IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1992] SGHC 92

Suit 249/1987

Between

Maidstone Pte Ltd

… *Plaintiff*

And

Takenaka Corp

… *Defendant*

GROUNDS OF DECISION

Tort — Defamation — Malice; Tort — Defamation — Qualified privilege

Version No 1: 11 Sep 2026 (01:05 hrs)

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Maidstone Pte Ltd v Takenaka Corp

[1992] SGHC 92

Suit 249/1987
Yong Pung How CJ
10 April 1992

1 Cur Adv Vult

2 This is an action for damages for libel. The defendants do not dispute that the published statement is defamatory and untrue, but they allege that the publication took place on an occasion protected by qualified privilege and they deny that it was made with malice. I shall therefore move directly to consider the circumstances of the publication.

3 **The facts**

4 The background to this action is the construction of the Mass Rapid Transit (`MRT`) system in Singapore. The MRT Corp had awarded the City Hall Station and Operation Control Centre/PUB Building project (`the project`) to the Nishimatsu-Lum Chang Joint Venture (`NLC-JV`) as the main contractors. NLC-JV in turn had nominated the defendants, a Japanese engineering and construction company, as the sub-contractors for the architectural finishes works for the project.

5 The plaintiffs are a local company involved in the manufacture, fabrication, supply and installation of stone. In October 1985, with a view to participation in the project, the plaintiffs sent an employee, one Peter Wong, to India with representatives from NLC-JV. The purpose of the trip was to inspect the quarries of a company known as Gem Granites, Madras (`Gem Granites`). Subsequently, by a letter dated 26 December 1985, Gem Granites appointed the plaintiffs as their sole distributor in Singapore of a type of natural granite known as `Holy Brown`, which was quarried in Adoni, India.

6 By a letter dated 23 July 1986, the defendants as sub-contractors for the project, invited tenders from four pre-selected companies, of which the plaintiffs were one, for the supply, delivery and installation of granite slabs for the project (`the sub-contract works`). The letter stated that the tenders were to be based `on the attached tender document and drawings compliance strictly with the terms and conditions of our standard sub-contract agreement ...`. The letter further specified that:

> *The scope of work involved in this tender shall comprise of the supply, delivery and installation of `Holy Brown` and `Rosa Limbara` to the interior/exterior floors and walls. Our proposed sizes of granite slabs are 900 [times] 600mm and 600 [times] 600mm with thickness of 25mm and 30mm. However, we may consider your proposal if it is more economical to use other alternative sizes/types of granite slabs.*

7 The letter also stated that it was tentatively estimated that the installation should commence by the end of January 1987 and be completed by the end of May 1987. The letter further specified that the tenders were to be delivered by hand.

8 The material terms of the defendants` tender document were as follows:

> *7.53.5 Obtain granite from single sources for each type as follows:*

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> *Type Holy Brown*
>
> *Supplier - Gem Granite*
>
> *Type Rosa Limbara*
>
> *Supplier Corsi & Nicolai*
>
> *Fabricator: Cutting and finishing to be carried out by Corsi and Nicolai*
>
> *Confirm compliance with the specification prior to placing orders*
>
> *...*
>
> *7.54.1 Stainless steel anchor bolts, nuts and washers - Type 316, sizes as required, manufacturer Alpha AS SRL*
>
> *7.58.1 Employ only operatives with a minimum of five (5) years of experience in the laying of granite. Granite installation to be supervised by an experienced representative provided by the fabricator of cut and finished units.*

9 The types and sources of the granite slabs and fittings had been specified by the MRT Corp and their consent was required if different types and sources were to be used. The MRT Corp had also, in a document referred to as `Addm No 1.00 - proprietary index`, identified the plaintiffs as the local representatives of Gem Granites and of the manufacturer Alpha AS SRL. No local representative was listed in the document for the company known as Corsi & Nicolai of Italy.

10 For the purposes of this case, the material clause of the standard form sub-contract agreement was cl 34 which read:

> *The sub-contractor shall, subject to any agreement between the parties, from time to time make application to the contractor for payments of the amount which at the date thereof fairly represents the sub-contractor`s value of the sub-contract works and of any variation authorized under this sub-contract then executed and of the materials and goods delivered upon the site for use in the sub-contract works ...*

11 In other words, the successful tenderer would be paid by progress payments.

12 Under the cover of a letter dated 15 August 1986, the plaintiffs submitted a tender to supply, deliver and install the specified granite slabs for the operation control centre/PUB Building only for the sum of $4,232,235. The covering letter also stated that notwithstanding the terms of payment stated in the standard form subcontract agreement, the plaintiffs sought payment in the following manner: `On sight letters of credit equivalent to 75% of the tender sum shall be established by you in our favour upon acceptance of our tender. Balance of 25% shall be on monthly progress payment from date of installation.` The covering letter also stated that the estimated date of completion of the sub-contract works would be 22 June 1987, provided that the sub-contract be formed by 22 September 1986.

13 In their tender, the plaintiffs described their financial standing as having an authorized capital of $2m, half of which was paid up, and as having credit facilities of up to $4m. They also stated that their bankers were The Royal Bank of Canada and Hong Leong Finance.

14 The covering letter and the various tender documents were delivered to the defendants` office on 15 August 1986 by several members of the plaintiffs` company viz Peter Wong (PW1), Chong Toh Hui (PW3) and Christine Foo (PW4). These witnesses testified that they were met by one Hideichi Suyama (DW1), the person in charge of handling the tenders for the sub-contract works, and one Jacqueline Ng (DW2), his assistant. Peter Wong testified that he had a brief conversation with Suyama during which Suyama told him, in a raised voice, that the defendants were having problems with the plaintiffs over the

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construction of the UMNO Building in Kuala Lumpur. I digress now to consider the relevant aspects of that project.

15 In that project, the defendants, together with other companies, were the main contractors for the construction of the UMNO Building. They had sub-contracted part of the construction to another company called Intraco Ltd (`Intraco`) which had in turn, in August 1984 sub-contracted with the plaintiffs for the supply of marble slabs for the building. Disputes, dating from May 1985 to the time of the conversation between Peter Wong and Suyama on 15 August 1986, had arisen between Intraco and the plaintiffs over the quality and the colour of marble slabs supplied and the main contractors had eventually become involved with the negotiations towards settling the disputes. Christine Foo who had been involved in the plaintiffs` participation in the UMNO Building project, testified that the defendants had made several unreasonable demands upon the plaintiffs and had required them to replace slabs which had been damaged through no fault of the plaintiffs. She further said that despite the plaintiffs` compliance with those demands, the plaintiffs were not paid the sums due under that contract until 26 August 1989, some four years after its completion. In cross-examination, Christine Foo indicated that although the plaintiffs were not in a contractual relationship with the defendants in the UMNO project, their representatives had met at meetings and it was during such meetings that she had formed the view that the defendants bore ill-will towards the plaintiffs. She did, however, admit that she had never dealt with Suyama directly.

