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

[2024] SGHC 311

Originating Claim No 660 of 2023 (Registrar's Appeal No 77 of 2024)

Between

(1) Daniel Maag
(2) Gurpreet Gill Maag

… *Claimants*

And

Lalit Kumar Modi

… *Defendant*

JUDGMENT

[Civil Procedure — Pleadings — Amendment]
[Civil Procedure — Service — Service out of jurisdiction]
[Conflict of Laws — Jurisdiction]
[Tort — Defamation — Publication]
[Tort — Malicious Falsehood]

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v
Lalit Kumar Modi

[2024] SGHC 311

General Division of the High Court — Originating Claim No 660 of 2023
(Registrar's Appeal No 77 of 2024)
Dedar Singh Gill J
17 May, 17 July 2024

5 December 2024 Judgment reserved.

Dedar Singh Gill J:

1 HC/RA 77/2024 ("RA 77") is an appeal by the defendant in HC/OC 660/2023 ("OC 660") against the decision of the learned AR in HC/SUM 3888/2023 ("SUM 3888"). SUM 3888 was an interlocutory application by the claimants to amend their statement of claim in OC 660. The learned AR allowed the application in SUM 3888. The defendant, being dissatisfied with the AR's decision, has appealed.

Facts

The parties

2 The defendant in OC 660 is Mr Lalit Kumar Modi ("Mr Modi"), whom the claimants aver is an Indian national.[1] Mr Modi is the appellant in the present appeal. It is common ground between the parties that Mr Modi runs a page on the social media platform "X", which had 3.8 million followers at the material time (the "Twitter Page").[2] Mr Modi also runs a page on the social media platform "Instagram", which had 5.2 million followers at the material time (the "Instagram Page").[3]

3 The first and second claimants in OC 660 are Mr Daniel Maag ("Mr Maag") and Mrs Gurpreet Gill Maag ("Mrs Maag"), respectively. Mr and Mrs Maag are hereinafter referred to as the Maags. The Maags are married to each other and are the respondents in this appeal. Mr Maag, a Swiss national, is a private banking and wealth management professional based in Singapore.[4] He is resident in Singapore and is engaged in his vocation in Singapore. The Maags aver that Mrs Maag is an Indian national and notable venture capitalist.[5] According to the Maags, Mrs Maag is resident in, and conducts her business principally in, Singapore.[6]

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1 Joint Bundle of Documents (Volume 2) (10 May 2024) ("JBOD, Vol 2"), p 449 at para 4.

2 JBOD, Vol 2, p 449 at para 5.

3 JBOD, Vol 2, p 449 at para 6.

4 JBOD, Vol 2, p 448 at para 1.

5 JBOD, Vol 2, p 448 at para 2.

6 JBOD, Vol 2, p 448 at para 2.

Background to the dispute

4 It is accepted by the parties that on 5 May 2023, Mr Modi published a post on the Twitter Page (the "Litigation Post").[7] The precise contents of the Litigation Post are immaterial for the purpose of this appeal. The Maags aver, and Mr Modi does not admit, that the Litigation Post was also published by Mr Modi on the Instagram Page on or around 5 May 2023.[8] The Maags aver that the Litigation Post contained: (a) malicious falsehoods directed against the Maags; and (b) defamatory material directed against the Maags.

5 It is also accepted by the parties that on or around 5 May 2023, Mr Modi published another post on the Twitter Page (the "Political Hatred Post").[9] The Maags aver that the Political Hatred Post contained: (a) malicious falsehoods directed against the Maags; and (b) defamatory material directed against the Maags.

Procedural history

6 On 28 September 2023, the Maags filed OC 660 against Mr Modi.[10] OC 660 was the Maags' action against Mr Modi for libel and malicious falsehood based on the Litigation Post and Political Hatred Post.

7 On the same day, the Maags sought leave to serve the originating claim and statement of claim in OC 660 on Mr Modi in the United Kingdom (*ie*, out of jurisdiction).[11] Leave to effect service out of jurisdiction was granted.

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7 JBOD, Vol 2, p 450 at para 8.

8 JBOD, Vol 2, p 453 at para 11; JBOD, Vol 2, p 509 at para 11.

9 JBOD, Vol 2, p 483 at para 40; JBOD, Vol 2, p 555 at para 40.

10 JBOD, Vol 2, pp 445–446.

11 Joint Bundle of Documents (Volume 1) (10 May 2024) ("JBOD, Vol 1"), pp 5–6.

8 On 28 December 2023, the Maags filed SUM 3888 for leave to amend their statement of claim.[12] Mr Modi objected to two amendments which would have amended the SOC to plead that the Litigation Post and Political Hatred Posts were published in India and/or the United Kingdom in addition to Singapore.

The parties' cases below

9 In SUM 3888, Mr Modi objected to the proposed amendments on several grounds. First, such amendments would not enable the real issue in controversy to be determined as they were liable to be struck out for being an abuse of process.[13] The Maags were required to limit their claims in defamation and malicious falsehood to damage suffered in Singapore. It was argued on the authority of *Lee Hsien Loong v Review Publishing Co Ltd* [2007] 2 SLR(R) 453 ("*Review Publishing*") that it would be an abuse of the court's jurisdiction for a claimant to seek relief for publication and damage to reputation occurring in other jurisdictions. Further, the court had no jurisdiction under O 8 r 1 of the Rules of Court 2021 ("ROC 2021") to grant leave for service out of jurisdiction in respect of a tort which occurred in a foreign jurisdiction with no nexus to Singapore.[14] It was argued that the Maags had only obtained permission for service out of jurisdiction by repeatedly emphasising that their claim was based on the alleged publication of the relevant posts in Singapore.[15] It thus followed that the Maags should not be allowed to amend their claim, after having

12 JBOD, Vol 1, pp 107–108.

13 JBOD, Vol 2, pp 263–269.

14 JBOD, Vol 2, p 269 at para 27.

15 JBOD, Vol 2, pp 270–272.

obtained permission for service out of jurisdiction, to seek relief for publication and damage that occurred outside of Singapore.

10 Second, it was argued that the relevant amendments should not be allowed as the Maags failed to obtain the court's approval to apply to make such amendments.[16] Specifically, the Maags did not inform the court that they intended to make the relevant amendments to widen their claims in OC 660, when they sought approval to file SUM 3888. The relevant amendments were not stated in the Maags' Form B9 and letter to the court dated 18 December 2023.

11 The Maags raised several arguments in response. First, they submitted that they were not precluded from claiming damages that occurred outside of Singapore for the purposes of their application for service out of jurisdiction.[17] In this connection, they relied on paragraphs 63(3)(f)(i)–63(3)(f)(ii) of the Supreme Court Practice Directions 2021 ("SCPD 2021"). The Maags submitted that the case of *IM Skaugen SE and another v MAN Diesel & Turbo SE and another* [2016] SGHCR 6 ("*IM Skaugen(AR)*") had interpreted the equivalent provisions under the Rules of Court (2014 Rev Ed) ("ROC 2014") and held that a claimant was not restricted to only claiming damage suffered in Singapore. This position was consistent with the approach in other jurisdictions, such as the United Kingdom and Hong Kong (see *FS Cairo (Nile Plaza) LLC v Brownlie (as dependant and executrix of Sir Ian Brownlie CBE QC)* [2021] 3 WLR 1011 ("*FS Cairo*") and *Employees Compensation Assistance Fund Board v Fong Chak Kwan* [2022] 5 HKC 426 ("*Fong Chak Kwan*"), respectively). Further, such a position was congruent with the ideals and intent of the ROC 2021: (a)

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16 JBOD, Vol 2, pp 272–275.

17 JBOD, Vol 2, p 238 at para 21.

the factors listed in paragraph 63 of the SCPD 2021 were expressly stated to be "non-exhaustive"; (b) the Civil Justice Commission, *Civil Justice Commission Report* (29 December 2017) (Chairperson: Justice Tay Yong Kwang) (the "CJC Report") stated that O 8 r 1 of the ROC 2021 only prescribed criteria and did not enumerate all permissible cases in which service out of jurisdiction could be ordered; and (c) the intent of the CJC Report was to avoid a situation where a "particular category of cases which could and should be heard in Singapore is actually not in the list".[18]

12 Second, the Maags argued that they had never limited their claims to publication of the Litigation Post and Political Hatred Post in Singapore.[19] The language of the Maags' statement of claim and affidavit in support of their application for service out of jurisdiction did not limit the Maags' case to damages sustained in Singapore and publication of the relevant posts in Singapore.

13 Third, the fact that the Maags had not reflected the relevant amendments in their Form B9 was not fatal to their amendment application.[20] Form B9 merely required the Maags to state the nature of the application sought, *ie*, that it was an application to amend their statement of claim. This requirement had been fulfilled by the Maags.

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18 JBOD, Vol 2, p 241.

19 JBOD, Vol 2, pp 241–245.

20 JBOD, Vol 2, pp 245–246.

14 Fourth, even if the Maags had to confine themselves to damage suffered in Singapore, the damage suffered by the Maags occurred in Singapore as they were resident in Singapore.[21]

15 Fifth, even if the Maags had obtained permission to serve the defendant out of jurisdiction on the basis that damage was only suffered in Singapore, the Maags were entitled to re-apply for leave to effect service out of jurisdiction.[22]

16 After written submissions were tendered below, the learned AR directed the parties to file additional submissions to address paragraph 19.3 of Doris Chia, *Defamation: Principles and Procedure in Singapore and Malaysia* (LexisNexis, 2016) ("*Doris Chia*") and the two Australian authorities cited at footnote 10 of the same paragraph.

17 The Maags consequently argued that paragraph 19.3 of *Doris Chia* supported the view that a claimant could bring defamation and malicious prosecution claims for: (a) publication made overseas; and (b) damage sustained overseas arising from such overseas publication.[23] This was supported by the Australian case of *Toomey v Mirror Newspapers Ltd* [1985] 1 NSWLR 173 ("*Toomey*"), which was cited at footnote 10 of paragraph 19.3 of *Doris Chia*.[24] While the subsequent case of *David Syme & Co Ltd v Grey* (1992) 115 ALR 247 ("*David Syme*") appeared to depart from the position in *Toomey*, the

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21 JBOD, Vol 2, pp 246.

22 JBOD, Vol 2, p 247.

23 JBOD, Vol 2, p 312 at paras 3–4.

24 JBOD, Vol 2, p 313 at paras 5–7.

decision in *David Syme* was based on the specific wording of an Australian statute and should not be followed in Singapore.[25]

18 In response, Mr Modi submitted that paragraph 19.3 of *Doris Chia* was not written in the context of a claimant seeking leave to effect service out of jurisdiction.[26] Rather, para 19.3 was confined to scenarios where a defendant was served within jurisdiction. It would run counter to the principles in *Review Publishing* if damage from foreign publication could be claimed under damages for a local publication.[27] It would be too easy for a claimant to circumvent the principles in *Review Publishing* as such claimants could simply pursue foreign publication under the claim for damages for a local publication, instead of pursuing foreign publication as a separate cause of action. The unsatisfactory nature of such a position was recognised by the English court in *Clarke (t/a Elumina Iberica UK) v Bain* [2008] EWHC 2636 (QB) ("*Clarke v Bain*") at [66]. It was also submitted that *Toomey* and *David Syme* did not form part of Singapore law and should not be followed as they run contrary to the principles in *Review Publishing*.[28]

Decision below

19 The learned AR applied the three-step analytical framework for the amendment of pleadings as stated by Goh Yihan JC (as he then was) in *Wang Piao v Lee Wee Ching* [2024] 4 SLR 540 ("*Wang Piao*"). Nothing turned on the

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25 JBOD, Vol 2, pp 313–314 at paras 8–10.

26 JBOD, Vol 2, p 405 at para 5.

27 JBOD, Vol 2, p 405 at paras 6–7.

28 JBOD, Vol 2, p 405 at para 8.

first step of the framework as SUM 3888 was taken out early in the proceedings.[29]

20 In relation to the second step of the *Wang Piao* framework, the AR held that the Maags' proposed amendments would enable the real questions or issue in controversy between the parties to be determined. First, *Review Publishing* was decided under a previous iteration of the Rules of Court. However, the jurisdictional gateways under the old Rules of Court are now found under paragraph 63(3) of the SCPD 2021, which is non-exhaustive in nature.[30] Second, while *Review Publishing* cited *Berezovsky v Michaels* [2000] 1 WLR 1004 for the proposition that each instance of publication gives rise to a separate tort, the separate tort thesis had been legislatively overruled in England by s 8 of the Defamation Act 2013 (c 26) ("UK Defamation Act").[31] This created some uncertainty over the applicability of the principles espoused in the older line of cases cited by the court in *Review Publishing*. Third, it was unclear whether the position stated in *Review Publishing* remained good law in the light of the English decision of *FS Cairo* and the local decision rendered in *IM Skaugen SE and another v MAN Diesel & Turbo SE and another* [2018] SGHC 123 ("*IM Skaugen(HC)*"). While an amendment would not be allowed if it was liable to be struck out in any event, the proposed amendments could not be said to be "plainly or obviously unsustainable".[32] As the law was unclear, the Maags should not be shut out from seeking relief for publication or damages occurring

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29 JBOD, Vol 2, p 426.

30 JBOD, Vol 2, p 427.

31 JBOD, Vol 2, p 429.

32 JBOD, Vol 2, p 430.

outside of Singapore.[33] Accordingly, the second step of the *Wang Piao* framework was satisfied.

21 Under the third step of the *Wang Piao* framework, the court held that the proposed amendments would not cause any prejudice to the other party which could not be compensated in costs. This was because Mr Modi primarily objected to the Maags relying on foreign publication which caused damage outside of Singapore. He did not object to proving the foreign publication going towards claiming damages *in Singapore*. In either situation, the Maags could prove the foreign publication. If the Maags wished to claim damages outside Singapore, Mr Modi merely needed to state his position that the Maags were not entitled to do so at law. The trial judge could then decide whether to award such damages occurring outside Singapore. If the ultimate decision was that the Maags were not entitled to do so, Mr Modi would be compensated in costs after the trial.[34]

22 The court held that the Maags had never restricted themselves by stating that the publication of the relevant posts only occurred in Singapore or that damages only occurred in Singapore. There was no evidence of bad faith by the Maags.[35] Further, while the proposed amendments were not specifically identified in the Maags' request for permission to file the amendment application, the Maags were not faulted as they merely had to state the nature and essence of their intended amendment application, and they had done so.[36]

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33 JBOD, Vol 2, p 431.

34 JBOD, Vol 2, p 432–433.

35 JBOD, Vol 2, p 430.

36 JBOD, Vol 2, p 430.

23 For the above reasons, the AR allowed SUM 3888. Costs consequential, fixed at $4,000, were awarded to Mr Modi. Costs of and incidental to the application, fixed at $6,000, were awarded to the Maags.[37] Mr Modi, being dissatisfied with the AR's decision, appealed.

The revised statement of claim

24 During the hearing of RA 77 on 17 May 2024, I allowed the Maags to furnish a revised draft statement of claim for the purposes of RA 77 (the "Revised Statement of Claim"). The statement of claim that the Maags initially relied on did not appear to me to achieve the objective that the Maags sought to achieve through SUM 3888. Bearing in mind the ideals enshrined in the ROC 2021, I allowed the Maags to rely on a revised draft statement of claim in the interests of expediency and the efficient use of court resources. I now summarise the amendments sought by the Maags in the Revised Statement of Claim. However, given the convoluted manner in which the Revised Statement of Claim has been pleaded, the following paragraphs merely set out a summary of the Maags' claims and are not intended to be exhaustive.

