Dorsey James Michael *v* World Sport Group Pte Ltd
[2014] SGCA 4

Case Number	: Civil Appeal No 167 of 2012
Decision Date	: 14 January 2014
Tribunal/Court	: Court of Appeal
Coram	: Sundaresh Menon CJ; Chao Hick Tin JA; V K Rajah JA
Counsel Name(s)	: N Sreenivasan SC and Sujatha Selvakumar (Straits Law Practice LLC) and George Hwang (George Hwang LLC) for the appellant; and Deborah Barker SC and Ushan Premaratne (KhattarWong LLP) for the respondent.
Parties	: Dorsey James Michael — World Sport Group Pte Ltd

CIVIL PROCEDURE – Interrogatories – application for leave

[LawNet Editorial Note: The decision from which this appeal arose is reported at [2013] 3 SLR 180.]

14 January 2014 Judgment reserved.

V K Rajah JA (delivering the judgment of the court):

1 This appeal raises important questions about the proper exercise of judicial discretion in the ordering of pre-action interrogatories. The grant of pre-action interrogatories, while not exceptional, is not usual. It requires a court to take a multi-factorial approach that necessitates the answering of a number of questions. What matters can and/or ought to be considered by a court in assessing the merits of a pre-action application for interrogatories? What is the relevance of the particular subject matter of the proceedings? When is it just to grant pre-action interrogatories? Here, at the heart of the existing legal controversy are potential claims for defamation and breach of confidence arising from the publication of certain blog posts alleging that serious improprieties had been committed by a former head of an international sports body by entering into questionable transactions with certain commercial entities.

Facts

Parties to the dispute

2 The appellant, James Michael Dorsey ("Dorsey") is a Senior Fellow at the S Rajaratnam School of International Studies, Nanyang Technological University ("NTU"). In addition, Dorsey asserts that he continues to be a journalist and has been one for almost four decades. He has at various times worked as a foreign correspondent for the New York Times, Financial Times, and the Wall Street Journal. At all material times, Dorsey maintained a blog titled 'The Turbulent World of Middle East Soccer' (http://mideastsoccer.blogspot.sg/), where he discussed political, economic and social issues relating to the sport of soccer in the Middle East.

3 The respondent, Word Sport Group ("WSG"), is an international sports marketing, media and event management company. Part of its business involves the sale and exploitation of commercial rights in connection with sporting events taking place throughout Asia and the Middle East. WSG and its related entities have had commercial links with the Asian Football Confederation ("AFC") since 1993. On 15 June 2009, the AFC and World Sport Football, a company associated with WSG, entered

into a Master Commercial Rights Agreement ("MRA") in relation to the commercial rights of major football competitions held under the auspices of the AFC. The MRA was novated to WSG on 1 January 2010. It is this document that takes centre stage in these proceedings.

Background facts

4 The subject proceedings came in the wake of shocking allegations of bribery and corruption which rocked the AFC and caused grave consternation in the global footballing community around July 2011. This culminated in the suspension and ban of its former President, Mr Mohamed Bin Hammam ("Bin Hammam"), from all football-related activities by the Fédération Internationale de Football Association ("FIFA"). Subsequently, this ban was overturned by the Court of Arbitration for Sport ("CAS"), but FIFA eventually banned him again because of unresolved concerns about his handling of AFC's funds and an investigation into election bribery charges.

5 In July 2012, a report on this troubling matter was finalised by PricewaterhouseCoopers Advisory Sdn Bhd ("PWC"), acting under the instructions of the AFC ("the PWC Report"). PWC had been tasked by AFC to investigate and review certain transactions, accounting practices and contracts negotiated during Bin Hammam's tenure as president of the AFC, from 2002 to 2011. The PWC Report generated great international media interest and controversy as it raised, among other matters, troubling questions about the propriety of the MRA structure and its terms. In particular, the PWC Report found that the MRA comprised no-bid contracts which were considerably undervalued and that Bin Hammam had allegedly received substantial amounts of money from individuals linked to various AFC contracts during his tenure as AFC President. A copy of the PWC Report was later submitted to FIFA by AFC.

6 Between July and August 2012, the key findings of the PWC Report were referred to extensively by the international media all over the world in their reporting on Bin Hammam's alleged involvement in this scandal. These included news.com.au, SaudiGazette.com.sa, Daily Reporter, The Republic, The National, SI.com, Al Jazeera, San Francisco Chronicle and Greenwich Time. For instance, on 7 August 2012 SaudiGazette.com.sa published an article that stated: [note: 1]

> The audit, prepared by the international accounting firm of PricewaterhouseCoopers and dated July 13, claims the 63-year-old Qatari [Bin Hammam] received millions of dollars from individuals linked to AFC contracts during his tenure that dates back to 2002 and spent tens of thousands on items such as a honeymoon for his son and dental work, haircuts and cash payments for his family
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> …
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> The audit found that a contract for commercial rights with World Sports Group and its subsidiary World Sports Football were no-bid contract that were "considerably undervalued." A $14 million payment from companies with stakes in WSG, Al-Baraka Investment and Development Co. and International Sports Events Company was made to the AFC for the "personal use of its president" the report said.
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> …
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> The audit said its review of the AFC accounts found that tens of thousands of dollars in cash were routinely given to federation presidents and their relatives. Most of it went into their personal bank accounts and none of it was for football-related expenses, it said.

7 Dorsey too covered the issue in various blog posts on his blog titled "**Bin Hammam Audit Opens Pandora's Box – Analysis**" (dated 23 July 2012); "**Qatar and UAE Hire Fired AFC Bin Hammam Associates – Analysis**" (dated 24 July 2012); "**FIFA's suspension of Bin Hammam buys time/ Column by James M Dorsey**" (dated 29 July 2012); and "**FIFA investigates: World Cup host Qatar in the hot seat**" (dated 28 August 2012) (collectively, "blog posts") [note: 2]. In the blog posts, Dorsey allegedly made extensive references to and/or quoted the PWC Report and the MRA. To substantiate his assertions, Dorsey cited various "sources close to the AFC" or "sources" (collectively, "sources") in the blog posts as well. *In relation to the present appeal, only the blog post-dated 28 August 2012 remains material*. Indeed, the Judge only relied on the 28 August 2012 blog post in her decision (*World Sport Group Pte Ltd v Dorsey James Michael* [2013] 3 SLR 180 ("GD") at [23]). The relevant excerpts from that blog post which was captioned "*FIFA investigates: World Cup host Qatar in the hot seat*" are as follows [note: 3]:

> The AFC has raised questions about the sincerity of its investigation by hiring the [Freeh group owned by former FBI director Louis Freeh which produced a report which served as part of the basis for Bin Hammam's ban] despite CAS's (sic) rejection of its earlier work. The group has been tasked with further investigating the findings of a report by Price Waterhouse Cooper (PwC) that charged [Bin Hammam] had used an AFC sundry account as his personal account and raised questions about his negotiation of a $1 billion marketing and rights contract with Singapore-based World Sport Group (WSG), a $300 million contract with the Qatar-owned Al Jazeera television network and payments of $14 million to [Bin Hammam] by entities belonging to a Saudi businessman with a vested interest in the WSG deal. …
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> …
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> The WSG master rights agreement (MRA) that according to sources close to the AFC handed the soccer body's assets embodied in its rights to the company is certain to be at the core of both investigations. PwC questioned the fact that the contract as well as the agreement with Al Jazeera had been awarded without being putting (sic) out to tender or financial due diligence. Sources close to AFC said the contract awarded WSG all the benefits while ensuring that AFC retained the potential liabilities. PwC said the contract failed to give AFC a right to audit WSG's services or costs. "In comparison with similar-type agreements for other sports, it appears that the current MRA may be considerably undervalued," the PWC Report said.
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> …
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> Sources close to the AFC said the soccer body had been advised to conclude a service provider rather than a master rights agreement with WSG. This would have allowed the AFC to retain control of its rights, determine how they are exploited and enabled it to continuously supervise the quality of services provided by WSG. … They said the contract was out of sync with other international sports bodies that had shifted years ago from rights to service provider agreements.
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> The sources said the WSG agreement was further detrimental to AFC's interests because it failed to precisely define what commercial rights were being granted. As a result, the sources said, AFC had effectively surrendered its treasure, making it difficult, if not impossible, for the soccer body to explore potential opportunities with third parties.
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> The sources said the contract put WSG in the driver's seat with no oversight or transparency. They said WSG determined which AFC officials would be members of the committee that oversees WSG's execution of the agreement. AFC further failed to insulate itself from any damages that

could arise from WSG actions[.] … They suggested further that contract gave WSG rather than the AFC control of monies emanating from the agreement.

8 It merits reiteration that by 28 August 2012 several articles in the international media had already made explicit references to this alleged corrupt relationship between Bin Hamaan and WSG. For example on 30 July 2012 the Wide World of Sports, News.com.au, The Republic and Al Jazeera (amongst others) reported that the subject commercial rights agreement between AFC and WSG were no bid contracts and were " ***considerably undervalued*** " [emphasis in original]. [note: 4] *There is absolutely no suggestion by WSG in these proceedings that it was Dorsey who broke the story on the PWC Report findings and/or the nature of the MRA to the international media.* Dorsey additionally asserts that "[i]n or around July 2012, several blogs and newspapers" reported on this. [note: 5] The contents of the PWC Report were "common knowledge and commonly reported in several global media including Associate (sic) Press as well as blogs and commentaries". [note: 6] Then "[i]n late July to August 2012, [Dorsey] too covered this … and wrote several blog posts relating to the incident on [his] blog". [note: 7]

9 On 5 September 2012 pursuant to O 26A r 1 of the Rules of Court (Cap 332, R 5, 2006 Rev Ed) ("ROC"), WSG sought leave to serve on Dorsey pre-action interrogatories to ascertain the sources of his information. Pursuant to O 24 r 6 of the ROC, WSG also sought pre-action discovery of the PWC Report and the MRA.