16 I now return to the conversation at the defendants` office on 15 August 1986. Peter Wong testified that Suyama had also asked if the plaintiffs were still in receivership. Peter Wong said that he denied the allegation about the receivership but said nothing in reply to Suyama`s complaints about the UMNO Building. In his view, the conversation lasted about ten minutes. In cross-

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examination, Peter Wong admitted that the plaintiffs and their holding company had been in some financial difficulties and that the financial troubles of the plaintiffs` holding company had been widely reported in the newspapers. Peter Wong`s account of the matter was supported by the evidence of Chong Toh Hui and Christine Foo.

17 Suyama`s evidence on the conversation was that he asked about the financial status of the plaintiffs as Singapore was going through a recession at the time. He said that he had heard about the plaintiffs` involvement in the construction of the UMNO Building but he had no personal involvement in it as he had left Kuala Lumpur in August 1983. He also said that he had heard rumours of the plaintiffs` holding company being in financial difficulties and that he had seen newspaper reports to the same effect. However, he could not remember if he had asked if the plaintiffs were in `receivership` or if he had mentioned the UMNO Building project. He stressed that there was no reason for him to have mentioned the UMNO project as it was of no relevance to the sub-contract works. He also denied in cross-examination that it was operating on his mind when he spoke to Peter Wong. Jacqueline Ng`s evidence was that she could not recall what was said at the meeting as it was short and nothing unusual happened, but to the best of her recollection the financial standing and the work experience of the plaintiffs were discussed.

18 Later, in a letter dated 21 August 1986 to the defendants, written in reply to a letter dated 18 August 1986, the plaintiffs confirmed that they would be able to commence the sub-contract works by the end of January 1987 and complete the sub-contract works by the end of May the same year, provided that a letter of credit was established in their favour by 22 September 1986. In the same letter, the plaintiffs replied to a query on their experience with similar granite works in the past five years as follows: `N/A. But enclosed is an

international cladding specialist (Alpha) job reference in other parts of the world. The entire project will be managed and co-ordinated by Alpha.` The reference to Alpha was a reference to Alpha AS SRL, the manufacturer specified by the MRT Corp in cl 7.54.1 of the tender form (above).

19 Under the cover of a letter dated 27 August 1986, and in response to the defendant`s further invitation to tender dated 15 August 1986, the plaintiffs submitted another tender for the supply and delivery of granite slabs for the City Hall station for the sum of $2,699,945. Later, by a letter dated 29 August 1986, the plaintiffs submitted a third tender for the installation of the granite slabs to the City Hall Station for the sum of $663,844. These letters stated that the plaintiffs would require full payment by letter of credit upon acceptance of the tender. The plaintiffs` total tender price for sub-contract works was thus $7,596,024. The only other relevant bid for present purposes was that of Intraco for the sum of $4,270,000.

20 On 12 September 1986, the defendants wrote to NLC-JV proposing M/s Intraco Ltd/Marmi Formigari Spa Italy (`IM`) as the alternative granite supplier and fabricator in place of the plaintiffs and Corsi & Nicolai as indicated in their contract with NLC-JV. The letter opened with the following paragraph:

> *Subsequent to the careful study of analysing the financial status, experience, source and manufacturer, delivery etc of the suitable granite supplier and fabricator so as to achieve the high quality and tight schedule of the above captioned project ...*

21 The letter went on to substantiate the defendants` proposal on various grounds, namely:

> (a) Intraco had the highest paid-up capital, $75m, of the four companies invited to tender for the project;

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> (b) Marmi Formigari was one of the best known manufacturing firms in the field of granite and marble products, with 35 years` experience in this field, and were able to obtain `Rosa Limbara` granite slabs from Sardinia, Italy and `Holy Brown` granite slabs from Gem Quarry in India;
>
> (c) IM had a proven record of competence in stonework projects in Singapore and overseas and were performing a supply contract for another MRT project to the defendants` entire satisfaction;
>
> (d) Intraco was a worldwide group;
>
> (e) IM could deliver the first shipment of the slabs by the end of December 1986 if the order was confirmed by mid-September 1986;
>
> (f) Marmi Formigari had a track record of good quality control; and
>
> (g) Intraco was prepared to offer a five-year warranty for defects of quality and workmanship.

22 In addition, the defendants submitted a comparative table of the various information regarding the four local companies invited to tender for the project (`the table`). Under the heading of `financial situation`, the defendants published the following defamatory statement regarding the plaintiffs that is the subject of this suit (`the statement`): `Under receivership, charges $25.2m.` The table also described the plaintiffs` experience of supply and installation of stoneworks as `NA`.

23 The letter of 12 September 1986 and the table were drawn up by Suyama, who testified that the difference between IM`s and the plaintiffs` bids made the former more attractive even though the MRT Corp had specified a supplier represented by the plaintiffs: IM had put in the lowest price; between the partners, they had the five years` experience required by cl 7.58.1 of the tender form; they had experience with MRT stations that also served as civil defence stations; Marmi Formigari was also an experienced supplier; their tender schedule met the defendants` requirement; they were able to start field

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installation earlier than the plaintiffs; and the plaintiffs had required payment by letters of credit. Suyama explained that as the defendants were responsible to NLC-JV for the company selected for the sub-contract works, they needed the approval of NLC-JV to select a different supplier from that specified by MRT Corp, and accordingly he drew up the letter and the table. He said that he arrived at the figure of $25.2m in the table by simply adding up the charges registered against the plaintiffs and appearing in the company search done by him. He also obtained the plaintiffs` accounts for 1983 from the Registry of Companies (`ROC`) and found that the plaintiffs had accumulated losses amounting to $1,614,199. He was unable to obtain the plaintiffs` accounts for 1984 and 1985 as these had not been lodged with the ROC. Based on this information, he formed the view that the plaintiffs were in financial trouble and unable to pay their creditors, and he thought that `receivership` was the term used to describe the situation as he had heard others use the word in this context. He admitted that, at the time of statement, he did not know the exact or legal meaning of `receivership` and he did not look it up in any dictionary, even though he was not very proficient in English. He also admitted to not being qualified to assess the financial status of a company and that he did not know how to read a company search, eg he did not know the significance of the `status` description in a company search or the meaning of `liquidation`. However, he claimed that he had the help of other persons and was therefore able to assess the plaintiffs` financial stability. He did not, however, make inquiries with the plaintiffs` bankers as to their financial standing. In cross-examination, he denied that he had been so anxious for Intraco to obtain the contract that he failed to take steps to check on the plaintiffs` financial standing. He also denied that he had ignored what was told to him by the plaintiffs` representatives at the meeting on 15 August 1986 and the statement in the tender documents that the plaintiffs had a credit line of up to $4m. Jacqueline Ng

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testified that she helped in the drawing-up of the table and that she simply accepted Suyama`s use of the word `receivership` which at the time suggested to her the notion of `financial trouble, not so strong`.