25 The Revised Statement of Claim seeks to claim the following in relation to the claims in malicious falsehood for the Litigation Post and Political Hatred Post:

> (a) That the publication of the posts in Singapore and/or India and/or the United Kingdom was calculated to and did cause pecuniary damage to Mr Maag and/or Mrs Maag in respect of each of their trades or

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37 JBOD, Vol 2, p 435.

businesses in Singapore ("A1").[38] In this regard, the Maags rely on s 6(1)(a) and/or s 6(1)(b) of the Defamation Act 1957.

(b) That the publication of the posts in India and/or the United Kingdom was calculated to and did cause pecuniary damage to and/or damage to the reputations of Mr Maag and/or Mrs Maag in India and/or the United Kingdom ("A2").[39] The Maags rely on the fact that each of them has an overseas reputation which has been damaged overseas by the publication of the posts in India and/or the United Kingdom. The Maags plead, without prejudice to the generality of the foregoing, that the following are "elements of their overseas reputations":

(i) Mr Maag has forged his career on the basis of a global network of Indians and/or persons of other nationalities which he has built up.[40] Such persons from Mr Maag's overseas network have social and/or professional ties to Mr Maag.[41] Further and/or in the alternative, some of those persons have social and/or commercial ties to Singapore where Mr Maag is resident.[42] Further and/or in the alternative, Mr Maag's overseas reputation includes any or all of the elements comprising Mrs Maag's overseas reputation by virtue of his marriage to her and/or introduction to her network thereby.[43]

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38 Joint Bundle of Documents (Volume 3) (10 July 2024) ("JBOD, Vol 3"), p 266 at para 20; p 282 at para 49.

39 JBOD, Vol 3, p 266 at para 20A; p 282 at para 49A.

40 JBOD, Vol 3, p 266 at para 20A.1.

41 JBOD, Vol 3, p 266 at para 20A.2.

42 JBOD, Vol 3, pp 266–267 at para 20A.3.

43 JBOD, Vol 3, p 267 at para 20A.4.

(ii) Mrs Maag has a reputation with persons resident in India and/or the United Kingdom and/or Singapore.[44] Mrs Maag has leveraged her reputation with such individuals to build her social and/or business network upon which her business interests are based, which includes her business as a venture capitalist and/or entrepreneur in Singapore.[45] Further and/or in the alternative, various members of Mrs Maag's social and/or business network have ties to Singapore.[46]

(c) That the publication of the posts in Singapore and/or India and/or the United Kingdom was calculated to and did cause Mr Maag and/or Mrs Maag to suffer pecuniary and/or reputational damage in Singapore ("A3").[47] In this context, and by virtue of the facts stated at [25(b)(i)]–[25(b)(ii)] above, the Maags rely on their overseas reputation for the purposes of their vocation/business in Singapore and/or social reputation in Singapore.[48] Thus, damage sustained to the Maags' reputations in India and/or the United Kingdom through the publication of the posts in India and/or the United Kingdom gives rise to reputational damage and/or pecuniary damage in Singapore.[49] Further and/or in the alternative, the Maags rely on s 6(1)(a) and/or s 6(1)(b) of the Defamation Act 1957 in so far as those provisions are applicable to any

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44 JBOD, Vol 3, p 267 at para 20A.5.

45 JBOD, Vol 3, p 267 at para 20A.6.

46 JBOD, Vol 3, p 267 at para 20A.7.

47 JBOD, Vol 3, p 268 at para 20B; p 282 at paras 49B–49C.

48 JBOD, Vol 3, p 268 at paras 20B.1–20B.2.

49 JBOD, Vol 3, p 268 at para 20B.3.

of the publications in Singapore and/or India and/or the United Kingdom.[50]

26 The Revised Statement of Claim seeks to claim the following in relation to the claims in libel for the Litigation Post and the Political Hatred Post:

(a) That the publication of the posts in Singapore and/or India and/or the United Kingdom caused Mr Maag and/or Mrs Maag to suffer reputational damage in Singapore, as well as distress and hurt to their feelings ("B1").[51] Further and/or in the alternative, the publication of the posts in Singapore and/or India and/or the United Kingdom was calculated to and did cause pecuniary damage and/or reputational damage to the Maags in Singapore.[52] In this regard, the Maags rely on their overseas reputation for the purposes of their vocation/business in Singapore and/or social reputation in Singapore.[53] The Maags rely on the facts stated at [25(b)(i)]–[25(b)(ii)] above. Thus, damage sustained to the Maags' reputations in India and/or the United Kingdom through the publication of the posts in India and/or the United Kingdom gives rise to reputational damage and/or pecuniary damage in Singapore.[54] Further and/or in the alternative, the Maags rely on s 6(1)(a) and/or s 6(1)(b) of the Defamation Act 1957 in so far as those provisions are applicable to any of the publications in Singapore and/or India and/or the United Kingdom.[55]

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50 JBOD, Vol 3, p 268 at para 20B.4.

51 JBOD, Vol 3, p 274 at para 39; p 275 at para 39B; pp 283–284 at paras 57 and 57B.

52 JBOD, Vol 3, p 268 at para 20B.

53 JBOD, Vol 3, p 268 at paras 20B.1–20B.2.

54 JBOD, Vol 3, p 268 at para 20B.3.

55 JBOD, Vol 3, p 268 at para 20B.4.

(b) That the publication of the posts in India and/or the United Kingdom caused Mr Maag and/or Mrs Maag to suffer reputational damage in India and/or the United Kingdom, and each of them to suffer distress and hurt to their feelings ("B2").[56] The Maags rely on the fact that each of them has an overseas reputation which has been damaged by the publication of the posts in India and/or the United Kingdom.[57] The Maags also rely on the facts stated at [25(b)(i)]–[25(b)(ii)] above.

(c) That the publication of the posts in Singapore and/or India and/or the United Kingdom was calculated to and did cause the Maags to suffer pecuniary damage in respect of each of their trades or businesses in Singapore ("B3").[58] The Maags rely on s 6(1)(a) and/or s 6(1)(b) of the Defamation Act 1957.[59]

(d) That the publication of the posts in Singapore and/or India and/or the United Kingdom was calculated to and did cause the Maags to suffer pecuniary damage in India and/or the United Kingdom and/or Singapore ("B4").[60] In this regard, the Maags also plead and rely on the following facts:

(i) That the publication of the posts in India and/or the United Kingdom was calculated to and did cause pecuniary damage to and/or reputational damage to the Maags in India

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56 JBOD, Vol 3, p 275 at para 39A; p 284 at para 57A.

57 JBOD, Vol 3, p 275 at para 39A; p 284 at para 57A.

58 JBOD, Vol 3, pp 275–276 at para 39C; p 284 at para 57C.

59 JBOD, Vol 3, p 266 at para 20.

60 JBOD, Vol 3, pp 275–276 at para 39C; p 284 at para 57C.

and/or the United Kingdom.[61] The Maags rely on the fact that each of them has an overseas reputation which has been damaged overseas by the publication of the posts in India and/or the United Kingdom. The Maags also rely on the facts stated at [25(b)(i)]–[25(b)(ii)] above.

(ii) That the publication of the posts in Singapore and/or India and/or the United Kingdom was calculated to and did cause pecuniary damage and reputational damage to the Maags in Singapore.[62] The Maags also plead the following particulars:

(A) The Maags rely on their overseas reputation for the purposes of their vocation/business in Singapore and/or social reputation in Singapore.[63] The Maags rely on the facts stated at [25(b)(i)]–[25(b)(ii)] above. Thus, damage to the Maags' reputations in India and/or the United Kingdom through the publication of the posts in India and/or the United Kingdom gives rise to reputational damage and/or pecuniary damage in Singapore.[64]

(B) The Maags rely on s 6(1)(a) and/or s 6(1)(b) of the Defamation Act 1957 in so far as those provisions are applicable to any of the publications in Singapore and/or India and/or the United Kingdom.[65]

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61 JBOD, Vol 3, p 266 at para 20A.

62 JBOD, Vol 3, p 268 at para 20B.

63 JBOD, Vol 3, p 268 at paras 20B.1–20B.2.

64 JBOD, Vol 3, p 268 at para 20B.3.

65 JBOD, Vol 3, p 268 at para 20B.4.

27 The Revised Statement of Claim also seeks to plead the following:

(a) That, for the purposes of a claim for malicious falsehood, the Litigation Post was published in Singapore and/or India and/or the United Kingdom ("C1").[66]

(b) That, for the purposes of a claim for libel, the Litigation Post was published in Singapore and/or India and/or the United Kingdom ("C2").[67]

(c) That, for the purposes of a claim for malicious falsehood, the Political Hatred Post was published in Singapore and/or India and/or the United Kingdom ("C3").[68]

(d) That, for the purposes of a claim for libel, the Political Hatred Post was published in Singapore and/or India and/or the United Kingdom ("C4").[69]

(e) That, for the claims in malicious falsehood and libel in relation to the Political Hatred Post and Litigation Post, the Maags are entitled to damages sustained overseas ("D").[70]

28 C1 and C3 are the initial amendments that were disputed by the parties below. It appears that C1–C4 set out the underlying facts that will allow

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66 JBOD, Vol 3, p 240 at para 12.

67 JBOD, Vol 3, p 269 at para 24.

68 JBOD, Vol 3, p 279 at para 45.

69 JBOD, Vol 3, p 282 at para 51.

70 JBOD, Vol 3, pp 290–291 at paras 66.1–66.5.

amendments A1–A3, B1–B4 and D to be pleaded, *ie*, they plead the fact of republication outside of Singapore.

29 For completeness, the Maags also propose to amend certain headers in the Revised Statement of Claim.[71] The Maags also seek an amendment to particularise the aggravation of their damages through the grapevine effect.[72] Mr Modi generally does not object to these amendments, save for one amendment at para 65.6 of the Revised Statement of Claim ("E") that I will return to later (see [151] below).[73]

The parties' cases on appeal

30 Given the somewhat unusual manner in which these proceedings have unfolded, I will first discuss the parties' initial arguments on C1 and C3 (which are equally applicable to C2 and C4). Thereafter, I will briefly summarise the parties' additional arguments on A1–A3 and B1–B4.

Amendments C1–C4

Mr Modi's arguments

31 On appeal, Mr Modi advances largely the same arguments as he did below. As a preliminary matter, Mr Modi's position is that he does not object to the amendments in so far as they relate to foreign publication which caused damage to the Maags in Singapore.[74] However, Mr Modi objects to the

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71 JBOD, Vol 3, p 285 and 287.

72 JBOD, Vol 3, p 288 at para 61.3A; p 290 at para 65.6.

73 Defendant's Further Written Submissions (10 July 2024) ("DWS3"), p 10 at paras 26–27.

74 Defendant's Written Submissions (10 May 2024) ("DWS1"), p 5 at para 9.

amendments in so far as they relate to foreign publication which caused damage to the Maags entirely outside of Singapore.[75] He raises the following arguments.

32 First, he submits that the proposed amendments should not be allowed as they are liable to be struck out.[76] He argues that the Maags are required to limit their claims to publication and loss of reputation *in Singapore*.[77] Mr Modi contends that *Review Publishing* is authority for the proposition that, for the purposes of a claim for defamation arising from material posted online, a claimant who seeks leave to serve the claim out of jurisdiction on a foreign defendant should be limited to claiming for injuries arising within the home jurisdiction. As each publication is a separate tort for the purposes of defamation and malicious falsehood, a claimant who sues in respect of the publication of a post in foreign jurisdictions is thus suing in respect of injury arising abroad. If the claim was expanded to include publications and loss of reputation outside of Singapore, those claims would have no nexus to Singapore and would be outside of the court's jurisdiction.[78] Accordingly, the proposed amendments would be liable to be struck out for being an abuse of process.[79]

33 Second, Mr Modi contends that *Review Publishing* is still good law even though it was decided under the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("ROC 2006").[80] A claimant who seeks leave to serve a court document out of Singapore under O 8 r 1(1) ROC 2021 must show that the court is the

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75 DWS1, p 4 at para 6.

76 DWS1, p 6 at para 13.

77 DWS1, p 10 at para 21.

78 DWS1, p 29 at para 69; pp 24–25 at paras 57–60.

79 DWS1, p 15 at para 31; p 30 at para 70.

80 DWS1, p 13 at para 27.

"appropriate court to hear the action". This still requires the claimant to establish, amongst other requirements, that "there is a good arguable case that there is sufficient nexus to Singapore". The requirement for a "nexus to Singapore" is consistent with the principles espoused in *Review Publishing*, notwithstanding the fact that the jurisdictional gateways under paragraph 63(3) of the SCPD 2021 are now listed as "non-exhaustive".[81] Accordingly, a claimant who seeks to sue a foreign defendant for defamation in proceedings governed by the ROC 2021 cannot include publications outside of Singapore that do not cause loss in Singapore. Such claims would not have "sufficient nexus to Singapore".[82]

34 Third, it follows as a matter of logic that if a claimant cannot obtain permission to effect service out of jurisdiction for a claim relating to publication and damage incurred outside of Singapore, he should not be allowed to amend his claim to seek such relief after he has obtained permission to effect service out of jurisdiction.[83]

35 Fourth, Mr Modi submits that the AR erred in his criticism of *Review Publishing* for the following reasons:

(a) The separate tort thesis had not been legislatively overruled in England. Section 8 of the UK Defamation Act only provides for a "single publication rule" for the purposes of the law of limitation. It does not overrule the common law principle that in the law of defamation and malicious falsehood, each publication gives rise to a separate tort. The

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81 DWS1, pp 13–14 at paras 27(a)–27(e).

82 DWS1, p 15 at para 28.

83 DWS1, p 15 at para 31.

English Court of Appeal had recently upheld the separate tort thesis in *Banks v Cadwalladr* [2023] 3 WLR 167 ("*Cadwalladr*").[84] In any event, the separate tort thesis has not been overruled in *Singapore*.[85]

(b) There is no conflict between *Review Publishing* and *IM Skaugen(HC)*. While the court in *IM Skaugen(HC)* held that the jurisdictional gateway under O 11 r 1(f)(ii) of the ROC 2014 allowed a claimant to claim for "indirect damage", this holding was made in the context of damage flowing from the *single tort* of misrepresentation. Mr Modi argues that the court's reasoning does not apply to the present case, which involves claims for *several separate torts* where some torts cause damage in Singapore and others do not. Further, the Court of Appeal in *MAN Diesel & Turbo SE v IM Skaugen SE* [2020] 1 SLR 327 ("*IM Skaugen(CA)*") held that each claim had to be considered separately for the purposes of assessing whether the claims fulfilled the jurisdictional gateways under O 11 of the ROC 2014. Thus, the Maags must establish that each cause of action (*ie*, each publication) has a sufficient nexus to Singapore.[86]

(c) While the jurisdictional gateways listed in paragraph 63(3) of the SCPD 2021 are no longer exhaustive, this does not give the Maags free rein to introduce claims for *all* publications made overseas, including those which did not cause any loss in Singapore and have no connection

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84 DWS1, p 18–21 at paras 39–45.