10 WSG alleged that the PWC Report and the MRA had been distributed to third parties and Dorsey in breach of a duty of confidentiality owed to it. WSG additionally alleged that the PWC Report contained statements and innuendos which defamed it. WSG stated that it contemplated the commencement of proceedings for breach of confidentiality and defamation, and that pre-action interrogatories and discovery would assist them in:

(a) ascertaining the nature of any breach of a duty of confidentiality; and

(b) identifying potential parties to those proceedings.

Pertinently, despite its strenuous assertion that the PWC Report was defamatory WSG does not appear to have made any attempt to secure relevant information from either the AFC or PWC or to initiate any manner of proceedings against either of them. WSG also does not allege that the disclosure of the existence of the MRA and its terms to PWC by AFC was a breach of the MRA confidentiality clause.

11 The application was first heard by an Assistant Registrar ("the AR") who allowed the application in part and ordered that WSG be at liberty to serve on Dorsey the interrogatories set out in Schedule 1 of Originating Summons No 839 of 2012, but refused to concurrently order discovery of certain documents that were also being sought.

12 Dorsey appealed against the decision of the AR to the High Court, but there was no cross appeal by WSG on the issue of discovery. The High Court judge ("the Judge") who heard the appeal ordered that WSG be at liberty to serve the interrogatories but limited the scope of interrogatories allowed. For convenience, we reproduce below the interrogatories allowed by the Judge:

1. State the names and last known addresses of the "sources close to the AFC" and "source" or "sources" referred to in your blog post titled "FIFA investigates: World Cup host Qatar in the hot seat" … (URL: http://mideastsoccer.blogspot.sg/2012/08/fifa-investigates-world-cup-host-

qatar.html)?

2. Is each of the "sources close to the AFC" or the "sources" an employee/officer/representative [of] the Asian Federation [sic] Confederation ("**AFC**")?

If yes:-

(a) What is his/her position?

If no:-,

(b) What is the relationship of each of the "sources close to the AFC" or "sources" to the AFC?

(c) Was any of them previously employed by or associated with AFC?

…

…

6. Are you or have you been in possession or custody of any agreement between World Sport Football Ltd ("WSF") and the AFC or World Sport Group Pte Ltd ("WSG") and the AFC?

6.1 If yes, did the source provide you a copy of any agreement/s between WSF and/or WSG and the AFC?

If yes:-

(a) Please state the date, time and place the source provided you a copy of any such agreement/s.

If no:-

(b) Did the source provide you part of any such agreement/s between WSF and/or WSG and the AFC?

If yes:-

(i) Please state the date, time and place the source provided you part of any such agreement/s.

[emphasis in original]

13 The Judge, however, did not order interrogatory 3, which Dorsey argued was significant. Interrogatory 3 read as follows:

3. Are you or have you been in possession or custody of a copy of the PwCAS Report dated 13 July 2012?

3.1 If yes, did the "*sources close to the AFC*" provide you with a copy of the PwCAS Report?

If yes:-

(a) When did the source/s provide you with a copy of the PwCAS Report, or any part of it?

(b) Did the source/s impose or notify you of any conditions of the use of the PwCAS Report?

If no:-

(c) How did you come into possession of the PwCAS Report?

3.2 If no, did the source/s provide you information about the PwCAS Report?

If yes:-

(a) Please state the exact information that was provided by the source/s to you.

(b) Please state whether the source imposed or notified you of any conditions of the use of information from the PwCAS Report.

(c) Please state the date, time and place such communication was made.

(d) Please state whether there were other third parties who were present at the time such communication was made.

(e) If such third parties were present, please indentify (sic) these parties.

The High Court decision

14 The Judge decided that Dorsey had to answer interrogatories 1, 2(a), 2(b), 2(c), 6 and 6.1, but allowed the appeal in respect of the rest of the interrogatories that the AR had ordered. Both interrogatories 1 and 2 dealt with the source's identity and relationship to AFC, whilst interrogatories 6 and 6.1 were directed towards ascertaining whether a copy of the MRA was given to the defendant and if so by whom.

15 She agreed that Dorsey's article contained statements that were, *prima facie*, defamatory of WSG. Thus, if those sources had indeed provided the PWC Report or information about the PWC Report to Dorsey, then those sources would, *prima facie*, have defamed WSG or assisted in the publication of defamatory statements. Accordingly, WSG on the face of it had a cause of action in defamation against those sources. The Judge also found that because of the confidentiality clause in the MRA, anybody who was employed by the AFC or had come to know about the MRA by reason of a connection with the AFC could possibly be liable to WSG for breach of confidence if such person had released information about it to Dorsey as he was not entitled to be given such information. Therefore, in order to sue such persons, WSG would have to know their identities.

16 WSG had not made its application frivolously or vexatiously, and had a valid reason for administering pre-action interrogatories to Dorsey. WSG, after all, wanted to know who the proper parties to sue were. If the source turned out not to be an individual, the defence of fair comment on a matter of public interest would not be available to the source, which would be available to an individual like Dorsey. If Dorsey was the only party sued and he succeeded in the defence of fair comment, WSG would be left without any remedy. The Judge noted that Dorsey had, in fact, indicated in a letter from his solicitors that the contents of his article (allegedly defamatory) were fair

comments. The fact that Dorsey might be liable for defamation was not a sufficient reason to allow him to protect his sources since pursuing a legal action against Dorsey alone might not be effective.

17 As the MRA was a confidential document, Dorsey, as a non-party, was not entitled to information on it. Hence, whoever gave him information about it was a possible wrongdoer, and WSG would be entitled to investigate and initiate action to determine if it had a legal remedy for the breach of confidence. WSG was entitled to know what connection the sources had to the AFC in order to determine if, and to what extent, the confidentiality of the MRA had been breached by the AFC or connected persons, and thereafter calibrate its future course of action – this would be addressed by interrogatories 2, 6 and 6.1.

18 The Judge found that Dorsey was not a journalist as he was employed by NTU as a Senior Fellow, and only blogged and tweeted for his own interests. Moreover, the newspaper rule did not apply in Singapore. Rather, a balancing of interests approach would apply instead. Applying that approach, given that the sources had *prima facie* breached their duties of confidentiality, *prima facie* it would not be correct to protect such breaches. This would outweigh the public interest in the free flow of information by preserving the confidentiality of sources.

19 Finally, the Judge was persuaded by WSG that given the present age of easy movement of persons between nations and the easier transmission of information across borders, the information was as likely to have been received in Singapore as anywhere else. Therefore the possibility that WSG had no cause of action in Singapore against anyone other than Dorsey (because the AFC is a Malaysian company) was purely speculative.

20 Dissatisfied with the Judge's decision, Dorsey appealed to this Court. WSG promptly responded by applying for an order that the Notice of Appeal be struck out on the ground that the Judge's order was not appealable to this Court by reason of s 34(1)(*a*) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA"), read with para (*i*) of the Fourth Schedule. This purportedly had the effect of excluding the right of appeal to this Court where a judge made an order "giving or refusing interrogatories". The application was dismissed by this Court on 25 February 2013. We affirmed that under the existing appeal scheme set out in the SCJA an application for leave to serve pre-action interrogatories was not an "interlocutory application" for the purposes of the SCJA (see *Dorsey James Michael v World Sport Group Pte Ltd* [2013] 3 SLR 354).

Issues before this Court

21 The following issues were placed before this Court:

(a) Did the Judge correctly order that interrogatories 1, 2(a), 2(b), 2(c), 6 and 6.1 be answered? The following sub-issues were raised by parties:

(i) the appropriateness of interrogatory 1;

(ii) the relevance of the Judge not ordering interrogatory 3 (see above at [13]);

(iii) whether the sources were *prima facie* liable for defamation;

(iv) whether the sources were *prima facie* in breach of an obligation of confidentiality; and

(v) whether disclosure should be ordered in the balance of interests;

(b) whether WSG had to show that the orders would be in aid of proceedings in Singapore.

Decision

Rationale of pre-action interrogatories

22 Not all these issues are crucial to the outcome of the appeal. Before we address the issues we consider relevant, an examination of the rationale underlying the making of pre-action interrogatories – and in general, pre-action disclosure – would be apposite, given the relative dearth of authorities on this peculiar aspect of procedure.

23 The pre-action interrogatory procedure is a unique procedural tool for the discovery of facts and evidence that is peculiar to Singapore; no other jurisdiction appears to expressly provide for a similar method of disclosure in its interlocutory toolkit. Rather, it is the pre-action interrogatories' better-known sibling, pre-action *discovery*, which is commonplace in many common law jurisdictions. Pre-action interrogatories were introduced in Singapore in 1993 *via* O 26A r 1 to give effect to para 12 of the First Schedule to the SCJA which states as follows:

> **Discovery and interrogatories**
>
> 12. Power before or after any proceedings are commenced to order discovery of facts or documents by any party to the proceedings or by any other person in such manner as may be prescribed by Rules of Court.