24 The plaintiffs must then have received notice of the defendants` concern over their financial status, for they wrote a letter dated 22 September 1986 reassuring the defendants of their financial standing and ability to perform the contract. This was followed by a letter dated 23 September 1986 from the plaintiffs` solicitors to the defendants complaining of the libel and asking them to withdraw the letter to NLC-JV and to clarify the position with them. The plaintiffs also sought an apology in the press. There was no immediate response to the letters. Instead, a letter dated 24 September 1986 was sent by the defendants to NLC-JV reiterating the factors that made the Intraco tender attractive but omitting the comments on the financial status of the tenderers. This was sent on by NLC-JV, with their comments, to the MRT Corp under the cover of a letter dated 29 September 1986. Then, by a letter dated 6 October 1986 and received by the plaintiffs on 23 October 1986, the defendants informed the plaintiffs that they had been unsuccessful in the tender. This was somewhat odd as neither NLC-JV nor the MRT Corp had at this time given their approval for the IM bid, although it is not disputed that by the time of the letter dated 12 September 1986, it was clear that the sub-contract works were to be awarded either to Intraco or to the plaintiffs. Indeed, questions remained over the source of the Holy Brown granite to be supplied by Intraco and, by a letter to the defendants dated 8 October 1986, Intraco forwarded documents purporting to show that the Holy Brown was from the quarries of Gem Granites. The defendants in turn sent them to NLC-JV under the cover of a letter dated 13 October 1986. The defendants wrote again to NLC-JV on 27 October 1986

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describing IM as `our proposed supplier and fabricator of specified granite slabs` and enclosing further information on the IM bid.

25 It was only on 14 November 1986 that the defendants informed NLC-JV that the information in the table was untrue and that the plaintiffs were not in receivership and that they only had charges amounting to $2.6m registered against them. The defendants` explanation of the delay in responding to the plaintiffs` solicitors` letter was simply that they had sought legal advice on it. Subsequently, by a letter dated 25 November 1986, the defendants accepted Intraco`s tender for the sub-contract works. This was again somewhat odd as it was only later, by a letter dated 28 November 1986, that the MRT Corp informed NLC-JV of their approval of the proposed change of alternative granite supplier and fabricator. The defensay that they had heard informally from the MRT Corp before they wrote to Intraco. The MRT Corp, however, specified in their approval that it was for NLC-JV to satisfy themselves that the relevant certification of the granite was in order. Consequently, NLC-JV wrote to the defendants seeking further information of the source of the Holy Brown granite to be supplied and pointing out certain disparities in the documents submitted earlier. The defendants sent the MRT Corp and NLC-JV letters on to Intraco.

26 Among the documents forwarded by Intraco, under the cover of their letter dated 8 October 1986, to satisfy the defendants (and NLC-JV) was a testing certificate dated 6 October 1986 from the Universita di Pisa (`the certificate`). The certificate was in Italian and purported to be the results of tests done on `Gem Brown (Holy Brown)` granite slabs. At the end of December 1986 this certificate was shown to be a forgery. The consequences of this discovery on the sub-contract works are unclear, save that Intraco did not lose the sub-contract works as a result and no action was taken against Intraco by the

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defendants or the MRT Corp. Subsequently, an action (Suit No 723 of 1987) was taken out by Gem Granites and the plaintiffs against Intraco for damages for the tort of passing-off. In the course of the proceedings in that action, one Lim Meng Hoong, a manager with Intraco, swore an affidavit filed on 23 March 1987, in which he deposed, inter alia, that the plaintiffs` tender bid for the sub-contract works was $6,932,180.37. This figure appeared to be the total of the plaintiffs` first two tenders, without taking into account the third tender for the installation of the granite slabs to the City Hall Station for $663,844. The defendants denied any knowledge of how Intraco came to know of the plaintiffs` tender price.

27 **The claim**

28 Based on the facts recited above, the plaintiffs allege in their pleadings that the words of the statement were defamatory, in that in their natural and ordinary meaning the words meant and were understood to mean that the plaintiffs at the material time were over-indebted and that creditors had appointed a receiver over the assets or undertaking of the plaintiffs in protection of their interests. Further, by way of innuendo the words meant and were understood to mean that the plaintiffs had excessive charges on their available assets, were unable to discharge their financial obligations to their creditors, were on the brink of insolvency and were unfit to be awarded the contracts for which they had submitted tenders, as the plaintiffs were unlikely to fulfil performance of the contracts in view of their financial instability. The defendants, as stated above, do not deny that the words published were defamatory but rely on the defence of qualified privilege.

29 Accordingly, the issues on the question of liability in this action are whether the publication of the letter dated 12 September 1986 was made on an

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occasion protected by qualified privilege, and, if so, whether the publication was made with malice so as to remove the protection.

30 **Submissions on qualified privilege**

31 The defendants have pleaded that the publication was privileged in that (to paraphrase their pleadings):

> (a) By their contract with NLC-JV, they were given the express option to choose a supplier of material for the sub-contract works.
>
> (b) Upon tenders being called and received, four suppliers were short-listed. The plaintiffs were one of the four. The defendants, as required by their contract with NLC-JV, did a study of the financial status, the experience and the tender price of each of the tenderers, and rendered a report with their proposal, naming a supplier for the granite.
>
> (c) This report was rendered in strict confidence and the statements contained therein were made in the honest belief that they were true.
>
> (d) In the premises, the defendants and NLC-JV had a common and corresponinterest in the subject-matter and publication of the said words.

32 Further, they have submitted that there was a legitimate common and corresponinterest between them and NLC-JV arising from the clearly superior bid of Intraco which made it necessary for them to communicate the results of the tender exercise to NLC-JV and to recommend the appointment of IM as alternative suppliers and fabricators in place of the plaintiffs and Corsi & Nicolai. Further, they contend that by virtue of the responsibility owed by them and NLC-JV to the MRT Corp over the selection of the suppliers and fabricators of the granite slabs, a common interest existed between them and NLC-JV.

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33 The plaintiffs say that the defendants have not made out their pleaded case of qualified privilege in that:

> (a) The defendants had an express option only to choose among tenderers who conformed in terms of granite suppliers and fabricators and it was only the plaintiffs who had conformed with the specified granite suppliers and fabricators. In the event, the defendants had no option to choose any supplier other than the plaintiffs, unless they obtained approval from NLC-JV and MRT Corp.
>
> (b) The defendants did not study the plaintiffs` financial status as such a study implies, at the very least, having a person able to read accounts and an ROC instant search. If they had made such a study, the defamatory statement would never have been made.
>
> (c) The defendants were under no duty contractual or otherwise to report on the tenderers to NLC-JV. The defendants have produced no documentary evidence of any such duty. Moreover, Suyama admitted in cross-examination that if all the tenderers had conformed in terms of granite suppliers and fabricators, the defendants would have chosen among them without reference to NLC-JV.

34 The plaintiffs contend that the defamatory statement was made as part of a proposal aimed at winning NLC-JV`s approval of the alternative supplier and not as part of a routine report on the tenders.

