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

[2023] SGHC 97

Suit No 30 of 2022 (Summonses Nos 3879 and 4340 of 2022)

Between

Karan Bagga

… *Plaintiff*

And

Stichting Chemical Distribution Institute

… *Defendant*

GROUNDS OF DECISION

[Civil Procedure — Witnesses — Issue of letter of request to foreign judicial authorities for examining witnesses in foreign jurisdiction — Applicable principles — Whether order "necessary for the purposes of justice"]
[Civil Procedure — Witnesses — Issue of subpoena requiring attendance of witnesses]

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Karan Bagga
v
Stichting Chemical Distribution Institute

[2023] SGHC 97

General Division of the High Court — Suit No 30 of 2022 (Summons Nos 3879 and 4340 of 2022)
See Kee Oon J
10 February 2023

14 April 2023

See Kee Oon J:

Introduction

1 In HC/S 30/2022, the plaintiff claims against the defendant for damages arising from eight sets of statements which were allegedly defamatory and/or malicious falsehoods. To bolster his evidential case, the plaintiff filed the present two applications. In HC/SUM 3879/2022 ("SUM 3879"), he sought an order to examine eight witnesses who are based overseas. In HC/SUM 4340/2022 ("SUM 4340"), he sought an order to subpoena three witnesses who are based in Singapore and to dispense with their affidavits of evidence-in-chief ("AEICs").

2 After hearing the parties on 10 February 2023, I dismissed both applications. I now set out my grounds of decision.

Facts

The parties

3 The plaintiff, Mr Karan Bagga, is a litigant-in-person in these proceedings. He is in the business of providing marine surveying services and undertaking other marine consultancy work. The defendant, Stichting Chemical Distribution Institute (also referred to as "CDI"), is a non-profit foundation which *inter alia* promotes the safety and security of the marine chemical industry by operating an inspection scheme known as the "CDI-M Scheme". The plaintiff was accredited as an inspector under the CDI-M Scheme in November 2013.

Background to the present summonses

4 From May 2014, the defendant had been informed on multiple occasions of alleged concerns over the plaintiff's excessive fees. On 27 October 2016, the defendant received a formal complaint regarding the plaintiff's alleged excessive fees from MTM Ship Management Singapore ("MTMSM"). The defendant suspended the plaintiff on 28 October 2016 pending a review process, before eventually revoking his licence permanently with effect from 7 February 2017 upon the conclusion of this process.

5 On or around 28 January 2019, the Plaintiff filed a data subject access request ("DSAR") with the defendant under article 15 of the Parliament and Council Regulation (EU) No 2016/679, also known as the United Kingdom ("UK") General Data Protection Regulations. Subsequently, on 3 April 2019, the plaintiff filed a claim against the defendant before the High Court of England & Wales (Queen's Bench Division) ("the UK proceedings"), alleging that the defendant was in breach of contract and duty of care in wrongfully revoking his

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accreditation. On 20 April 2020, the High Court endorsed a settlement of the UK proceedings in the form of a Tomlin order. This consent order provided for the immediate reinstatement of the plaintiff's accreditation in addition to the payment of a sum of £645,000.00 to the plaintiff in settlement of the breach of contract claim.

6 As a result of the DSAR request and the plaintiff's specific disclosure application in the UK proceedings, the plaintiff received from the defendant several documents concerning himself. The plaintiff's case in HC/S 30/2022 is that certain statements made by the defendant, *viz* eight sets of words, were defamatory and/or malicious falsehoods (the "Words"). The Words relate to the defendant's suspension and eventual revocation of the plaintiff's accreditation in the CDI-M Scheme. The Words are set out in a table in Annex 1.

7 The plaintiff claims that the Words are false, undermine the plaintiff's credibility, have caused grievous harm to the plaintiff's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, in addition to lowering the plaintiff's professional and personal business and/or reputation in the estimation of right-thinking members of society. The plaintiff further claims that the Words were published with express malice and with improper motive to injure him and seeks general, aggravated and special damages against the defendant.

8 The defendant denies the plaintiff's claims in their entirety. The defendant denies that the Words bore any defamatory meaning. The defendant further relies on the defences of justification and qualified privilege. The defendant also takes the position that it had an honest belief in the truth of the Words published, and the Words were therefore not published maliciously. In

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any event, the plaintiff has not suffered any damage because of the publication of the Words.

The present summonses

9 Turning to the present applications, in SUM 3879, the plaintiff sought, pursuant to O 39 r 2 of the Rules of Court (2014 Rev Ed) ("ROC 2014"), to issue letters of request to the relevant authorities in four separate jurisdictions for the examination of eight individuals based overseas (the "Foreign Witnesses").

10 In SUM 4340, the plaintiff sought to subpoena three witnesses based in Singapore (the "Local Witnesses") and for their AEICs to be dispensed with pursuant to O 38 rr 14 and 2(4) of ROC 2014 respectively.