24 Originally this procedure was strictly limited to interrogatories administered to potential parties prior to the proceedings, and interrogatories administered to non-parties after the proceedings. However, the scope of pre-action interrogatories was expanded in 1999 when O 26A r 1(5) was enacted to allow interrogatories to be administered to persons not party to the proceedings before the commencement of proceedings as well. This new addition was intended to be the codification of the remedy set out in *Norwich Pharmacal Co and Others v Customs and Excise Commissioners* [1974] AC 133 ("*Norwich Pharmacal*") when ordering discovery or interrogatories against non-parties. There are now altogether three types of interrogatories that can be potentially made under this framework: (a) interrogatories *before* commencement of proceedings to potential *parties* of proceedings, as well as (b) *non-parties* to the proceedings (*ie*, *Norwich Pharmacal* type of disclosure), and (c) interrogatories *after* commencement of proceedings to *non-parties* of the proceedings. Order 26A r 1 of the ROC now reads as follows:

> **Interrogatories against other person (O. 26A, r. 1)**
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> **1.**—(1) An application for an order to administer interrogatories *before the commencement of proceedings* shall be made by originating summons and the person against whom the order is sought shall be made defendant to the originating summons.
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> (2) An application after the commencement of proceedings for an order to administer interrogatories to a person who is not a party to the proceedings shall be made by summons, which must be served on that person personally and on every party to the proceedings.
>
> (3) The originating summons under paragraph (1) or summons under paragraph (2) shall be supported by an affidavit which must —
>
> (a) in the case of an originating summons under paragraph (1), state the grounds for the

application, the material facts pertaining to the intended proceedings and *whether the person against whom the order is sought is likely to be party to subsequent proceedings in Court*; and

(b) in any case, specify the interrogatories to be administered and show, if practicable by reference to any pleading served or intended to be served in the proceedings that the answers to the interrogatories are relevant to an issue arising or likely to arise out of the claim made or likely to be made in the proceedings or the identity of the likely parties to the proceedings, or both.

(4) A copy of the supporting affidavit shall be served with the originating summons or summons on every person on whom the originating summons or summons is required to be served.

(5) An order to administer interrogatories before the commencement of proceedings or to administer interrogatories to a person who is *not a party to the proceedings* may be made by the Court *for the purpose of or with a view to identifying possible parties to any proceedings* in such circumstances where the *Court thinks it just* to make such an order, and on such terms as it thinks just.

[emphasis added]

25 Nevertheless, in spite of the singularity of the pre-action interrogatory scheme to Singapore, the principles underlying both pre-action discovery and pre-action interrogatories (both constituting what we shall henceforth refer to as "pre-action disclosure") remain broadly the *same*. It bears mention that the wording of O 26A r 1 and O 24 r 6 (which governs pre-action discovery) is largely similar. Order 24 r 6 reads as follows:

Discovery against other person (O. 24, r. 6)

6.—(1) An application for *an order for the discovery of documents before the commencement of proceedings* shall be made by originating summons and *the person against whom the order is sought shall be made defendant to the originating summons*.

(2) An application after the commencement of proceedings for an order for the discovery of documents by a person who is not a party to the proceedings shall be made by summons, which must be served on that person personally and on every party to the proceedings.

(3) An originating summons under paragraph (1) or a summons under paragraph (2) shall be supported by an affidavit which must —

(*a*) in the case of an originating summons under paragraph (1), state the grounds for the application, the material facts pertaining to the intended proceedings and whether the person against whom the order is sought is likely to be party to subsequent proceedings in Court;

(*b*) in any case, specify or describe the documents in respect of which the order is sought and show, if practicable by reference to any pleading served or intended to be served in the proceedings, that the documents are relevant to an issue arising or likely to arise out of the claim made or likely to be made in the proceedings or the identity of the likely parties to the proceedings, or both, and that the person against whom the order is sought is likely to have or have had them in his possession, custody or power.

(4) A copy of the supporting affidavit shall be served with the originating summons or summons on every person on whom the originating summons or summons is required to be served.

(5) An order for the discovery of documents before the commencement of proceedings or for the discovery of documents by a person who is not a party to the proceedings may be made by the Court for the purpose of or with a view to *identifying possible parties to any proceedings* in such circumstances where *the Court thinks it just to make such an order, and on such terms as it thinks just*.

[emphasis added]

26 Fundamentally, both forms of pre-action disclosure have the same objectives: the saving of costs and time, as well as the efficient management of court processes. Both procedures permit the making of orders to identify "possible parties to any proceedings in such circumstances where the Court thinks it just". Ultimately, if these forms of disclosure, at an early stage, reveal that a claimant's suspicions are actually unfounded, litigation will be avoided, and if so, there will be costs and time savings for all. Yet even if such disclosure shows that litigation cannot be avoided, it might also help to save time by identifying the real issues, whether existing or anticipated, thereby facilitating the future course of the litigation. On the other hand as a matter of principle, there are three counter-constraints: (a) the problem of 'fishing', that is, an applicant's 'roving' request for evidence to make out a contemplated claim which is wholly speculative; (b) non-parties' reasonable expectations in maintaining confidentiality and privacy (whether in respect of their own private information, or to satisfy duties of confidentiality owed to fourth parties); (c) the danger that *judicially administered orders* for pre-action disclosure can increase the expense of resolving disputes (see Neil Andrews, *Andrews on Civil Processes vol I Court Proceedings* (Intersentia Publishing Ltd, 2013) at p 264. The courts should not encourage satellite litigation on claims that have not and/or may not be commenced.

27 In *Kuah Kok Kim v Ernst & Young (a firm)* [1996] 3 SLR(R) 485 ("*Kuah Kok Kim*"), a case on pre-action discovery, this Court explained that its purpose is for a plaintiff who "does not yet know whether he has a viable claim against the defendant, and the rule is there to assist him in his search for the answer", but, significantly, this tool is also qualified with "safeguards specified in the rules … to ensure that the plaintiff is not allowed to take advantage of the rules merely to enable him to go on a fishing expedition" (at [31]). This objective was later affirmed by this Court in *Navigator Investment Services Ltd v Acclaim Insurance Brokers Pte Ltd* [2010] 1 SLR 25 where it was stated that "the grant of pre-action discovery and/or pre-action interrogatories … might assist the applicant to ascertain whether it had a viable claim against the respondent" (at [63]). Additionally, these procedures may also help claimants find out who the appropriate parties to sue are or whether they will even have any cause of action against them. The utility and benefits of this procedure, however, must be calibrated against the fact that pre-action disclosure of any sort is quintessentially intrusive in nature – especially when it involves individuals who may ultimately not (or cannot) be parties to the litigation. These non-parties, who may eventually be witnesses in the main proceedings, should not be unnecessarily inconvenienced, embarrassed or prejudiced by these disclosure requirements prematurely. An application has to be confined to what is strictly necessary for disposing fairly of the cause or matter or for saving costs in the pending or potential proceedings. Deep-sea fishing must be discouraged. Most crucially, in the final analysis, the making of any order must be "just" in all the circumstances.

Principles that govern discretion to order pre-action interrogatories

28 For pre-action interrogatories to be ordered against a non-party, the requirements of relevance (O 26A r 1(3)) and necessity (O 26A r 2) are crucial in assessing the justness of an application. Unfortunately, as mentioned above, there has hitherto been little guidance in terms of case law on what kinds of situations would warrant pre-action interrogatories. We will now examine the existing

local case law on O 26A (pre-action interrogatories) and O 24 r 6 (pre-action discovery), and consider the juridical undergirding of *Norwich Pharmacal* orders (which, as mentioned above, O 26A r 1(5) sought to codify) and the pre-action disclosure framework under the UK's Civil Procedure Rules ("CPR") before summarising the essential principles.

Pre-action interrogatories

29 One of the few reported instances where O 26A was successfully invoked was in *Foo Ko Hing v Foo Chee Heng* [2002] 1 SLR(R) 664, where the High Court ordered interrogatories under O 26A against a non-party as the plaintiff was able to show that the answers to those interrogatories would be absolutely crucial to the already *pending* proceedings. In this case, the claimant applied for leave to serve interrogatories on his former solicitor, Rey Foo, after the latter declined to reveal information on a "precedent agreement" between the plaintiff and defendant which was crucial in the dispute. Tay Yong Kwang JC (as he then was) made the following analysis (at [11]–[12]):

> I will deal first with the issue whether interrogatories ought to be ordered. Rey Foo was not willing to provide an affidavit of evidence-in-chief before the trial although he has consented to give oral testimony at the trial. *His answers to the interrogatories would clearly be crucial for an important issue in the proceedings* – the existence of the precedent agreement and, if there was one, the circumstances in which it came about. The plaintiff has *therefore satisfied the requirement of relevance specified in O 26A r 1(3)(b)*. Further, Rey Foo's evidence may *assist the plaintiff in deciding whether to add him or his firm as a party to the proceedings*, a purpose allowed under r 1(5) of the same Order. I emphasise here that I do not imply any wrongdoing on the part of Rey Foo or his firm.
>
> Rey Foo's evidence would also clarify the above-mentioned important issue before the trial. This would be beneficial to both parties as it would *help them prepare the case they have to meet* and *no one would be taken by surprise* by the solicitor's evidence. The present solicitors would probably need to ask the trial judge for time to take further instructions if Rey Foo were to proffer his evidence only at the trial. This would be obviated if the interrogatories were answered before the trial. The interrogatories should therefore result in a *fair disposal of the action* and would *save some costs for the parties*, factors the court should take into consideration pursuant to O 26A r 2. I therefore allowed the interrogatories to be administered. [emphasis added]

30 Tay JC determined that the purpose of the pre-action interrogatories was to allow the plaintiff to decide if he wanted to add Rey Foo and/or his firm as a party. The making of the orders would help the *existing parties* "prepare the case they have to meet" in the already *pending* proceedings. As such, Tay JC found that the clarification afforded by the interrogatories would help parties to prepare the case they have to meet, prevent surprises as well as facilitate costs savings and a fair disposal of the action.