35 Further or alternatively, the plaintiffs say that the occasion was not one of qualified privilege as the information communicated was so unreliable that, without taking steps to assure themselves of the truth of the statement, the defendants could not claim to be under any duty to communicate the information. The plaintiffs point out that Suyama himself admitted that he knew he was not qualified to read accounts or to interpret an instant search. The instant search by not stating against `status` that the plaintiffs were in receivership was information that they were in fact not in receivership. The instant search was also not information that the plaintiffs had charges representing a total

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indebtedness of $25.2m registered against them since anyone reading an instant search and having a minimal knowledge of the process of obtaining loans from a bank would know that there would be overlap between the charges, especially where the charges are stated to relate to the same bank, as a bank would take several charges in relation to each loan over different property belonging to a company with the charges being collectively limited to the total amount drawn down under the credit facility. Moreover, all that one has to do is to search at the ROC for the charge documents themselves, or obtain references from the banks named in the instant search. Furthermore, the plaintiffs had, in their tender, informed the defendants that they had credit facilities of $4m and that their bankers were The Royal Bank of Canada and Hong Leong Finance. The plaintiffs rely on a dictum of Greer LJ in ***Watt v Longsdon*** 1 at p 293 which is set out below, as authority for this proposition.

36 **The law on qualified privilege**

37 The law treats the publication of statements that are false in fact and injurious to the character of another as malicious, unless it is fairly made by a person in the discharge of some public or private duty, whether legal, social or moral, or in the conduct of his own affairs, in matters where his interest is concerned. It is also essential that the recipient of the publication shares a common interest with the publisher or has a corresponding legitimate interest or duty to receive the publication. These occasions are referred to in the law as occasions of qualified privilege and the rationale for the protection is the common convenience and welfare of society: see generally ***Gatley on Libel and Slander*** (8th Ed) at para 443. Such being the case, the occasions when the law offers the protection of qualified privilege are not fixed and necessarily vary with the changes in social conditions and values. The determination of whether an occasion is one of qualified privilege is one of law. The requirements stated

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above were set out by Scrutton LJ in **Watt v Longsdon** [1929] All ER Rep 284 at p 290 in the following terms:

> *With slight modifications in particular circumstances, this appears to me to be well-established law, but, except in the case of communications based on common interest, the principle is that there must be either interest in the recipient, and a duty to communicate in the speaker, or an interest to be protected in the speaker and a duty to protect it in the recipient. Except in the case of common interest justifying intercommunication, the correspondence must be between duty and interest; there may, in the common interest cases, be also a common or reciprocal duty.*

38 It is for the defendant to a libel action to prove that the defamatory publication was made on an occasion of qualified privilege. Where, as in the present case, the defendant relies on the existence of a common interest, he has to show that the publication was for the fair and reasonable protection or furtherance of his own interests and that the receiving party had a legitimate interest in the subject matter of the publication: ***Stuart v Bell*** 2 and ***Watt v Longsdon*** .1

39 The plaintiffs have not contended in their submissions that there is no common interest; rather, they contend that the defendants were under no duty to communicate the information on the plaintiff`s financial status. While it is usually clear whether a legal duty or interest exists in fact, the determination of the existence of a moral or social duty is more nebulous. The question that a judge has to ask himself was set out in the following passage from the judgment of Lindley LJ in ***Stuart v Bell*** 2 at p 350:

> *The question of moral or social duty being for the judge, each judge must decide it as best he can for himself. I take moral or social duty to mean a duty recognized by English people of ordinary intelligence and moral principle, but at the same time not a duty enforceable by legal proceedings, whether civil or criminal. My own conviction is that all or, at all events, the great mass of right-minded men in the position of the defendant would*

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> *have considered it their duty, under the circumstances, to inform Stanley of the suspicion which had fallen on the plaintiff.*

40 A factor to be taken into consideration in answering the question stated is the reliability of the information to be published. This approach appears most clearly in the judgment of Greer LJ in ***Watt v Longsdon*** 1 at p 293:

> *In my judgment, no right-minded man in the position of the defendant, a friend of the plaintiff and of his wife, would have thought it right to communicate the horrible accusations contained in Mr Browne`s letter to the plaintiff`s wife. The information came to Mr Browne from a very doubtful source, and, in my judgment, no reasonably right-minded person could think it his duty, without obtaining some corroboration of the story, and without first communicating with the plaintiff, to pass on these outrageous charges of marital infidelity of a gross kind, and drunkenness and dishonesty, to the plaintiff`s wife.*

41 **Decision on qualified privilege**

42 The defendants` failure to put their contract with NLC-JV in evidence means that their pleaded case of qualified privilege based on their contractual obligations to NLC-JV fails as I have no evidence before me for holding that the letter of 12 September 1988 was a proposal in accordance with the contract between NLC-JV and the defendants. For the same reason, I also do not find it possible to consider the plaintiffs` contention that there is no contractual duty on the part of the defendants to report to NLC-JV concerning the tenderers.

43 However, in my view, the defendants have made out their claim to qualified privilege based on their common interest with NLC-JV in the sub-contract works. The defendants and NLC-JV stood in a contractual relationship as regards the architectural finishes works for the project. Although the document containing the contract between these two entities has not been produced, I think it can be inferred from their relationship that the defendants would have been liable to NLC-JV for any delays or faults in the architectural

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finishes. It is also a fair inference that NLC-JV would in turn be liable to the MRT Corp for any such delays or faults. It was thus in the interests of both the defendants and NLC-JV that the successful tenderer should be competent and financially stable.

44 The common interest between the defendants and NLC-JV is thus a broad one. It would be unrealistic to have expected the defendants to inform NLC-JV only if all the tenders did not conform to the specifications in the tender documents. In that situation, it would have been inevitable that the defendants would refer to NLC-JV but it does not follow that it is the only situation in which they had an interest in common with the joint venture in referring the tenders. Where, as here, the tender conforming with the specified source and fabrication is significantly higher than a competing tender, the defendants were certainly acting in their interests in referring the competing tenders. The information in the letter dated 12 September 1988 concerned the financial situations of the various tenderers and their respective ability to perform the sub-contract works. NLC-JV would plainly have a legitimate interest in receiving such information. Another significant factor in this situation is the concern that must have arisen from the news reports of the financial problems faced by the plaintiffs` holding company and from the demand by the plaintiffs that they be paid in advance rather than by progress payments. This concern over the financial stability of one of the tenderers must have been of common interest to the plaintiffs and NLC-JV.

45 Accordingly, it is not necessary for me to consider further if there was a social or moral duty to communicate and an interest in receiving the communications and I go on to consider the parties` submissions on malice.

