IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1999] SGHC 53

Suit 319/1997

Between

Cristofori Music Pte Ltd

… *Plaintiff*

And

Robert Piano Co Pte Ltd

… *Defendant*

GROUNDS OF DECISION

Tort — Defamation; Tort — Defamation; Tort — Defamation

Version No 1: 29 Oct 2026 (23:45 hrs)

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Cristofori Music Pte Ltd v Robert Piano Co Pte Ltd

[1999] SGHC 53

Suit 319/1997
Lim Teong Qwee JC
27 February 1999

1 : The defendant Robert Piano Co Pte Ltd (`Robert Piano`) is a company incorporated in Singapore. It deals in pianos. Its business includes the teaching of music which it provides in its six music schools. The managing director Mr Robert Chiu trained as a piano technician and worked in his father`s piano business from 1957. He established his own piano business in 1966 and in 1978 he incorporated Robert Piano to continue the business. He said under cross-examination that Robert Piano was one of the largest sellers of pianos in Singapore.

2 The plaintiff Cristofori Music Pte Ltd (`Cristofori Music`) was incorporated in 1980. It also deals in pianos and it also provides teaching of music. Cristofori Music and Robert Piano sell pianos of different makes. Notably Cristofori Music is the sole distributor of Asahi and Paco pianos and Robert Piano is the sole distributor of the higher priced Kawai and Samick pianos. Cristofori Music is today one of the largest sellers of pianos and this has affected Robert Piano`s market share as Mr Robert Chiu admitted in evidence.

3 The Straits Times newspaper of 1 February 1997 carried on its front page an advertisement of Kawai and Samick pianos. The advertisement contained the following statement printed conspicuously:

> *BEWARE! Pianos, like `A` & `P` brands (retailing at $3799 & $4970 respectively, as advertised) are made & assembled in Pyongyang, North Korea. Both brands are made in the same factory and claim to use mainly Japanese parts when in actual fact 80% to 90% of these piano parts are made in North Korea by North Korean workmen. These pianos are therefore 100% made & assembled in Pyongyang, North Korea, NOT JAPAN!!! Isn`t this a `Sales Gimmick`? Do not let such sales people `PULL WOOL OVER YOUR EYES`! Insist on written statement for your own protection! The Old Chinese Proverb `ONE CENT BUYS YOU ONE CENT PRODUCT` does apply here. Therefore such pianos cannot be compared with world re-nowned KAWAI & SAMICK Pianos - The Two Names You Can Trust!*

4 The advertisement appears on the face of it to have been published by Robert Piano.

5 On 5 February 1997 Cristofori Music`s solicitors wrote to Robert Piano. They alleged that the statement in the advertisement referred to Cristofori Music and that it was defamatory. They demanded an undertaking not to repeat the advertisement and the usual actions to be taken and threatened legal proceedings in default. No such undertaking was given but since then no advertisement has appeared containing the statement complained of or words to the same effect. It is not disputed that the advertisement was published by Robert Piano and Mr Robert Chiu said that he stopped publishing such advertisements on legal advice.

6 This action was commenced by writ issued on 15 February 1997. A statement of claim was filed with the writ. Robert Piano filed a defence and counterclaim. The counterclaim relates to an alleged libel contained in a letter dated 31 January 1997 from Cristofori Music to one of its customers. Cristofori

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Music filed a reply and defence to the counterclaim. At the conclusion of the trial I found for Cristofori Music on its claim and gave judgment for $50,000 damages and granted an injunction. On the counterclaim I found for Robert Piano and gave judgment for $5,000 damages. Robert Piano has given notice of appeal and these are my written grounds of judgment.

7 Paragraph 9 of the statement of claim states:

> *The plaintiffs aver that the words in the defendants` advertisement referred to and was understood to refer to the plaintiffs and/or the plaintiffs` pianos.*
>
> *Particulars*
>
> (a) Paragraphs 1 and 7 above are repeated.
>
> (b) The plaintiffs` pianos have been widely advertised, and in particular the plaintiffs had on 1 January 1997 advertised in ***The Straits Times*** that the price for their `Asahi` piano is $3799 and the price for their `Paco` piano is $4970. The said advertisement is set out in Sch 2 of this statement of claim.
>
> (c) That there are no other brands of pianos beginning with the alphabets `A` and `P` that are made in North Korea and further, `Asahi` and `Paco` pianos are solely distributed by the plaintiffs.

8 Paragraph 1 describes Cristofori Music and para 7 sets out the text of the statement complained of.

9 Paragraph 6 of the defence states:

> *The defendants deny para 9 of the statement of claim and put the plaintiffs to strict proof thereof.*

10 ***Asahi*** ***Paco*** This is clearly an insufficient traverse of the allegations of fact made in para 9 of the statement of claim. See O 18 r 13(3). It is a matter of regret that such general denials have become quite common. Counsel explained that it was Robert Piano`s case that there was no evidence to support

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identification. I understand him to say that Robert Piano denies that the statement complained of referred to Cristofori Music. As for the particulars in para 9 of the statement of claim Robert Piano admits:

11 (a) that Cristofori Music was at all material times the sole distributor of and pianos (as alleged in para 1 of the statement of claim); and

12 (b) that the advertisement in the Straits Times newspaper of 1 February 1997 contained the statement complained of (as alleged in para 7 of the statement of claim).

13 It further:

14 (c) concedes that there is evidence to support the allegations contained in para (b) of the particulars; and

15 (d) admits the allegations contained in para (c) of the particulars.

16 In **E Hulton & Co v Jones** [1910] AC 20 defamatory statements were published of a person identified by an unusual name and the publishers believed this to be a fictitious person. In fact it was the real name of the plaintiff. Lord Loreburn LC said at p 23:

> *Libel is a tortious act. What does the tort consist in? It consists in using language which others knowing the circumstances would reasonably think to be defamatory of the person complaining of and injured by it.*

17 The trial judge had directed the jury:

> *The real point upon which your verdict must turn is, ought or ought not sensible and reasonable people reading this article to think that it was a mere imaginary person ... ? If you think any reasonable person would think that, it is not actionable at all. If,*

> *on the other hand, you do not think that, but think that people would suppose it to mean some real person - those who did not know the plaintiff of course would not know who the real person was, but those who did know of the existence of the plaintiff would think that it was the plaintiff - then the action is maintainable ...`*

18 Lord Loreburn LC said at p 24 that he saw no objection in law to that passage in the direction to the jury.

19 In **Knupffer v London Express Newspaper Ltd** [1944] AC 116 Viscount Simon LC said at p 118:

> *... it is an essential element of the cause of action for defamation that the words complained of should be published `of the plaintiff`.*

20 and later at p 119:

> *Where the plaintiff is not named, the test which decides whether the words used refer to him is the question whether the words are such as would reasonably lead persons acquainted with the plaintiff to believe that he was the person referred to.*

21 Lord Atkin put it this way at p 121:

> *The only relevant rule is that in order to be actionable the defamatory words must be understood to be published of and concerning the plaintiff.*

22 See also **Morgan v Odhams Press Ltd & Anor** [1971] 2 All ER 1156[1971] 1 WLR 1239.

23 Cristofori Music is not named in the statement complained of or anywhere in the advertisement containing it. In order to be actionable the statement must be understood to be published of and concerning Cristofori Music. I would respectfully apply Viscount Simon LC`s test and ask the question whether the words in the statement are such as would reasonably lead

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persons acquainted with Cristofori Music to believe that it was the person referred to.

