for 11 August 2023 at p 63 line 25 – p 64 line 8.

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This comports with CDI's case that Mr Snaith's job as general manager was to send the email to the CDI EB with the necessary information and for the CDI EB to decide what course of action should be taken.[213] Furthermore, Mr Bagga's concession that he did not know what Mr Snaith's and the CDI EB's job scopes were[214] also casts doubt on his submission.

CDI's failure to call Mr Frith as a witness

141 Mr Bagga also says that the court should draw an adverse inference from CDI's refusal to call Mr Frith as a witness.[215] Mr Bagga says that Mr Frith was the maker of the 5th Statement,[216] but it is not clear how he knows this. To the extent Mr Bagga alleged that a document was prepared by Mr Frith,[217] this appears to be confined to only an *agenda*, presumably for the CDI EB Meeting, and not the 5th Statement. I say this because only the last page of the 5th Statement has a line which states "Agenda prepared by T. Frith".[218] Mr Banon gave evidence that he "was responsible for recording the minutes"[219] and thereafter circulated the 5th Statement.[220] Mr Bagga did not challenge this evidence. I do not accept Mr Bagga's evidence that the 5th Statement was made by Mr Frith.

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213 NE for 8 August 2023 at p 28 lines 19–22, p 29 lines 2–8; Mr Snaith's AEIC at para 72.

214 NE for 8 August 2023 at p 34 lines 14–22.

215 Mr Bagga's WCS at paras 197–201.

216 NE for 8 August 2023 at p 41 lines 7–11; Mr Bagga's WCS at para 197.

217 NE for 8 August 2023 at p 41 lines 7–11

218 6AB at p 3312.

219 Mr Banon's AEIC at para 14.

220 Mr Banon's AEIC at para 19.

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142 Assessing all of the above in the round, I am unconvinced that Mr Snaith, or CDI, harboured any ill-will or malicious intent towards Mr Bagga. While I agree that the investigations could have progressed quicker and there could have been more clarity if CDI had an established procedure concerning warnings, suspension and revocation of accreditations at the material time, there was no malice. I find that CDI honestly believed in the truth of the Statements when it made them.

143 Consequently, any claim in malicious falsehood must fail. I note that notwithstanding the fact that Mr Bagga did not plead malicious falsehood either in his Statement of Claim or his Reply, he seeks relief for malicious falsehood.[221] In the absence of any malice on CDI's part, this claim must fail. Mr Bagga's claim for malicious falsehood under section 6(1) of the Defamation Act 1957[222] is similarly not pleaded and not made out. There is no evidence that the Statements were calculated to cause pecuniary damage.

CDI's publication of the Statements was not motivated by a dominant improper motive

144 Mr Bagga claims that the Statements were made for two improper purposes, including to injure Mr Bagga.[223] For the reasons explained above, I find that CDI did not publish the Statements to injure Mr Bagga.

145 Second, Mr Bagga says the Statements were made to display to ship operators that CDI had control of inspectors' fees and discourage inspectors from deciding their prices independently, with the ultimate goal of improving

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221 Mr Bagga's WCS at paras 202–203.

222 Mr Bagga's WCS at paras 205–210.

223 Statement of Claim at para 54; Mr Bagga's WRCS at paras 29–33 and 36.

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the relationship between CDI and ship operators.[224] However, these claims are merely conjectures and are not supported by any evidence. I agree with CDI that the evidence shows that "CDI, whilst protecting its own interests and reputation, had no intent whatsoever of harming [Mr Bagga], let alone *dominant* intent".[225]

146 By virtue of the foregoing, I find that Mr Bagga has not succeeded in showing that the Statements were published with malice. Therefore, CDI is entitled to rely on the defence of qualified privilege which applies to all the Statements.

Conclusion

147 Having dealt with the substantive issues raised in Suit 30, I make the additional observation that Mr Bagga appears to have sought, via Suit 30, to relitigate the issues which had been resolved in the UK proceedings. There, Mr Bagga commenced a claim for breach of contract, alleging, *inter alia*, that the contract between the parties did not provide for CDI's right to suspend or revoke his CDI-M accreditation.[226] Notwithstanding that the UK proceedings culminated in a settlement,[227] Mr Bagga spent a significant amount of time at trial focusing on issues which are relevant to a contractual claim, rather than a defamation claim.[228] That should not have been the case.

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224 Statement of Claim at paras 52–53; Mr Bagga's WCS at paras 177–178.

225 CDI's WCS at paras 12.3.1–12.3.3.

226 1AB at pp 29–49.

227 6AB at pp 3589–3590.

228 *Eg*,on whether Mr Snaith had the power to suspend Mr Bagga: NE for 10 August 2023 at pp 160–171; on the significance of negotiation: NE for 10 August 2023 at p 117.

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148 To sum up, I dismiss Mr Bagga's claims in defamation and malicious falsehood, for the following reasons:

(a) Mr Bagga has failed to establish that the 1st, 2nd, 4th, 5th and 7th Statements were defamatory as they were not published to third parties;

(b) Mr Bagga has not shown that the 6th and 8th Statements are defamatory as they do not refer to him;

(c) Mr Bagga has not proven that the 3rd Statement is defamatory in nature;

(d) in any case, CDI has successfully invoked the defence of qualified privilege in respect of all the Statements; and

(e) CDI did not act maliciously or with any improper motive in making the Statements.

149 In view of my decision to dismiss Mr Bagga's claim, costs should follow the event even though I do not accept CDI's arguments in their totality. I will hear the parties' submissions as to the appropriate quantum of costs to be awarded.

See Kee Oon
Judge of the High Court

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Mark Seah and Lynn Cheng (Dentons Rodyk & Davidson LLP) for the plaintiff;
Prakash Pillai, Koh Junxiang and Charis Toh (Clasis LLC) for the defendant.

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