46 **Submissions on malice**

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47 The plaintiffs rest their contention that the words were published with express malice on several grounds. Firstly, it is said that there was no belief in the truth of the defamatory words. The plaintiffs say that this can be inferred from the following:

> (a) The evidence of Peter Wong, Chong Toh Hui and Christine Foo to the effect that at the meeting on 15 August 1986 Suyama specifically asked whether the plaintiffs were in receivership and was told by Peter Wong that they were not. The plaintiffs submit that their witnesses` version of events should be accepted as it was in essence uncontradicted since Suyama and Jacqueline Ng both testified that the plaintiffs` finances were discussed. They say that the clarity of their witnesses` recollection was due to the importance of the meeting to the plaintiffs, and that Christine Foo recalled the word `receivership` being used because the allegation came as a shock to her.
>
> (b) Suyama had at no point deposed to an honest belief that the plaintiffs were in fact `under receivership`. The plaintiffs point out that Suyama has admitted that he was careless in his choice of words (in the sense that he was not certain of the meaning of `receivership`) so that what he ended up saying was not what he wanted to say or express. Moreover, he did not look up the meaning of `receivership` in the Japanese-English dictionary that he admits he possessed, even though the document in which the statement appeared was an important business document, on which the fate of the tender depended. The plaintiffs rely on the cases of **Horrocks v Lowe** [1975] AC 135[1974] 1 All ER 662 and **Leverman v Campbell Sharp Ltd** [1987] 36 DLR 401

48 The plaintiffs further base their contention that there was express malice on the ground that the defendants were indifferent to the truth of the words, in that Suyama had done no more than to make an instant search at the ROC. He had failed to note that the search did not describe the status of the plaintiffs as being `in receivership` and also had not made a search at the ROC to determine if a receiver had been appointed. The plaintiffs point out that the defendants also failed to obtain a reference from the plaintiffs` bankers and that Suyama

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admitted that he did not bother to read the names of the chargees on the instant search, but simply added up the amounts stated. It is said that had he only read the names, he would have noted that there were only two chargees, namely, Royal Bank of Canada and Hong Leong Finance, and he should then have realized that the charges were to secure credit facilities of only $4m and that there was no indebtedness of $25.2m. It is said that this failure to read even the names of the chargees was an extreme case of wilful blindness. The plaintiffs also suggest that Suyama testified that he could not remember whether he had seen the plaintiffs` accounts dated 31 December 1983 before making the defamatory statements though this suggestion was contradicted by Suyama`s evidence-in-chief on this aspect which was not weakened in cross-examination. The plaintiffs also point out that despite some attempt being made to show that there were news reports at the material time concerning the financial health of the companies related to the plaintiffs, no news reports were produced to the court, nor was there evidence that any such news report even mentioned the plaintiffs. The plaintiffs rely on **Lee Kuan Yew v Derek Gwyn Davies & Ors** [1990] 1 MLJ 390 for the proposition that malice can be inferred from these circumstances.

49 The third ground on which the plaintiffs contend that there was express malice is that the defendants had a dominant indirect motive not to report the best qualified tenderer to NLC-JV, but to procure by any means the approval of a cheaper alternative supplier regardless of the quality of his materials. They say that such dominant indirect motive can be inferred from several factors, viz:

> (a) The language and thrust of the letter dated 12 September 1986 to NLC-JV and the table:
>
> (i) The letter opened with the false claim of a `careful study of analysing the financial status`.

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(ii) Intraco`s warranty was highlighted as if it was something special, even though the plaintiffs had in fact offered a similar warranty.

(iii) The defendants failed to set out the extensive experience of Alpha AS SRL which had been notified to them by the plaintiffs.

(iv) The table indicated that Intraco`s schedule was two-and-a-half months while the plaintiffs` was four months, when in fact Intraco had only promised first delivery by the end of December 1986 while the plaintiffs promised field installation commencing end of January, ie delivery would have been earlier. The true difference was therefore less than a month, and not one-and-a-half months. The plaintiffs` schedule moreover complied with the tender requirement. The defendants had never requested the plaintiffs for any earlier date of field installation.

(b) The defendants rejected the plaintiffs` tender on 6 October 1986, ie prior to the MRT Corp`s approval of Intraco as an alternative supplier. It is contended that this showed that the defendants were bent on excluding the plaintiffs from the tender.

(c) The defendants did not take seriously the problems encountered by Intraco in sourcing the granite, including the production of the false certificate dated 6 October 1986. The defendants merely acted as a postbox between Intraco and NLC-JV and took no independent steps to satisfy themselves on the certification.

(d) The defendants did not retract the defamatory statements until 14 November 1986, ie after the defamatory statements had achieved their desired effect, namely, the approval of Intraco by the MRT Corp. This is despite Suyama preparing another letter (the letter dated 24 September 1986) proposing Intraco as an alternative supplier. The plaintiffs say that this second proposal showed that Suyama knew that the statements in the earlier letter were untrue and that the timing of the apology and the delay in apologizing showed malice. The plaintiffs rely on **Matheson v Schneideman** [1930] NZLR 151 as authority for this proposition.

(e) The cost savings of appointing Intraco were at the date of publication of the defamatory statement expected and intended by the defendants to accrue to them alone. The fact that MRT Corp subsequently reduced the amount they would pay by their letter dated 9 October 1986 is said to be irrelevant as the defendants had not invited them to reduce the price as admitted by Suyama.

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50 The plaintiffs also contend that malice was shown by the defendants` spite or ill-will towards the plaintiffs: such spite or ill-will could be inferred from the conduct of the defendants towards the plaintiffs during the UMNO Building project and the fact that Intraco had learnt of the plaintiffs` tender price as indicated by the affidavit of Lim Meng Hoong in Suit No 723 of 1987.

51 The defendants deny that the statement was made with reckless indifference as to its truth. They concede, however, that it was made carelessly or negligently but say that this was not enough to amount to malice.

52 The defendants say the statement was not made with any ill-will or spite. They contend that it is not possible for any inference to be drawn from the UMNO project because Suyama had left Kuala Lumpur by the time the disputes over that project arose and it is therefore inconceivable that he could have been involved with communications with the plaintiffs` employees on the project. They further say that the plaintiffs have not demonstrated any plausible reason for Suyama to bear any ill-will or spite towards them. The defendants say that it was not possible for the plaintiffs` tender price to have been revealed to Intraco as all the tenders were submitted on the same day. With regard to the allegation of improper motive, the defendants say that it is spurious to assert that the tender prices should have been disclosed to NLC-JV in the letter dated 12 September 1986 as such disclosure would amount to disclosing their profit margins to NLC-JV.

53 The defendants also deny that they unnecessarily delayed the issuance of an apology to the plaintiffs. They say that Suyama was unable to reconcile the comments contained in the letters dated 22 September 1986 and 23 September 1986 from the plaintiffs and their solicitors since an instant search on 22 September 1986 and a further instant search on 29 September 1986 still

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revealed charges totalling $25.2m registered against the plaintiffs. It was only after receiving the benefit of legal advice from their solicitors that the defendants were advised of their misunderstanding and took steps to retract the defamatory statement from NLC-JV on 14 November 1986. The defendants deny that there was a deliberate attempt to delay the issue of the retraction and contend, instead, that any delay was contributed to by the plaintiffs` own neglect or failure to update their records lodged with the ROC. If the plaintiffs had been diligent in maintaining current records with the ROC, the defendants would have been notified that only $2.6m (as alleged by the plaintiffs) in charges remained and the defendants would have had less reason to be concerned with the vast discrepancy between the value of the registered charges and the paid-up capital of the plaintiffs. It is therefore said that Suyama believed in the truth of the statement. The defendants contend that this was not a situation where the defamatory statements were made without even bothering to verify the plaintiffs` financial position through the available public records. They further contend that the correction dated 14 November 1986 showed an absence of malice and they rely on ***CS Wu v Wang Look Fung & Ors*** 7 as authority for this.