24 In the ***Knupffer*** case Viscount Simon LC went on to say at p 121:

> *There are two questions involved in the attempt to identify the appellant as the person defamed. The first question is a question of law - can the article, having regard to its language, be regarded as capable of referring to the appellant? The second question is a question of fact - Does the article, in fact, lead reasonable people, who know the appellant, to the conclusion that it does refer to him? Unless the first question can be answered in favour of the appellant, the second question does not arise ...*

25 The statement in the advertisement does not merely refer to piano dealers who use `sales gimmick` or `pull wool over [the buyer`s] eyes`. It refers to a particular dealer. It refers to `Pianos, like "A" and "P" brands (retailing at $3799 & $4970 respectively, as advertised)`. There are references to their being assembled in North Korea and to the use of Japanese parts. I think the statement is capable of referring to Cristofori Music. What remains to be proved is that the statement in fact did lead reasonable people who knew Cristofori Music to the conclusion that it referred to this company. Surprisingly Cristofori Music itself adduced no evidence in this regard. It seemed content to rely on the witnesses called by Robert Piano to testify.

26 Ms Edna Chia is a piano teacher with more than 30 years` experience. She said in her affidavit that she was often asked by students and friends to recommend pianos to them. She recalled an occasion in 1986 when she accompanied her student`s parents to Cristofori Music`s showroom to look at a ***Dresden*** piano that they were thinking of buying. She would have known of Cristofori Music for a good number of years since then and Cristofori Music is now one of the largest sellers of pianos.

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27 In December 1996 Ms Chia saw an advertisement placed by Robert Piano in a newspaper. It contained this statement in the form of a questionnaire:

> *`BEWARE! Make a CHECK LIST on the following points before you buy your piano:*
>
> (1) Where is the cast iron frame / (2) sound board / (3) piano casing made and by whom? Japan / N Korea / Another Country;
>
> (4) Who are the craftsmen who make the piano bridge / (5) install the piano action into the piano / (6) in which country the pianos are originally made and assembled and (7) where is the final inspection done? Japan / N Korea / Another Country;
>
> *If only one or two of the answers is Japan, then `A`, `P`, `G`, `Y` etc brands cannot claim that their pianos use 90% Japanese parts or of Japanese quality, craftsmenship and origin.*

28 She said she thought this was a good guide and she proceeded to make some telephone calls to make inquiries `for [her] own information` as she said. She first called a dealer of a well known Japanese piano and she said she was satisfied with the answers she received. Her next call was to Cristofori Music. She was recommended a Paco piano and she asked a number of questions about it. Under cross-examination she was not asked what made her call Cristofori Music or why she made the inquiries `for [her] own information`. Ms Chia is a part time teacher with Kawai Music School and it was subsequently revealed that Kawai Music School is owned by Robert Piano.

29 Under cross-examination Ms Chia admitted that by January 1997 she had heard of Asahi and Paco pianos. She said:

> Q: To recommend you have to know various brands in market?
>
> A: Not all brands in market.
>
> Q: How would you know brands available?

A: From piano shops. Sometimes brochures, flyers sent through mail and I guess newspaper advertisements if I came across them.

Q: Came across Kawai advertisement in newspaper?

A: Yes.

Q: Asahi advertisement in newspaper?

A: Yes.

Q: Paco advertisement in newspaper?

A: Yes.

30 and later:

Q: Wong (1). Page 87. Asahi. Paco. Likely came across advertisement 1/1/97?

(Note: This is Cristofori Music`s advertisement published on 1/1/97.)

A: May or may not. Don`t read newspaper for advertisements. Read for articles. If advertisement happens to be next to article I read I might notice. I won`t study it.

Q: If you have read would have seen price next to Asahi?

A: Would have seen it but would not have studied advertisement.

Q: Paco. Would have seen price `$4,970` stated there?

A: Same. Would have but would not have studied advertisement.

Q: Wong (1). Page 87. If you read this would have seen `Cristofori Music`?

A: If I read through whole I would. If only cursory glance might not.

Q: Heard of Cristofori Music Pte Ltd?

A: Yes.

Q: January 1997. You knew Cristofori Music Pte Ltd distributor of Asahi piano in Singapore?

A: Would know it sells but whether distributor would not know.

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> Q: January 1997. You knew Cristofori Music Pte Ltd company that sells Paco piano?
>
> A: Yes.

31 Ms Chia knew by January 1997 that Cristofori Music sells Asahi and Paco pianos.

32 Cristofori Music`s advertisement published in ***The Straits Times*** newspaper of 1 January 1997 carried the heading `Welcome 1997` and offered a number of makes of pianos at special prices. Asahi piano was offered at $3,799 and was described as:

> *100% designed by Japanese & using mainly high quality Japanese precision parts (NO PLASTIC PARTS).*

33 Paco piano was offered at $4,970 and was described as:

> The most beautiful, most elegant handcrafted piano by craftsmen with more than 35 years of experience in handcrafted pianos based on German `Meister` craftmanship.

34 By January 1997 Ms Chia knew from advertisements that Paco pianos were made in North Korea. She said that under cross-examination. She said it was possible she would have seen advertisements of Asahi pianos offering them for sale at $3,799 and describing them as `assembled in the Japanese Joint Venture factory in Pyongyang, North Korea.` In December 1996 she made inquiries of Cristofori Music and asked a number of questions about the Paco piano. She made the inquiries `for [her] own information` and would have given Cristofori Music`s advertisement of 1 January 1997 more than a mere `cursory glance` if she had seen it or been referred to it. The advertisement appeared so soon after her inquiries.

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35 By January 1997 Ms Chia knew that Asahi and Paco pianos were sold by Cristofori Music as she admitted and she knew of no other dealer that sold such pianos. I think she knew by then that Paco pianos were offered at $4,970 or some such price and were made in North Korea and Asahi pianos were offered at $3,799 or some such price and were also made in North Korea. The offer prices for these pianos in Cristofori Music`s advertisement of 1 January 1997 would have caught her attention.

36 Ms Chia said in her affidavit that she had seen Robert Piano`s advertisement of 1 February 1997. She said:

> *I have seen the defendants` advertisement dated 1 February 1997. As a piano teacher, the brand names, `Asahi` and `Paco` did not come to mind when I read the said advertisement. In fact, I know of a few other brand names beginning with the letters A and P, for example, `Atlas`, `Ajello`, `Apollo`, `Ashton`, `Pleyel` and `Petrof`. Even with the reference to the prices of the `A` and `P` pianos referred to in the advertisement, I did not know that it refer to the plaintiffs` pianos.`*

37 I find this quite unbelievable.

38 Under cross-examination Ms Chia said she had no idea where Atlas was made. It was sold `quite some time ago` but she did not know if it was still sold in Singapore. She thought Ajello was made in Italy but she did not know if it was sold in Singapore. She was not sure if Apollo was sold in Singapore and she had an idea it was made in Japan. She did not know if Ashton was sold in Singapore and she thought it was made in Europe. She also did not know if Pleyel was sold in Singapore and also thought it was made in Europe. She knew that Petrof was sold in Singapore and she knew that it was made in the Czech Republic. She said she did not know how much a Petrof upright sold for. Rather more than the $4,970 for the Paco I should have thought and as she must have known as a piano teacher of her experience. She said that when she saw Robert

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Piano`s advertisment she did not think `A` and `P` referred to any particular brands of piano but she explained to the court that `A` and `P` meant two brands of piano to her.

39 Ms Chia saw Robert Piano`s advertisement of 1 February 1997 and in particular the statement contained in it which is complained of. I think she knew that `"A" retailing at $3,799 and "P" retailing at $4,970 as advertised` were references to Asahi and ***Paco*** pianos. She knew that they were made or assembled in North Korea. She knew that Asahi and Paco pianos were sold by Cristofori Music and that Cristofori Music had advertised them for sale at those prices. I think she knew from the statement and what she knew about this company that the statement referred to Cristofori Music.