85 DWS1, p 21 at para 45.

86 DWS1, pp 21–24 at paras 46–54.

to Singapore. The Maags must still establish a sufficient nexus to Singapore.[87]

36 Fifth, the AR erred in concluding that Mr Modi would not suffer prejudice that could not be compensated by costs. The Maags are not allowed to introduce fresh causes of action under the proposed amendments as a matter of *jurisdiction*. If the amendment application is allowed, Mr Modi would not be afforded the opportunity to object to the order granting leave to serve the claim on Mr Modi out of jurisdiction.[88] This argument relates to the AR's conclusion on stage three of the *Wang Piao* framework.

37 Sixth, the Maags had initially sought leave to effect service out of jurisdiction on the basis that they were suing only in respect of publication in Singapore:

(a) The Maags' original statement of claim only referred to publication of the Litigation Post and Political Hatred Post in Singapore.[89]

(b) The supporting affidavit for the application for service out of jurisdiction indicated that the claims in OC 660 would be limited to publication in Singapore and damage incurred in Singapore.[90] While the supporting affidavit made certain references to the publication of the posts in the United Kingdom, the statement of claim and the "critical parts" of the affidavit made it clear that the Maags were pursuing claims

87 DWS1, p 24 at paras 55–56.

88 DWS1, pp 24–26 at paras 61–63.

89 DWS1, p 26 at para 64.

90 DWS1, pp 27–28 at para 65.

> in respect of the publication made in and damage sustained in Singapore.[91]

The significance of this argument appears to be that the Maags' proposed amendments should not be allowed as they are liable to be struck out for being an abuse of process.

The Maags' arguments

38 In response, the Maags submit that the proposed amendments should be allowed. They contend that the real issue in the present appeal is whether the amendments sought would enable the real question or issue in controversy between the parties to be determined. The Maags make several arguments, which I outline below in broad strokes.

39 First, the Maags submit that their proposed amendments are not liable to be struck out for abuse of process as their claims have a sufficient nexus to Singapore. They advance three alternative arguments:

> (a) There are compelling reasons to abolish the separate tort thesis for claims in defamation.[92] Further, there is no authority to suggest that the separate tort thesis applies to claims for malicious falsehood.[93] The relevance of this argument appears to be that if all publications of the posts can be considered as a single global tort, the Maags will be able to establish a nexus to Singapore under paragraph 63(3)(f)(i) of the SCPD 2021.

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91 DWS1, pp 28–29 at paras 66–67.

92 Claimant's Letter to Court (16 May 2024) ("CWS2"), pp 1–2 at para 5; pp 4–5 at para 11.

93 CWS2, p 1 at para 4.

(b) Even if it is accepted that the separate tort thesis applies to claims in defamation and malicious falsehood, there will be a sufficient nexus to Singapore under paragraph 63(3)(f)(ii) of the SCPD 2021 so long as the claim is partly founded on indirect damage suffered in Singapore. The Maags submit that in so far as the publication of the Litigation Post and Political Hatred Post overseas harmed the Maags' reputations overseas, this amounts to indirect damage sustained in Singapore which falls under paragraph 63(3)(f)(ii) of the SCPD 2021. This is because the concept of an individual's reputation is "very broad", and it is conceivable that the foreign publication of the social media posts to an "overseas audience" resulted in some damage to the Maags in Singapore as they are resident in and do business in Singapore.[94]

(c) It is argued on the authority of *Cadwalladr* at [49] that even if the separate tort thesis applies to claims in defamation, the common law allows the court to consider the reputational damage caused by *all* the publications of a post when assessing the damages of a single cause of action which relates to that post.[95] Thus, the Maags contend that it is possible for them to bring a claim for the publication of the relevant posts in Singapore but have the impact of the foreign publications considered when assessing damages. In other words, the foreign publications can be relied on as matters merely going to damages and not as separate causes of action. The Maags also cite the Australian case of *Toomey* and *Doris Chia* at paragraph 19.3 to support this

94 CWS2, pp 2–4 at paras 6–10.

95 CWS2, pp 1–2 at para 5; Claimant's Further Written Submissions (10 July 2024) ("CWS3"), p 8 at para 8.

proposition.[96] The significance of this argument appears to be that if the Maags are correct, they will be able to establish a nexus to Singapore under paragraphs 63(3)(f)(i) or 63(3)(f)(ii) of the SCPD 2021.

40 Second, the Maags submit that *Review Publishing* does not stand for the principle that a claimant who seeks leave to serve the claim out of jurisdiction on a foreign defendant, should be limited to claiming for injuries arising within the home jurisdiction.[97] The remarks in *Review Publishing* were *obiter dicta*.[98] Further, the cases cited in *Review Publishing* were decided in the context of foreign legislation that was narrower than the jurisdictional gateways under ROC 2014 and the SCPD 2021.[99] In any event, *Review Publishing* was only concerned with defamation and not malicious falsehoods.[100]

41 Third, the jurisdictional gateways for service out of jurisdiction under the SCPD 2021 are expressly stated to be "non-exhaustive". Instead, the focus under the SCPD 2021 is on whether the case should be heard in Singapore. This expansionary approach strengthens the position that there is no principle that damage sustained outside Singapore cannot be included in a claim for tort.[101]

42 Fourth, the Maags did not act in abuse of process as they did not restrict themselves to a claim based in Singapore in their application for leave for service out of jurisdiction.[102]

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96 Claimant's Written Submissions (10 May 2024) ("CWS1"), pp 19–20 at paras 34–37.

97 CWS1, pp 16–17 at para 28.

98 CWS1, pp 16–17 at para 28.

99 CWS1, pp 17–19 at paras 29–33.

100 CWS1, p 12 at para 19.

101 CWS1, pp 20–23 at paras 38–44.

102 CWS1, pp 23–27 at paras 45–56.

43 Fifth, the fact that the proposed amendments were not raised in the Maags' Form B9 is not fatal to the amendment application.[103]

Amendments A1–A3 and B1–B4

Mr Modi's arguments

44 Mr Modi objects to A1–A3 and B1–B4 on the following grounds:

(a) A1 suffers from a lack of particulars as the Maags did not plead the particulars of the nature of the pecuniary loss allegedly sustained and the mechanism by which such loss was likely to be sustained.[104]

(b) A2 has no nexus to Singapore as it relates entirely to foreign publications causing foreign damage.[105]

(c) A3 discloses no reasonable cause of action as damages for injury to reputation cannot be recovered in an action for malicious falsehood.[106] Further, A3 suffers from a lack of particulars as the Maags did not plead the particulars of the nature of the pecuniary loss allegedly sustained and the mechanism by which such loss was likely to be sustained.[107]

(d) B1 discloses no reasonable cause of action for several reasons. First, the Maags' contention that the foreign publications damaged the Maags' reputation in Singapore goes against the fundamental principle that damage to reputation is done in the place where the material is

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103 CWS1, pp 27–28 at paras 58–60.

104 DWS3, p 5 at para 11.

105 DWS3, pp 3–4 at para 5.

106 DWS3, p 4 at para 7.

107 DWS3, p 5 at para 11.

published. There is no case law which supports the Maags' contention.[108] Second, injury to feelings does not amount to "damage" within jurisdiction that will justify bringing an action against a foreign-domiciled defendant.[109]

(e) B2 has no nexus to Singapore as it relates to a cause of action that arose outside of Singapore which caused damage outside of Singapore.[110]

(f) B3 and B4 are defective as the Maags did not provide sufficient particulars relating to the pecuniary loss suffered. Any special damages claimable in an action for libel must be referrable to reputational damage. However, the Maags have not particularised the nature of the pecuniary loss and how such loss relates to the Maags' reputational damage.[111]

The Maags' arguments

45 The Maags advance the following arguments:

(a) A1 should be allowed as it effects clerical amendments to the initial statement of claim. The amendment clarifies the Maags' claim for direct damage in Singapore flowing from all publications of the relevant posts. According to the Maags, this amendment should be "uncontroversial".[112]

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108 DWS3, pp 7–8 at paras 18–19.

109 DWS3, p 8 at para 20.

110 DWS3, p 7 at para 16.

111 DWS3, pp 8–9 at paras 21–22.

112 CWS3, p 6 at para 3.

(b) A2 and B2 should be allowed for various reasons. First, *Review Publishing* does not preclude a claimant from amending his claim to introduce further claims on matters occurring outside the jurisdiction after he has obtained leave to serve a claim out of jurisdiction.[113] Second, the mere fact that a claim does not fall under any of the factors in paragraph 63(3) SCPD 2021 is not determinative as such factors are meant to be non-exhaustive.[114] Third, *Cadwalladr* is authority for the proposition that the common law may evolve to consider multiple publications collectively when assessing the harm caused for a single cause of action for defamation.[115] Further, there are strong policy reasons to support such a collective assessment of multiple publications.[116]

(c) A3, B1, B3, and B4 should be allowed as the Maags suffered indirect reputational harm in Singapore from the foreign publications.[117] Given the "indivisible" nature of a person's reputation and the ubiquity of the internet, it is artificial to distinguish between reputational damage suffered in jurisdiction and reputational damage suffered out of jurisdiction. Thus, there is a sufficient nexus to Singapore under paragraph 63(3)(f)(ii) SCPD 2021. Alternatively, this should suffice as a "new gateway" which demonstrates a sufficient nexus to Singapore.

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113 CWS3, p 7 at para 5.

114 CWS3, pp 7–8 at para 7.

115 CWS3, p 8 at para 8.

116 CWS3, p 9 at para 9.

117 CWS3, p 10 at para 13.

Issues to be determined

46 In considering whether the amendments should be allowed, the following issues arise for my consideration:

(a) Whether a claimant is entitled to amend his pleadings to plead a claim that has no nexus to Singapore after leave has been granted for service out of jurisdiction.

(b) If so, whether the amendments in question seek to introduce claims which have no nexus to Singapore. In this connection, the following sub-issues arise:

(i) Whether the amendments introduce claims that fall within paragraph 63(3)(f)(i) SCPD 2021.

(ii) Whether the amendments introduce claims that fall within paragraph 63(3)(f)(ii) SCPD 2021.

(iii) If the amendments do not fall under any of the paragraphs of paragraph 63(3) SCPD 2021, whether they introduce claims that have a sufficient nexus to Singapore.

47 If the amendments introduce claims which have a sufficient nexus to Singapore, the following issues arise:

(a) Whether the amendments should be disallowed on any other basis.

(b) Whether the Maags restricted their claims to publications in Singapore and damage incurred in Singapore in their application for leave to effect service out of jurisdiction.

(c) Whether it is nonetheless just to allow the amendments.

The applicable law

48 In determining whether a claimant should be permitted to amend his pleadings under O 9 r 14(1) ROC 2021, the court will apply a three-step framework: see the decision of Goh Yihan JC (as he then was) in *Wang Piao* at [16]–[19]. In particular, the court will:

(a) First, determine the stage of the proceedings in which the amendment application is sought. The later an application is made, the stronger would be the grounds required to justify it although no hard and fast rules may be laid down: *Wang Piao* at [16].

(b) Second, determine whether the proposed amendments would enable the real question and/or issue in controversy between the parties to be determined. A pleading that is bad in law and liable to be struck out will not amount to a real question or issue in controversy between the parties to be determined: *Wang Piao* at [14] and [17].

(c) Third, even if the proposed amendments would enable the real question to be determined, the court will consider whether it is nonetheless just to allow the amendments. The court will consider various factors, such as whether the amendment would cause any prejudice to the other party which cannot be compensated in costs or whether the applicant is effectively asking for a second bite at the cherry: *Wang Piao* at [18].

49 The principles which govern striking out applications are relevant to the second stage of the *Wang Piao* framework. For present purposes, it suffices to

note that a pleading may be struck out on, amongst other grounds, the following bases:

(a) It is an abuse of process of the court: see O 9 r 16(1)(b) ROC 2021.

(b) It is in the interests of justice to do so: see O 9 r 16(1)(c) ROC 2021. This ground allows for "plainly or obviously unsustainable" claims to be struck out: *Iskandar bin Rahmat and others v Attorney-General and another* [2022] 2 SLR 1018 at [19]. A "plainly or obviously unsustainable" action is one that is either legally or factually unsustainable. Legal unsustainability is established if it is clear as a matter of law that even if a party were to succeed in proving all the facts that he offers to prove, he will not be entitled to the remedy sought. Factual unsustainability is established if the factual basis for the claim is entirely without substance, such as where the statement of facts is contradicted by all the documents that it is based on: *The "Bunga Melati 5"* [2012] 4 SLR 546 at [39].

50 Having set out the legal principles that govern amendment applications and applications for the striking out of pleadings, I turn to consider each of the issues in the present appeal.

Issue 1: Whether a claimant who has been granted leave to effect service out of Singapore is entitled to amend his pleadings to plead a claim that has no nexus to Singapore

51 Mr Modi contends, on the authority of *Review Publishing,* that a claimant who wishes to sue a foreign defendant for defamation will have acted in abuse of the court's process if he relies on foreign publications and/or seeks to recover damage sustained overseas. Each publication amounts to a separate

tort under the law of defamation and malicious falsehood. Thus, a publication that occurs overseas will have no nexus to Singapore. It will be an abuse of process for a claimant to seek leave to effect service out of jurisdiction on a foreign defendant in relation to such claims. Mr Modi submits that, by logical extension, it will be an abuse of the court's process for a claimant to amend his claim to seek relief for foreign publication and foreign damage *after* he has been granted leave to serve a defendant outside of Singapore.[118]

52 In response, the Maags submit that there is "no principle that a plaintiff who serves a defamation claim out of jurisdiction and subsequently seeks to amend the claim to recover damages sustained overseas would in any way be acting in abuse of process".[119] However, the Maags appear to have adopted this position on the basis that their proposed amendments introduce claims that have a sufficient nexus to Singapore. In other words, the Maags do not appear to contest the broader principle that it would be an abuse of the court's process for a claimant to seek to amend his pleadings to plead a claim that has no nexus to Singapore after he obtains leave to effect service on a foreign defendant out of jurisdiction. Their contention is with what amounts to a claim that has a sufficient nexus to Singapore.

53 I agree with Mr Modi's submission. In *Review Publishing*, Menon JC (as the Chief Justice then was) elaborated on the significance of the jurisdictional gateways under O 11 r 1 of the ROC 2006. The jurisdictional gateways under O 11 r 1 of the ROC 2006 related to specific situations where the claim, cause of action, or relief sought had a sufficient nexus with Singapore. The need to establish a nexus with the home jurisdiction served to prevent the

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118 DWS1, p 15 at para 31.

119 CWS1, p 20 at para 37.

unwarranted extension of the jurisdiction of the court beyond the territorial limits of the country: *Review Publishing* at [23].

54 While the court's pronouncement in *Review Publishing* was made in the context of ROC 2006, the requirement for a "sufficient nexus" to Singapore finds expression in the new regime for service out of jurisdiction under the ROC 2021. Order 8 r 1(1) of the ROC 2021 allows for service to be effected outside of jurisdiction if it can be shown that the Singapore court is "the appropriate court to hear the action". In turn, paragraph 63(2) of the SCPD 2021 requires the claimant to establish that "there is a good arguable case that there is sufficient nexus to Singapore" for the purposes of showing why the Singapore court is the appropriate court to hear the action.