Plaintiff's submissions

11 In relation to SUM 3879, the plaintiff submitted that the evidence of the Foreign Witnesses would be necessary to determine "the extent of publication in order to achieve a fair trial"[1] and the issues relating to the defences of justification and qualified privilege, the falsity of the Words and the alleged malice on the part of the defendant.[2]

12 In relation to SUM 4340, the plaintiff submitted that the applications to subpoena the Local Witnesses and for their AEICs to be dispensed with under O 38 rr 14 and 2(4) of ROC 2014 respectively, should be granted. This is because the evidence of these witnesses would be critical to determine the extent

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1 Written Submissions of Plaintiff for SUM 3879 ("WSP-SUM3879") at para 9.

2 WSP-SUM3879 at para 10.

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of publication of the Words, the assessment of damages, and the background facts to the claim.

Defendant's submissions

13 In respect of SUM 3879, the defendant submitted that the letters of request should not be granted as they would not be "necessary for the purposes of justice" as required under O 39 r 1 of ROC 2014.[3] The defendant argued primarily that the evidence of the Foreign Witnesses would not be material to the issues at trial. Moreover, the costs of allowing the examinations would "far outweigh" the benefits of the evidence[4] and the examinations would not be completed in time for the trial of this matter, which had already been scheduled to take place in August 2023.[5] In addition, in relation to the witnesses based in Belgium, the plaintiff had failed to provide evidence that Belgian law permits the processing of letters of request.[6]

14 In respect of SUM 4340, the defendant objected to the issuance of the subpoenas and dispensation of the AEICs of the Local Witnesses on the basis that the plaintiff had not shown that their evidence would be relevant or material to the issues in dispute.

Issues to be determined

15 There were two issues to be determined in the present applications. The first issue arising from SUM 3879 was whether it appeared necessary for the

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3 Written Submissions of Defendant ("WSD") at para 30.

4 WSD at paras 49–50.

5 WSD at paras 52–53.

6 WSD at para 29.

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purposes of justice to grant the letters of request for the examination of the Foreign Witnesses out of jurisdiction under O 39 r 2 of ROC 2014. The second issue arising from SUM 4340 was whether the applications to subpoena the Local Witnesses and for their AEICs to be dispensed with, under O 38 rr 14 and 2(4) of ROC 2014 respectively, should be granted.

The application in SUM 3879 for the examination of the Foreign Witnesses out of jurisdiction

16 Before examining the parties' submissions in respect of SUM 3879, it would be helpful to set out the law relating to applications for the examination of persons out of jurisdiction. This is set out in O 39 rr 1 and 2 of ROC 2014:

> **Power to order depositions to be taken (O. 39, r. 1)**
>
> **1.**—(1) The Court may, in any cause or matter where it appears necessary for the purposes of justice, make an order in Form 73 for the examination on oath before a Judge or the Registrar or some other person, at any place, of any person.
>
> (2) An order under paragraph (1) may be made on such terms (including, in particular, terms as to the giving of discovery before the examination takes place) as the Court thinks fit.
>
> **Where person to be examined is out of jurisdiction (O. 39, r. 2)**
>
> **2.**—(1) Where the person in relation to whom an order under Rule 1 is required is out of the jurisdiction, an application may be made —
>
> > (a) for an order in Form 74 under that Rule for the issue of a letter of request to the relevant authorities of the jurisdiction in which that person is to take, or cause to be taken, the evidence of that person; or
> >
> > (b) if the government of that jurisdiction allows a person in that jurisdiction to be examined before a person appointed by the Court, for an order in Form 75 under that Rule appointing a special examiner to take the evidence of that person in that jurisdiction.

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17 O 39 r 2(1) read with O 39 rr 1(1) and 1(2) of ROC 2014 empowers the court to order the examination of a person even if the person to be examined is out of jurisdiction. The touchstone for making such an order is whether it appears "necessary for the purposes of justice", as set out in O 39 r 1(1).

18 The exercise of the court's powers under these rules for the examination of a person out of jurisdiction is a matter of discretion, especially since the cost of taking evidence abroad is high and sometimes prohibitive: *Singapore Civil Procedure 2021* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell, 2021) at para 39/3/1. An application under these rules should not be the first port of call. Reasonable attempts should first be made, in a proper case, to obtain the evidence in other ways, such as through a witness who is within jurisdiction, by documents, by admissions, or an order that the evidence may be given on affidavit. The court may decline to grant the application if the evidence of the proposed witness is not material: see *Kea Meng Kwang and Another v Merrill Lynch Investment Managers (Asia Pacific) Ltd and Others* [2006] SGHC 161 at [62].