40 Mr Chiu Lu Bing is the general manager of Singapore Piano Co Pte Ltd. He said in his affidavit that he had been in the business of selling pianos for 15 years and his family for more than 40 years. He said he had been shown a copy of Robert Piano`s advertisement and continued in his affidavit:

> *Firstly, it is not immediately apparent from the defendants` advertisement which pianos the defendants are referring to by using the initials `A` and `P`. Being in the business of selling pianos myself, there are several brand names which begin with these letters which spring to mind ...*
>
> *Secondly, even if I were able to identify from the defendants` advertisement that the defendants are referring to the Asahi and Paco brands, I would not be able to immediately connect the said brand names to the plaintiffs.*

41 He named six brands beginning with `A` and three brands beginning with `P`. Under cross-examination he admitted that Cristofori Music was his business competitor and in January 1997 he knew that Cristofori Music sold Asahi and Paco pianos.

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42 Under cross-examination Mr Chiu said:

> Q: As businessman you would be interested in knowing what brands of piano your competitor selling?
>
> A: Yes.
>
> Q: Also interested in knowing what price competitor selling this piano?
>
> A: Yes.
>
> Q: Wong (1). Page 87. Likely you saw this on or shortly after 1/1/97?
>
> A: Would be likely I had cursory glance at most advertisements.
>
> (To court):Advertisement on 1/1/97. Could have glanced at it next day.
>
> Q: Glanced at it. Came across `Asahi`?
>
> A: If I took longer look, yes.
>
> Q: Would also have seen `Offer $3,799`?
>
> A: Generally would have cursory glance at prices.
>
> Q: Would also have seen `Paco`?
>
> A: Yes.
>
> Q: Would also have seen price `$4,970`?
>
> A: Yes.
>
> Q: Would also have seen `Cristofori Music`?
>
> A: Yes.

43 Under further cross-examination he said:

> Q: January 1997. Who main advertisers for piano in Straits Times other than in classified advertisements?
>
> A: Think on frequency Yamaha, Cristofori, Kawai.
>
> Q: Many advertisements? By these 3?
>
> A: These 3 and others.

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> (To court): Think have seen advertisements of Bohemia which are fairly frequent. No others I can remember now.
>
> Q: January 1997. Frequency you recall of plaintiff`s advertisement?
>
> A: Would not recall in January 1997.
>
> Q: Kawai? January 1997?
>
> A: Don`t know.
>
> Q: Would say everyday?
>
> A: No.
>
> Q: 2 or 3 times per week?
>
> A: Can say would have seen several times over the year for Yamaha, Kawai, Cristofori, Gramercy. I left this out earlier.`

44 Mr Chiu would have looked at piano advertisements. He knew that Cristofori Music was one of four main advertisers in ***The Straits Times*** newspaper on the basis of frequency. He could say he had seen their advertisements several times over the year. I think he would have seen Cristofori Music`s advertisement of 1 January 1997 and he would have seen that Asahi and Paco pianos were offered at $3,799 and $4,970. He knew of several makes with names beginning with `A` and `P` other than Asahi and Paco but as he admitted in cross-examination he also knew that none of these was made in North Korea. He admitted to the court:

> *Has entered my mind referred to Asahi and Paco. After looking at advertisement once again. Can`t remember possibly when.*

45 I think Mr Chiu knew from the statement complained of in Robert Piano`s advertisement of 1 February 1997 and from what he knew about Cristofori Music that the statement referred to it.

46 Both Ms Chia and Mr Chiu know Cristofori Music. They have read the statement complained of in Robert Piano`s advertisement. They know that `A`

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and `P` refer to Asahi and Paco pianos. They know the statement refers to Cristofori Music and it has not been suggested that I should not regard them as reasonable people. In my judgment the words in the statement complained of were published of Cristofori Music.

47 Paragraph 10 of the statement of claim states:

> *In their natural and ordinary meaning, the words in the defendants` advertisement as referred to in paras 5 and 7 herein meant and were understood to mean:*
>
> (i) The plaintiffs are dangerous and a threat to society and the public at large.
>
> (ii) The plaintiffs` advertisement and sales tactics will entrap members of the public if they fail to exercise caution.
>
> (iii) The plaintiffs are dishonest in claiming that their pianos use mainly Japanese parts.
>
> (iv) The plaintiffs are dishonest and practise lowly sales tactics.
>
> (v) The plaintiffs have dishonestly employed unscrupulous and lowly sales tactics to boost their sales.
>
> (vi) The plaintiffs are tricksters who are capable of deceiving the public.
>
> (vii) The plaintiffs have through wilful misrepresentation tried to trick and deceive their customers and other members of the public into buying their pianos.
>
> (viii) The plaintiffs` treacherous and conniving conduct had exposed the public to risk.
>
> (ix) The plaintiffs are guilty of undesirable and unlawful acts which if left unguarded will result in harm in the public.
>
> (x) The plaintiffs sell cheap products with suspect qualities and are therefore a dubious and mediocre company.
>
> (xi) The plaintiffs` relatively lesser priced pianos must surely have suspect qualities and are less reliable.
>
> (xii) The plaintiffs are crooked and cannot be trusted since the pianos sold by them are dubious products that cannot be trusted.

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48 Robert Piano denies that the words in the statement bear or are capable of being understood to bear any of these meanings.

49 In **Rubber Improvement Ltd & Anor v Daily Telegraph Ltd** [1964] AC 234 Lord Reid said at p 258:

> *There is no doubt that in actions for libel the question is what the words would convey to the ordinary man: it is not one of construction in the legal sense. The ordinary man does not live in an ivory tower and he is not inhibited by a knowledge of the rules of construction. So he can and does read between the lines in the light of his general knowledge and experience of world affairs ...*
>
> *What the ordinary man would infer without special knowledge has generally been called the natural and ordinary meaning of the words. But that expression is rather misleading in that it conceals the fact that there are two elements in it. Sometimes it is not necessary to go beyond the words themselves, as where the plaintiff has been called a thief or a murderer. But more often the sting is not so much in the words themselves as in what the ordinary man will infer from them, and that is also regarded as part of their natural and ordinary meaning.*

50 I turn now to the meanings which Cristofori Music ascribe to the words in the statement complained of:

> *The plaintiffs are dishonest in claiming that their pianos use mainly Japanese parts.*

51 The second sentence in the statement says that a false claim has been made. I think to the ordinary person reading this statement as a whole and this sentence in particular the meaning conveyed by Robert Piano`s advertisement is that Cristofori Music is dishonest in claiming that Asahi and Paco pianos use mainly Japanese parts.

> *The plaintiffs have through wilful misrepresentation tried to trick and deceive their customers and other members of the public into buying their pianos.*

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52 The statement plainly says that. Facts have been misrepresented. Pianos with 80% to 90% of their parts made in North Korea have been claimed to use mainly Japanese parts. I think the ordinary person will infer that the false claim has been made to sell Asahi and Paco pianos. I think that reading the statement he will understand it to mean that Cristofori Music has tried to deceive its customers and others into buying its pianos by wilfully representing the pianos as using mainly Japanese parts when in fact they did not.

53 I have considered all the other meanings alleged (and there are ten of them) and I think it is sufficient for me to say that these other meanings are too far fetched. After reviewing the authorities Lord Reid said in the ***Rubber Improvement Ltd*** case at p 259:

> *In this case it is, I think, sufficient to put the test in this way. Ordinary men and women have different temperaments and outlooks. Some are unusually suspicious and some are unusually naive. One must try to envisage people between these two extremes and see what is the most damaging meaning they would put on the words in question.*

54 In the case before me `suspicious` may not be the appropriate word but I would say that the reader of the statement complained of would have to read too much into it to understand the words to bear any of these ten meanings.