55 In my view, the continued requirement for a claimant to establish a "sufficient nexus to Singapore" under the new regime for service out of jurisdiction indicates that there remains an interest in preventing the unwarranted extension of the jurisdiction of the court beyond the territorial limits of the country. This, in turn, supports the proposition that it will be an abuse of process for a claimant to seek to pursue claims against foreign defendants that have no nexus to Singapore. Indeed, the primary mechanism to ensure that a claimant does not abuse the jurisdiction of the court is found in the need for the claimant to seek leave to serve out: *Review Publishing* at [30]. In my judgment, allowing a claimant to amend his pleadings to introduce a claim with no nexus to Singapore *after* he has been granted leave to effect service out would render this control mechanism otiose. Such an amendment application will amount to an abuse of the court's process. For the avoidance of doubt, this holding is confined to circumstances such as that in the present case, *ie*, where service out of jurisdiction has been granted under O 8 r 1 of the ROC 2021 on the basis that the Singapore court *is the appropriate court to hear the action*.

With this principle in mind, I turn to consider whether the proposed amendments seek to introduce claims that have a sufficient nexus to Singapore.

Issue 2: Whether the amendments in question seek to introduce claims which have no nexus to Singapore

56 The amendments seek to plead, in relation to the claims in defamation and malicious falsehood, that the Litigation Post and Political Hatred Post were published in India and/or the United Kingdom in addition to Singapore. Mr Modi's primary contention is that the Maags' proposed claims do not have a sufficient nexus to Singapore and are thus an abuse of process. In determining whether the proposed claims have a sufficient nexus to Singapore, I will consider whether the amendments seek to introduce claims that will: (a) fulfil paragraph 63(3)(f)(i) of the SCPD 2021; (b) fulfil paragraph 63(3)(f)(ii) of the SCPD 2021; or (c) despite not fulfilling any of the subparagraphs under paragraph 63(3) of the SCPD 2021, will establish a nexus to Singapore.

57 It is apposite to state the relevance of paragraph 63(3) of the SCPD 2021 in leave applications for service out of jurisdiction. This court's jurisdiction to hear a civil matter is governed by s 16(1) of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) ("SCJA"), which states that:

> **16.**–(1) The General Division has jurisdiction to hear and try any action in personam where —
>
> (*a*) the defendant is served with an originating claim or any other originating process —
>
> (i) in Singapore in the manner prescribed by Rules of Court or Family Justice Rules; or
>
> (ii) *outside Singapore in the circumstances authorised by and in the manner prescribed by Rules of Court* or Family Justice Rules; or
>
> (*b*) the defendant submits to the jurisdiction of the General Division.

[emphasis added]

58 In short, the court's jurisdiction to hear a civil matter where the defendant is served outside of Singapore is contingent on the fulfilment of the relevant requirements stated in the ROC 2021. Order 8 r 1 of the ROC 2021 states the following:

> **Service out of Singapore with Court's approval (O. 8, r.1)**
>
> **1.**–(1) An originating process or other court document may be served out of Singapore with the Court's approval if it can be shown that the Court has the jurisdiction *or is the appropriate court to hear the action.*
>
> [emphasis added]

59 This rule is supplemented by paragraph 63(2) of the SCPD 2021, which states that for the purposes of establishing that the court is the appropriate court to hear the action, the claimant should show: (a) that there is a good arguable case that there is sufficient nexus to Singapore; (b) that Singapore is the *forum conveniens*; and (c) that there is a serious question to be tried on the merits of the claim. In relation to the first requirement, paragraph 63(3) SCPD 2021 provides a *non-exhaustive* list of factors that the claimant can refer to in order to establish that there is a sufficient nexus to Singapore. While the practice directions issued by the court do not have the force of law, they are nonetheless directions from the court. A court will not normally depart from such directions unless there is good reason for doing so: *Citiwall Safety Glass Pte Ltd v Mansource Interior Pte* Ltd [2015] 1 SLR 797 at [88]. The factors in paragraph 63(3) SCPD 2021 largely reflect the former jurisdictional gateways under O 11 r 1 of the ROC 2014: *Halsbury's Laws of Singapore Conflict of Laws* vol 6(2) (LexisNexis, 2024) ("*Halsbury 6(2) 2024*") at para 75.040. I make two points regarding the factors in paragraph 63(3) SCPD 2021.

60 First, the non-exhaustive nature of the factors in paragraph 63(3) SCPD 2021 cannot be taken as a license for claimants to introduce claims which plainly have no nexus to Singapore. Paragraph 63(2) of the SCPD 2021 still requires the claimant to establish a sufficient nexus to Singapore when establishing that the Singapore court is the appropriate court to hear the action. The factors in paragraph 63(3) SCPD 2021 *go towards* establishing this requirement of a sufficient nexus to Singapore.

61 Second, I am of the view that an applicant will *generally* be able to establish a sufficient nexus to Singapore if he can bring his action within one of the factors listed in paragraph 63(3) SCPD 2021. The factors in paragraph 63(3) are near verbatim reproductions of the heads of jurisdiction under the previous regime for service out of jurisdiction: Yeo Tiong Min SC, *Commercial Conflict of Laws* (Academy Publishing, 2023) ("*Commercial Conflict of Laws*") at para 02.041; *Halsbury 6(2) 2024* at para 75.040. Under the previous regime for service out of jurisdiction, a claimant needed to establish that his case fell within one of these heads of jurisdiction: *Commercial Conflict of Laws* at para 02.032. While the test for specific heads of jurisdiction under the ROC 2014 has been superseded by the more general test of "sufficient nexus" under the ROC 2021, it is unlikely that the ROC 2021 intended to take away from a claimant a case which would have satisfied a jurisdictional gateway under the ROC 2014. The intention in effecting a change to the regime of service out of jurisdiction was to simplify matters, for example, by obviating the need for a claimant to scrutinise a list of cases in which service out of jurisdiction is permissible: *Janesh s/o Rajkumar v Unknown Person ("CHEFPIERRE")* [2023] 3 SLR 1191 at [89]. Indeed, our courts have observed in the context of paragraphs 63(3)(a), 63(3)(i), and 63(3)(p) of the SCPD 2021, that a claimant need only show a good arguable case with respect to *one* of those factors to establish a

sufficient nexus to Singapore: see Justice Chua's decision in *Cheong Jun Yoong v Three Arrows Capital Ltd and others* [2024] 4 SLR 907 ("*Cheong Jun Yoong*") at [42] and the observations of the Appellate Division of the High Court in *Three Arrows Capital Ltd and others v Cheong Jun Yoong* [2024] 1 SLR 419 at [32].

62 Nonetheless, I recognise that some of the factors stated in paragraph 63(3) SCPD 2021 may indicate a rather weak connection to Singapore: see *Commercial Conflict of Laws* at para 02.043. However, such factors are not engaged in the present case. It will suffice, for the purposes of establishing a sufficient nexus to Singapore, that the claimant's action falls within either paragraphs 63(3)(f)(i) or 63(3)(f)(ii) SCPD 2021. It is to this inquiry that I now turn to.

Paragraph 63(3)(f)(i) of the SCPD 2021: Act or omission occurring in Singapore

63 Under the ROC 2021, a claimant who wishes to effect service out of jurisdiction must show a "good arguable case that there is sufficient nexus to Singapore" (see [54] above). The claimant should refer to any of the non-exhaustive factors in paragraph 63(3) of the SCPD 2021. Paragraph 63(3)(f)(i) is one such factor, which states:

> (f) the claim:
>
> > (i) is founded on a tort, wherever committed, which is constituted, at least in part, by an act or omission occurring in Singapore.

64 Mr Modi's principal contention is that paragraph 63(3)(f)(i) SCPD 2021 is not satisfied as each publication of the relevant posts amounts to a separate

cause of action.[120] This principle is referred to as the "separate tort thesis". Thus, in so far as the Maags wish to rely on the foreign publication of the relevant posts, each foreign publication relates to a separate cause of action which is comprised *entirely* of acts occurring outside of Singapore.

65 The Maags' argument in relation to paragraph 63(3)(f)(i) SPCD 2021 is two-fold. First, there is no "separate tort thesis" in respect of publication under the law of malicious falsehood.[121] The Maags, citing the Court of Appeal in *Low Tuck Kwong v Sukamto Sia* [2014] 1 SLR 639 ("*Low Tuck Kwong*") at [104], argue that the tort of malicious falsehood is of an entirely different character from an action for defamation. Second, the "separate tort thesis" within the law of defamation should be abolished.[122] The thrust of these two arguments is that *all* publications of the posts should be treated as a single global tort under the law of defamation and malicious falsehood. The effect of this argument is that the Maags will be able to establish a nexus to Singapore under paragraph 63(3)(f)(i) SCPD 2021, *ie*, that a single global tort for both defamation or malicious falsehood is founded in part by a publication in Singapore.

66 Mr Modi makes two submissions in reply. First, the separate tort thesis applies in relation to publication under the law of malicious falsehood as the principles of publication for defamation and malicious falsehood are the same.[123] Second, in the context of claims in libel, the separate tort thesis has been affirmed locally in *Golden Season Pte Ltd v Kairos Singapore Holdings Pte Ltd*

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120 DWS1, p 12–13 and 15 at paras 25–26 and 28.

121 CWS2, p 1 at para 4.

122 CWS2, p 4 at para 11.

123 Defendant's Letter to Court (31 May 2024) ("DWS2"), p 1 at paras 4–7.

[2015] 2 SLR 751 ("*Golden Season*") and continues to be good law in the United Kingdom.[124]

Whether the separate tort thesis applies to the tort of malicious falsehood

67 I begin by addressing the Maags' contention that the separate tort thesis should not apply to the tort of malicious falsehood, which "is of an entirely different character from an action for defamation". In my view, there is much force in Mr Modi's submission to the contrary.

68 First, while the Court of Appeal in *Low Tuck Kwong* stated at [104] that the tort of malicious falsehood was of a different character from an action for defamation, that statement must be read in its proper context. In *Low Tuck Kwong*, the court noted that the torts of malicious falsehood and defamation vindicate different types of losses suffered by a claimant. The latter is concerned with words that injure the *reputation* of a person, while the former relates to words that were intended to cause, and which did cause, *pecuniary loss* to someone: *Low Tuck Kwong* at [104]. A claim for malicious falsehood need not relate to words that injure the reputation of the claimant: *Low Tuck Kwong* at [104]. It was in that context that the court recognised that both torts were of an entirely different nature; the court was simply referring to the fact that both torts vindicate different types of losses. However, this does not mean that the separate tort thesis should not apply to the tort of malicious falsehood.

69 Second, Mr Modi refers to the Australian decision of *Australand Holdings Ltd v Transparency and Accountability Council Inc* [2008] NSWSC 669 ("*Australand*"), where the New South Wales Supreme Court observed at

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[124] DWS2, pp 3–4 at paras 23–29.

[98] that "[t]here [did] not seem … to be any relevant distinction between the concept of publication for the purpose of defamation and for the purpose of injurious falsehood". This is a reference to the tort of malicious falsehood; the High Court of Australia has recognised that the tort of malicious falsehood is sometimes referred to as the tort of injurious falsehood: see *Palmer Bruyn & Parker Pty Ltd v Parsons* [2002] 2 LRC 674 at [58]. Mr Modi argues that since the same principles of publication govern the law of defamation and malicious falsehood, the separate tort thesis necessarily applies to the latter.

70 I agree with Mr Modi's submission. In my view, the same principles of publication apply to the law of defamation and malicious falsehood. The observation of the court in *Australand* is congruent with the Singapore decision of *TWG Tea Co Pte Ltd v Murjani Manoj Mohan* [2019] 5 SLR 366 ("*TWG*"), where Audrey Lim JC (as she then was) referred to principles relating to the concept of publication under the law of defamation, in the context of a claim for malicious falsehood (see *TWG* at [90]–[91]). The Maags did not raise any authority to the contrary.

71 Under the law of defamation, matter is published when and where it is received. Each time an individual views a post on his computer, it counts as a publication: *Golden Season* at [55]. Given that the same principles of publication apply to the law of defamation and malicious falsehood, such a conclusion applies equally to claims in malicious falsehood.

72 In order to establish a claim for malicious falsehood at common law, a claimant must establish that: (a) the defendant published to third parties words which are false; (b) the words refer to the claimant or his property or his business; (c) the words were published maliciously; and (d) special damage followed as a direct and natural result of their publication (*WBG Network*

(Singapore) Pte Ltd v Meridian Life International Pte Ltd and others [2008] 4 SLR(R) 727 at [68]). The cause of action is established whenever the elements of the tort are fulfilled. Thus, a separate cause of action arises each time the material is published (for instance, when an individual views the post on his computer), provided that the other elements of the tort are also satisfied. Accordingly, I am of the view that the separate tort thesis applies to the tort of malicious falsehood.

73 This conclusion is buttressed by the fact that the English High Court in *Ruta v Department for Work and Pensions* [2022] EWHC 1535 (QB) recognised at [37] that "[e]ach publication is a separate cause of action in libel *or malicious falsehood*" [emphasis added]. I am thus of the view that the malicious falsehood claims introduced in the amendments (*ie,* C1, C3, and A1–A3) do not fulfil paragraph 63(3)(f)(i) SCPD 2021 as each foreign publication is a separate cause of action that is comprised entirely of acts occurring outside Singapore.

Whether the separate tort thesis continues to apply to the law of defamation

74 Next, the Maags submit that the separate tort thesis should be abolished for defamation claims. The Maags rely on the following to support their argument: (a) comments of the English Court of Appeal in *Cadwalladr* at [49];[125] (b) the presence of the doctrine of *forum non conveniens* as a relevant control factor; and (c) the artificiality of the separate tort thesis when applied to online torts.[126]

75 Mr Modi submits there is no basis to argue for the separate tort thesis under the law of defamation to be abolished. The separate tort thesis has been

125 CWS2, p 1 at para 5.

126 CWS2, pp 4–5 at para 11.

accepted and applied in Singapore in the context of defamation: *Golden Season* at [55]. The separate tort thesis has also been affirmed in the United Kingdom and New Zealand.

76 In my view, Mr Modi has the better argument. Our courts have endorsed the applicability of the separate tort thesis in Singapore: *Review Publishing* at [34]–[35]; *Golden Season* at [53]–[55]. Further, the separate tort thesis continues to apply in the United Kingdom for the following reasons:

(a) First, the English Court of Appeal in *Cadwalladr* expressly affirmed the application of the separate tort thesis in the context of a mass publication scenario and rejected the notion of a "single publication rule" where there is only a single cause of action in respect of a mass publication: *Cadwalladr* at [41].

(b) Second, contrary to the views of the Maags and the learned AR, the separate tort thesis has not been legislatively overruled in England by s 8 of the UK Defamation Act. This much was expressly recognised by the English Court of Appeal in *Cadwalladr*, which noted at [43] that s 8 of the UK Defamation Act only enacts a "single publication rule" for the purposes of the law of limitation – *and for that purpose only*. In other words, while each communication gives rise to a separate cause of action for defamation, s 8(4) of the UK Defamation Act operates to treat the *limitation period* for the subsequent publication(s) as having commenced on the date of the first publication. However, this does not change the fact that, conceptually, separate causes of action arise from each communication of the material.

(c) Third, while [49] of *Cadwalladr* left open the possibility of analysing several publications collectively when assessing reputational

> harm, this observation was made in the specific context of s 1 of the UK Defamation Act. Section 1 of the UK Defamation Act imposes a statutory requirement for a claimant in a defamation claim to establish that the publication of the purportedly defamatory material has caused or is likely to cause serious harm to the reputation of the claimant. However, s 1 does not import the single publication rule into English law as there is nothing in the UK Defamation Act or its legislative history to suggest that it was intended to adopt the single publication rule or depart in any other way from the common law meaning of the word "publication": *Cadwalladr* at [42]–[43]. Thus, the court's observations on the collective assessment of publications should be confined to the specific inquiry of whether the requirement of serious harm under s 1(1) of the UK Defamation Act is satisfied.