19 The plaintiff relied on the relevance of the Foreign Witnesses as the primary factor in support of allowing the applications. The names of the Foreign Witnesses and their respective jurisdictions and designations at the material time when the Words were published are set out below:

S/N	Jurisdiction	Name	Designation at the material time
1	United States of America	Rob Kiefer	Chairman of the CDI Board of Directors
2		John Kelly	CDI-M Executive Board ("CDI EB") member

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3		James Prazak	CDI EB member
4	United Kingdom	Jan Antonsson	Chairman of the CDI EB
5		Terry Frith	CDI Technical Manager
6	Netherlands	Steven Beddegenoodts	CDI EB member
7	Belgium	Luc Cassan	CDI EB member
8		Paul Verschueren	CDI EB member

20 The plaintiff averred that these witnesses are relevant to determine questions on the defence of justification, the defence of qualified privilege, the falsity of the Words and malice on the part of the defendant.[7] This is because, as alleged by the defendant, they acted for and on behalf of the defendant such that there was no "publication" of the Words. Furthermore, they were responsible for the revocation of the plaintiff's accreditation. They were also the recipients of the Words. The plaintiff stressed that every litigant has a general right to bring all evidence relevant to his case to the court's attention, citing *Basil Anthony Herman v Premier Security Co-operative Ltd and others* [2010] 3 SLR 110 ("*Basil Anthony*") at [24].

21 In response, the defendant referred to the decision of the Court of Appeal of England and Wales in *Honda Giken Kogyou Kabushiki Kaisha v KJM Superbikes Ltd* [2007] EWCA Civ 313 ("*Honda*") which provides guidance on the relevant considerations in the grant of letters of request. These considerations, as set out in the judgment of Sir Anthony Clarke MR at [26]–[31], can be summarised as follows:

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7 WSP-SUM3879 at para 10.

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(a) First, in considering the letters of request, the court should ask whether the intended witnesses can reasonably be expected to have relevant evidence to give on the topics mentioned in the letter of request.

(b) Second, the court should ask whether the intention underlying the formulation of the topics is an intention to obtain evidence for use at the trial or is some other investigatory and therefore impermissible intention.

(c) If the two questions above are answered affirmatively, then subject to the four points below, the court ought to accede to the application and grant the letters of request:

(i) First, there may be circumstances in which it would be appropriate to refuse an application because the request would be oppressive.

(ii) Second, a letter of request must not be too wide.

(iii) Third, there may be other circumstances in which it would not be appropriate to accede to an application. For example, a case management judge may conclude that the costs of obtaining the evidence would be disproportionate or that the evidence would not be necessary for the fair determination of the issues in the action.

(iv) Fourth, an application might be refused because it was made too late.

22 The defendant submitted that the considerations above would point against the grant of the letters of request as they would not be "necessary for the

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purposes of justice" as required under O 39 r 1 of ROC 2014.[8] It made four broad arguments in support of its submission. First, the evidence of the Foreign Witnesses would not be material to the issues in dispute or necessary for the fair determination of the issues in the action. Second, the costs of allowing the examinations would be disproportionate and "far outweigh" the benefits of the evidence.[9] This is given that the eight Foreign Witnesses span four jurisdictions such that steps would have to be taken to compel their attendance for the examinations. Third, if the letters of request were issued, the examinations would not be completed in time for the trial of this matter in August 2023. Fourth, in relation to the witnesses based in Belgium, the plaintiff had not provided evidence that Belgian law permits the processing of letters of request.

23 I was satisfied that *Honda* provides useful guidance in determining the appropriateness of granting the letters of request. I was persuaded by the defendant's submissions as set out above, and I therefore found that the plaintiff had not shown that it would be necessary for the purposes of justice for the eight Foreign Witnesses to be examined out of jurisdiction. I shall elaborate on my reasons below.

Relevance and materiality of the evidence

24 The plaintiff had not shown that the intended witnesses could reasonably be expected to have relevant evidence to give on the topics mentioned in the letter of request. In relation to the plaintiff's submission that the evidence would be necessary to "determine the extent of the publication", this evidence would

8 Written Submissions of Defendant ("WSD") at para 30.

9 WSD at paras 49–50.

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no longer be necessary in light of the defendant's concession that they do not dispute the extent of the publication of the Words.[10]

25 In relation to the link the plaintiff sought to draw between the intended witnesses' potential evidence and the issues relating to the defences of justification and qualified privilege, the falsity of the Words, and malice on the part of the defendant, I found that this did not establish the materiality of their evidence. As the defendant rightly pointed out, all that was stated in the draft letters of requests on "Questions to be put to the persons to be examined or statement of the subject matter about which they are to be examined" was the following:[11]

> The subject matter about which the three witnesses are to be examined will be primarily focusing on the 'Eight Sets of Defamatory Words' as articulated in the pleadings, the Plaintiff's pricing, suspension and accreditation revocation, Extra Ordinary Board meeting held at Rotterdam on 26 January 2017, the Plaintiff's appeal on compassionate grounds, the Plaintiff's formal request for accreditation re-instatement and inquiries into his Nationality and SIRE accreditation status. Specific questions to be put to the individual witnesses will be transmitted by 3 November 2022.