31 In another decision, although pre-action interrogatories were neither applied for nor granted, the High Court in *Tan Seow Cheng v Oversea-Chinese Banking Corp Ltd* [2003] SGHC 30 ("*Tan Seow Cheng*") observed that the plaintiff should have first obtained pre-action interrogatories from one Mr Cheong (a non-party). There the plaintiff had allegedly been defamed by someone in the defendant bank, but was unsure as to the exact identity of that person. Woo Bih Li J made the following observations (at [10]):

> It seemed to me that Mr Tan was *ill-prepared to mount his claim*. He could and should have first obtained the necessary particulars from Mr Cheong. If Mr Cheong was not prepared to co-operate, he could and should have obtained the particulars through O 26A of the Rules of Court

> regarding pre-action interrogatories. If Mr Tan was concerned about antagonising Mr Cheong, then Mr Tan should *re-consider whether to pursue his claim*. Instead, Mr Tan initiated his action in the hope of muddling along till he reached the trial stage. However, OCBC was not obliged to go with him along this unsatisfactory route. Furthermore, *when faced with OCBC's request for particulars, Mr Tan could and should have immediately taken steps under O 26A* or withdraw his claim till he was better prepared. However, he did not take either step. [emphasis added]

32 Plainly, as the above observations suggest, one of the main purposes of the pre-action interrogatories procedure is to help save unnecessary costs and avoid needless claims in relation to actual or anticipated proceedings in Singapore. In fact there may even be occasions where, as was the case in *Tan Seow Cheng*, it can be said to be almost incumbent upon potential litigants to take out pre-action interrogatories to clarify certain issues, as opposed to being "ill-prepared to mount" their claims, casting their nets so wide to implicate parties who should never have been subjected to the processes of litigation. That said, we should point out that the observations in both the above cases were made in the context of obtaining pre-action interrogatories where proceedings were already pending.

Pre-action discovery

33 As noted earlier, the wording of O 26A and O 24 r 6 are almost identical, apart from the specific terms relating to the nature of interrogatories and discovery, and the prescribed test in both instances is that of justness underpinned by "necessity" (see O 26A r 2 and O 24 r 7). As such, the principles which have been applied in pre-action discovery cases have relevance for pre-action interrogatories.

34 The standard as to what claimants are expected to set out in making an application for pre-action discovery has not been overly stringent. In *Kuah Kok Kim*, the leading case on O 24 r 6, this Court held that a claimant need only set out "the substance of his claim to enable a potential defendant to know what the essence of the complaint against him is" even if "the plaintiff does not yet know whether he has a viable claim against the defendant" as "the rule is there to assist him in his search for the answer" (at [31]). Hence, disclosure was granted as the claimants were able to "show that they *may have a cause of action* and that the documents were *likely to be relevant to an issue* pertaining to the cause of action" [emphasis added] (at [40]).

35 In *Bayerische Hypo- und Vereinsbank AG v Asia Pacific Breweries (Singapore) Pte Ltd and other applications* [2004] 4 SLR(R) 39 ("*Bayerische*"), Belinda Ang J cautioned that pre-action discovery is only for "an applicant who is unable to plead a case as he does not yet know whether he has a viable claim against the opponents, and needs pre-action discovery to fill the void or gaps in his knowledge" (at [25]). However, she also noted that such applications cannot be "frivolous or speculative" and the applicant cannot be "on a fishing expedition" (at [4]). Subsequently, in *Asta Rickmers Schiffahrtsgesellschaft mbH & Cie KG v Hub Marine Pte Ltd* [2006] 1 SLR(R) 283 Tay Yong Kwang J found that on the established facts pre-action discovery would "necessarily save costs". His reasons were that if on one hand, the plaintiff's belief turned out "to be unfounded after perusing the relevant documents", litigation would be avoided; yet if on the other, the documents "reveal otherwise, the ends of justice would be served." Tay J concluded that the "incursion into the documentary domain of the defendant" was "amply justified in the circumstances" (at [44]).

36 Yet, even if pre-action discovery can be ordered for the purposes of allowing a claimant to ascertain the viability of his claim, Kan Ting Chiu J rightly cautioned in *Ng Giok Oh and others v Sajjad Akhtar and others* [2003] 1 SLR(R) 375 that pre-action discovery was "not an instrument for private detectives snooping for action" (at [7]). In that case the claimants were denied discovery for the

purpose of uncovering *further* causes of action against certain assessors. The decision suggests that where claimants are already able to commence proceedings in respect of a cause of action, they ordinarily ought not to be allowed to obtain pre-action discovery with respect to other potential claims. This is a fine balance that the courts have to draw, and is particularly significant in our present case (see [62], [71]–[72] below).

Norwich Pharmacal orders

37 Order 26A r 1(5) was intended to be a codification of the principles set out in *Norwich Pharmacal* (Singapore Court Practice 2009 (Jeffrey Pinsler SC gen ed) (LexisNexis, 2009) at para 26A/1/2). The *Norwich Pharmacal* decision was highly significant as it revived an antiquated action for discovery which had been long thought dead, ever since the enactment of the Judicature Act 1873 in England. Under orders for pre-action discovery made pursuant to this decision (henceforth termed "*Norwich Pharmacal* orders"), a claimant may seek information for the purpose of identifying person(s) who are potentially liable to him. Lord Reid explained the principle, albeit in the context of discovery as opposed to interrogatories, as follows (at 174):

> Here *if the information in the possession of the respondents cannot be made available by discovery now*, ***no action can ever be begun*** *because the appellants do not know who are the wrongdoers who have infringed their patent*. So the appellants can never get the information. [emphasis added in italics and bold italics]

38 The decision affirmed the general position that there is ordinarily no action for discovery against a person against whom no reasonable cause of action exists, or who is in the position of being a mere witness. However, the facts of that case suggest that exceptions might exist. There the appellants had owned a patent for a chemical compound but did not know the identity of the wrongdoers who were infringing the patent by illicitly importing the compound from abroad. The respondent (the Customs & Excise), however, did have this information of who these wrongdoers were and had, by allowing the movement of the goods in port so that they could be received by consignees, actually "facilitated" the wrongdoing. As a consequence, discovery was ordered against the respondent. Since the decision, the *Norwich Pharmacal* order has been used more frequently, amassing a considerable amount of case law. The following general rule as set out in David Fletcher Rogers, *Pre-Action Discovery* (Sweet & Maxwell, 1991) at p 33 is helpful in setting out the scope and purpose of such an order:

> In accordance with the rules in *Norwich Pharmacal*, an action for discovery will be maintained and discovery granted against non-parties to the substantive action where the person against whom discovery of information is sought had himself, albeit innocently, been *involved* in the wrongful acts of another so as to *facilitate the wrongdoing*. [emphasis added]

(1) Facilitation of wrongdoing

39 Significantly, the person possessing the information must have been involved in the wrongdoing, like the respondent in *Norwich Pharmacal*. This presupposes some degree of actual involvement, even if the involvement is completely innocent, although later cases show that the person with the information need not have caused the wrongdoing, or even have had knowledge of the wrongdoing (*R (Mohamed) v Secretary of State for Foreign and Commonwealth Affairs (No 1)* [2008] EWHC 2048 (Admin); [2009] 1 WLR 2579 at [69]–[71]).

(2) Requirement of "real interest" in ascertaining a "source"

40 It was later declared in the seminal decision of *British Steel Corporation v Granada Television Ltd* [1981] AC 1096 ("*British Steel*") by Lord Wilberforce that in compelling disclosure of sources "it is only **exceptionally** that the aggrieved person would have, and could demonstrate*, a real interest in suing the source*" [emphasis added in bold and in italics] (at 1173F). In that case British Steel Corp successfully commenced an action against Granada Television for the disclosure of the name of the British Steel employee who passed confidential information to the television company. This was after British Steel Corp obtained a partial return of mutilated documents from Granada. There was nothing more that it could obtain from Granada and its only real remedy for its unsatisfied claim for breach of confidence was against the unidentified source of the documents. Lord Wilberforce emphasised that the present case was "exceptional" and "would not open floodgates to actions against newspapers … still less stifle investigation" (at 1173G), before making the following observations (at 1173B–1174A):

> *This is not an action for libel or slander, it is based on breach of confidence.* The argument that a plaintiff by proceeding to trial against the defaming newspaper is likely to get all the relief he needs, and therefore does not need to sue the source, cannot be transferred to breach of confidence cases. … *And if the test is to see whether, at the trial, the plaintiff has got, against the newspaper, all that he may reasonably require and, only if he has not, to force disclosure so that he may sue the source, this test is certainly satisfied.* … There is nothing more to be obtained against Granada. But the plaintiffs still have a real unsatisfied claim against the source, to deprive them of which will require justification.
>
> … *To succeed in proceedings aimed at compelling disclosure the plaintiff will always have to satisfy the court that he has* ***a real grievance, even after suing the newspaper, which, in the interest of justice, he ought to be allowed to pursue*** *, and that this ought, in the particular case, to* ***outweigh whatever public interest there may be in preserving the confidence*** **.** It is possible that, if the plaintiff succeeds here, fewer "leaks" will occur, though that must be speculation. But I do not think that judicially we are able to place a value on this. "Leaks" may vary all the way from mere gossip or scandal to matters of national or international importance. *A general proposition that leaks should be encouraged, or at least not discouraged, cannot be made without weighing the detriments in loss of mutual confidence and cooperation which they involve*. ***The public interest involved in individual leaks can be taken account of and weighed by the court in deciding whether to grant the remedy in a particular case*** **.**
>
> [emphasis added in italics and bold italics]

41 The balancing approach, as advocated by Lord Wilberforce above, thus pits the existence of a "real grievance" which an applicant should be allowed to pursue against "whatever public interest" there may be in preserving the confidence in relation to the identity of the source. The jurisdiction afforded by *Norwich Pharmacal* orders is a flexible one and involves a "careful and fair weighing of all relevant factors" *(The Rugby Football Union v Consolidated Information Systems Ltd (formerly Viagogo Ltd)* [2013] FSR 23 at [17]). Some of the factors that have been identified as relevant include the public interest in allowing applicants to vindicate their legal rights (*British Steel* at 1175), the strength of the possible cause of action contemplated by the applicant (*Clift v Clarke* [2011] EWHC 1164 (QB) at [38]), whether it is a "necessary and proportionate response in all the circumstances" (*Ashworth Hospital Authority v MGN Ltd* [2002] 1 WLR 2033 ("*Ashworth*") at [36]), whether the information could be obtained from another source (*Norwich Pharmacal* at 199), the degree of confidentiality of the information sought (*Norwich Pharmacal* at 190) and whether it will deter similar future wrongdoing (*Ashworth* at [66]).