55 Paragraph 7A of the defence states:

> *Further or in the alternative, insofar as the words were understood to bear the meanings set out below, they are true.*
>
> *Particulars of Meanings*
>
> *At best, the words mean that the brands `A` and `P` were made and assembled in North Korea using substantially 80% to 90% North Korean pianos parts (as opposed to generic parts) and that buyers should be aware of clever advertising and clever salesmanship and therefore ask for a written statement of the origin of the pianos and note that you get is what you pay for.*

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56 Robert Piano`s suggested meaning omits altogether the claim as regards the use of mainly Japanese parts and introduces the word `substantially` and seeks to distinguish `parts` from `generic parts`. I do not think an ordinary person would understand the statement in this way. In my judgment the words in the statement are not capable of bearing this meaning.

57 In **Sim v Stretch** [1936] 2 All ER 1237 Lord Atkin said at p 1240:

> *... after collating the opinions of many authorities I propose in the present case the test: would the words tend to lower the plaintiff in the estimation of right-thinking members of society generally?*

58 He was proposing a test of whether words are defamatory or not. See **Aaron & Ors v Cheong Yip Seng & Ors** [1996] 1 SLR 623 at p 641 where Lord Atkin`s test was applied. The two meanings I have found impute dishonesty and deception. In my judgment the statement complained of tends to lower Cristofori Music in the estimation of right thinking members of society generally. The statement is defamatory of Cristofori Music.

59 Paragraph 8 of the defence states:

> *Further or in the alternative, the defendants say that the words set out in paras 5 and 7 of the statement of claim are true in substance and in fact.*

60 Nine paragraphs of particulars are given but only para (c) is relevant:

> *Save for a small fraction of minor parts which are of Japanese origin and are yet to be assembled to be a complete piano part, the bridge pin, tuning pin, tuning pin bush, hammer head, butt spring and pedal fulcrum pins, the rest of the piano parts are made in North Korea and are not Japanese piano parts as claimed.*

61 Mr Keisuke Ohtani is the chief piano engineer of PACO Co Ltd of Japan. He said in his affidavit that his company is a `100% Japanese company`

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and the company is the manufacturer of Cristofori Music`s ***Asahi*** and ***Paco*** pianos. These pianos are `100% designed by Japanese piano engineers` and are `assembled in PACO`s joint-venture piano factory in Pyongyang, North Korea, under the supervision of [PACO`s] Japanese piano engineers`.

62 Mr Ohtani said in his affidavit:

> *Most of the important components of the plaintiffs` piano are made in Japan. In fact, `Paco` pianos use mainly Japanese parts selected and controlled by PACO in Japan. A copy of the drawings of the piano parts can be found at pages 5 to 15 of `KO-1`. Those which have a circle in the column marked `parts from Japan` are the parts which are made in Japan. Those parts which are marked with a circle in the column `North Korean parts` are the parts that are made in North Korea. Details of Part Origin can be found at pages 16 to 18 of `KO-1`. Out of the 8,500 pieces of piano components, around 1,500 pieces are made in North Korea.*

63 Under cross-examination he said:

> Q: Your company sells Paco pianos in Japan?
>
> A: Yes.
>
> Q: Asahi? Your company sells in Japan?
>
> A: No.
>
> Q: Reason why not?
>
> A: Nothing in particular. We have other brands. Only designate name Asahi only for export. Basic design same for Paco and Asahi but we give different name.

64 I think what he has said about the Paco piano parts applies substantially to the Asahi piano. It is not disputed that both Asahi and Paco pianos are made or assembled in the same factory in North Korea. Mr Ohtani`s evidence is that Asahi pianos as well as Paco pianos use mainly Japanese parts selected and controlled by PACO in Japan.

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65 Under cross-examination Mr Ohtani said that he considered the soundboard, the strings and the hammer the three most important parts of a piano. He said:

> Q: Soundboard for Paco piano. Comes from Japan?
>
> A: No.
>
> Q: You export wood to North Korea to make soundboard?
>
> A: No.

66 He has included the soundboard among the approximately 1,500 parts made in North Korea. It is not a `Japanese part`.

67 In relation to the strings Mr Ohtani said:

> Q: Piano strings. Sent from Japan to North Korea. In what form?
>
> A: Strings long. Coiled and wrapped in protective material to prevent rusting. Packed.
>
> Q: Length of strings in coil?
>
> A: Don`t know. Different types have different diameters.
>
> Q: Have to be cut to length in North Korea?
>
> A: Yes. Cut to correct length to get correct pitch.
>
> Q: Strings for lower notes. Coiled with thinner wire?
>
> A: Yes.
>
> Q: Coiling done in North Korea?
>
> A: Yes. Thinner wire also sent from Japan. Copper wire.

68 He has included the music wires for the strings and the copper wires as parts made in Japan.

69 In relation to the hammer Mr Ohtani said:

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> Q: Felt parts. Shipped from Japan to North Korea in rolls?
>
> A: Cut in Japan and shipped to North Korea. Cutting most important part.
>
> Q: Ohtani (1). Page 233. `HF 1 (carton)`. Item 32. Each piece cut in Japan and sent to North Korea?
>
> (Note: This is a felt item.)
>
> A: Yes.
>
> Q: Item 44. Item cut to size in Japan or North Korea?
>
> (Note: This is an item called the `butt skin`.)
>
> A: Cut in North Korea.
>
> Q: How many pieces used in piano? Butt skin?
>
> A: 88 pieces.
>
> Q: When cut. You include as parts made in Japan?
>
> A: Yes.
>
> Q: Ohtani (1). Para 8. Sentence 7. 1,500 pieces. Include pieces cut to size in North Korea?
>
> A: No.

70 Dictionary meanings of the word `parts` were suggested by counsel in their submissions but while such meanings are no doubt relevant I think any assistance I can derive from them is really quite limited. The word has to be understood by the ordinary reader of the statement complained of and it has to be understood in its context. I think the ordinary reader would understand `part` as a part of the finished product rather than as something that can be fashioned into the finished product or a part of the finished product. As an illustration: he would not see a piece of timber as a part of a chair but he would in his mind take the chair apart and identify say the legs as some of its parts. I think that in the context of the statement `parts` would connote to the ordinary reader a meaning and a sense derived by this mental process even if he is not conscious of the way his mind is working.

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71 Piano strings are of two kinds. Some are bare and others are sheathed in tightly wound thin copper wire. The sheathed strings are for the lower notes and are less in number. I think the ordinary reader would see each of the bare strings or music wires as a part. He would also see each of the sheathed strings as a part. This string can be unsheathed to expose a bare string or music wire and to yield the thin copper wire. I think the ordinary reader would also see each of such music wires and the thin copper wires as parts. All these music wires and the thin copper wires are cut to length in North Korea from coils of wire made in and shipped from Japan.

72 The second sentence of the statement refers to a claim to use `mainly Japanese parts` and says that 80% to 90% of `these piano parts` are made in North Korea. I think the ordinary reader would understand `parts` in both sections of this sentence in the same sense whether called `parts` or `piano parts`. I think he would understand the bare music wires and thin copper wires as Japanese parts if they are made in Japan even if they are cut to length in North Korea. By the same token he would not understand the music wires or the thin copper wires to be made in North Korea just because they are cut to length in North Korea. I think more than merely cutting to length would be required for him to understand these wires as ` ***made*** in North Korea`. Mr Ohtani has included each of these music wires and thin copper wires as Japanese parts. I agree that these are `Japanese parts` and are not `piano parts made in North Korea`.