26 The scope of the plaintiff's inquiry, as stated in the draft letters of request, merely echoes what is reflected in his 3rd Affidavit which was filed in support of SUM 3879:[12]

> 47. I confirm that the subject matter about which the eight witnesses are to be examined will be primarily focussing on the 'Eight Sets of Defamatory Words' as articulated in my pleadings, my pricing, suspension, my accreditation revocation, Extra Ordinary Board meeting held at Rotterdam on 26 January 2017, my appeal on compassionate grounds, my formal request

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10 WSD at paras 45 and 62.

11 WSD at para 34.

12 3rd Affidavit of Karan Bagga dated 21 October 2022 ("3KB") at para 47.

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> for accreditation re-instatement and inquiries into my Nationality and my SIRE accreditation status. …

27 In the absence of any specific questions to be put to the individual Foreign Witnesses, the letters of request as drafted were far too wide and ambiguous. The scope of the letters of request extended beyond the allegedly defamatory words or malicious falsehoods, and referred to "pricing, suspension and accreditation revocation" and even the plaintiff's request for reinstatement of his accreditation and "inquiries into his [n]ationality and SIRE accreditation status".[13] The plaintiff had not shown how these issues were relevant to the disputed issues or how these issues related to the Foreign Witnesses. Furthermore, as I shall explain further below (at [32]), the plaintiff appeared to have conflated the issue of the defendant's purported malice in its *decision to revoke the plaintiff's accreditation* with the issue of whether the defendant's *making of the allegedly defamatory statements* was also actuated by malice.

28 The plaintiff had not disclosed the specific questions to be put to the Foreign Witnesses, despite previously having indicated that he would do so by 3 November 2022, as set out at [25] above. He averred that he was not prepared to disclose these questions to the defendant, but he was prepared to disclose the same to this court on an "ex-part[e] basis". According to the plaintiff, disclosing such interrogatories to the defendant would have caused them to lose the "element of surprise", which the plaintiff argued was akin to a situation "where [a] party to the Suit is directed to disclose its questions (examination or cross-examination) months ahead of the witness examination", thereby "giving the Witnesses adequate time to consult the Defendant and its Lawyers to prepare responses to their own benefit at trial".[14]

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13 3KB at para 47.

14 WSP-SUM3879 at para 19(f).

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29 The plaintiff's arguments on preserving the "element of surprise" were plainly misconceived. I am not aware of any proposition in law which affords a party to a civil suit an entitlement to such an "element of surprise", a point on which the plaintiff had not offered any authorities in support. In fact, such "surprise" tactics should not be condoned. They would clearly be contrary to O 39 r 3(3) of ROC 2014, which expressly requires that "[i]f the evidence of the person to be examined is to be obtained by means of written questions, *there must be filed* with the letter of request a copy of the interrogatories and cross-interrogatories to be put to him on examination" [emphasis added]. In any case, the plaintiff made no effort during the hearing on 10 February 2023 to offer disclosure ("*ex parte*" or otherwise) of any of the specific questions that he purportedly had in mind to be put to the Foreign Witnesses.

30 The plaintiff contended that the evidence of the Foreign Witnesses would be necessary to test the defendant's allegation that the Foreign Witnesses had acted for and on behalf of the defendant such that there was no "publication" of the Words. Furthermore, the plaintiff stressed that the Foreign Witnesses would be relevant given their role as recipients of the Words and given further that the defendant was responsible for the revocation of the plaintiff's accreditation.

31 In my view, the plaintiff had failed to clearly frame the issues in dispute which he claimed that the Foreign Witnesses would be able to provide evidence on. Equally, he had not demonstrated how the evidence of the Foreign Witnesses would be relevant and/or material to the disputed issues. I was not persuaded that the evidence of the Foreign Witnesses would be relevant and material to the defences of justification or qualified privilege, the falsity of the Words and the alleged malice on the part of the defendant. Among these issues, it appeared that the only issue on which the Foreign Witnesses could possibly

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shed light on would be that of the alleged malice on the part of the defendant. That being said, I was not satisfied that the evidence of the Foreign Witnesses would be relevant or material.

32 In his submissions, the plaintiff appeared to have conflated the issue of whether the defendant's *decision to revoke his accreditation* was actuated by malice with the issue of whether the defendant's making of the *alleged defamatory statements* was actuated by malice. It is the latter issue that is relevant to the subject matter of the present dispute. In this regard, the plaintiff maintained during the hearing on 10 February 2023 that there was no such conflation and that the defendant was actuated by one and only one type of malice. The plaintiff argued that the defendant did not act bona fide in *suspending his licence*, leading to the inference that the defamatory statements were malicious. I did not agree that any malice in the defendant's decision to suspend his accreditation, even assuming that this could be established, must necessarily mean that malice was also similarly present in the making of the alleged defamatory Words. I was not prepared to find that such an irresistible inference or any causal connection would ineluctably arise. The UK proceedings have been resolved and involved different causes of action.