42 More significantly, for the purposes of this present appeal, Lord Wilberforce's emphasis on the existence of a "real grievance" which must still be there "even after suing the newspaper" is

pertinent, as WSG makes a similar argument that it would still have a real grievance to sue the sources, even after suing Dorsey. This is discussed further below (at [56]–[60]). In *British Steel*, the "real grievance" being the breach of confidence in the passing of the confidential information by Granada's employee, British Steel Corp would not have access to all the relief needed if they had been limited to suing the newspaper and journalist alone (as opposed to if the "real grievance" were libel or slander); quite clearly it was the "source" who was in serious breach of those obligations, and not the newspaper and journalist. This in turn raises the practical issue of how clear or obvious it should be that the "source" had committed some wrongdoing before the disclosure would be granted, *ie*, to what extent must the basis for the alleged impropriety by the ultimate wrongdoer be shown? In essence this is a question of what the required standard of proof is for showing that a wrong has been carried out, or at least arguably carried out, by the wrongdoer (whom information is being sought *of*, not *from*) should be. This was discussed briefly in *United Company Rusal Plc v HSBC Bank Plc* [2011] EWHC 404 (QB) (at [50]–[52]) as follows:

> There is no dispute that the standard of proof which an applicant must attain before a *Norwich Pharmacal* order may be granted is that he has *at least an arguable case* …
>
> …
>
> *Norwich Pharmacal* applications are one of a number of different types of applications which require the court to be satisfied as to matters which will never be the subject of a final determination at a trial before the court considering this application. In this case such questions include whether there has been wrongdoing, and if so whether the respondent has facilitated it. So an order may be made on a factual basis that will never be determined, and may therefore be mistaken. A similar risk has long been recognised as inherent in applications for permission to serve proceedings out of the jurisdiction, and it is inherent in some decisions made under the Civil Jurisdiction and Judgments Act. The standard for such cases is generally that of *a good arguable case*.
>
> In that context, in the case of *Bols Distilleries BV v Superior Yacht Services Ltd* [2007] 1 WLR 12 the Privy Council summarised the test at para [28] as requiring the court to be as satisfied as it can be, having regard to the limitations which an interlocutory process imposes, that ***factors exist which allow the court to take jurisdiction*** , or that ***the applicant has a much better argument than the defendant*** . That test is appropriate in *Norwich Pharmacal* applications.
>
> [emphasis in bold italics]

43 Similarly, in Paul Matthews and Hodge M Malek QC, *Disclosure* (Thomson Reuters (Legal) Limited, 4th Ed, 2012) ("*Matthews and Malek*") at para 3.06, it is stated that "[i]t is not necessary for the claimant to establish that there has *in fact* been a wrong, although there must be at least *some reasonable basis* for contending that a wrong may have been committed" [emphasis added]. In our view, having a "good arguable case" and "at least some reasonable basis" means not having to enter into speculative territory – there is a difference between trying to identify the wrongdoer and/or his role in the wrongdoing, and attempting to determine whether there has been *any* wrongdoing at all. This has generally been applied in cases involving *Norwich Pharmacal* orders, with the exception of the "truly exceptional case" *P v T* [1997] 1 WLR 1309 ("*P v T*") (Charles Hollander QC, *Documentary Evidence* (Sweet & Maxwell, 11th Ed, 2012) at para 4-11). In that case, the plaintiff had been dismissed without being told about the nature of the allegations made against him by an unidentified person. As such, even though he was given the opportunity to make representations at his disciplinary hearing and its appeal, it was akin to shadow boxing against the unknown. This had severely affected his re-employment prospects as he could not give information

about the cause of his dismissal for gross misconduct. Yet, he was faced with the problem of not being able to show that the informant had indeed committed a tort, a requirement for obtaining a *Norwich Pharmacal* order. Richard Scott V-C acknowledged that the requirement of making out a seriously arguable case that a tort had been committed had not been established, but at the same time also recognised that this case was unique in its circumstances (at 1318C):

> In that respect [in that it was not possible for the plaintiff to know for certain whether he did or did not have a viable cause of action against the informant] his position is not the same as that of the plaintiff in the *Norwich Pharmacal* case [1974] A.C. 133. In the *Norwich Pharmacal* case the plaintiff was able to demonstrate that tortious infringements of patent rights were being committed. It did not know by whom. It did not know whom to sue. ***But that there was tortious conduct against it was not in question*** . ***In the present case it is in question whether a tort has been committed against the plaintiff.*** He believes that it has. The purpose of any order I make, as I suppose of any order that a judge ever makes, is to try to ***enable justice*** to be done. It seems to me that in the circumstances of the present case justice demands that the plaintiff should be placed in a position to clear his name if the allegations made against him are without foundation. It seems to me intolerable that an individual in his position should be stained by serious allegations, the content of which he has no means of discovering and which he has no means of meeting otherwise than with the assistance of an order of discovery such as he seeks from me. [emphasis added in bold italics]

44 Plainly, the demands of justice paved the way for an exception to be made on the truly exceptional facts of *P v T*. However, ordinarily the claimant must be able to show a reasonable *prima facie* case of wrongdoing against the person(s) whom information/ identity is sought *of* (not *from*).

(3) Necessary, just and convenient

45 A critical requirement for obtaining a *Norwich Pharmacal* order is that claimants have to show that the disclosure sought is necessary to enable him to take action, or at least that it is just and convenient in the interests of justice to make the order sought (see *President of the State of Equatorial Guinea v RBS International* [2006] UKPC 7). In other words, the information sought must be shown to be *necessary* "for the purposes of the claimant asserting his legal rights" (*Matthews and Malek* at para 3.09). Yet another significant element in this requirement is the consideration of whether there exists an *alternative and more appropriate* method to obtain the information sought. In addition, there is the consideration of proportionality, where the court always maintains a residual discretion as to whether the order should be made in all the circumstances.

English decisions on pre-action disclosure

46 In the UK, case law under CPR r 31.16 (the provision which governs pre-action disclosure from the potential or intended defendant himself, which is distinct from the *Norwich Pharmacal* order which usually involves disclosure from third parties) suggest that the court must be satisfied on two questions: whether there is a good arguable case on the material before it at the time of application, and whether the court considers that there would be a good arguable case if the disclosure was provided (see *Alan Kneale v Barclays Bank Plc (trading as Barclaycard)* [2010] EWHC 1900 (Comm)). To date, the threshold seems to be one where disclosure will not be granted where the court would deem a case to be "over-speculative" (see *Anglo Irish Bank Corporation PLC v West LB AG* [2009] EWHC 207 (Comm); although in *XL London Market Ltd v Zenith Syndicate Management Ltd* [2004] EWHC 1182 (Comm) disclosure was granted even though claimants accepted they did not know what had gone wrong, could not make any specific allegations of negligence and did not want to sue come what may).

Summary of the principles

47 As such, beyond the obvious threshold of relevance, it is clear that *necessity* (as set out in O 26A r 2) remains the main cornerstone in determining whether pre-action interrogatories will be ordered: are the pre-action interrogatories applied for necessary for the claimant to ascertain if his cause of action is *viable*? The jurisdiction by its very nature requires the court to acknowledge that some measure of imprecision in mapping out factual contours is permissible. Yet, at the same time it must be borne in mind that this jurisdiction cannot be overstretched to allow claimants to sniff around for potential causes of action which are still at an amorphous, undefined stage. Nor can the procedure be employed for collateral reasons that suggest the commencement of proceedings is not the key consideration that underpins the relevant application. As much as O 26A r 1(3)(*b*) states that reference to "any pleading served or intended to be served in the proceedings" should be made only "if practicable", we would only make the obvious observation that the clearer the cause of action that a claimant is able to put before the court, the easier it is to ascertain the relevance and necessity of the pre-action interrogatories to those proceedings. In other words, the claimant's "real interest" (*per* Lord Wilberforce in *British Steel* at 1173F) in suing the parties on whom information is sought about must be made apparent to the court, and is always a highly relevant consideration.

48 Additionally, other facets of necessity such as notions of proportionality, the availability of alternative avenues to obtain the information and how intrusive those interrogatories are would naturally be taken into consideration as well. A significant consideration against the making of an order is that the applicant can, at the time of the making of the application, immediately commence proceedings against an identified party in relation to the controversy at hand without the disclosure sought. If the applicant already has a complete cause of action against an identified party, orders should not be made with alacrity, as pre-action disclosure is then not necessary.