77 The Maags refer to Hannah Jones, "New Zealand's Zombie Defamation Survival Guide: Solving the Grave State of Defamation Law with a Single Publication Rule" (2020) Victoria University of Wellington Legal Research Paper No. 22/2020 to support their argument that the advent of the internet and social media necessitates a departure from the separate tort thesis. However, I note that the separate tort thesis has been affirmed in the context of the internet and social media in recent decisions from New Zealand: see *Rafiq v New Zealand Customs Service* [2022] NZHC 1756 at [11]; *Sellman v Slater* [2017] 2 NZLR 218 at [34]–[38].

78 As the separate tort thesis continues to be good law in Singapore, the United Kingdom and New Zealand, it is legally unsustainable for the Maags to contend that the separate tort thesis should be abolished in the context of the law of defamation. Accordingly, each publication of the relevant posts amounts to a separate cause of action in libel. The consequence of this is that each foreign

publication of the relevant posts relates to a separate cause of action which is comprised *entirely* of acts occurring outside of Singapore. Such claims do not fulfil paragraph 63(3)(f)(i) SCPD 2021.

Paragraph 63(3)(f)(ii) of the SCPD 2021: Damage suffered in Singapore

79 I turn to consider whether the amendments introduce claims that fulfil paragraph 63(3)(f)(ii) SCPD 2021, which states:

> (f) the claim:
>
> …
>
> (ii) is wholly or partly founded on, or is for the recovery of damages in respect of, damage suffered in Singapore caused by a tortious act or omission wherever occurring

80 The Maags submit that the amendments introduce claims that fulfil paragraph 63(3)(f)(ii) SCPD 2021. In this connection, the Maags advance two alternative arguments. First, they argue that paragraph 63(3)(f)(ii) SCPD 2021 is satisfied as the Maags suffered indirect harm to their reputation in Singapore arising from the foreign publication of the relevant posts.[127] The Maags cite *IM Skaugen(AR)* and *IM Skaugen(HC)* as authority for the proposition that paragraph 63(3)(f)(ii) SCPD 2021 can be satisfied if part of the damage, such as indirect damage, is suffered in Singapore. The Maags also rely on the English case of *Jameel (Mohammed) and another v Wall Street Journal Europe Sprl* [2006] 3 WLR 642 ("*Jameel*") to argue that the court should recognise a "broad concept" of reputation, which can be damaged in the home jurisdiction by the publication of defamatory material overseas.[128] Second, the Maags argue that the common law allows the court to consider the reputational harm caused by

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127 CWS1, pp 12–16 at paras 20–26.

128 CWS2, pp 2–4 at paras 7–10.

all publications of a post wherever occurring when assessing damages under a single cause of action which relates to that post. In other words, the publication of the posts overseas is merely a matter that goes to damages and is not relied on as a separate cause of action itself.[129]

81 Mr Modi raises several arguments in response. First, he argues that the relevant statements in *Jameel* were made in the specific context of determining whether a trading company could recover general damages for libel without pleading that the relevant publication caused it special damage.[130] *Jameel* does not stand for the proposition that an individual's reputation should be considered broadly such that foreign publications can cause reputational harm to a claimant in the home jurisdiction. Further, the established principle is that damage to reputation is done in the place where the material is published: *Qingdao Bohai Construction Group Co, Ltd and others v Goh Teck Beng and another* [2016] 4 SLR 977 ("*Qingdao*") at [39]. Second, Mr Modi argued in the proceedings below that it would be artificial to treat an overseas publication as only going to damages and not as a separate cause of action itself as this would allow a claimant to side-step the jurisdictional rules for seeking leave to effect service out of jurisdiction.[131]

82 It is apposite to briefly state the principles relating to paragraph 63(3)(f)(ii) SCPD 2021. The equivalent provision under the ROC 2014 was interpreted in *IM Skaugen(CA)* at [77]. This jurisdictional gateway allowed the court to assume jurisdiction based on damage suffered in Singapore and encompassed two kinds of claims: (a) claims founded on damage, where

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129 CWS1, pp 19–20 at paras 34–37.

130 DWS2, pp 2–3 at paras 14–22.

131 JBOD, Vol 2, p 405 at para 7.

damage is part of the cause of action; and (b) claims for the recovery of damages, where damage is not part of the cause of action. Crucially, the Court of Appeal endorsed the following passage at para 75-051 of *Halsbury's Laws of Singapore* vol 6(2) (LexisNexis, 2016 Reissue) which clarifies the significance of such a distinction:

> Two kinds of claims are in fact enumerated in [O 11 r 1(f)(ii) ROC 2014]: claims founded on damage, and claims for the recovery of damages. This distinction reflects the difference (in the domestic common law) between *torts where damage is part of the cause of action and torts where damage is not*. The phrase *'wholly or partly' qualifies only the first type of claim*. The significance of this is that if damage is suffered both in Singapore and elsewhere, a claim founded on all the damage wherever occurring can be brought in Singapore (since the claim needs only be partly founded on the damage in Singapore), whereas *if the claim is only for the recovery of damages and not founded on damage, the claim is restricted to the damage suffered in Singapore*.
>
> [emphasis added]

The foregoing passage makes it clear that where a tortious claim is *founded on damage* that is partially or wholly suffered in Singapore, the claimant may claim for all the damage wherever occurring. In contrast, where the claim is only for the *recovery of damages*, it is restricted to the damage suffered in Singapore.

83 In my view, the tort of libel falls under the latter category of claims, *ie*, a claim for the recovery of damages. The claimant in a libel suit is *presumed* to have suffered reputational damage by reason of the publication of the defamatory material. A claimant who is an individual is not required to prove that he has suffered financial loss or even that any particular person has thought the worse of him as a result of the publication complained of: *Lee Hsien Loong v Singapore Democratic Party and others and another suit* [2009] 1 SLR(R) 642 at [151]. In other words, the tort of libel is actionable even without proof of reputational harm. It is perhaps for this reason that the court in *Review*

Publishing, in analysing whether the claims for libel fulfilled O 11 r 1(f)(ii) of the ROC 2006, focused its inquiry on whether the claims were confined to damage sustained in Singapore: *Review Publishing* at [5], [31], and [48].

84 In contrast, the tort of malicious falsehood requires a claimant to establish that he suffered special damage (see [72] above). This would ordinarily mean that it is a claim founded on damage as damage is part of the cause of action. However, s 6(1) of the Defamation Act 1957 sets out certain circumstances in which it is not necessary for a claimant to plead and prove special damage in an action for malicious falsehood. In my view, it is unclear whether the tort of malicious falsehood should be treated as a claim for the recovery of damages where the claimant also relies on s 6(1) of the Defamation Act 1957. However, I do not have to resolve this question in the present case as the claimant's amendments which relate to the tort of malicious falsehood are either confined entirely to damage suffered in Singapore or do not plead any damage suffered in Singapore. The claims which concern damage suffered *solely* in Singapore will fulfil paragraph 63(3)(f)(ii) regardless of whether the claims are claims founded on damage or claims for the recovery of damages. In a similar vein, the claims which do *not* plead any damage suffered in Singapore will clearly not fulfil paragraph 63(3)(f)(ii).

Amendments relating to malicious falsehood

85 I pause briefly to note that Mr Modi's arguments do not address the amendments that relate to the tort of malicious falsehood. In my view, C1 and C3 seek to introduce claims which fall within paragraph 63(3)(f)(ii) SCPD 2021. The consequential amendments (*ie*, A1 and A3) allege that the foreign publication of the relevant posts caused the Maags to suffer pecuniary damage *in Singapore*. This plainly falls within the scope of paragraph 63(3)(f)(ii) as it

relates to claims that are wholly or partly founded on damage suffered in Singapore caused by a tortious act wherever occurring.

86 However, this does not necessarily mean that C1, C3, A1, and A3 should be allowed; it merely means that they should not be disallowed on the basis that they introduce claims that have no nexus to Singapore. For reasons that I will return to later, these amendments may be disallowed on other grounds. For present purposes, it suffices to conclude that C1, C3, A1, and A3 should not be disallowed on the basis that they seek to introduce claims that have no nexus to Singapore.

87 In contrast, A2 alleges that the foreign publication of the relevant posts caused the Maags to suffer pecuniary and/or reputational harm abroad. In my view, A2 does not satisfy paragraph 63(3)(f)(ii) SCPD 2021 as it relates *entirely* to damage sustained in India and/or the United Kingdom, *ie*, outside of Singapore. The relevant portion of paragraph 63(3)(f)(ii) SCPD 2021 requires a claim to be either wholly or partly founded on damage suffered *in Singapore*. Further, for reasons elaborated on below, I am of the view that A2 does not have *any* nexus to Singapore (see [128]).

88 Having dealt with the amendments relating to the tort of malicious falsehood, I turn to consider whether the amendments relating to the tort of libel fulfil paragraph 63(3)(f)(ii) SCPD 2021.

Amendments relating to defamation claims involving pecuniary loss

89 As a preliminary matter, I note that the Maags intend to introduce several defamation claims that relate to pecuniary loss (as opposed to reputational damage). These claims are reflected in amendments B3 and B4. In my view, amendment B3 falls squarely within paragraph 63(3)(f)(ii) SCPD 2021 as it only

pleads that the Maags suffered pecuniary damage in Singapore. Thus, amendment B3 should not be disallowed on the basis that it introduces claims with no nexus to Singapore. It follows then that amendments C2 and C4, which plead the fact that the Political Hatred Post and Litigation Post were published outside of Singapore, should not be disallowed on the basis that they introduce claims with no nexus to Singapore.

90 For reasons that are stated below (see [129]), I am of the view that amendment B4 introduces claims that have no nexus to Singapore and should be disallowed on that basis. Having considered the defamation claims which involve pecuniary loss, I now turn to analyse the defamation claims which involve reputational damage.

Indirect reputational harm arising from foreign publication

91 The Maags contend that the foreign publications caused them to suffer reputational harm in Singapore. This submission relates to amendment B1. In my view, the Maags have not cited any relevant authority to support the proposition that, as a matter of law, reputational damage arising from the publication of defamatory material in other jurisdictions can be suffered in Singapore. While the Maags have referred to *Jameel* to argue that the law recognises a "very broad concept of reputation", their reliance on *Jameel* is misplaced.

92 In *Jameel*, the House of Lords had to consider, amongst other issues, whether a trading corporation could sue and recover general damages for libel without pleading or proving special damage: *Jameel* at [1]. Under the existing law in England and Wales at the time, a trading corporation was so entitled. However, an argument was made that such a rule infringed on the respondent's

right to publish newspapers under Art 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms. In rejecting this argument, the court made several observations about the significance of a trading corporation's reputation. For instance, the court noted that reputational damage suffered by a trading corporation could affect its business as a trading company: *Jameel* at [95]. The reputation of a company, much like the reputation of an individual, was a thing of value: *Jameel* at [26]. Thus, the court held that the law of libel should apply equally to all plaintiffs: *Jameel* at [100].

93 Contrary to the Maags' submission, *Jameel* does not stand for the proposition that an individual's reputation is "broad and indivisible". The court in *Jameel* merely noted the significance of a trading company's reputation to its business. I agree with Mr Modi's submission that *Jameel* does not go so far as to suggest that a claimant may suffer reputational harm in the home jurisdiction arising from the foreign publication of defamatory material.

94 Further, our courts have accepted that reputational damage is suffered in the place where the defamatory material is published: *Qingdao* at [39]. In *Qingdao*, the court endorsed the following passage from *Dow Jones & Company Inc v Gutnick* (2002) 210 CLR 575 ("*Gutnick*"):

> In defamation, the same considerations that require rejection of locating the tort by reference only to the publisher's conduct, lead to the conclusion that, *ordinarily, defamation is to be located at the place where the damage to reputation occurs. Ordinarily that will be where the material which is alleged to be defamatory is available in comprehensible form* assuming, of course, that the person defamed has in that place a reputation which is thereby damaged. It is only when the material is in comprehensible form that the damage to reputation is done … *In the case of material on the World Wide Web, … [i]t is where that person downloads the material that the damage to reputation may be done.*
>
> [emphasis added]

95 *Gutnick* is also cited in *Carter-Ruck on Libel and Privacy* (6th Ed., LexisNexis) at para 7.7 as authority that, for the purposes of seeking leave to effect service out of jurisdiction for a claim in libel in England and Wales under the equivalent of paragraph 63(3)(f)(ii) SCPD 2021, "damage is sustained where publication occurs".

96 In my judgment, the Maags have not cited any relevant authority to support their argument that a claimant may suffer "indirect" reputational harm in the home jurisdiction which arises out of the publication of defamatory material overseas. Such a submission runs contrary to the position in *Qingdao* and *Gutnick* that reputational harm occurs where the defamatory material is published. I thus reject the Maags' contention that the mere publication of defamatory material overseas, without more, can constitute indirect reputational harm to a claimant in the home jurisdiction.

97 Notwithstanding this, the Maags may still be able to show that their proposed claim falls under paragraph 63(3)(f)(ii) SCPD 2021. While it is not clearly stated in the Revised Statement of Claim, the Maags appear to allude to the fact that individuals in India and/or the United Kingdom *republished* the relevant posts in Singapore and thereby damaged the claimant's reputation in Singapore. For instance, the Maags' Revised Statement of Claim states that certain persons in India and/or the United Kingdom who are familiar with the Maags have social and/or commercial ties to Singapore[132] and that the Maags rely on their overseas reputation for the purposes of their social reputation in Singapore.[133] Paragraph 65.6 of the Revised Statement of Claim states that the Maags rely on the fact that they have significant social and commercial

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132 JBOD, Vol 3, pp 266–267 at paras 20A.3 and 20A.7.

133 JBOD, Vol 3, p 268 at paras 20B.1–20B.2.

networks comprised of people who are likely to know each other and *repeat the words to each other*.[134] In turn, the Maags' social and commercial networks comprise persons in India, the United Kingdom, and Singapore.[135] The Maags have also pleaded that it is foreseeable and/or the natural, ordinary and probable consequence that Mr Modi's purported publication of the posts would be republished extensively on the internet.[136]

98 The significance of this pleading is that, under the law of defamation, a defendant who is liable for the original publication of a defamatory statement is also liable for all subsequent republications which are the natural and probable consequence of his act: *Goh Chok Tong v Jeyaretnam Joshua Benjamin* [1997] 3 SLR(R) 46 ("*Goh Chok Tong*") at [127]. Further, the republication of the defamatory matter will not constitute a separate cause of action against the *original* publisher. Instead, as against the original publisher, the republications merely go towards the damages to be assessed for the cause of action for the original publication: *Goh Chok Tong* at [123]–[127]. I note that these principles are not directly applicable to the present case as they were decided in the context of *both* the republication and the original publication of the defamatory words occurring *within the same jurisdiction*. In contrast, the present case involves original publication outside of Singapore and republication in Singapore. Nonetheless, these principles mean that there is a *good arguable case* that such a claim would satisfy paragraph 63(3)(f)(ii) SCPD 2021. The only caveat to this is that claims for the recovery of damages suffered in Singapore which fall under paragraph 63(3)(f)(ii) SCPD 2021 are restricted to damages for losses suffered in Singapore, for reasons stated above (see [82]–[83]). However, this is not an

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134 JBOD, Vol 3, p 290.