73 In the hammer group of parts Mr Ohtani said that the felt parts were cut in Japan and that cutting was the most important part. He included these felt parts as Japanese parts. I think these are clearly `Japanese parts` and not `piano parts made in North Korea`.

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74 Mr Ohtani also included 88 pieces of butt skin as Japanese parts. These are cut in North Korea from skins shipped from Japan. He was not asked what was involved in cutting and what he said was not altogether very helpful. Item 44 of HF 1 at p 233 of his affidavit indicates that they are cut from larger pieces and presumably have to be cut to fit the hammer butt. While merely cutting a music wire to the required length in North Korea would not make it a part made in North Korea I would think that an ordinary reader of the statement looking at a butt skin taken from a piano and being told that it had been cut into that particular size and shape in North Korea to fit the hammer butt of the piano would probably regard it as a `piano part made in North Korea`. I think the butt skins are not `Japanese parts`. I think they are `piano parts made in North Korea`.

75 Mr Ohtani also said under cross-exmination:

> Q: Cabinet. Ohtani (1). Page 154. Cabinet comes in parts assembled in North Korea?
>
> A: Case comes from Japan, finished by painting and assembled. Cabinet made of about 23 pieces. Each is cut into correct shape in North Korea.
>
> Q: These 23 parts. Included in 1,500 pieces in Ohtani (1) para 8 sentence 7?
>
> A: No.

76 At p 165 of his affidavit the 23 parts of the cabinet appear to be shown as North Korean parts. They must have been included in the approximately 1,500 pieces which he said in his affidavit are made in North Korea. I think he was mistaken under cross-examination but he was not re-examined. These 23 parts will have to be included as parts made in North Korea and added to the approximate number of 1,500.

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77 Mr Ohtani has identified about 1,500 parts as being North Korean parts. To that number must be added the 88 butt skin parts and the 23 cabinet parts but it does not make any significant difference. Of the 8,500 parts of a PACO piano made or assembled in North Korea only about 1,611 of them or about 19% are made in North Korea. The rest are Japanese parts.

78 Mr Robert Chiu said in his affidavit:

> *... the defendants` advertisement states that 80% to 90% of the piano parts of the `A` & `P` brands are made in North Korea by North Korean workmen and 100% assembled in Pyongyang, North Korea, all of which are also true.*

79 He went on to say:

> *Annexed hereto and marked as exh `CNYR-7` is a breakdown of the important parts of a piano from which, it is to be noted that the major parts of the piano namely, the back post, the iron frame, the soundboard and soundboard bridge, pedal assembly, and the casing amount to at least 80% of the major parts of a piano.*

80 Exhibit CNYR-7 is headed `Breakdown of Major Piano Parts` and lists 14 groups of parts. Under cross-examination he explained that `important parts` meant `major parts` and under re-examination he corrected himself and removed item 13 of the 14 groups leaving 13 groups altogether.

81 I find this statement about the major parts of a piano quite outrageous. His evidence if that is what it can be called is that the major parts of a piano amount to at least 80% of the major parts of a piano! Under cross-examination he explained:

> *What I mean is 6 items I have named, namely, (1) back post, (2) iron frame, (3) soundboard, (4) soundboard bridge, (5) pedal assembly; and (6) casing - amount to 80% of piano.*

82 He then went on to say:

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> Q: Six items. 80% of piano. 80% of all parts of piano?
>
> A: Yes. 80% of all parts of piano. Not 80% by number.

83 It would not be 80% by number. From Mr Ohtani`s `Details of Parts Origin` these six items account for 48 parts only by number. It would also not be by number of groups of what Mr Robert Chiu calls major parts.

84 The six items are six of the 13 groups of piano parts listed in exhibit CNYR-7 and if these six items amount to 80% of all parts of a piano but not 80% by number then by what measure I am unable to imagine. Mr Robert Chiu did not say. I must return to the ordinary person reading the statement complained of. What would he understand `80% to 90% of these piano parts` in the context to mean? I do not think that he will read it as 80% to 90% of the major parts nor will he read the claim to relate to `mainly Japanese ***major*** parts`. He will not read it as `80% to 90% of the piano parts but not 80% to 90% by number`. I think he will read `parts` or `piano parts` as all parts of a piano and he will understand `80% to 90% of the piano parts` to mean 80% to 90% of the piano parts by number.

85 In my judgment the defence of justification has not been made out. It is not true that 80% to 90% of the parts or piano parts of an ***Asahi*** or ***Paco*** piano are made in North Korea. It is not true that only a small fraction of `minor parts` are of Japanese origin.

86 Robert Piano pleads s 8 of the Defamation Act which provides:

> *In an action for libel or slander in respect of words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not*

> *materially injure the plaintiff`s reputation having regard to the truth of the remaining charges.*

87 The sting of the charge made against Cristofori Music lies in the fact asserted by Robert Piano that 80% to 90% of the piano parts are made in North Korea. I have found that this is untrue. In any case there are no two or more distinct charges against Cristofori Music. In my judgment s 8 of the Defamation Act does not assist Robert Piano in its defence of justification.

88 Paragraph 11 of the defence states:

> *Further or in the alternative, the words set out in paras 5 and 7 of the statement of claim are fair comment upon a matter of public interest, namely, that the public/consumers are being misled by statements in the advertisements placed by the plaintiffs to entice them to buy the plaintiffs` pianos and upon the following facts.*
>
> *Particulars of facts and matters which the comment was based*
>
> *The defendants repeat parahs 8(a) to 8(h) above.*

89 I very much doubt that Robert Piano is saying that every part of the statement complained of is `comment` for the purpose of the defence but it is clear that the second sentence in the statement contains three assertions of fact and in the context of the statement these are not and are incapable of being understood as comments:

90 (a) Both Asahi and Paco pianos are made in the same factory. This is fact and not comment and this fact is not disputed.

91 (b) It is claimed that these pianos use mainly Japanese parts. This is also fact and not comment and this fact is also not disputed.

92 (c) In actual fact 80% to 90% of these piano parts are made in North Korea by North Korean workmen. This is also fact and not comment and this is untrue.

93 In my judgment the defence of fair comment fails in ***limine*** and it is unnecessary to consider the effect of the particulars pleaded. I need only say that in considering whether the words complained of would reasonably have been understood as comment they may and in this case ought to be read in their proper context within the statement complained of and Robert Piano`s advertisement in which the statement appears but regard may not otherwise be had to matters outside those words even if they comprise matters at which the comment is directed. See **Telnikoff v Matusevitch** [1992] 2 AC 343. Robert Piano also pleads s 9 of the Defamation Act but in the circumstances of this case it has no application.

94 Paragraph 13 of the defence states:

> *Further or in the alternative, the alleged occasion of publication was an occasion of qualified privilege.*
>
> *Particulars*
>
> (a) The defendants are one of the two major importers and distributors of Japanese made and assembled pianos, namely, Kawai pianos. The plaintiffs are importers of North Korean made and assembled pianos, namely, Asahi and Paco pianos. Both the defendants` and the plaintiffs` pianos are advertised in the newspapers. The public/consumers are readers of these newspapers and potential buyers of the defendants` and plaintiffs` pianos.
>
> (b) In the premises, the defendants were under a moral and social duty to publish the said words to the public/ consumers to ensure that they were not misled and the public/consumers have an interest to receive them.
>
> (c) Further the defendants published the said words in the reasonable and necessary protection of their own interests to

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> ensure that the value and goodwill of Japanese pianos are not tarnished by North Korean pianos passed off as Japanese pianos.