49 Pre-action disclosure, while not exceptional, is not usual. A court should not make an order if it has not been provided with sufficient information to adequately assess the necessity of disclosure. Reasons ought to be given why it is neither convenient nor just for that information to be sought after proceedings have been commenced against an already identifiable party. Ordinarily, the court is always placed in a better position in matters where proceedings have already commenced as it can then additionally examine the pleadings of all the parties to assess the merits of an application. This is why the granting of interrogatories after the commencement of proceedings is the norm. Further, where there are serious allegations of wrongdoing which will attract public interest considerations, a very careful assessment must be made about the appropriateness of this intrusive procedure.

50 In its final analysis, the court ought to take a multi-factorial view and question whether it is just (as well as necessary) for the applicant to secure the information sought even before any proceedings are commenced. In general, the applicant must show that the circumstances are such that the case differs from the normal. The requirement of necessity imported by O26A r 2 to be established before an order is made suggests that the application must be made for proper reasons of process. Indubitably, the procedure is not meant to be employed as an instrument to embarrass and/or oppress others.

Should the interrogatories in this matter been granted?

51 Before we address the question of whether the interrogatories in this case should be granted at this juncture, we are constrained to observe that: (a) *what* WSG's claim was; and precisely (b) against *who* WSG was making those claims were unclear. WSG's submissions confounded the potential actions against both Dorsey and the sources, and brought very little clarity as to what it was ultimately trying to achieve other than to ascertain the identity of the "source(s)". As far as we

can discern, the potential *claims* anticipated by WSG through the application for these pre-action interrogatories can be summed up in the following table:

Potential claims as against/ cause of action	**Defamation**	**Breach of confidentiality**
Dorsey	·Dorsey made comments defamatory of WSG on his blog posts	·Unclear what breach of confidentiality Dorsey could have committed; possibly breach of *equitable* duty of confidence by knowingly disclosing information which he knows to be confidential.
Sources	·The sources facilitated Dorsey's defamation by supplying him with material to make those statements/ defamatory statements. ·The sources published defamatory material contained in the PWC Report to Dorsey and possibly third parties. ·Unclear where this might have taken place as no assertions were made.	·Breached duty of confidentiality by providing the two confidential documents, the PWC Report and/or the MRA, to third parties, including Dorsey. ·Unclear where this might have taken place as no assertions were made.

52 As can be seen, there are two separate alleged wrongdoings which occurred at different times: Dorsey publishing defamatory remarks, as well as the sources publishing the contents of the PWC Report and/or the MRA to Dorsey and to third parties. The former relates to claims against Dorsey himself, whereas the latter relates to claims against the sources.

Cause of action against sources

53 It appears to us that WSG is far more serious about pursuing its claims of defamation and breach of confidentiality against the sources, as opposed to Dorsey. Stephanie McManus ("McManus"), WSG's Group Legal Advisor and Senior Vice President, categorically states in her first affidavit the intention of WSG as follows: [note: 8]

> WSG contemplates the commencement of proceedings against:-
>
> (a) any party whom the interrogatories show had provided a copy of the Report to *any third party* in breach of confidentiality and/or had published defamatory material contained in the Report to any other party by providing a copy of the whole or any part of the Report to any person; and
>
> (b) any party whom the interrogatories show provided confidential information *to [Dorsey]* pertaining to a confidential agreement between the AFC and WSG.
>
> [emphasis added]

54 From the above, it is clear that WSG's concerns in relation to the PWC Report are about its dissemination to *any third party*, including Dorsey, whereas WSG's concerns in relation to the MRA are

about its contents being revealed to Dorsey alone. Yet even in relation to the latter, WSG is presumably so greatly concerned with the sources which provided the PWC Report to Dorsey only because "[t]here are reasonable grounds to believe that the source/s may have also been responsible for disseminating the Report to *other third parties*, including the media organizations." [note: 9] WSG's main "target", for want of a better word, thus appears to be person(s) behind the worldwide leakage to the international media, as opposed to Dorsey himself. In fact, McManus stated the purpose of identifying the sources plainly as follows: [note: 10]

> Therefore, the disclosure of [Dorsey's] source/s would assist to identify:-
>
> (a) The person(s) that may have leaked the Report to the media;
>
> (b) Whether the said person or persons had acted on his/ their own volition or was/were acting on behalf of any other organization/s or person/s
>
> (c) The persons(s) (sic) that may have disclosed information relating to the Agreement and its commercial terms to third parties without the prior consent of WSG.
>
> In the circumstances, the interrogatories would enable WSG to identify likely parties to proceedings to be commenced by WSG for breach of confidentiality and/or defamation.

55 On the issue of whether there were even any potential causes of action against the sources, the Judge found that WSG did have a *prima facie* cause of action in defamation against the sources, "[i]f in fact such sources had provided the Report or information about the Report to [Dorsey]" as they would have "defamed the [WSG] or assisted in the publication of defamatory statements" (GD at [25]). She also found that WSG had a *prima facie* cause of action in breach of confidence against the sources which "might have provided a copy of the MRA or information about it" to Dorsey at [26]. However, the discretion to order pre-action interrogatories should not be limited to a purely analytical consideration of how viable the alleged causes of action are. While this is of course an important consideration, the court also needs to be satisfied that it would be just in *all the circumstances* to make an order for a non-party to the potential causes of action against the sources (in this case, Dorsey) to answer *pre-action* interrogatories.

56 On this point, WSG cites the High Court of Australia case *John Fairfax & Sons Ltd v Cojuangco* (1988) 165 CLR 346 ("*Fairfax*") in order to fortify its stance that it should be permitted to pursue their grievances against the sources even *after* suing Dorsey. In relation to an application made against the newspaper that published the alleged defamatory comments the High Court observed (at [23]):

> Where an applicant complains of a defamatory publication in a newspaper a court will refuse an order for preliminary discovery if it appears that *the applicant has an effective remedy against the newspaper or journalist without the necessity for making such an order*. But where, as here, it appears that the newspaper and the journalist may well plead statutory qualified privilege under s. 22 of the Defamation Act, a judge is entitled to exercise his judicial discretion in favour of making the order sought *if the newspaper and the journalist do not relinquish that defence* and the judge *considers that the defence might well prevail*. *In this respect we agree with Mahoney J.A. that Hunt J.'s reference to "the likelihood of a successful defence" was susceptible of misunderstanding but that in its context the reference should be read as a statement that the defence was open to be pleaded and might well succeed.* So understood, his Honour's statement was in our opinion correct. No doubt if the matter went to trial the success of the defence might well turn on Mr Hastings giving evidence. But it is not profitable to speculate on that possibility. [emphasis added]

57 This in turn appears to have formed the basis of the Judge's conclusion that "the fact that [Dorsey] might be liable for defamation was not a sufficient reason to allow him to protect his sources since pursuing a legal action against [Dorsey] alone might not be effective" since Dorsey had already indicated *via* his solicitor's letter that he would be relying on the defence of fair comment (GD at [28]). We agree with the Judge's conclusion on this narrow point with the qualification that this passage only suggests that the availability of Dorsey's potential defence is *merely a factor* which should be taken into consideration. We note also that in *Fairfax* (unlike the present matter) it was common ground that the applicant had made reasonable enquiries to ascertain the identity of the source before making the application and that the source was legally liable in New South Wales for giving the published information. Crucially, *Fairfax* also differs from the present matter in another significant aspect: in *Fairfax* what the newspapers and the journalist could have pleaded under s 22 of the Defamation Act 1974 (NSW) was a form of *privilege*, which is quite different in nature from Dorsey's possible *defence of fair comment*. The former, if successfully applied, would effectively operate as an absolute "curtain" shielding the party from liability absent malice, and would not necessitate an examination of the actual *merits* of the case. This is distinct from the operation of a substantive defence, such as the defence of fair comment in defamation cases, where there would have to be a careful assessment of the merits of the case before it can be successfully invoked.

58 Moreover in *Fairfax*, the appellant had all but conceded that the defence of qualified privilege under s 22 would apply, whilst in the present matter the possible defence of fair comment was but mentioned in a letter from Dorsey's solicitors. Here, WSG has not acknowledged that the defence of fair comment is likely to succeed. In response to the submission that it was inappropriate for the court to engage in speculation on the prospects of a successful defence under s 22, the court in *Fairfax* observed that what was necessary for them to consider was whether the applicant would have been left without an *effective remedy* if an order was not made (at [24]):

> [T]he judge is not called upon to decide whether the statutory defence will succeed; it is for him to form a conclusion that the defence *might well succeed on the materials before him.* [emphasis added]

59 We are simply not satisfied that WSG would be left without an effective remedy if the interrogatories are not ordered at this stage. The materials before us are less than scant on the matter of Dorsey's potential success with running a defence of fair comment, and in any event it would be far too premature to assess these matters at this pre-trial stage. As such for all of the above reasons, contrary to what the Judge thought, *Fairfax* does not really assist WSG.

60 Put in perspective, the entire issue of whether WSG would be denied justice (if its legal action is limited only to Dorsey) ultimately relates to the fundamental question of whether WSG can sufficiently show that it has a "real interest" in commencing proceedings against sources, and whether on the balance of interests, those pre-action interrogatories would be necessary to that end at this point of time. There is no doubt that the prospect of a "significant denial of justice" (*British Steel* at 1175B) would be such a factor in the balancing exercise; but it is nonetheless *only* a *factor*, not a decisive consideration. However, there is no issue presently arising in relation to any limitation period precluding a cause of action against the sources if the action against Dorsey on either or both causes of action prove(s) unsuccessful. In addition to that, whether the justice lies in allowing the pre-action interrogatories to be ordered for the purposes of pursuing those causes of action would also depend largely on the *circumstances* colouring those causes of action which – as we will now explain – in this present case did not warrant the exercise of the High Court's jurisdiction to order pre-action interrogatories.