54 With regard to the false certificate, the defendants say that as it was in Italian, Suyama, who did not understand the language, had no reason to doubt its authenticity. They also contend that the falsity of the certificate is irrelevant as notice of the document`s falsehood was given to the defendants only in December 1986, after the contract for the sub-contract works had been awarded to Intraco. Moreover, no further action was taken by the MRT Corp to pursue the point and Intraco`s appointment as alternative supplier of granite was not revoked by NLC-JV or the MRT Corp.

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55 With regard to the conversation in the defendants` office on 15 August 1986, the defendants contend that the meetings were brief and only general queries were made of each tenderer`s financial status and relevant experience. They urged the court to prefer the evidence of the defence witnesses that no mention was made of the plaintiffs being in receivership. They say that the plaintiffs` witnesses` recollection of the conversation was too vivid and consistent, and, given the lapse of almost five years, probably rehearsed.

56 **The law on malice**

57 The protection afforded by qualified privilege is not an absolute one. It will be lost if the occasion that gives rise to it is misused, ie in common parlance, if the publication is made with malice. The burden of proving this is on the plaintiffs. This area of the law was authoritatively and exhaustively considered by Lord Diplock in **Horrocks v Lowe** [1975] AC 135[1974] 1 All ER 662 at pp 149-151 and it would not be out of place for me to set out the very lengthy passage which was stressed by counsel:

> *My Lords, as a general rule, English law gives effect to the ninth commandment that a man shall not speak evil falsely of his neighbour. It supplies a temporal sanction: if he cannot prove that defamatory matter which he published was true, he is liable in damages to whomever he has defamed, except where the publication is oral only, causes no damage and falls outside the categories of slander actionable per se. The public interest that the law should provide an effective means whereby a man can vindicate his reputation against calumny, has nevertheless to be accommodated to the competing public interest in permitting men to communicate frankly and freely with one another about matters with respect to which the law recognizes that they have a duty to perform or an interest to protect in doing so. What is published in good faith on matters of these kinds is published on a privileged occasion. It is not actionable even though it be defamatory and turns out to be untrue. With some exceptions which are irrelevant to the instant appeal, the privilege is not absolute but qualified. It is lost if the occasion which gives rise to it is misused. For in all cases of qualified privilege there is some special reason of public policy why the law accords immunity*

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> *from suit - the existence of some public or private duty, whether legal or moral, on the part of the maker of the defamatory statement which justifies his communicating it or of some interest of his own which he is entitled to protect by doing so. If he uses the occasion for some other reason he loses the protection of the privilege.*

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

59 The motive with which a person published defamatory matter can only be inferred from what he did or said or knew. If it be proved that he did not believe that what he published was true this is generally conclusive evidence of express malice, for no sense of duty or desire to protect his own legitimate interests can justify a man in telling deliberate and injurious falsehoods about another, save in the exceptional case where a person may be under a duty to pass on, without indorsing, defamatory reports made by some other person.

60 Apart from those exceptional cases, what is required on the part of the defamer to entitle him to the protection of the privilege is positive belief in the

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truth of what he published or, as it is generally though tautologously termed, `honest belief`. If he publishes untrue defamatory matter recklessly, without considering or caring whether it be true or not, he is in this, as in other branches of the law, treated as if he knew it to be false. But indifference to the truth of what he publishes is not to be equated with carelessness, impulsiveness or irrationality in arriving at a positive belief that it is true. The freedom of speech protected by the law of qualified privilege may be availed of by all sorts and conditions of men. In affording to them immunity from suit if they have acted in good faith in compliance with a legal or moral duty or in protection of a legitimate interest the law must take them as it finds them. In ordinary life it is rare indeed for people to form their beliefs by a process of logical deduction from facts ascertained by a rigorous search for all available evidence and a judicious assessment of its probative value. In greater or in less degree according to their temperaments, their training, their intelligence, they are swayed by prejudice, rely on intuition instead of reasoning, leap to conclusions on inadequate evidence and fail to recognize the cogency of material which might cast doubt on the validity of the conclusions they reach. But despite the imperfection of the mental process by which the belief is arrived at it may still be `honest`, ie a positive belief that the conclusions they have reached are true. The law demands no more.

61 Even a positive belief in the truth of what is published on a privileged occasion - which is presumed unless the contrary is proved - may not be sufficient to negative express malice if it can be proved that the defendant misused the occasion for some purpose other than that for which the privilege is accorded by the law. The commonest case is where the dominant motive which actuates the defendant is not a desire to perform the relevant duty or to protect the relevant interest, but to give vent to his personal spite or ill-will

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towards the person he defames. If this be proved, then even positive belief in the truth of what is published will not enable the defamer to avail himself of the protection of the privilege to which he would otherwise have been entitled. There may be instances of improper motives which destroy the privilege apart from personal spite. A defendant`s dominant motive may have been to obtain some private advantage unconnected with the duty or the interest which constitutes the reason for the privilege. If so, he loses the benefit of the privilege despite his positive belief that what he said or wrote was true.

62 Judges and juries should, however, be very slow to draw the inference that a defendant was so far actuated by improper motives as to deprive him of the protection of the privilege unless they are satisfied that he did not believe that what he said or wrote was true or that he was indifferent to its truth or falsity. The motives with which human beings act are mixed. They find it difficult to hate the sin but love the sinner. Qualified privilege would be illusory, and the public interest that it is meant to serve defeated, if the protection which it affords were lost merely because a person, although acting in compliance with a duty or in protection of a legitimate interest, disliked the person whom he defamed or was indignant at what he believed to be that person`s conduct and welcomed the opportunity of exposing it. It is only where his desire to comply with the relevant duty or to protect the relevant interest plays no significant part in his motives for publishing what he believes to be true that `express malice` can properly be found.

63 There may be evidence of the defendant`s conduct upon occasions other than that protected by the privilege which justify the inference that upon the privileged occasion too his dominant motive in publishing what he did was personal spite or some other improper motive, even although he believed it to be true. But where, as in the instant case, conduct extraneous to the privileged

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occasion itself is not relied on, and the only evidence of improper motive is the content of the defamatory matter itself or the steps taken by the defendant to verify its accuracy, there is only one exception to the rule that in order to succeed the plaintiff must show affirmatively that the defendant did not believe it to be true or was indifferent to its truth or falsity. Juries should be instructed and judges should remind themselves that this burden of affirmative proof is not one that is lightly satisfied.