135 JBOD, Vol 3, p 266–267 at paras 20A.1, 20A.5, and 20A.7.

136 JBOD, Vol 3, p 242 at para 15

issue as amendment B1 only pleads that the Maags suffered reputational damage, distress, and hurt to their feelings in Singapore.

99 The preceding discussion assumes that the Maags have sufficiently pleaded that the foreign publications were republished in Singapore. However, the Revised Statement of Claim does not clearly plead this fact as it presently stands. If the Maags intend to plead that the foreign publications were republished in Singapore, they should amend the Revised Statement of Claim within 14 days to clearly and unambiguously plead this fact; failing which, the portion of amendment B1 which pleads that the posts were published in "India and/or the United Kingdom" will be disallowed as I have previously rejected the Maags' submission that a foreign publication can give rise to indirect reputational harm in Singapore (see [96] above). In the absence of republication in Singapore of original publications abroad, I do not see any basis for the Maags to plead that they suffered reputational damage in Singapore from the foreign publications.

The collective assessment of reputational harm under the law of defamation

100 Next, the Maags submit that the proposed defamation claims fulfil paragraph 63(3)(f)(ii) SCPD 2021 as the foreign publications are not relied upon as separate causes of action. Instead, the Maags contend that the foreign publications merely go towards the assessment of damages for the causes of action that are founded upon publications in Singapore.[137] This argument is conceptually distinct from the preceding discussion on the republication of the defamatory posts. Under this argument, the Maags contend that *all* of the individual *original* publications of the posts can be considered cumulatively in

[137] CWS1, pp 19–20 at paras 34–37.

the assessment of damages. This argument appears to be directed at amendments B2 and B4.

101 I have reservations about the soundness of the Maags' submission. As observed above at [76(c)], the comments in *Cadwalladr* at [49] were made in the specific context of s 1 of the UK Defamation Act. Section 1 of the UK Defamation Act imposes a statutory requirement for a claimant to establish that the publication of the defamatory material caused *serious harm* to the claimant's reputation. However, this statutory requirement is absent in Singapore. Further, *Cadwalladr* did not deal with the issue of publication in multiple jurisdictions. Instead, it considered whether the publications *within the jurisdiction* caused or were likely to cause serious harm to the claimant's reputation under s 1 of the UK Defamation Act: see *Cadwalladr* at [1], [9], [32], and [36].

102 Having disposed of *Cadwalladr*, I turn to consider the Maags' reliance on paragraph 19.3 of *Doris Chia*, which states the following:

> Publication of the defamatory imputation takes place when and where it is communicated to third parties. … Where the publication is in more than one jurisdiction, *forum non conveniens* issues may arise. *The plaintiff can choose to sue for each publication in each jurisdiction or he can sue in one jurisdiction and ask the court to take into account the publications in other jurisdictions in the claim for damages.*[10] …
>
> [emphasis added]

103 This is expounded upon in footnote 10 of the paragraph, which states:

> However, there are no known cases in Singapore or Malaysia which deal with a situation where the plaintiff sued for publications in multiple jurisdictions in Singapore or Malaysia only and treat the publications in other jurisdictions as going to damages. In Australia, the case of *Toomey v Mirror Newspapers Ltd* [1985] 1 NSWLR 173 suggests this is possible, but the Federal Court of Australia in *David Syme & Co Ltd (Rec and Mgr apptd) v Grey* (1992) 115 ALR 247, was of the view that it was not correct to assess damages by reference to publication

> outside the territory without considering whether those damages would be recoverable under the laws of the other jurisdictions.

104 I will address the applicability of the common law rule in *Toomey* (that allows for publications in various jurisdictions to be assessed collectively) later in this judgment (see [123] below). For present purposes, I am of the view that this common law rule cannot apply in the context of paragraph 63(3)(f)(ii) SCPD 2021. In determining whether this common law rule is applicable in the present case, it is useful to return to first principles and thereafter consider the authorities in that light. In Singapore, the court's jurisdiction to hear a civil matter is governed by s 16(1) of the SCJA (see [57] above). In short, the court's jurisdiction to hear a matter where the defendant is served outside of Singapore is contingent on the circumstances authorised by the ROC 2021 being fulfilled. On the other hand, there is no such restriction where jurisdiction is founded on service within jurisdiction, save that service must be effected in the manner prescribed in the ROC 2021. In this context, I turn to paragraph 63(3)(f)(ii) SCPD 2021, which is one of the factors that a claimant can refer to in establishing a sufficient nexus to Singapore.

105 As stated earlier, the equivalent provision to paragraph 63(3)(f)(ii) SCPD 2021 in the ROC 2014 has been interpreted to encompass two kinds of claims: (a) claims founded on damage, where damage is part of the cause of action; and (b) claims for the recovery of damages, where damage is not part of the cause of action. The significance of this distinction is that claims which relate to the latter are limited to the damage suffered in Singapore, whereas claims which relate to the former are not restricted in that manner (see [82] above). I have also explained that libel claims are claims for the recovery of damages (see [83] above).

106 When seen in that light, it is unclear how *Toomey* can override the clear wording of paragraph 63(3)(f)(ii) SCPD 2021. As the learned author of *Doris Chia* observes at footnote 10 of paragraph 19.3, "there are no known cases in Singapore or Malaysia which deal with a situation where the plaintiff sued for publications in multiple jurisdictions in Singapore or Malaysia only and treat the publications in other jurisdictions as going to damages." I also note that para 19.3 of *Doris Chia* does not appear in Doris Chia, *Defamation: Principles and Procedure in Singapore and Malaysia* (LexisNexis, 2nd Ed, 2024), which is a subsequent edition of the same text. Further, paragraph 19.3 of *Doris Chia* was not written in the context of service out of jurisdiction. This is important as the requirement of establishing a sufficient nexus to Singapore is only relevant where the court's jurisdiction is founded on service out of jurisdiction. There is no equivalent restriction where jurisdiction is founded on service within jurisdiction (see above at [104]). This is because s 16 of the SCJA states:

> **16**.–(1) The General Division has jurisdiction to hear and try any action in personam where —
>
> (a) the defendant is served with an originating claim or any other originating process —
>
> (i) in Singapore in the manner prescribed by Rules of Court or Family Justice Rules; or
>
> (ii) *outside Singapore in the circumstances authorised by* and in the manner prescribed by Rules of Court or Family Justice Rules; or
>
> (b) the defendant submits to the jurisdiction of the General Division.
>
> [emphasis added]

107 Accordingly, foreign publications should not be considered collectively when assessing whether damage is sustained in Singapore for the purposes of paragraph 63(3)(f)(ii) SCPD 2021. The claims introduced in amendment B4 do not satisfy paragraph 63(3)(f)(ii) SCPD 2021 on this basis. For the sake of

clarity, the preceding analysis is concerned solely with the issue of whether the proposed claims for libel fall under paragraph 63(3)(f)(ii) SCPD 2021.

Whether paragraph 63(3)(f)(ii) of the SCPD 2021 should be read expansively to allow a claimant in a libel claim to recover damages for losses suffered overseas

108 The next issue that arises for my consideration is whether paragraph 63(3)(f)(ii) SCPD 2021 should be read expansively to allow a claimant to recover damages for losses suffered overseas under a tort where damage is not a constituent element – such as the tort of libel. This issue has been identified in *Halsbury's Laws of Singapore* vol 4 (LexisNexis, 2024) at para 50.080, which states that:

> Limb (f)(ii) [*ie,* paragraph 63(3)(f)(ii) SCPD 2021] can be dichotomised into two kinds of claims: claims founded on damage, and claims to recover damages. This reflects the common law difference between torts where damage is a constituent element (ie, actionable only upon proof of damage), and where damage is not. *Query, given the non-exhaustive nature of the connecting factors now, if a claim can proceed to recover damages for losses suffered overseas for a tort where damage is not a constituent element, and some but not all damage was suffered in Singapore.*
>
> [emphasis added]

Mr Modi contends that *Review Publishing* makes it clear that, where a claimant pursues a claim in libel in Singapore against a foreign defendant, the claimant is required to limit his claim to losses suffered in Singapore.[138]

109 The Maags make several arguments in response. First, they submit that the court's observations in *Review Publishing* were *obiter dicta*.[139] Further, the

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138 DWS1, p 13 at para 26.

139 CWS1, pp 16–17 at paras 28–29.

cases cited in *Review Publishing* were decided in the context of foreign legislation that was narrower than the jurisdictional gateways under ROC 2014 and the SCPD 2021.[140] Second, the Maags argue that the restrictions under paragraph 63(3)(f)(ii) SCPD 2021 should not apply stringently under the new framework for service out of jurisdiction as the factors in paragraph 63(3) SCPD 2021 are non-exhaustive.[141] Third, the Maags contend that *IM Skaugen(AR)* and *IM Skaugen(HC)* made clear that a plaintiff, who relied on the equivalent of paragraph 63(3)(f)(ii) SCPD 2021 in the ROC 2014, was not restricted to only claiming for damage suffered in Singapore.[142] Fourth, *IM Skaugen(AR)* and *IM Skaugen(HC)* stand for the proposition that the equivalent of paragraph 63(3)(f)(ii) SCPD 2021 in the ROC 2014 could be satisfied by indirect damage.[143] This is supported by the foreign decisions of *FS Cairo* and *Fong Chak Kwan*.[144] Fifth, the Maags rely on the common law rule in *Toomey* that allows for publications in various jurisdictions to be assessed collectively.[145]

110 I reject the Maags' criticism of *Review Publishing*. While the propositions relating to foreign damage were made in *obiter*, that alone does not take the Maags far. The court in *Review Publishing* had considered the issue of foreign damage in considerable depth. Further, the fact that the foreign cases cited in *Review Publishing* were decided in the context of foreign legislation is not determinative. In my view, the foreign cases were cited in *Review*

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140 CWS1, pp 17–19 at paras 29–33.

141 CWS1, pp 20–21 at paras 38–40.

142 CWS1, pp 12–14 at paras 20–23.

143 CWS1, p 14 at para 24.

144 CWS1, pp 14–16 at paras 24–25.

145 CWS1, pp 19–20 at paras 35–37.

Publishing as *illustrations* of the various interests that the abuse of process doctrine served to protect: *Review Publishing* at [25].

111 Nonetheless, I recognise that the restriction imposed in *Review Publishing* was likely due to the exhaustive nature of the jurisdictional gateways under the ROC 2006 and the precise wording of O 11 r 1(f)(ii) ROC 2006. A claimant was not at liberty to establish that a claim had a "sufficient nexus" to Singapore if it did not fall within any of the jurisdictional gateways under the ROC 2006. In contrast, a claimant under the new framework for service out of jurisdiction merely has to establish a sufficient nexus to Singapore. It is in this context that paragraph 63(3) SCPD 2021 states that a claimant *should* refer to various non-exhaustive factors to establish a good arguable case that there is sufficient nexus to Singapore.

112 In my view, paragraph 63(3)(f)(ii) SCPD 2021 should not be read expansively to allow the Maags to recover damages for losses sustained overseas in their claims in *libel*. This is for two reasons. I emphasise that the following discussion is limited to the present situation, *ie*, where the court's jurisdiction is founded upon service out of jurisdiction on the basis that it is the appropriate court to hear the action. Further, as the remaining amendments (*ie*, B2 and B4) relate to losses sustained overseas for the Maags' claims in *libel*, I confine my analysis to the specific tort of *libel*.

113 First, reading paragraph 63(3)(f)(ii) SCPD 2021 expansively to allow the Maags to recover damages for losses sustained overseas for the tort of libel will run counter to the intention of the paragraph. Paragraph 63(3)(f)(ii) SCPD 2021 is set out below:

> (3) For the purposes of [establishing that there is a good arguable case that there is a sufficient nexus to Singapore], the

> claimant should refer to any of the following non-exhaustive list of factors (as may be applicable) in the supporting affidavit:
>
> …
>
> (f) the claim:
>
> …
>
> (ii) is wholly or partly founded on, or is for the recovery of damages in respect of, damage suffered in Singapore caused by a tortious act or omission wherever occurring

The verbatim reproduction of the heads of jurisdiction under ROC 2014 in paragraph 63(3) SCPD 2021 suggests an intention to have some degree of continuity in the law: *Commercial Conflict of Laws* at para 02.043. Further, the Court of Appeal in *IM Skaugen(CA)* observed that the plain wording of O 11 r 1(f)(ii) of the ROC 2014 (which is the equivalent provision to paragraph 63(3)(f)(ii) SCPD 2021) was such that the phrase "wholly or partly" only qualified claims *founded on damage* and not claims for the recovery of damages (see [82] above). This observation is highly persuasive in the interpretation of paragraph 63(3)(f)(ii) SCPD 2021, which is in *pari materia* with O 11 r 1(f)(ii) ROC 2014. It follows then that in so far as claims for the recovery of damages are concerned, paragraph 63(3)(f)(ii) only establishes a sufficient nexus to the extent that the damage is suffered in Singapore. While paragraph 63(3)(f)(ii) is merely one of several non-exhaustive factors that go towards establishing a sufficient nexus to Singapore under the new regime for service out, there is nonetheless a need to give effect to the intention of the paragraph, which aims to draw a distinction between the two types of torts. In my view, the intention behind paragraph 63(3)(f)(ii) will be undermined if it is read such that, in the context of a claim for the recovery of damages, a sufficient nexus under paragraph 63(3)(f)(ii) can *also* be established for all the damage *wherever occurring*.

114 Second, specific concerns militate against permitting a claimant in a *libel* claim to recover, as against a defendant served outside of jurisdiction, damages for losses sustained outside of the home jurisdiction. In 2007, the court in *Review Publishing* aptly noted that the increasing accessibility of mass media and communication had greatly increased the reach and impact of any individual's idea or expression: *Review Publishing* at [1]. As such, it was a common occurrence for defamation suits to straddle more than one jurisdiction: *Review Publishing* at [1]. In the years following *Review Publishing*, the world has become smaller with the proliferation of the internet and other forms of mass media. Internet communication enables individuals to communicate instantaneously with a potentially vast *global* audience: Matthew Collins, *The Law of Defamation and the Internet* (Oxford University Press, 3rd Ed, 2010) at para 3.02. In my judgment, the principles stated in *Review Publishing* apply equally today as they did in 2007. In particular, the court is still concerned with preventing the wastage of judicial resources in adjudicating claims which have nothing to do with the home jurisdiction but are merely an attempt to vindicate the claimant's global reputation: *Review Publishing* at [29]. I am thus of the view that, in so far as claims in *libel* are concerned, cogent policy considerations militate against the recovery of damages for losses suffered outside of Singapore as against defendants who have been served outside of jurisdiction.