(1) Information already in public domain

61 From the outset, WSG asserted that the PWC Report had been disseminated to "various media organizations by an unknown entity or person(s)" [note: 11]. In her affidavit, [note: 12] McManus even identified various media organisations worldwide, such as news.com.au, SaudiGazette.com, Daily Reporter, The Republic, The National, SI.com, Al Jazeera, Greenwich Time and the San Francisco Chronicle which had referred to the PWC Report extensively in their articles by early August 2012. [note: 13] Axiomatically, such extensive media coverage would mean that the PWC Report – or at least, sizeable reproductions of certain parts of its contents – would have already been in the international public domain even *before* Dorsey had published his 28 August 2012 blog post (which, as explained above at [7], was the only material one among his blog posts).

62 In our opinion the level of exposure that the PWC Report had been given in the international press and the fact that there was no credible evidence that WSG had been singled out for mention by the international media or Dorsey casts some doubt over the "real interest" that WSG has in needing to identify these "sources" so as to commence legal proceedings against such sources. Further, there is no evidence that either Dorsey or the source(s) were motivated by malice or ill feeling against WSG. These facts must be taken into consideration in weighing the scales of competing interests in assessing whether the pre-action interrogatories should be ordered. If Dorsey was not the only person who was privy to the PWC Report, it is curious why WSG should be focussing on Dorsey alone, and in particular, Dorsey's sources when in fact there were other extensive communications with the international media. Whilst we need not go so far as to agree with Dorsey's suggestion that this application for pre-action interrogatories has been launched for an ulterior, collateral purpose to flush out and punish the source(s), we are minded to observe that it seems odd that WSG should claim that their reputation had been severely damaged and yet not act *immediately* to clear their name by suing Dorsey directly even while attempting to ascertain the sources. We shall discuss the significance of WSG's failure to do so further, below (at [71]–[72]).

63 We now pause to draw some general parallels between the matter at hand and the law of confidentiality where information enters into the public domain and ceases to be confidential. This is relevant as WSG has referred to a potential claim for breach of confidence against the sources. In the landmark case of *Attorney General v Observer Ltd and Others* [1990] 1 AC 109 ("the *Spycatcher* case"), the House of Lords upheld the Court of Appeal's decision that there was no purpose in maintaining an injunction against further distribution of "Spycatcher", a book written by an ex-MI5 agent describing his work, due to its extensive publication abroad and the availability of copies in the UK. Lord Goff outlined the limits to the equitable duty of confidentiality in as follows (at 282C):

> The first limiting principle (which is rather an expression of the scope of the duty) is … that the principle of confidentiality only applies to information to the extent that it is confidential. In particular, *once it has entered what is usually called the public domain* (which means no more than that the information in question is so generally accessible that, in all the circumstances, it cannot be regarded as confidential) then, as a general rule, *the principle of confidentiality can have no application to it*. [emphasis added]

64 Dhillon LJ also remarked, in the Court of Appeal, that it would be "futile and just plain silly" (at 205) to decide otherwise, given the widespread availability and ease of importation of "Spycatcher". As astutely summed up in R G Toulson and C M Phipps, *Confidentiality* (Sweet & Maxwell, 3rd Ed, 2012) at para 3-112:

> [T]he law of confidentiality is … designed to protect secrecy. The essence of a secret is that it is

not publicly known. If information is known to the public at large, it would be idle (both in the sense of unreal and in the sense of purposeless) to seek to regard it as confidential.

65 In our view, the futility of ordering an injunction against dissemination of information in the public domain as in the *Spycatcher* case can be loosely analogised to the facts of this case (although not to be confused with the alleged breach of confidence causes of action that WSG raises): prior to Dorsey's offending blog posts, the bulk of the damage, *ie*, the PWC Report and its contents getting leaked to the international media (which is what WSG appears to really be concerned about) would have already been done. Since that is the case, and Dorsey's blog was but one of the *many* outlets of this information, WSG has to at least explain why, despite the information having been leaked to so many other media outlets, this particular leakage of information to *Dorsey alone* remains the only subject of their legal action anywhere. What about all the other international media that covered this scandal? WSG has simply failed to address this curious state of affairs. Further, there is absolutely no indication that WSG has taken any other steps to find out the identity of the source(s). This invites further vexing questions as to WSG's reasons for seeking Dorsey's source even before initiating proceedings to clear its name.

(2) Connection to Singapore unclear

66 Quite apart from the fact that the sources' leakage to Dorsey may be just one of *many* wrongdoings committed by various sources and involving various media outlets, it is not even clear that the *one* particular leakage of information to Dorsey (giving rise to the alleged defamation and/or breach of confidence) even occurred in Singapore at all. In so far as WSG limits their cause of action to Dorsey's defamatory remarks on his blog posts alone, there is no issue with seeing a clear nexus with Singapore, as Dorsey resides in Singapore and blogged from Singapore. This has not been disputed. However, the same cannot be said of the sources' wrongdoing in leaking the information to Dorsey. In this respect, our opinion departs from the Judge's, who was persuaded by WSG that the possibility that there was no cause of action in Singapore against anyone other than Dorsey was mere "speculation" for the following reason (GD at [34]):

> In the present age of easy movement of persons between nations and the easier transmission of information across borders, the information was as likely to have been received in Singapore as anywhere else.

67 Conversely, the fact that there was not a scintilla of evidence which suggested that Dorsey had even obtained the information in Singapore at all is we think even more significant as both the legal and evidential burdens are on WSG to persuade the court that it has a potential cause of action against the sources in Singapore. Considering that pre-action interrogatories are fairly robust and intrusive procedural tools which are not to be employed unless just circumstances exist, the discretion to grant them must be carefully exercised. For the sake of illustration, the facts of *Norwich Pharmacal* are instructive on this point. There it was clear that the patent infringer was from the UK, and the only outstanding question was the identity of that person; absent the information on who that person was, the plaintiff was unable to sue anyone. This is quite different from the present case where it is far from clear what the connection between the alleged wrongdoing and Singapore is (apart from Dorsey being resident here).

68 Pre-action interrogatories can only be ordered in relation to intended proceedings in a Singapore court. The High Court's jurisdiction to order interrogatories is derived from s 18(2) of the SCJA which states that the High Court shall have the powers set out in the First Schedule to the SCJA. Para 12 of the First Schedule, once again, reads as follows:

> Power before or after any *proceedings* are commenced to order discovery of facts or documents by any party to the *proceedings* or by any other person in such manner as may be prescribed by Rules of Court. [emphasis added]

69 The term "proceedings" as used in para 12 of the First Schedule must refer to proceedings before the Singapore courts. Pertinently, O 26A r 1(3) requires that the material facts pertaining to the intended proceedings and *whether the person against whom the order is sought is likely to be party to subsequent proceedings in Court* be explicitly stated. As such, considering WSG's vague allegations of Dorsey's wrongdoing, the sheer uncertainty of where this alleged wrongdoing took place is a strong factor which weighs *against* the ordering of pre-action interrogatories as the courts' powers do not extend to interrogatories in aid of proceedings beyond Singapore. Unlike the Judge, we think that WSG had to adduce some credible evidence of a Singapore nexus to the alleged third party wrongdoings. It is not sufficient to hypothesise without any alleged factual substratum that "the information was as likely to have been received in Singapore as anywhere else" (GD at [34]) as on the established facts, the converse is just as likely.

70 All things considered, even if WSG may have *prima facie* causes of action against the sources (or whoever leaked the information to Dorsey) the balance is clearly tipped *against* ordering pre-action interrogatories in these circumstances where the (a) the specific alleged wrongdoing of leaking information to Dorsey was preceded by what appears to be a rather widespread release of that information worldwide; (b) it is not even suggested by WSG that the breach or disclosure took place and or is actionable in Singapore; and (c) there are no likely prospects of subsequent proceedings being held in Singapore for defamation or breach of confidence against the sources.

Cause of action against Dorsey

71 Despite the fact that WSG's *main* professed intention appears to be finding out the identity of sources for the purposes of suing the sources, WSG nonetheless maintains that Dorsey is "likely to be made party to proceedings commenced by WSG for breach of confidentiality and or (sic) defamation" [note: 14]. WSG's position is that the PWC Report contained assertions and imputations which were *prima facie* defamatory and/or libellous. WSG was not consulted, and yet PWC was provided with inaccurate/incomplete information and the report makes speculative conclusions. As such, the PWC Report was in itself arguably defamatory to WSG, and Dorsey, by "mak[ing] reference to" or "quot[ing] verbatim" from the PWC Report was, in turn, making remarks which were defamatory [note: 15]. In addition, the other allegedly defamatory aspects of Dorsey's blog posts involve imputations that WSG secured the MRA at an undervaluation because of the absence of a tender or by improper means, and that as a result the MRA was seriously disadvantageous to the AFC. Further, there was also the innuendo that WSG was involved in corrupt practices, including paying bribes to Bin Hammam to secure the MRA. There was, nevertheless, no serious attempt in McManus' affidavits to clarify why these defamatory statements based on the PWC Report might be false. Despite all that WSG set out about the damage inflicted by Dorsey's blog posts, the stubborn fact remains that WSG has *not* commenced proceedings against Dorsey and/or PWC; this, as explained above at [62], is significant. While our remarks should in no way to be taken to be an affirmation of its viability, it seems clear to us that there already existed a "complete" cause of action in defamation against Dorsey. WSG's counsel's rather elliptical reasons for not proceeding against Dorsey before the Judge were as follows: [note: 16]

> The plaintiff has not commenced proceedings against Dorsey because it wants to know who are proper parties to sue. Dorsey is an individual. We do not know who source is. Might be an individual. Might be someone a company is responsible for.