95 The statement complained of appears in an advertisement in the Straits Times newspaper and the question that immediately comes to mind is whether the readers of the newspaper have a duty or interest to receive the communication corresponding with Robert Piano`s alleged moral and social duty to make the communication.

96 In the ***Aaron*** case [1996] 1 SLR 623 a report featuring the appellants and a religious community known as the House of Israel was published in an issue of the Straits Times newspaper. The report consisted of three articles. The first two articles highlighted the nature, structure and religious practices of the appellants and the House of Israel. The House of Israel was referred to as a sect and the first appellant as its dominant leader. The third article contained a warning of the potential dangers of belonging to a sect with a leader who controlled the members. In libel proceedings commenced by the appellants the respondents pleaded the defence of qualified privilege among others. LP Thean JA (delivering the judgment of the court) examined the authorities and said at p 652:

> *The respondents have only shown that the publication of the information was in the interest of a section of the public, namely, members of the Christian community. That is sectional rather than general interest of the public at large. On the authorities, such sectional interest does not give rise to a moral or social duty to publish the report. The respondents have, therefore, not succeeded on the defence of qualified privilege.*

97 The public as represented by the readership of the newspaper as opposed to only a section of it does not have an interest to receive the communication of the words in the report through its publication in the newspaper.

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98 ***The Straits Times*** newspaper has a wide readership in this country. Only a section of the readership would have any interest to receive the statement complained of. Any appeal the statement would have would be to those concerned with the piano trade as buyers or as persons likely to entertain any thoughts of buying pianos. Competing sellers and some others concerned with the practice of selling pianos may also have an interest to receive the statement although the statement itself is addressed only to buyers and potential buyers. I should have thought that the public as represented by the readership as opposed to that section of the readership who are buyers or potential buyers of pianos would not have the interest to receive the communication of the words in the statement complained of but there are other considerations also.

99 Robert Piano alleges that Cristofori Music`s (and its own) pianos are advertised in the newspapers and in these circumstances I think different considerations do arise. In **Adam v Ward** [1917] AC 309 the plaintiff who was formerly an officer in a cavalry regiment and was subsequently elected a member of Parliament in a speech in the House of Commons made a false charge against the General commanding the brigade of which his regiment formed part. The General having referred the matter to the Army Council the defendant by the direction of the Council wrote a letter to the General vindicating him against the charge made by the plaintiff. The letter contained defamatory statements about the plaintiff. This letter was sent to the press for publication and it was widely published in the British and Colonial press.

100 Earl Loreburn said at p 321:

> *The facts of different cases vary infinitely, and I do not think the principle can be put more definitely than by saying that the judge has to consider the nature of the duty or right or interest and to rule whether or not the defendant has published something beyond what was germane and reasonably appropriate to the*

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> *occasion, or has given to it a publicity incommensurate to the occasion. For a man ought not to be protected if he publishes what is in fact untrue of some one else when there is no occasion for his doing so, or when there is no occasion for his publishing it to the persons to whom he in fact publishes it.*

101 Lord Atkinson expressed himself in sterner terms. He said at p 343:

> *Every subject, therefore, who had an interest in the Army had an interest in being by a public communication informed of General Scobell`s acquittal. But I go further. I think it may be laid down as a general proposition that where a man, through the medium of Hansard`s reports of the proceedings in Parliament, publishes to the world vile slanders of a civil, naval, or military servant of the Crown in relation to the discharge by that servant of the duties of his office he selects the world as his audience, and that it is the duty of the heads of the service to which the servant belongs, if on investigation they find the imputation against him groundless, to publish his vindication to the same audience to which his traducer has addressed himself.*

102 I might add that the plaintiff had gone on to say in his speech that the General was on his way home from abroad and the plaintiff hoped that when he saw the report of his speech in the paper as the plaintiff intended that he should do he would appreciate the meaning of certain specific words the plaintiff had used in his speech. The case before me is of course not concerned with anything said in Parliament.

103 Robert Piano has not by its defence identified Cristofori Music`s advertisements in relation to the privilege alleged. The statement of claim refers to one such published in ***The Straits Times*** newspaper on 1 January 1997 and the full text appears as a schedule. I have referred to this advertisement and to what it says about Asahi and Paco pianos. There is a claim that Asahi pianos use mainly Japanese parts. An earlier advertisement at p 22 of the agreed bundle makes a similar claim in respect of Paco pianos. Mr Wong Jian Bing of Cristofori Music himself said in his affidavit that Asahi and Paco pianos had been `widely publicised in the major local newspapers`.

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104 I agree that Robert Piano had a moral and social duty to publish the statement containing the second sentence. I also agree that Robert Piano had an interest to communicate those words in the reasonable protection of its legitimate interests as a seller of pianos in general and of Japanese pianos in particular. There was also a corresponding interest in the buyers and potential buyers of pianos to receive the communication. I think the occasion when Robert Piano`s advertisement was published on 1 February 1997 was a privileged occasion. I should add that not every statement published on a privileged occasion is entitled to the protection of the privilege and a communication will not be protected if it is made to persons with no corresponding interest to receive it or if too much publicity is given to it.

105 In ***Adam v Ward*** defamatory statements against the plaintiff were made in the letter vindicating the General. Earl Loreburn said at p 322:

> I have had more doubt upon the question whether or not all that is contained in the letter which forms the subject of this action was covered by the privilege, and am disposed to take on that point the same view of the facts that appears from his summing-up to have been taken by Darling J.

106 Darling J had taken the view that the statements in the letter were not protected. However Earl Loreburn did not dissent from the majority view that the defamatory statements were relevant to vindicate the General.

107 The question before me is whether the second sentence in the statement complained of is protected. It makes assertions of fact which appear to me to be directly relevant to Cristofori Music`s claims about its pianos. I think the words in that sentence are relevant and are reasonably appropriate to the occasion. Having regard to the wide publicity given to Asahi and Paco pianos in the major local newspapers including ***The Straits Times*** newspaper I think Robert Piano

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has not given the second sentence in the statement any more publicity than was commensurate with the occasion. Claims have been made in advertisements in newspapers and a refutation of such claims in one advertisement in one of these newspapers appears to me to be appropriate. I think the communication of the words in the second sentence in the statement through an advertisement by Robert Piano in an issue of ***The Straits Times*** newspaper is entitled to protection as having been made on a privileged occasion.

108 Cristofori Music in its reply alleges that the words complained of in Robert Piano`s advertisement of 1 February 1997 were published maliciously. The reply also states:

> *The defendants cannot purport to be under any moral or social duty to publish the said words when the said words were false and the defendants knew the same were false or did not care whether the same were true or false.*

109 I think the words complained of refer only to the assertion of fact in the second sentence of the statement that in actual fact 80% to 90% of the piano parts are made in North Korea.

110 In **Horrocks v Lowe** [1975] AC 135 Viscount Dilhorne said at p 145:

> *If a man abuses a privileged occasion by making defamatory statements which he knows to be false, express malice may easily be inferred. If, on such an occasion, he makes statements recklessly, not caring whether they be true or false, again malice may be inferred ...*
>
> *Can a man who believes what he says on a privileged occasion to be true and which if true would not be an abuse of the occasion be held to have made his statements `recklessly whether they are true or false`? Gross and unreasoning prejudice may have led him to have uttered them recklessly whether they were true or false, but if he believes the truth of what he said, can he at the same time be said to be reckless of the truth or falsity of his statements? May be that others with more judgment and more wisdom would not have formed the same belief, but if, in fact, he believes what he says, he cannot at the same time, in my opinion,*

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> *be reckless whether it is true or false. Such recklessness falls short of deliberate falsehood.*

111 Lord Diplock said at pp 149, 150:

> *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 ... save in the exceptional case where a person may be under a duty to pass on, without endorsing, defamatory reports made by some other person.*
>
> *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 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.*

112 Where a protected communication is made on a privileged occasion and the maker believes the words communicated to be true then he is entitled to the protection of the privilege excepting the case of express malice `if it can be proved that the [maker] misused the occasion for some purpose other than that for which the privilege is accorded by law`. See further at p 150 per Lord Diplock.