115 The Maags' reliance on *IM Skaugen(AR)* and *IM Skaugen(HC)* is also misplaced. The AR in *IM Skaugen(AR)* opined that, under the equivalent of paragraph 63(3)(f)(ii) SCPD 2021 in the ROC 2014, a plaintiff was not restricted to only claiming for damage sustained in Singapore: *IM Skaugen(AR)* at [102] and [104]. In a similar vein, the High Court in *IM Skaugen(HC)* recognised that O 11 r 1(f)(ii) of the ROC 2014 only required the claim to be at least partly founded on damage suffered in Singapore: *IM Skaugen(HC)* at

[147]. This case can be distinguished on the basis that it involved the torts of fraudulent misrepresentation and negligent misrepresentation. As explained earlier, paragraph 63(3)(f)(ii) SCPD 2021 encompasses two types of claims (see above at [82]). The significance of this distinction is that if a claim is *founded on* damage suffered wholly or partly in Singapore, a claim founded on *all the damage wherever occurring* can be brought in Singapore. However, where a claim is for the recovery of damages in respect of damage suffered in Singapore, the claim is limited to *damage suffered in Singapore* (see above at [82]). I have explained that a claim for the tort of libel relates to a claim for the recovery of damages (see [83] above). In contrast, claims for fraudulent and negligent misrepresentations relate to claims founded on damage. A plaintiff must establish that he suffered damage to establish the tort of either fraudulent misrepresentation or negligent misrepresentation. This much was recognised by the court in *IM Skaugen(AR)* at [65]–[66]. Thus, the remarks by the courts in *IM Skaugen(AR)* and *IM Skaugen(HC)* must be understood in the appropriate context, *ie*, that they related to a different subcategory of claims under the equivalent provision of paragraph 63(3)(f)(ii) SCPD 2021 in the ROC 2014.

116 Next, the Maags submit that *FS Cairo* is consistent with the position in *IM Skaugen(AR)*. In *FS Cairo*, the respondent and her family were on a holiday in Egypt, where they participated in an excursion. During the excursion, an unfortunate car accident occurred. The respondent suffered various personal injuries, while her husband and several other members of her family passed away as a result of the accident. The respondent then sought permission from the English courts to serve various claims against the foreign defendant-appellant, who had arranged for the excursion, in Egypt. The respondent advanced three heads of claim: (a) a claim for personal injury suffered in her own right; (b) a claim for damages in her capacity as the executrix of the estate

of her late husband for wrongful death; and (c) a claim for damages for bereavement and loss of dependency in her capacity as her late husband's widow. Her claims in all three capacities were pleaded as claims for, *inter alia*, the tort of negligence. On appeal, it was argued that the respondent's claims in tort did not fulfil the relevant jurisdictional gateway for service out, which was paragraph 3.1(9)(a) of the UK Civil Procedure Rules, Practice Direction 6B ("CPR PD 6B"). The respondent had only suffered direct damage in Egypt, and not in England and Wales. Paragraph 3.1(9)(a) CPR PD 6B states:

> Service out of the jurisdiction where permission is required.
>
> 3.1 The claimant may serve a claim form out of the jurisdiction with the permission of the court under rule 6.36 where –
>
> …
>
> Claims in tort
>
> (9) A claim is made in tort where –
>
> (a) damage was sustained, or will be sustained, within the jurisdiction; or
>
> …

117 On appeal, the Supreme Court of the United Kingdom considered the scope of paragraph 3.1(9)(a) CPR PD 6B. The majority held that, for the purposes of paragraph 3.1(9)(a) of the CPR PD 6B, "damage" would encompass actionable harm, direct or indirect, caused by the wrongful act alleged. There was no need to limit its scope to direct as opposed to indirect damage: *FS Cairo* at [81]. Damage was thus not limited to the element necessary to complete a cause of action; it also included "all the detriment, physical, financial, and social which the claimant suffers as a result of the tortious conduct of the defendant": *FS Cairo* at [83]. On this basis, the court concluded that the respondent's tortious claims fulfilled paragraph 3.1(9)(a) CPR PD 6B.

118 The Maags rely on *FS Cairo*'s broader conception of "damage" to argue that reputational damage sustained by the Maags overseas, which arises from foreign publication of the relevant posts, will amount to *indirect* damage sustained in Singapore.[146] The relevance of this argument appears to be that the Maags may then claim for *all* the damage suffered – including damage sustained overseas.

119 The Maags also appear to rely on *Fong Chak Kwan* on the same basis. In *Fong Chak Kwan*, the Hong Kong Court of Final Appeal held that "damage" under the equivalent jurisdictional gateway in the Rules of the High Court (the "HK Rules") should not be confined to direct damage. *Fong Chak Kwan* involved the interpretation of O 11 r 1(1)(f) of the HK Rules, which states:

> … service of a writ out of the jurisdiction is permissible with the leave of the Court if in the action begun by the writ –
>
> …
>
> (f) the claim is founded on a tort and the damage was sustained, or resulted from an act committed, within the jurisdiction;

120 I deal with *FS Cairo* and *Fong Chak Kwan* together, and reject the Maags' reliance on these cases for two reasons. First, a direct application of *FS Cairo* and *Fong Chak Kwan* to the present case, which involves a claim for the recovery of damages, will erode the distinction that paragraph 63(3)(f)(ii) of the SCPD 2021 aims to draw between: (a) claims founded on damage; and (b) claims for the recovery of damages (see above at [113]).

121 Second, *FS Cairo* and *Fong Chak Kwan* involved the interpretation of provisions that are textually different from paragraph 63(3)(f)(ii) of the SCPD

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146 CWS1, pp 15–16 at para 25.

2021. Neither paragraph 3.1(9)(a) CPD PD 6B (in *FS Cairo*) nor O 11 r 1(1)(f) of the HK Rules (in *Fong Chak Kwan*) draws a distinction between tortious claims founded on damage and tortious claims for the recovery of damages. It was in this context that the court in *FS Cairo* held that "damage" was not limited to the element necessary to complete a cause of action under paragraph 3.1(9)(a) CPD PD 6B: *FS Cairo* at [83]. However, paragraph 63(3)(f)(ii) of the SCPD 2021 explicitly distinguishes between the two types of torts. The Court of Appeal has observed that this distinction reflects the difference between torts where damage *is part of the cause of action* and torts where damage is not (see above at [82]). Paragraph 63(3)(f)(ii) also provides for the differential treatment of the two types of torts. Thus, I decline to apply *FS Cairo* and *Fong Chak Kwan* in the present case, as doing so would unduly widen the scope of paragraph 63(3)(f)(ii) and undermine the distinction that the paragraph seeks to draw between the two types of torts.

122 I turn last to the decision of *Toomey*, which was decided by the Supreme Court of New South Wales. The court in *Toomey* held that a claimant who had pleaded a single cause of action against a defendant for libel could recover damages for reputational harm caused by a mass publication by the defendant, suffered both within the jurisdiction where the action was brought and elsewhere: *Toomey* at 184F. In coming to this conclusion, the court noted that the original publisher of a defamatory statement was liable for republications of that material where republication is the natural and probable result of the original publication. Thus, the court reasoned that there could not be any logical distinction drawn between the damage for which a defendant is liable when he makes a mass publication himself, and those for which he is liable where someone else had republished what he had originally published in foreseeable circumstances: *Toomey* at 183E–183G.

123 I decline to follow the principle set out in *Toomey*. In my judgment, applying the principle in *Toomey* in the context of service out applications would effectively allow the claimant to sidestep the limitation found in paragraph 63(3)(f)(ii) SCPD 2021 and *Review Publishing*. A similar concern was raised by the court in *Clarke v Bain* at [66]:

> It would be surprising if a [c]laimant, after being refused leave to rely on a cause of action in respect of a publication outside the jurisdiction[,] could simply move his plea from his substantive claim to the part of the pleading dealing with damages.

124 For these reasons, I am of the view that *Review Publishing* remains good law in Singapore. Notwithstanding the non-exhaustive nature of the factors stated in paragraph 63(3) of the SCPD 2021, I am of the view that paragraph 63(3)(f)(ii) should not be read expansively to allow the Maags to recover damages for losses suffered outside of Singapore in their claims in libel.

Whether the proposed defamation claims indicate a sufficient nexus to Singapore despite not fulfilling the factors within paragraph 63(3) SCPD 2021

125 Thus far, I have held that amendments A1, A3 and B3 should not be disallowed on the basis that they introduce claims with an insufficient nexus to Singapore as they satisfy paragraphs 63(3)(f)(ii) SCPD 2021. I have also stated that amendment B1 is likely to establish a sufficient nexus to Singapore if the Maags intended to, and amend the Revised Statement of Claim to reflect that they, seek to claim for republications of the posts in Singapore. I thus consider whether the remaining amendments introduce claims with a sufficient nexus to Singapore. The remaining amendments are: A2, B2 and B4.

126 Throughout the course of this appeal, the Maags repeatedly rely on the "non-exhaustive" nature of the factors in paragraph 63(3) SCPD 2021 to argue

that their proposed claims have a sufficient nexus to Singapore. The Maags submit that the non-exhaustive nature of the factors in paragraph 63(3) SCPD 2021 signals that there is no such principle, that damage sustained outside of Singapore cannot be included in a claim for a tort.[147]

127 Mr Modi submits that while the factors in paragraph 63(3) SCPD 2021 are non-exhaustive, the Maags must nonetheless establish a good arguable case that their claim has a sufficient nexus to Singapore.[148] Thus, the Maags cannot seek to introduce defamation claims based on foreign publications which cause reputational harm to the Maags outside of Singapore. Such actions will plainly have no nexus to Singapore.

128 I agree with Mr Modi's submission. Certain amendments, such as A2 and B2, plainly have no connection to Singapore at all. They relate to *foreign* publications which have caused the Maags damage *abroad*. They do not plead that such foreign damage resulted in damage in Singapore. Instead, they only seek to vindicate the reputational harm suffered by the Maags *abroad.* The mere fact that the factors in paragraph 63(3) SCPD 2021 are non-exhaustive cannot save such claims; the Maags must still establish a sufficient nexus to *Singapore* under paragraph 63(2) SCPD 2021. For this reason, amendments A2 and B2 are disallowed as they seek to introduce claims which have no nexus to Singapore.

129 I turn to consider whether amendment B4 should be allowed. Amendment B4 pleads that the publications in Singapore *and/or* India *and/or* the United Kingdom were calculated to and did cause the Maags to suffer pecuniary damage in India *and/or* the United Kingdom *and/or* Singapore.

147 CWS1, p 21 at para 40.

148 DWS1, pp 13–15 at paras 27–28.

However, B4 also goes beyond this as the Maags also plead reliance on "paragraph 20A and each of its sub-paragraphs and/or paragraphs 20B and each of its sub-paragraphs in this regard".[149] By repeating these paragraphs, the Maags essentially repeat amendments A2 and A3 in the context of their claims in libel.

130 While this amendment appears to be simple, it encompasses at least *nine* types of claims:

(a) publications overseas that caused pecuniary damage overseas ("Claim A");

(b) publications overseas that caused pecuniary damage in Singapore and overseas ("Claim B");

(c) publications overseas that caused pecuniary damage in Singapore ("Claim C");

(d) publications in Singapore and overseas that caused pecuniary damage overseas ("Claim D");

(e) publications in Singapore and overseas that caused pecuniary damage in Singapore and overseas ("Claim E");

(f) publications in Singapore and overseas that caused pecuniary damage in Singapore ("Claim F");

(g) publications in Singapore that caused pecuniary damage overseas ("Claim G");

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149 JBOD, Vol 3, pp 275–276 at para 39C; pp 284–285 at para 57C.

(h) publications in Singapore that caused pecuniary damage in Singapore and overseas ("Claim H"); and

(i) publications in Singapore that caused pecuniary damage in Singapore ("Claim I");

131 In my view, several of these claims have no nexus to Singapore.

(a) Claim A, which concerns publications made *overseas* that caused pecuniary damage *overseas*, has no nexus to Singapore and should be disallowed.

(b) Claim B concerns publications made overseas that caused pecuniary damage to the Maags in Singapore and overseas. In my view, the *only* nexus that the claim has to Singapore is the fact that damage was purportedly sustained in Singapore. Paragraph 63(3)(f)(ii) SCPD 2021, which squarely addresses this particular connection to Singapore, is thus relevant. As explained above, paragraph 63(3)(f)(ii) will not allow the Maags to recover damages for losses suffered outside of Singapore in their claims in libel (see [112]–[124] above).

(c) Claim D concerns publications in Singapore *and* overseas that caused pecuniary damage overseas. As each publication amounts to a separate tort in libel, Claim D effectively introduces claims involving pecuniary damage sustained *overseas* arising from a publication made overseas. Accordingly, Claim D introduces claims which have no nexus to Singapore and should be disallowed on that basis.

(d) Claim E concerns publications in Singapore *and* overseas that caused pecuniary damage in Singapore *and* overseas. As stated earlier,

> each publication amounts to a separate tort in libel. As such, Claim E introduces claims for: (a) publication in Singapore that caused damage to the Maags in Singapore and overseas; and (b) publication overseas that caused pecuniary damage to the Maags in Singapore and overseas. While the former situation likely has a sufficient nexus to Singapore as it relates to publications in Singapore, the latter situation has already been dealt with above in the context of Claim B. As such, I am of the view that Claim E introduces claims with an insufficient nexus to Singapore.

132 In sum, while amendment B4 introduces claims which have a sufficient nexus to Singapore, it also introduces claims which do not. Further, it is unclear how B4 can be amended to excise such claims. Amendment B4 states:

> Further and /or in the alternative, the publication of the said Words in Singapore and/or India and/or the United Kingdom were calculated to and did cause pecuniary damage to the 1st and/or 2nd Claimants in India and/or the United Kingdom and/or Singapore and the Claimants repeat and rely on paragraph 20A and each of its sub-paragraphs and/or paragraph 20B and each of its sub-paragraphs in this regard.

133 I thus disallow amendment B4 on the basis that it introduces claims with no nexus to Singapore.

Issue 3: Whether amendments A1, A3, B1, B3, C1–C4, D and E should be disallowed on any other basis

134 As stated earlier (at [128] and [133]), amendments A2, B2, and B4 are disallowed as they introduce claims that have no nexus to Singapore. B1 should also be disallowed on the same basis if the Maags do not amend their pleadings to plead the fact of republication in Singapore. However, it cannot be said that A1, A3, B3, and C1–C4 introduce claims without a sufficient nexus to

Singapore. The issue then is whether these claims should be disallowed on any other basis. I deal with these amendments in turn. For completeness, I consider amendment B1 in the event that the Maags do amend their pleadings to plead the fact of republication in Singapore. I also consider amendments D and E in this analysis.

Amendment A1: Claim for malicious falsehood involving foreign publication and pecuniary damage in Singapore

135 In relation to A1, Mr Modi contends that the Maags failed to sufficiently particularise the following: (a) the nature of the pecuniary loss which the falsehoods were said to have caused; and (b) the mechanism by which the loss is likely to be sustained.[150] Mr Modi submits, on the basis of *Niche Products Ltd v Macdermid Offshore Solutions LLC* [2013] EWHC 3540 (IPEC), that such particulars must be contained in the Revised Statement of Claim.

136 The absence of, or defects in, particulars in pleadings, can be a basis for striking out when the error is major and cannot be made good by an amendment providing those particulars. The relevant question is whether the defendants would know what the case they are supposed to meet is: *Antariksa Logistics Pte Ltd and others v Nurdian Cuaca and others* [2018] 3 SLR 117 at [145].