64 The exception is where what is published incorporates defamatory matter that is not really necessary to the fulfilment of the particular duty or the protection of the particular interest upon which the privilege is founded. Logically it might be said that such irrelevant matter falls outside the privilege altogether. But if this were so it would involve the application by the court of an objective test of relevance to every part of the defamatory matter published on the privileged occasion; whereas, as everyone knows, ordinary human beings vary in their ability to distinguish that which is logically relevant from that which is not and few, apart from lawyers, have had any training which qualifies them to do so. So the protection afforded by the privilege would be illusory if it were lost in respect of any defamatory matter which upon logical analysis could be shown to be irrelevant to the fulfilment of the duty or the protection of the right upon which the privilege was founded. As Lord Dunedin pointed out in ***Adam v Ward*** [[1917] AC 309 at pp 326-327] the proper rule as respects irrelevant defamatory matter incorporated in a statement made on a privileged occasion is to treat it as one of the factors to be taken into consideration in deciding whether, in all the circumstances, an inference that the defendant was actuated by express malice can properly be drawn. As regards irrelevant matter the test is not whether it is logically relevant but whether, in all the circumstances, it can be inferred that the defendant either did not believe it to

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be true or, though believing it to be true, realized that it had nothing to do with the particular duty or interest on which the privilege was based, but nevertheless seized the opportunity to drag in irrelevant defamatory matter to vent his personal spite, or for some other improper motive. Here, too, judges and juries should be slow to draw this inference.

65 It is therefore for the plaintiffs to show that the publication was made with the dominant intention of injuring them. The fact that the defendants might have known that the publication would injure the plaintiffs is not sufficient. Such a dominant and improper motive can be proven if it is shown that the defendants knew that the statement was false. This is usually conclusive and it is no excuse that the publication was made carelessly such that it did not reflect the defendants` true belief even though there was no intention to publish the false statement: **Leverman v Campbell Sharp Ltd.** [1987] 36 DLR 401

66 Following Lord Diplock, a defendant will also be held to have made the statement with malice if he made it recklessly as to its truth. A defendant is not reckless, for the purposes of proving malice, if he did so believing it was true, even if he was careless, impulsive or irrational in coming to that belief. The law does not require him to be logical. In order for him to be held to be reckless, he must be shown to have not cared or considered if the statement was true. This is illustrated by the finding of malice (albeit obiter) by LP Thean J in ***Lee Kuan Yew v Derek Gwyn Davies & Ors*** .5 That case was an action by the present Senior Minister for damages for libel in respect of an article concerning the detention of several persons under the Internal Security Act (Cap 143) in May 1987. For present purposes, it is only necessary to state the facts in the briefest outline. The persons were detained in connection with a clandestine communist network. Several of the persons detained were full-time workers of the Catholic Church and others were voluntary workers in the Church`s organizations. After

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the arrest and prior to the offending publication, several government and other statements had been published setting out conflicting accounts of the reasons for the arrests. Some of these statements were made by a priest of the Catholic Church, who alleged that the arrests were part of a campaign against the Church. The priest later resigned his position and left for Australia where he continued to make statements in the Australian and the New Zealand press, casting adverse inferences on the government`s motives for the detentions. The Senior Minister then made a lengthy statement in Parliament critical of this priest. This statement was reported in the press and the priest made a press statement in Australia in response to the Senior Minister`s statement. A copy of this press statement together with two other documents were then sent to the author of the defamatory article, who wrote the article based on the documents he received. LP Thean J held that in view of the past statements by the priest and his resignation and the statement on him by the Senior Minister, the author and the editor of the article must have realized that the priest had a deep grievance against the government and that the documents sent to them with a view to their writing and publishing a counter-attack on the government might have contained accounts that were not objective or impartial and were likely to be factually inaccurate. In those circumstances, the learned judge held that they had a duty to verify the account in the documents, and by not doing so before writing the defamatory article on the basis of the account in the documents, they were reckless as to the truth of the account in the article.

67 Personal ill-will or spite is also evidence of malice. The evidence for such ill-will or spite is usually found in the dealings between the parties prior to the publication: see eg ***S Pakianathan v Jenni Ibrahim*** .8 Exceptionally, it may also be found in the behaviour of the defendant after the publication. A refusal or a delay in apologizing, even after being told that the publication was

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false, usually does not amount to malice: see ***Gatley on Libel and Slander*** (8th Ed) para 1355, but the view has been expressed that it might do so in exceptional circumstances: ***Matheson v Schneideman*** .6 The case of ***CS Wu v Wang Look Fung*** 7 is an illustration of an instance where an apology negatived the existence of malice. The courts should also bear in mind Lord Diplock`s view that they should be slow to draw an inference of ill-will or spite from the dealings between the parties.

68 Ill-will or spite may also be found in the defamatory publication itself if it contains defamatory matter not really necessary to the fulfilment of the particular duty or interest upon which the privilege is founded. It should be borne in mind that the test of relevance is not one of logical analysis and that the inclusion of irrelevant defamatory material is to be treated as one of the factors to be taken into account in deciding whether, in all the circumstances, an inference of malice can be drawn against the defendant. Again, a court should be slow to draw such an inference.

69 **Decision on malice**

70 Having these principles in mind, I now turn to consider the instant case. The defamatory statement was made on the basis of an instant search from the ROC and the plaintiffs` accounts for the year ended 31 December 1983. While it may well be that all lawyers and others trained in the practice of the ROC may realize that the `status` line in an ROC search would indicate whether a company was or was not in receivership and that there is usually an overlap of charges indicated on the search, I do not find that an ordinary reasonable man would in all probability have such knowledge. In my opinion, Suyama clearly did not have knowledge other than an ordinary reasonable man would have had and I see no reason to doubt his testimony on this point. Having seen him in the

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witness box and observed him as he testified, I am also of the view that his command of the English language was not sufficiently competent for him to have known the distinction that exists in law between being indebted and being in receivership. He was certainly careless not to have checked with a dictionary, but that omission cannot amount to recklessness. The same point may be made of his failure to verify his reading of the instant search or to obtain references from the plaintiffs` bankers. The fact that the defamatory statement was in a business document is not sufficient to take it out of the context of ordinary life and I remind myself of the observations of Lord Diplock in **Horrocks v Lowe** [1975] AC 135[1974] 1 All ER 662 which in my view are as true of Singapore as they are of England:

> *... In ordinary life it is rare indeed for people to form their beliefs by a process of logical deduction from facts ascertained by a rigorous search for all available evidence and a judicious assessment of its probative value. In greater or in less degree according to their temperaments, their training, their intelligence, they are swayed by prejudice, rely on intuition instead of reasoning, leap to conclusions on inadequate evidence and fail to recognize the cogency of material which might cast doubt on the validity of the conclusions they reach. But despite the imperfection of the mental process by which the belief is arrived at it may still be `honest`, that is, a positive belief that the conclusions they have reached are true. The law demands no more.*

71 It is said that Suyama could not have believed that the defendants were in receivership since the plaintiffs` representatives had at the meeting on 15 August emphatically denied such an allegation. I find this contention to be too technical and unrealistic. It is common ground that the plaintiffs` financial situation was discussed at that meeting, although Suyama is not certain if the word `receivership` was used, and it was also admitted by Peter Wong that the plaintiffs` holding company`s financial troubles had been widely reported in the newspapers. Such being the circumstances, it is clear that Suyama believed that the plaintiffs were in financial trouble and whether or not receivership was the

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right word for such problems is immaterial. Indeed, assuming that the word `receivership` was used in the discussion, there is no apparent reason why Suyama should have accepted the oral assertion of the plaintiffs` representatives who had obvious interests to protect over what appeared to him to be a reliable ROC search.