113 Mr Robert Chiu did not say in his affidavit that he believed in the truth of the fact asserted, namely, that 80% to 90% of the piano parts of Asahi and Paco pianos were made in North Korea by North Korean workmen. He said it was true. He gave his grounds for saying that. He referred to exhibit CNYR-7. He explained under cross-examination that he meant 80% of all the parts but not by number though by what he did not say. His grounds were untenable and I think he knew it. He said nothing about whether the fact asserted was true

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when the statement in Robert Piano`s advertisement was published or whether he believed it to be true then.

114 Mr Robert Chiu said in his affidavit that he first became aware of Cristofori Music`s `misleading advertisements in the newspapers` some time in 1991. He said ***Paco*** was advertised as a Japanese piano but he knew that it was a North Korean piano. He wrote to the Advertising Standards Authority of Singapore (`ASAS`) to complain about the misleading advertisement but for some reason not disclosed by counsel his letter is not produced. The agreed bundle has only one 1991 advertisement of Cristofori Music`s Paco pianos. It refers to it as a `Japanese Brand Piano` with an asterisk leading to a note which says that it is assembled in North Korea. Mr Robert Chiu was not content with writing to ASAS. He also wrote to ***The Straits Times*** . This letter also is not produced. On 5 December 1991 the New Paper, a newspaper published by the publishers of the Straits Times newspaper, carried an article under the heading `Row over "Japanese` piano"`. The article featured part of a copy of Cristofori Music`s advertisement relating to Paco pianos where there appears a reference to `Japanese piano`. The article also contained what it said were statements made by Mr Wong, Mr Robert Chiu and Mr Tan of Consumers` Association of Singapore. The `row` was over the question whether a Paco piano could be advertised as a `Japanese piano`. Nothing was said in the article about whether the parts of the piano were Japanese parts or where the parts were made.

115 On 22 January 1993 ASAS wrote to both Cristofori Music and Robert Piano. The letter to Robert Piano was addressed to Mr Robert Chiu. ASAS advised that after deliberation on all the facts presented it formed the opinion that a Paco piano could not be claimed as a Japanese piano. Since then Cristofori Music`s advertisements have made no more references to `Japanese Brand

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Piano` or `Japanese piano` or anything implying that it is made or assembled in Japan. ASAS said nothing about the parts of the piano.

116 On 12 February 1997 Mr Robert Chiu wrote to the Singapore office of the Japan External Trade Organisation (`JETRO`) for some information about the manufacturers of Asahi and Paco pianos and for contact information on certain trade associations in Japan. He received a reply the next day but there is no evidence that he made any further inquiries or otherwise acted on the information he received. Mr Robert Chiu said in his affidavit that he received a letter dated 6 March 1998 from Mr Suzuki of Kawai Musical Inst Mfg Co Ltd (`KMIM`) of Japan forwarding a copy of a letter dated 16 February 1998 from the Shizuoka Prefecture Musical Inst Manufacturers` Association (`SPMIMA`). Mr Robert Chiu did not say when he communicated with KMIM for its assistance but it is likely to have been before 16 February 1998. The letter from SPMIMA is addressed to KMIM and is in question and answer form. Questions 3, 5 and 7 and the answers are:

> 3 Are soundboard, bridges and iron frame made inside North Korea?
>
> Yes, they are.
>
> 5 Are a few piano parts imported from Japan?
>
> The items exported from Japan are the metal parts like pedals, music wires, hinges, etc and parts to assemble the action and so on. Some other parts might be exported on irregular basis depending on the case.
>
> 7 Is ASAHI piano same as PACO piano?
>
> Yes, it is. The both are the same and are made in North Korea.`

117 The soundboard, the bridges (of which there are two) and the iron frame are four of the parts which Mr Ohtani said were included in his count of the parts made in North Korea.

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118 The advertisement containing the statement complained of was published on 1 February 1997. Cristofori Music`s solicitors` letter complaining about the contents of the statement was written on 5 February 1997. I think that prompted the inquiry to JETRO but nothing was said about piano parts in that inquiry or in the response from JETRO. There was no reply to Cristofori Music`s solicitors` letter. Robert Piano did not protest that any of the facts asserted in the statement was true. Other than writing that one letter to JETRO and communicating with KMIM at some undisclosed point of time Mr Robert Chiu did nothing at all that would be consistent with any belief he might have held in the truth of the fact asserted as to 80% to 90% of the piano parts. The statement of claim was filed on 15 February 1997 and in its original form (as well as in its final form) it is alleged that it is not true that 80% to 90% of the piano parts of Asahi and Paco pianos are made in North Korea. There is no evidence that Robert Piano or Mr Robert Chiu made any inquiries as to the truth of the fact asserted except for the communication which brought about the letter from SPMIMA dated 16 February 1998.

119 I think Mr Robert Chiu did not at any time at all before 1 February 1997 or even before the commencement of these proceedings know where most of the parts of the Asahi and Paco pianos were made and he made no attempt to find out. His attention was focussed on the question whether these pianos could be advertised as Japanese pianos. When this was resolved in Robert Piano`s favour by ASAS and the pianos ceased to be advertised as Japanese pianos he was still not satisfied. Cristofori Music continued to sell its pianos and became one of the largest sellers of pianos. Mr Robert Chiu affirmed his affidavit on 30 March 1998. By then he had received SPMIMA`s answers to the questions put to it. He did not say either in his affidavit or in court that he believed to be true the fact asserted in the second sentence of the statement complained of that 80%

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to 90% of the piano parts were made in North Korea. He should have known it to be untrue by then. I think that before he received SPMIMA`s answers he held no belief as to whether it was true or untrue. I think he held no such belief when he published the advertisement containing the statement complained of. He acted recklessly. He did not care whether it was true or not. In my judgment the statement complained of and in particular the second sentence was published by Robert Piano maliciously and it is not entitled to the protection of the privileged occasion when it was published.

120 The defamatory words mean that Cristofori Music is dishonest in claiming that Asahi and Paco pianos use mainly Japanese parts and that it has tried to deceive its customers and others into buying its pianos by wilfully representing them as using mainly Japanese parts when in fact they did not. These are defamatory of Cristofori Music in the way of its trade and Cristofori Music is one of the largest sellers of pianos. An unwarranted charge of dishonesty has been made and the public has been warned by the word `BEWARE` in bold and conspicuous print. Words such as `Sales Gimmick` and `PULL WOOL OVER YOUR EYES` have been used. There has been no apology. The words were published in an advertisement in the Straits Times newspaper and no attempt has been made to withdraw any part of those words or to make any correction. In its defence Robert Piano has pleaded justification and at the trial Mr Robert Chiu has claimed in evidence that the facts asserted in the defamatory statement were true. Substantial damages would be appropriate but Cristofori Music is a seller of pianos albeit one of the largest although there is no evidence of the size of its undertaking. It is not a bank as in **Oversea-Chinese Banking Corp Ltd v Wright Norman & Ors and another action** [1994] 3 SLR 760 where Chao Hick Tin J awarded $50,000. I think damages should be in an amount of $50,000 and I adjudged accordingly. I also

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granted an injunction when counsel informed me from the bar that he was unable to give any undertaking on behalf of Robert Piano.