72 These reasons, however, are not quite convincing; if what WSG is complaining of is Dorsey's defamatory statements, the correct course of action would be to sue Dorsey for defamation. If what WSG is complaining of is the fact that Dorsey's blog posts make references to the PWC Report, which WSG asserts contains material defamatory of WSG, then the correct course of action would be to sue the makers of, or other parties involved in, the PWC Report. None of this has been done. We also note that the unmistakeable focus of all Dorsey's blog posts as indicated by their various captions was the alleged corrupt activities of Bin Hamaam and not WSG. Of the several blog posts, WSG's complaint is now centred on just the post made on 28 August 2012 (see above at [7]). Even there, the focus was on Bin Hamaam's alleged pervasive corrupt conduct and the relationship with WSG was merely another manifestation of this. We might add that if the action against Dorsey is unsuccessful because the assertions in the subject blog post are made out or if it is found to be fair comment because wrongdoing implicating WSG is established, then it might be forcefully argued that the balancing test in *British Steel* (see above at [40]) might incline towards the exercise of discretion against any disclosure of the sources.

Exposure of corruption

73 Significantly, the wider interest in exposing corruption was not a point that WSG contested. It was right not to do so. In our view, if the assertions contained within the PWC Report and Dorsey's 28 August 2012 blog post implicating WSG are indeed true, it may be difficult for WSG to insist that its interests in confidentiality would override the wider interest in exposing corruption everywhere. We think it would be fanciful to argue against the proposition that the exposure of flagrant corruption (as in the present case where allegations of such a nature were made) is in the public interest *anywhere*. Serious wrongdoing of such a nature should be laid bare in the public interest. This uncompromising stance was illustrated most recently in the English case of *Long Beach Limited, Denis Christel Sassou Nguesso v Global Witness Limited* [2007] EWHC 1980 (QB) where the public interest in exposing corruption trumped private interests of confidentiality. There a Vulture Fund had sought to recover debts from the Republic of Congo ("Congo") and obtained multiple *Norwich Pharmacal* orders in Hong Kong to trace and seize assets from Congo. There were obvious possibilities involving oil dealings, the Congolese President's son and a sham entity ("Implicated Parties") of secret benefits being illicitly diverted from the people of Congo, among the poorest in the world (at [49]). In a bid to increase pressure on Congo, the Fund then passed information obtained *vide* the *Norwich Pharmacal* orders to a London-based non-governmental organisation ("NGO") which focussed on investigating the exploitation of natural resources and its links with corruption and conflict. This NGO later published the information on the internet. The Implicated Parties applied to the English court to prohibit the publication of the information on the ground that it was, *inter alia*, a misuse of private information. However, the court refused to prohibit the publication given the important public interest in the affairs of a public official being made public once their propriety had been called into question. The court relied on the general principle that the courts will not enforce an obligation of confidentiality in relation to material that is alleged to show serious misconduct (at [52]). This principle is now often referred to as the "iniquity rule" (see also *British Steel* at 1169B). As an aside, it is interesting to note that the appellants in *British Steel* never sought to justify breach of confidence on the grounds of public interest or anything else.

74 The word "corruption" has its roots in the Latin word "*corruptus*" that means "to break" (see Colin Nicholls QC *et al*, *Corruption and the Misuse of Public Office*, (Oxford University Press, 2nd Ed, 2011) at p 1). This allusion to the "break of confidence" by agents or office holders pithily captures the corrosive effect that corruption has on all aspects of life and not only why it must unflinchingly be prevented and punished but also why, vitally, the exposure of its very existence anywhere must be encouraged. The website for the Corrupt Practices Investigation Bureau declares as follows: [note: 17]

> The United Nations Convention Against Corruption (UNCAC) was adopted by the United Nations General Assembly on 31 October 2003. The Convention seeks to combat corruption by stipulating preventive measures, criminalising certain conduct (including acts of bribery), and requiring States Parties to provide mutual legal assistance to each other. Singapore takes a very serious view towards corruption. Much effort has been invested to ensure a low corruption rate in the public and private sectors. *Singapore therefore strongly supports international efforts to fight corruption, and we demonstrated this support by becoming a signatory to the UNCAC on 11 November 2005. Singapore ratified the UNCAC on 6 Nov 2009.*
>
> [emphasis added]

75 Countries which have subscribed to the UNCAC agree to cooperate with one another in every aspect of the global fight against corruption, including prevention, investigation, and the prosecution of offenders. Over and above that they have implicitly accepted that as members of the international community they will work towards exposing corruption regardless of where it takes place. Whistle blowing and the reporting of corrupt activities by credible parties therefore should not be unnecessarily deterred by the courts, as such activities, given their surreptitious nature, are usually very difficult to detect. In fact, it should be reiterated that there is a compelling public interest consideration ever present in Singapore to encourage whistle blowing against corruption: under s 36 of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) complaints made under the Act cannot be admitted as evidence in any civil or criminal proceedings, and no witness shall be obliged or permitted to disclose the name of the informer. Needless to say, such protection does not literally extend to Dorsey in this case as this matter does not involve such a complaint. Nonetheless, the provision is a salutary reminder of the enlightened legislative approach that has been taken to coax the exposure of corrupt activities.

76 While senior officials in international organisations, such as sports bodies, may not be public officials in the traditional sense of that term, similar public interest considerations of accountability equally apply in ferreting out, exposing and punishing wrongdoings by them. These individuals have critical decision making roles which often have profound implications across borders that impact many facets of public and private activities in the political, commercial and social spheres. Corruption anywhere raises serious concerns as it inevitably undermines good governance. If occurring in international organisations, it would not only undermine good governance but also distort international competiveness and subvert fair play. Certainly, corrupt practices in international football organisations ought not to be permitted to be spuriously cloaked by arid claims of confidentiality. It would be grotesque for a party implicated in corrupt activities to assert that that the courts ought to defer to contractual arrangements importing confidence if those very arrangements are infected by sordid criminality. To adapt a well-known dictum, sunlight is the best disinfectant for corruption.

77 In our view, this is yet another cogent reason why it would have been preferable for this issue to be assessed multi-factorially only *after* the action against Dorsey has been commenced. Given the established facts, surely it cannot be said that this is a matter that merits early disclosure of the source. Indeed, it appears to us that the exercise of discretion could tilt in the other direction, considering that the assertions of corrupt practices (amplified by Dorsey) have been made by a reputable professional services entity with the benefit of legal advice. The iniquity rule may well apply. This is yet another reason why WSG's application in the light of the established facts is on any considered view, at the very least, plainly premature.

78 Bearing in mind the principles stated above (at [28]–[50]) which should guide the court's exercise of discretion in relation to pre-action interrogatories, we conclude that the balance of interests lies in not ordering the interrogatories as they are simply not necessary, certainly for now.

There is already a complete cause of action against Dorsey which WSG has plainly chosen not to pursue, and the circumstances surrounding the potential causes of action against the sources do not weigh in favour of such an order. We stress that pre-action interrogatories are by nature intrusive, and should only be ordered when it is clearly just to do so. As such, we do not think it just to subject Dorsey to those orders on the basis of the factual substratum presented by WSG.

79 For the avoidance of doubt, we emphasise that nothing in these grounds should be taken as suggesting that any of the various allegations of corruption made against any of the individuals or entities mentioned herein have been found by us to be proven. The veracity or otherwise of any of the subject allegations simply does not arise for determination in these proceedings.

Conclusion

80 For the foregoing reasons, we will allow the appeal in its entirety and reverse the Judge's decision to order interrogatories 1, 2(a), 2(b), 2(c), 6 and 6.1 to be answered by Dorsey.

81 Dorsey is to have the costs of this appeal and the proceedings below on an indemnity basis. This is in accordance with the scheme for costs provided in O 26A r 5. The usual consequential orders are to follow.

[note: 1] Appellant's Core Bundle Vol II p 19

[note: 2] Appellant's Core Bundle Vol II pp 49–64

[note: 3] Appellant's Core Bundle Vol II pp 50-52

[note: 4] Affidavit of James Michael Dorsey dated 24 September 2012 at [16].

[note: 5] *Id*, at [11].

[note: 6] *Id*, at [14].

[note: 7] *Id*, at [12].

[note: 8] 1st Affidavit of Stephanie Jane McManus at [6].

[note: 9] *Id*, at [23].

[note: 10] *Id*, at [24]–[25].

[note: 11] 1st Affidavit of Stephanie Jane McManus at [3].

[note: 12] Filed pursuant to O 26A r 1(3) which requires an affidavit stating the grounds for application, material facts pertaining to the intended proceedings and whether the person against whom the order is sought is likely to be party to subsequent proceedings

[note: 13] 1st Affidavit of Stephanie Jane McManus at [14].

[note: 14] 1st Affidavit of Stephanie Jane McManus at [7].

[note: 15] *Id* at [19].

[note: 16] WSG's supplemental core bundle (Notes of Arguments Recorded in RA 404/2012) at p 6.

[note: 17] Retrieved at http://app.cpib.gov.sg/cpib_new/user/default.aspx?pgID=173 as of 2 Jan 2014.

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