33 In any event, as the defendants pointed out in their oral submissions, Mr Howard Smith, the General Manager of the defendant who was the central figure involved in the publication of the Words, will be called to testify as a witness. They also intend to call Mr Mike Bannon, who is part of the CDI-M accreditation committee. These two witnesses should be sufficient to provide evidence on the defendant's state of mind at the material time when the Words were published. This conclusion would take the facts of the present case outside those of *Credit Suisse v Lim Soon Fang Bryan* [2007] 3 SLR(R) 414. In that case, the court made orders for the examination of witnesses residing in Taiwan,

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given that they were material witnesses and that the plaintiff ran a real risk that it would not be able to call the relevant evidence if the order was not made. Furthermore, I am persuaded that the examination of the Foreign Witnesses, most of whom the plaintiff alleged were mere recipients of the Words and not their authors, would not be likely to shed further light on the defendant's state of mind.

34 I shall briefly address one objection raised by the defendant that I did not find convincing. The defendant noted in both its written and oral submissions that the plaintiff himself appeared to accept the lack of relevance or materiality of the evidence he had sought. According to the defendant, this was because the plaintiff had expressly confirmed to the assistant registrar at a pre-trial conference on 10 January 2023 that he would proceed with the trial fixed for August 2023, even if he was unable to procure the evidence of the Foreign Witnesses in time.[15] Based on the plaintiff's own confirmation, the defendant suggested that the evidence he sought was merely "good to have", rather than essential evidence. I was not satisfied that the plaintiff's confirmation that he would nevertheless proceed with the trial had indeed gone so far as to amount to an admission of the non-materiality of the Foreign Witnesses.

35 As I was not satisfied that the Foreign Witnesses would provide relevant or material evidence to the issues in dispute, this alone would be sufficient basis to dismiss the plaintiff's application in SUM 3879. However, for completeness, I shall also address the defendant's objections on costs and delay to the proceedings.

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15 WSD at para 53.

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Costs and delay to proceedings

36 Where applicable, significant costs arising from the examination of the Foreign Witnesses and delay to the proceedings are relevant considerations which would militate against the grant of the letters of request: *Honda* ([21] *supra* at [21]). The defendant stressed that the costs of the examinations would be disproportionate as the witnesses are spread across different continents and countries. For the witnesses in the USA, UK, and Belgium, they are possibly even located in different states or cities. Each jurisdiction would necessarily have its own rules and procedures for the processing of letters of requests.

37 In response, the plaintiff suggested in his oral submissions that the costs consideration was overstated. In support, he pointed to Annexes B, C, and D of the written submissions of the defendant, which set out the information provided on the website of the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters ("Hague Convention") by the USA (United States Department of Justice)[16] and the UK (Royal Courts of Justice),[17] respectively, on the practical information relating to the handling of letters of requests in these jurisdictions. The plaintiff pointed out that in relation to the USA and the UK, it was stated that the relevant authorities rarely or would not seek reimbursement of costs relating to the execution of letters of request. I accepted that the risk of disproportionately high costs arising from the examinations would appear to be tempered in the face of the available information.

38 However, as the defendant correctly noted, there is a high possibility of delay in the proceedings given the time required by foreign jurisdictions to

16 WSD at p 29.

17 WSD at p 37.

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process the letters of request. At present, the trial for this matter has been fixed for early August 2023, which is only a few months away from the date when the present applications were being heard. According to the information provided by the various States on the website for the Hague Convention, the estimated time periods for the execution of letters of request in the USA would be two to three months for evidence obtained on a voluntary basis and three to six months for evidence that needs to be compelled. For the UK, the time taken just to process a request would usually range from six and 12 months.

39 I would also point out that in relation to Belgium, which is not a Contracting State to the Hague Convention, the plaintiff had not adequately addressed the defendant's objection on whether the Belgian courts would even execute letters of request from Singapore. The plaintiff cited in his written submissions the "Belgian Judicial Code", "the European E-Justice Portal for Belgium" and the "Research Paper on obtaining evidence in Belgium".[18] Without the benefit of any expert evidence on Belgian law, these documents the plaintiff had sought to rely on suggest that it is far from clear whether letters of request from Singapore courts can even be executed in Belgium via transmission of "commissions rogatory" to the Belgian courts.[19] The "Research Paper on obtaining evidence in Belgium" itself states that the "Belgian courts must only carry out commissions rogatory received from foreign courts if a Treaty so provides." I note that the plaintiff had not shown that there is any such treaty in force between Singapore and Belgium.