121 I turn now to the counterclaim. On 22 December 1996 Ms Ong Siok Huang ordered an Asahi piano from Cristofori Music and placed a deposit of $400. She said in her affidavit that about two weeks later on the advice of Mr Robert Chiu she went back to Cristofori Music to `seek clarification ... whether or not the Asahi piano was Japanese`. She did not get any answer which she considered satisfactory. She asked for her money back. Later she received Cristofori Music`s letter dated 31 January 1997. The letter contained these words:

> *We are also aware that one of our competitor, Robert Piano Co is spreading the untrue statement to the public. We definitely reserved the right to take legal action against them. As you are one of the victim, we hope you can be one of our witness in the court, if the situation become necessary.*

122 Paragraph 23 of the counterclaim states:

> *In their natural and ordinary meaning, the said words meant and were understood to mean that:*
>
> (a) the defendants had been spreading lies and untrue statements to the public in order to mislead the public;
>
> (b) members of the public like Miss Ong Siok Huang, the addressee of the said letter were victimised by such statements by the defendants and as such, had suffered loss or damage;
>
> (c) the defendants were a dishonest company.

123 In its defence to the counterclaim Cristofori Music denies that the words bear or are understood to bear or are capable of bearing the meanings alleged. Cristofori Music also relies on justification, fair comment on a matter of public interest and finally qualified privilege.

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124 The words clearly say that Robert Piano is spreading `the untrue statement` to the public. No statement is expressly referred to but I think the words can refer to `some` untrue statement or `an` untrue statement. Grammatical accuracy is not a feature of the letter from which the words are taken. I entertain no doubt that the ordinary person will understand the words to mean that Robert Piano is spreading something to the public which something is untrue. His understanding will be reinforced by Cristofori Music reserving the right to take legal action against Robert Piano. I think the first meaning pleaded may be modified to:

> *Robert Piano is spreading an untrue statement to the public and Cristofori Music has a right to take legal action against Robert Piano.*

125 I have considered the other meanings pleaded but I do not think the ordinary person will understand the words to mean any of these things. They do not say that Ms Ong has been victimised by Robert Piano or by `such statements` meaning the untrue statements made by Robert Piano. Also spreading an untrue statement is not necessarily dishonest and in most cases no question of dishonesty arises.

126 To say that Robert Piano is spreading something untrue to the public and that Cristofori Music has a right to take legal action against it implies that Robert Piano has committed a wrong for which Cristofori Music can take legal action. I think words with that meaning will tend to lower Robert Piano in the estimation of right thinking members of society generally. In my judgment the words are defamatory of Robert Piano.

127 Until the publication of the advertisement on 1 February 1997, ie the day after Cristofori Music`s letter containing the defamatory words was written there is no evidence that Robert Piano has said anything about Cristofori Music

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that is untrue. There is no evidence that it has been spreading any such thing at all. The defence of justification has not been proved.

128 In its defence to the counterclaim Cristofori Music states in para 10:

> *Further or alternatively, the said words were fair comment on a matter of public interest, namely the defendants were propagating the untrue statement that the plaintiffs` pianos did not use 90% Japanese parts to the public ...*

129 The words complained of do not identify the untrue statement. There is no reference to the use of 90% Japanese parts or any Japanese parts in those words. The letter in an earlier part says:

> *The* ***Asahi*** *piano, model: U1-AS is 100% Japanese designed piano, using 90% Japanese parts, assembled in Japanese joint-ventured factory in Pyongyang ...*

130 The letter does not say that Robert Piano says any of this is untrue. It does not say that Robert Piano says Cristofori Music`s pianos or Asahi pianos did not use 90% Japanese parts and even if this can be read into the letter it still offers no assistance to any understanding of the statement as a comment. The statement pleaded and the words complained of are not and are incapable of being understood as comments. In my judgment the defence of fair comment on a matter of public interest fails.

131 Paragraph 11 of the defence to the counterclaim states:

> *Further or alternatively, the said words were published on an occasion of qualified privilege.*
>
> *Particulars*
>
> (a) The plaintiffs repeat paras 9(a) to (f) herein
>
> ... .

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132 Paragraph 9(a) states:

> *According to feedback from the plaintiffs` customers, the defendants had been asserting that the plaintiffs` `Asahi` pianos did not use 90% Japanese parts (hereinafter referred to as the `defendants` statements`).*

133 No evidence was adduced to prove these allegations in para 9(a) of the defence. Even Cristofori Music`s letter does not allege that Robert Piano had made any such assertions. I find that para 9(a) has not been proved. Paragraph 9(c) alleges that the statements attributed to Robert Piano (and attributed without any basis at all) are untrue. It is in ***fact*** untrue that Asahi pianos use 90% Japanese parts if by that it means that 90% of the parts are Japanese. Mr Ohtani said that about 19% of the parts were made in North Korea. The other paragraphs of the particulars are irrelevant or based on irrelevant assumptions.

134 In his affidavit Mr Wong said:

> *The plaintiffs further say that they honestly believe that it was the defendants who were making statements about the plaintiffs` piano as they received feedback from their customers that the defendants` sales staff had informed their customers that the plaintiffs` pianos were made in North Korea.*

135 Asahi and Paco pianos are in fact made in North Korea. But this is not even the statement identified in the particulars. There is no evidence that Mr Wong who wrote the letter containing the defamatory words or anyone else in his company believed that Asahi pianos use 90% Japanese parts.

136 Whether Asahi pianos use 90% Japanese parts or not is a fact within the knowledge of Cristofori Music or which it has the means to acquire. If it has learned that Robert Piano has asserted that it is untrue it would have refuted it. It would have done so in its letter of 31 January 1997. It would have done so when its solicitors wrote to complain about Robert Piano`s advertisement of 1

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February 1997. It did not do so. Mr Ohtani wrote to Mr Wong on 6 February 1997 and he enclosed drawings showing parts made in Japan. They are the drawings exhibited to his affidavit and they do not show 90% of the parts to be Japanese. Cristofori Music adduced no evidence to prove that Robert Piano made the allegedly untrue statement. I think Mr Wong did not even know precisely what it was that he referred to as the `untrue statement` in his letter. He had no belief in the truth of that assertion. He acted recklessly. He did not care whether the fact asserted was true or false. In my judgment the defamatory words were published maliciously and the defence of qualified privilege fails.

137 The defamatory words appear in the letter addressed to Ms Ong. Its publication is limited although she showed it to a salesman of Robert Piano who read it to her. She said she could only read a little English and understood if someone read to her slowly and explained to her. Mr Robert Chiu said that the letter was read by Ms Ong, the salesman and several other persons present at Robert Piano`s showroom when Ms Ong brought it there. Mr Robert Chiu would have known of it. There was no protest. There was no letter complaining of the libel not even when Cristofori Music`s solicitors had written to complain about the advertisement. On 15 February 1997 this action was commenced and it may well be thought that by then there would be little point in any correspondence. I think that is reasonable. I think in all the circumstances $5,000 by way of damages will be reasonable and fair compensation and I gave judgment accordingly.

138 **Outcome:**

139 Plaintiff`s claim allowed; defendant`s counterclaim allowed.

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Lim Teong Qwee JC

Hee Theng Fong and Joseph Chai (Hee Theng Fong & Co) for the plaintiff
Salem Ibrahim, Nigel Bogaars and Alwiya Hanafi (Salem Ibrahim & Partners) for the defendant

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