72 The present facts are different from the situation in ***Lee Kuan Yew v Derek Gwyn Davies*** 5 in which there had been several public statements, including a lengthy one in Parliament, that presented a different view from that in the publication in issue in that case. Moreover, the statement in Parliament in that case cast doubts on the integrity and honesty of the source of the information for the publication. The fact that the aspersions as to the source`s integrity were cast by a leading member of the community only reinforced the need for caution before publishing the information. None of those factors are present here. Indeed, the fact that the basis for Suyama`s belief is a public document stresses the fact that a reasonable person would have thought his belief formed on proper grounds. It in no way indicates recklessness on his part.

73 The plaintiffs also rely on the contention that the defendants bore ill-will or spite against them. Again, I do not find this contention to be made out. First, in my opinion, the fact that Intraco professed to know the value of the plaintiffs` tender did not, in any way, indicate malice. There was no definite evidence before me of how Intraco obtained any of this knowledge. It cannot be surmised from the fact of Intraco`s knowledge that it was the defendants who leaked the value of the plaintiffs` tender. As I have indicated above, Intraco`s figure was in fact vastly different from the true figure. Just as the plaintiffs found out about the defamatory statement from an undisclosed source, so too it is possible that Intraco somehow found out some information through the construction industry`s grapevine. Se, the plaintiffs` reliance on the conduct of the defendants

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during the UMNO Building project ignores that fact, pointed out by the defendants, that Suyama had already left Kuala Lumpur by the time the disputes over that project arose. Moreover, although Christine Foo testified that she thought that the defendants` employees in Kuala Lumpur bore ill-will towards the plaintiffs, she did not say that Suyama was one of them. The unfortunate circumstances of the UMNO Building project, as indicated by the considerable documents exhibited before me, show that the parties to the present action had an unsatisfactory experience working together on that project. It can only be expected that the defendants therefore had a preference for tenderers other than the plaintiffs, if possible. The ROC instant search was therefore likely to have been welcomed by the defendants as providing a reason which they could use for preferring IM`s tender over that of the plaintiffs. However, such prejudice, if it did exist, cannot amount to malice unless it formed the dominant motive for the publication of the statement: ***Horrocks v Lowe*** .3

74 It is therefore necessary to consider the terms of the letter dated 12 September 1986. It is true that the letter was written in such a manner as to draw attention to the financial status of the various tenderers. However, this was clearly within the scope of the relevant common interest on the part of the defendants. The reference to `a careful study of analysing the financial status`, while clearly wrong in the sense that no financial analyst would accept the study as a careful one, could be considered by an ordinary man, such as Suyama was, as one which could be called a careful study, given that consideration had been given by him to the facts revealed by the instant search and the plaintiffs` accounts for 1983. The highlighting of the warranty offered by Intraco was probably, in the context of the letter as a recommendation of a particular tenderer, a piece of salesmanship on the part of the defendants. While such salesmanship may have been undesirable, it could not be said to have been

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malicious. Suyama has also explained that the experience of Alpha AS SRL in projects outside of Singapore was, in the defendants` opinion, not relevant to whether they could handle the sub-contract works. There may have been a variety of reasons for this view, eg the peculiar local geographic or climatic conditions and, accordingly, the omission of Alpha`s experience, whether taken alone or in conjunction with the other factors pointed out by the plaintiffs (see above), could not amount to malice. I am also not impressed by the argument that the defendants had misrepresented the plaintiffs` delivery schedule as the diffebetween their schedule and Intraco`s has not been shown to be material. Accordingly, I do not agree that the stated factors, whether individually or collectively, indicate that the dominant motive of the publication was to exclude the plaintiffs and not to draw attention to the financial standings of the tenderers.

75 The plaintiffs` reliance on evidence extraneous to the letter is also not convincing as there are other plausible reasons for the matters relied upon. The plaintiffs first rely on the fact that the defendants rejected their tender well before the MRT Corp`s approval of the Intraco bid. The defendants` explanation, as given by Suyama, was that they had heard informally from the Corporation. Having seen Suyama in the witness box, I find no reason to doubt him, especially having regard to my earlier averment that the construction industry appears to be one in which information moves rapidly.

76 Secondly, the plaintiffs rely on the false testing certificate dated 6 October 1988. I accept the defendants` explanation that as Suyama did not understand Italian, he had no reason to doubt its authenticity. Moreover, as the document was one forwarded by Intraco in support of their tender, it was reasonable for the defendants to act merely as a post box leaving Intraco to bear the consequences of any flaw in the certificate. While on hindsight it may have been wiser to have been more careful, it cannot be said that it would have been

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expected that Intraco would rely on a false document. I should, however, make clear that I in no way rely on the fact that no action was taken by the MRT Corp or NLC-JV on the false certificate. The evidence as to what transpired on discovery of the certificate`s falsity is too nebulous to be relied on.

77 The plaintiffs also rely on the defendants` failure to apologize until almost two months had elapsed after the plaintiffs` solicitors` letter dated 24 September 1988 had been received and after the Intraco bid had been approved. In my opinion, this submission reads too much into the sequence of events. As the defendants pointed out, a further instant search at ROC on 29 September 1988 did not indicate that the earlier search was wrong. The defendants were therefore entitled to wait for their lawyers to revert to them. Unfortunately, both parties have not shown me any evidence as to when the defendants` solicitors reverted. I therefore have to assume from all the circumstances that it was shortly before 14 November 1988, some six weeks after the complaint about the libel. In my view, the period of time is unnecessarily long but this alone cannot in the circumstances amount to malice. This was because the evidence that Suyama relied on to form his belief remained uncontradicted apart from assertions by the plaintiffs. The defendants` second proposal dated 24 September which omitted the statement did not, in my view, show that they knew that the statement was untrue. Rather, it was a prudent and conservative act, given that Suyama was in receipt of a lawyer`s letter threatening a suit and liability in damages. This was clearly not a case of a refusal to apologize after realizing that the publication was false and, accordingly, I do not need to consider whether the unorthodox view of the New Zealand Court of Appeal in ***Matheson v Schneideman*** 6 is part of the law of Singapore.

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78 The plaintiffs finally contend that any saving in cost of the sub-contract works was intended by the defendants to accrue to their benefit. The contention is clearly unrealistic and without merit.

79 For all the above reasons, the plaintiffs` claim is dismissed, with costs.

80 **Outcome:**

Yong Pung How CJ

Philip Jeyaretnam and Jennifer Chan (Robert WH Wang & Woo) for the plaintiffs
Kenneth Koh and Prema Subramaniam (Koh & Choo) for the defendants

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