40 For the foregoing reasons, I dismissed the application for the examination of the Foreign Witnesses out of jurisdiction in SUM 3879.

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18 WSP-SUM3879 at paras 22–24.

19 Plaintiff's Bundle of Authorities dated 2 February 2023 at pp 17–18.

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The application in SUM 4340 for the subpoenas of the Local Witnesses and for their AEICs to be dispensed with

41 At the outset, it would be pertinent to set out the context for SUM 4340. As provided in O 38 r 2(1) of ROC 2014, the general rule in civil trials is that the evidence-in-chief of a witness shall be given by way of affidavit (or "AEIC"). This is subject to the exceptional case where the court exercises its discretion under O 38 r 2(4) to allow a witness to give evidence orally:

> **2.**—(4) Notwithstanding paragraph (1), (2) or (3), the Court may, if it thinks just, order that evidence of a party or any witness or any part of such evidence be given orally at the trial or hearing of any cause or matter.

42 It was within the above context that the plaintiff made his application to subpoena the Local Witnesses under O 38 r 14 of ROC 2014 and for the evidence of the Local Witnesses to be given orally under O 38 r 2(4). It was also within this context that the defendant objected to the issuance of the subpoena.

43 The critical issue here was whether the subpoenas to testify should be issued against the three Local Witnesses. This is because if it was found that the issuance of the subpoenas was appropriate, it followed as a matter of course that subpoenaed witnesses ought to be allowed to provide their evidence orally.

44 I turn now to the applicable principles for issuance of subpoenas. As the Court of Appeal held in *Basil Anthony* ([20] supra) at [23], the issuance of a subpoena to testify requires the court to determine whether the proposed witness is in a position to provide oral and documentary evidence that is not just relevant to the issues in dispute but which could have materially affected the outcome of some or all of the live disputes before the court. In making this determination, the court has to bear in mind the following principles (*Basil Anthony* at [24]–[26]):

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24 At this juncture, we would emphasise that every litigant has a general right to bring all evidence relevant to his or her case to the attention of the court. This general right is so fundamental that it requires no authority to be cited in support of it; in fact, to say that the right derives from some positive decision or rule is to understate its constitutive importance to the adversarial approach to fact-finding. The importance of the right is reflected in the fact that a litigant may pray in aid the machinery of the court to compel, on the pain of contempt, all persons who are in a position to give relevant evidence, to come forward and give it.

25 The general right is, of course, subject to specific limits. For present purposes, the following limits are germane. A litigant only has the right to adduce relevant evidence, as defined by the Evidence Act (Cap 97, 1997 Rev Ed) and other applicable rules; irrelevant evidence is inadmissible and will not be considered by the court. The adduction of relevant evidence must, as far as practicable, take place in accordance with the rules of procedure whose purpose is to ensure the fair, economical, swift and orderly resolution of a dispute. Finally, a litigant is prohibited from manipulating the court's machinery to further his ulterior or collateral motives in an abusive or oppressive manner.

26 In striking the proper balance between the general right and the specific limits, a trial judge must not only be guided by the applicable rules and decisions, but must look beyond the mechanical application of these rules and decisions, and carefully assess the interests at stake in every case to ensure that a fair outcome is reached through the application of fair processes. It should always be borne in mind that grave consequences might flow from the wrongful exclusion of evidence (such as by shutting out a witness from testifying or preventing cross-examination). In cases where the relevance of evidence sought to be adduced is unclear, or even doubtful, we are of the view that it is usually both prudent and just to err in favour of admission rather than exclusion. With specific regard to the calling of witnesses, we would reiterate what was said in *Auto Clean 'N' Shine Services v Eastern Publishing Associates Pte Ltd* [1997] 2 SLR(R) 427 (at [17]), where this court allowed an appeal to introduce eleven new witnesses of fact after the summons for directions stage:

> [A] balance should be struck between the need to comply with the rules and the parties' right to call witnesses whom they deem necessary to establish their case. It may well be that the additional evidence to be adduced by the parties may assist in illuminating the issues before the court or result in the expeditious

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> disposal of the proceedings. If, however, it really turns out at the trial that the evidence adduced is unnecessary, irrelevant or vexatious, the trial judge is in full control and is in a position to deal with the party adducing such evidence in an appropriate way, such as by disallowing the evidence which is being elicited from the witness and/or by an order as to costs. It must always be borne in mind that the duty of the court is to examine all the evidence put forward by the parties which is material and relevant to the dispute between the parties and not to shut out potentially material and relevant evidence by a strict adherence to the rules of civil procedure.
>
> [emphasis in original omitted]

45 While the court would tend to err in favour of admission rather than exclusion considering the grave consequences of prematurely shutting out evidence, the evidence must be relevant and material to the issues in dispute. On the relevance and materiality of the Local Witnesses, the parties naturally took differing positions. On the one hand, the plaintiff submitted that examination of the Local Witnesses would shed light on the issues in dispute. The Local Witnesses and their designations at the material time are as follows:

S/N	Name	Designation at the material time
1	Ian Mann ("Mr Mann")	CDI-M Singapore-based inspector
2	Vijay Rangroo ("Mr Rangroo")	Managing Director of MTMSM
3	Jayanta Dutta ("Mr Dutta")	Employee of MTMSM

46 According to the plaintiff, Mr Mann's evidence would be relevant and/or material for two reasons. Firstly, the defendant affirmed that it had deleted the emails containing the 6th and 8th set of Words. In the absence of the emails where these two sets of Words were circulated, the plaintiff submitted that it would be crucial that at least one individual (being Mr Mann), who was

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physically present at the meeting and who was a recipient of these two sets of Words, be examined as a witness.[20] In particular, Mr Mann's evidence would be relevant to determining facts in issue, the falsity of the defamatory statements, whether the words published were as spoken at the meeting or "forged" into the meeting minutes which would show malice on the defendant's part, and the defendant's motive and state of mind in publishing the Words.[21] Secondly, as the plaintiff had not been directly named in the 6th and 8th sets of Words, the plaintiff relies on their innuendo meaning. Mr Mann's evidence would thus be relevant to establish the "supplemental extrinsic facts" relevant to establishing this innuendo meaning.[22]

47 In relation to Mr Dutta and Mr Rangroo, the plaintiff submitted that their evidence would be relevant and/or material for two reasons. Firstly, the defendant had not disclosed documents relating to correspondences between MTMSM and the defendant pursuant to a specific discovery order made in HC/SUM 3543/2022. In the absence of these documents, the examination of Mr Dutta and Mr Rangroo would be relevant to determine the meaning of the set of Words and the defendant's motive and state of mind when it published the Words. Secondly, the defendant claimed that it acted to suspend and later revoke the plaintiff's accreditation upon the receipt of a single complaint by Mr Dutta and Mr Rangroo. As these witnesses were also recipients of the Words, the examination of these witnesses would shed light on the issues of the defence of justification, the defence of qualified privilege", the falsity of the Words and the alleged malice on the part of the defendant.[23]

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20 Written Submissions of Plaintiff for SUM 4340 ("WSP-SUM4340") at para 10.

21 WSP-SUM4340 at para 11.

22 WSP-SUM4340 at para 12.

23 WSP-SUM4340 at para 13.

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48 In relation to all three Local Witnesses, the plaintiff submitted that their evidence would elucidate the extent of publication of the Words, given that the defendant appeared to have taken contrasting positions on the persons whom the Words had been circulated to.[24]

49 Having considered the points above, I found that the plaintiff had not shown that the evidence of the Local Witnesses would be relevant and/or material to the issues in dispute. Specifically, I did not see how the evidence of the Local Witnesses would assist in shedding light on the defendant's state of mind in publishing the Words. As the defendant pointed out, these witnesses were employees of third parties at the material times. They were not representatives of the defendant, nor were they authorised by the defendant to act for any particular purpose. Furthermore, I agreed with the defendant that all three witnesses were mere recipients of the Words. I found it difficult to see how they would be able to shed much light on the state of mind of the defendant.

50 In relation to Mr Dutta and Mr Rangroo, it also appeared that the plaintiff was seeking to adduce the evidence of both these witnesses in his attempt to challenge the defendant's suspension of his accreditation. However, this was irrelevant to the issues in the present dispute. This was evident from the submissions the plaintiff himself had made on the relevance and/or materiality of the evidence of Mr Dutta and Mr Rangroo. According to the plaintiff, MTMSM was the party that made the complaint which eventually led to the suspension and revocation of his accreditation. Hence, Mr Dutta's evidence would be necessary since he was placed on suspension following the complaint contained in an email from Mr Dutta. In relation to Mr Rangroo, he

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[24] WSP-SUM4340 at para 8.

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would also be a "key witness in this action" as the complaint would have been discussed with Mr Rangroo before it was formally made.

51 In his oral submissions, the plaintiff sought to further explain why the evidence of Mr Dutta and Mr Rangroo would be essential. He asserted that this was because the defendant had yet to disclose documents relating to correspondences between MTMSM and the Defendant which had been ordered to be disclosed pursuant to a specific discovery order made in HC/SUM 3543/2022. In the absence of these documents, there would have been no other way for him to make his case without the testimony of Mr Dutta and Mr Rangroo. According to the plaintiff, the correspondence would point towards collusion between MTMSM and the defendant in bringing the complaint against him. The plaintiff questioned whether there was a common interest between MTMSM and the defendant to ensure the plaintiff's suspension and revocation. The plaintiff went on to insinuate that this collusion could have arisen due to the results of the last inspection the plaintiff did for MTMSM being unsatisfactory to the latter given that he had found a number of non-conformities. I indicated during the course of the hearing that I was not prepared to consider this argument given that this was new evidence which was not contained within the plaintiff's affidavits.

52 The plaintiff's grounds for requiring subpoenas for Mr Dutta and Mr Rangroo involved little more than speculation on his part as to how their evidence might be relevant or material to his case. Perhaps more importantly, the plaintiff's chief focus appeared to be on impugning the correctness of the defendant's decision to suspend and revoke his accreditation. However, this is not an issue to be determined in HC/S 30/2022, which involves the plaintiff's claims of defamation and malicious falsehoods.

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53 In relation to the plaintiff's argument that the evidence of the Local Witnesses would be crucial to determine the extent of publication of the Words, I was not satisfied that this remained a valid justification in the face of the defendant's confirmation that there is no dispute as to the extent of the publication of the Words.[25]

54 In relation to Mr Mann, the plaintiff emphasised in his oral submissions that Mr Mann would be able to testify as to whether the Words published were as spoken at the meeting or "forged" into the meeting minutes. He maintained that if there had been inconsistencies between the words spoken and what was recorded in the minutes, this would tend to show malice on the defendant's part.

55 In this connection, I was not satisfied that Mr Mann would be able to provide any real assistance for the plaintiff's case. The plaintiff's belief was that Mr Mann could testify as to whether the published Words were accurate or not. Any discrepancies in the minutes could indicate malicious intent on the defendant's part. However, the meetings where Mr Mann was present took place about five or more years ago. It was highly speculative but also quite improbable that Mr Mann could confirm or disconfirm the accuracy of the published Words. At any rate, it was not possible for the Plaintiff to say whether Mr Mann even had any recollection of what was spoken during the meetings (*ie*, Inspector Working Group Meeting #4 and #5 on 16 March 2017 and 14 March 2018 respectively) where Mr Mann was purportedly present. A period of almost five years would have elapsed since the date of the last meeting. In my view, it was unlikely that Mr Mann would be able to testify as to whether the words published were as spoken (or otherwise) at the meeting.

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[25] WSD at paras 45 and 62.

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Conclusion

56 For the above reasons, I dismissed the plaintiff's applications in SUM 3879 and SUM 4340. I ordered the plaintiff to bear the defendant's costs fixed at $5000 (inclusive of disbursements).

See Kee Oon
Judge of the High Court

The plaintiff in person;
Koh Jun Xiang and Charis Toh Si Ying (Clasis LLC) for the defendant.

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Annex 1: Tabulation of the relevant words

S/N	Context	The Words
1	The 1st set of Words is contained in an email from CDI to the CDI-M Executive Board on 21 December 2016. This email was sent in the context of the complaint being made against the plaintiff by MTMSM, and CDI's review and assessment of the issue.	"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 been previous cases of his abuse of inspection fees resulting in previous written warnings from CDI …. Although the EB is at liberty to immediately withdraw this inspectors [*sic*] 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 canyon" [*sic*] 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

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		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, 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."
2	The 2nd set of Words is contained in the minutes of the Extraordinary Meeting dated 26 January 2017. The said EGM was called in view of the number of "Motivated Reasons" request and complaints in relation to the plaintiff's inspection fees.	"The GM advised that the reason this meeting had being [*sic*] 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

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		high number of supported Motivated Reasons submitted to CDI and previous 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 been [sic] no indication provided by

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		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 that contained within sections 3.01.1 [*sic*] and 5.5 of the CDI-M Operating Manuals.

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		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…"
3	The 3rd set of Words is contained in an email from CDI to MTMSM dated 9 February 2017. The context for this email was the complaint made by MTMSM against the plaintiff.	"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."
4	The 4th set of Words is contained in the Monthly Update for March 2017 from CDI's General Manager to the CDI Board of Directors. Essentially, this is a document circulated to the CDI Board summarising the activities undertaken by CDI that month.	"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. Bagga's CDI-Marine Accreditation…"
5	The 5th set of Words is contained in the meeting minutes of the CDI Accreditation Committee Meeting dated 4 May 2017 and 6 April 2017.	"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

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		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."
6	The 6th set of Words is contained in the minutes of the Inspector Working Group meeting #4 dated 16 March 2017.	"8.3) Excessive fees complaints GM highlighted that there had been a recent case of abusive cost behaviour 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 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 it is deemed appropriate. Such matters received the support from the IWG with regards to the longevity of CDI and maintaining CDI's reputation"
7	The 7th set of Words is contained in the minutes of	"An Extra Ordinary meeting of the CDI-Marine Executive Board was

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	CDI's Management Review conducted in December 2017. This was a year-end review conducted by CDI's General Manager in relation to all aspects of CDI's quality management systems.	held on the 26th of 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 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."
8	The 8th set of Words is contained in the minutes of the Inspector Working Group meeting #5 dated 14 March 2018.	"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."

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