137 I do not see how it can be said that the Maags failed to particularise the nature of the pecuniary loss caused by the falsehoods. Header F of the Revised Statement of Claim is aptly titled "Special damage suffered by the 1st and / or 2nd claimant as a result of the defendant's malicious falsehood(s) and / or defamation(s) through the litigation post and / or political hatred post". Under this header, at paras 61–64 of the Revised Statement of Claim, the Maags have

150 DWS3, pp 4–5 at paras 8–14.

particularised the nature of the special damage caused by the malicious falsehoods and the mechanism by which the loss was likely sustained.[151] Specifically, the Maags aver that several prospective investors decided not to invest in the Maags' budding e-commerce platform after accessing the relevant posts online. The said investors raised concerns about the fact that Mr Modi had purportedly written the posts. The Maags thus aver that they suffered the loss of various opportunities such as: (a) the opportunity to benefit from an increase in the value of their respective shares of an e-commerce platform as a result of various investments being aborted; and (b) the opportunity to earn dividends on said shares. In my judgment, A1 should not be disallowed on this basis. It follows then that C1 and C3, which plead that the posts were published overseas in relation to the claims for malicious falsehood, should not be disallowed.

Amendment A3: Claim for malicious falsehood involving foreign publication and pecuniary and reputational harm in Singapore

138 In relation to A3, Mr Modi contends that: (a) reputational harm cannot be recovered under the tort of malicious falsehood as per *George v Cannell and another* [2024] 3 WLR 153 ("*George v Cannell*") at [57]; and (b) the Maags failed to include particulars of the pecuniary loss that the falsehoods were said to have caused and the mechanism by which the loss is likely to be sustained.

139 Mr Modi's contention regarding the lack of particulars is rejected for the same reason given above (see [137] above). However, I agree with Mr Modi's submission that reputational harm is not recoverable under the tort of malicious falsehood. Mr Modi cites *George v Cannell*, where Lord Legatt JSC opined that damages for injury to reputation cannot be recovered in an action for malicious falsehood as defamation and malicious falsehood protect different interests:

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[151] JBOD, Vol 3, pp 287–289.

George v Cannell at [57]. In my view, this is congruent with the observations of the Court of Appeal in *Low Tuck Kwong*. In *Low Tuck Kwong*, the court observed (at [99]) that the law of malicious falsehood seeks to protect a different interest from the tort of defamation. Indeed, as noted above (at [68]), both torts vindicate different types of losses. *Gatley on Libel and Slander* (Alistair Mullis & Richard Parkes QC joint eds) (Sweet & Maxwell, 12th Ed, 2013) ("*Gatley*") states at para 21.13 that a case for malicious falsehood may not be founded on general loss of reputation or mental anxiety and distress. However, once a person can establish a cause of action for malicious falsehood, whether by proof of actual pecuniary damage or reliance on the equivalent of s 6(1) of the Defamation Act, the claimant may recover aggravated damages for injury to feelings in the same way that he can in an action for defamation: *Gatley* at para 21.13. In the present case, amendment A3 relates to the claim for malicious falsehood, while other paragraphs of the Revised Statement of Claim (namely, paragraphs 58–60.4) deal with aggravated damages in respect of the malicious falsehood.[152] This makes it clear that the reputational harm referred to in amendment A3 is not a reference to aggravated damages for the claims in malicious falsehood.

140 For this reason, I disallow the portion of A3 which pleads that the Maags suffered reputational damage.

Amendment B1: Claim for libel involving foreign publication and reputational damage, distress, and hurt to feelings in Singapore

141 Mr Modi submits that B1 seeks to introduce claims which are legally unsustainable for several reasons. First, the contention that foreign publications of the posts have damaged the Maags' reputation in Singapore goes against the

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152 JBOD, Vol 3, pp 285–287 at paras 58–60.4.

fundamental principle that damage to reputation is done in the place where the material is published.[153] Second, for the purposes of service out of jurisdiction, mere injury to feelings will not amount to sufficient damage sustained within jurisdiction to establish a sufficient nexus to Singapore.[154]

142 In my judgment, Mr Modi's first contention only addresses the Maags' argument on indirect reputational harm arising from the foreign publications. I have rejected the Maags' argument earlier in this judgment (see [93]–[96] above). However, as explained earlier, the Maags appear to allude to the republication of the posts in Singapore. It is unclear whether the Maags wish to plead the fact of republication in Singapore (see above at [97]–[99]). If they intended to plead this fact, they should amend the Revised Statement of Claim to reflect this within 14 days.

143 Mr Modi's second contention is that *Clarke v Bain* makes clear that injury to feelings is insufficient to amount to "damage" within jurisdiction that will establish a sufficient nexus to Singapore. While I agree with this general proposition, I do not see this as a proper basis for disallowing B1. In *Clarke v Bain*, the court opined at [62] that injury to feelings is not damage that is sufficient for a libel claimant to fulfil the equivalent of paragraph 63(3)(f)(ii) SCPD 2021. Instead, the damage that is necessary is damage to the claimant's reputation by publication to a reader within jurisdiction. In the present case, the Maags have pleaded that the foreign publications caused both injury to the Maags' reputations in Singapore *and* hurt and distress to their feelings. The Maags are not relying solely on hurt and distress suffered within Singapore to fulfil paragraph 63(3)(f)(ii); they also rely on reputational harm suffered within

153 DWS3, pp 7–8 at paras 18–19.

154 DWS3, p 8 at para 20.

jurisdiction. As such, I reject Mr Modi's second contention. B1 should not be disallowed on this basis.

Amendment B3: Claims for libel involving foreign publication and pecuniary damage in Singapore

144 In relation to B3, Mr Modi contends that the Maags have not provided sufficient particulars of the nature and type of pecuniary loss sustained by them and how such loss is referrable to the protective interest of reputational harm.[155] The implication appears to be that the amendment should be disallowed as it is liable to be struck out for not disclosing a reasonable cause of action.

145 In Singapore, only losses that are referrable to damage to the claimants' reputation can be claimed as special damages in an action for defamation: *Low Tuck Kwong* at [96] and [98]–[99]. While I have stated above that the Maags particularised the nature of their losses (see [137] above), the issue is whether B3 particularises losses that are referable to reputational harm. In my view, B3 alludes to losses that are referable to reputational harm. Any deficiencies in B3 can be cured by an amendment to the Revised Statement of Claim. Where the deficiency in a pleading can be cured by an amendment, the court will generally prefer to allow an amendment rather than take the drastic course of striking it out: *Ching Mun Fong (executrix of the estate of Tan Geok Tee, deceased) v Liu Cho Chit and another appeal* [2000] 1 SLR(R) 53 at [12]. I highlight two shortcomings of B3 which may be cured by an amendment.

146 First, paragraphs 61.1–61.4 of the Revised Statement of Claim state that certain investors had accessed the posts and raised concerns about the fact that Mr Modi had purportedly written such posts about the Maags. Sometime later,

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155 DWS3, pp 8–9 at paras 21–23.

the investors informed the second claimant that they would no longer be pursuing an investment in the e-commerce platform.[156] While the Maags did not *explicitly* plead that the loss of the investment was due to the lowering of the Maags' reputation in the eyes of the investors, the pleaded facts allude to such a link. In my judgment, any defect in the pleading can be cured by an amendment which expressly states the link between the Maags' reputational harm and the loss of investment. Any such amendment must be made within 14 days.

147 Second, paragraphs 61.5–61.6 of the Revised Statement of Claim state that a separate prospective investor withdrew his interest, citing the fact that Mr Modi had stated some "fairly unsavoury things about the 2nd claimant in the press".[157] In my view, it is unclear what the phrases "unsavoury things" and "in the press" refer to. If the Maags intend for these phrases to refer to the Litigation Post and/or Political Hatred Post, they should amend the Revised Statement of Claim within 14 days to explicitly plead this fact.

148 Accordingly, B3 is not liable to be struck out as any deficiencies in the pleadings may be cured by an amendment. Amendment B3 should not be disallowed on this basis.

Amendment D: Damage sustained overseas

149 Mr Modi contends that amendment D, which pleads that the Maags are entitled to "damages sustained overseas", should not be allowed as a corollary of the principle that the Maags cannot recover damage sustained overseas.[158]

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156 JBOD, Vol 3, p 288.

157 JBOD, Vol 3, p 288.

158 DWS3, pp 3–4, 6, 7, and 9 at paras 5, 14, 16, and 24.

150 In my view, amendment D should be disallowed. In the course of this judgment, I have explained that amendments A2, B2, and B4 should be disallowed for various reasons. The remaining claims (*ie*, those in A1, A3, B1, and B3) only relate to damage sustained in Singapore. Accordingly, the Maags should not be allowed to plead that they seek the recovery of damages for losses sustained overseas.

Amendment E: Republication in Singapore

151 While Mr Modi submits that he does not object to the amendment in paragraph 65.6 of the Revised Statement of Claim, this is contradicted by his subsequent qualification:[159]

> In respect of paragraph 65.6 in particular, the Defendant's position is that it is only relevant for the court to consider republications from original publications in Singapore. Our understanding is that paragraph 65.6 as drafted is limited in this way.
>
> [emphasis in original]

152 In my view, it is unclear whether paragraph 65.6 of the Revised Statement of Claim is indeed limited to damage suffered as a result of republications arising from original publication(s) in Singapore. Paragraph 65.6 is reproduced below:

> The likelihood of, and actual republication and/or repetition of and/or percolation to the general public of the Words in the Litigation Post and / or Political Hatred post by virtue of the grapevine effect, comprised of *inter alia* the grave nature of the Words; and / or the fact they were published to large audiences; and / or the fact the 1st Claimant and / or 2nd Claimant had significant social and / or commercial networks comprised of people who were likely to know each other and / or repeat the words to each other as well as people from their own networks.

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159 DWS3, p 10 at para 27.

153 A plain reading of paragraph 65.6 indicates that such republications are not limited to republications arising from original publication(s) in Singapore. This is buttressed by paragraphs 24 and 51 of the Revised Statement of Claim, which expressly plead that the Litigation Post and Political Hatred Post were published in Singapore *and/or India and/or the United Kingdom*.[160] Paragraphs 25 and 52 of the Revised Statement of Claim then plead that the natural, ordinary and probable consequence of the publication of the relevant posts was that the posts would be republished extensively over the internet.[161] Thus, the reference to republication in paragraph 65.6 of the Revised Statement of Claim is not limited to republications arising from original publication(s) *within Singapore*.

154 In my view, amendment E should be disallowed. As I have noted earlier, the remaining amendments (*ie*, amendments A1, A3, B1, and B3) introduce claims which plead that the Maags suffered damage *in Singapore* (see above at [150]). Amendment E, as it is presently framed, can apply to the libel claims which plead that damage was sustained outside of Singapore. In this connection, only republications or original publications in Singapore would be relevant to such a claim; reputational damage occurs where the defamatory material is published (see above at [94]–[96]).

Uncontested amendments

155 For completeness, I note that Mr Modi does not object to the following amendments: (a) amendments to the header of Section E of the Revised Statement of Claim; (b) amendments to the header of Section F of the Revised

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160 JBOD, Vol 3, pp 269 and 282 at paras 24 and 51.

161 JBOD, Vol 3, pp 269 and 283 at paras 25 and 52.

Statement of Claim; (c) paragraph 61.3A of the Revised Statement of Claim; and (d) paragraph 65 of the Revised Statement of Claim.[162]

156 In my view, these amendments should be allowed as they allow the real questions in controversy between the parties to be determined. The amendments are clerical in nature and serve to clarify the Maags' pleadings.

(a) The amendments relating to the headers of Sections E and F of the Revised Statement of Claim merely clarify that the relevant sections relate to the claims in malicious falsehood and/or defamation arising from the publication of the Litigation Post and/or Political Hatred Post.

(b) Paragraph 61.3A merely pleads, in the context of particularising the special damage sustained by the Maags, that certain investors had accessed the Litigation Post and/or Political Hatred Post.

(c) The amendment at paragraph 65 simply clarifies that the section relates to the Maags' claims in libel "and/or malicious falsehood for the Litigation Post and/or the Political Hatred Post".

Issue 4: Whether the Maags had initially confined themselves to claims relating to publication and damage in Singapore

157 Mr Modi also contends that the Maags' amendments are an abuse of process. They seek to introduce claims for publications made (and damage sustained) overseas, even though the Maags had initially confined themselves to claims for publications in (and damage sustained in) Singapore when seeking leave for service out of jurisdiction.

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162 DWS3, p 10 at para 26.

158 In my view, it is unclear whether the Maags had reserved their position regarding the foreign publication and foreign damage in their application to effect service out of jurisdiction. The general tenor of the Maags' application for service out of jurisdiction appears to confine their claims to publications and damage suffered in Singapore. As Mr Modi rightly notes, the original statement of claim explicitly pleads that the Litigation Post and Political Hatred Post were published in Singapore.[163] This is repeated in the Maags' supporting affidavit for service out of jurisdiction.[164] The original statement of claim also pleads that the Political Hatred Post would be "understood [to be defamatory] by persons located in Singapore".[165]

159 Further, the supporting affidavit for the Maags' application for service out of jurisdiction states that the relevant posts were published in Singapore and had "primarily" caused damage to the Maags in Singapore.[166] While the Maags argue that they had left open the possibility of claiming for damage sustained outside of Singapore due to the use of the word "primarily", I reject their argument. In my view, the word "primarily" merely describes the factual context of the dispute, *ie*, that the relevant posts had purportedly caused the Maags to suffer reputational harm in other jurisdictions in addition to Singapore. However, this by itself does not mean that the Maags intended to bring a claim for the damage sustained outside of Singapore *in the present suit*.

160 Nonetheless, there are various statements in the Maags' supporting affidavit and statement of claim that, with the benefit of hindsight, can be

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163 JBOD, Vol 2, pp 453, 478, 487, 490–491 at paras 12, 24, 45, 51.

164 JBOD, Vol 1, pp 15–16 at paras 13 and 18.

165 JBOD, Vol 2, p 491 at para 55.

166 JBOD, Vol 1, pp 15–16 at paras 13–15 and 18.

construed as cryptic allusions to foreign publication and foreign damage. The Maags' supporting affidavit states, in the context of whether Singapore is the *forum conveniens*, that "even if the Honourable Court found that Modi committed the torts in the United Kingdom, the torts would be actionable in both the United Kingdom and Singapore".[167] The original statement of claim also pleads that it is foreseeable that the publications of the relevant posts would be republished extensively over the internet.[168] The Maags' supporting affidavit states in its penultimate paragraph: "I also believe that Modi published the Litigation Post and / or Political Hatred Post in the United Kingdom as well as Singapore, since it was published on the [i]nternet."[169]

161 In my view, the Maags' application for service out of jurisdiction leaves much to be desired. It is incumbent on applicants who seek leave to effect service out of jurisdiction to state their case clearly; a claimant must provide full and frank disclosure of all material facts when applying for approval for service out: *Cheong Jun Yoong* at [41]. In the present case, there is little in the Maags' application to indicate that they had reserved their position regarding the foreign publications or foreign damage. It is highly unsatisfactory for the Maags to rely on cryptic sentences to qualify entire paragraphs which explicitly refer to publications in Singapore and damage sustained in Singapore. The Maags should have *explicitly* stated their position in relation to the foreign publications and foreign damage in their application for leave to effect service out of jurisdiction. However, given the Maags' allusions to foreign publications and foreign damage in their supporting affidavit (see [160] above), I am prepared to give them the benefit of doubt and, with reluctance, accept that they had not

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167 JBOD, Vol 1, p 18 at para 23.7.

168 JBOD, Vol 2, pp 455, 478–479, 487, 491 at paras 15, 25, 46, 52.

169 JBOD, Vol 1, pp 21–22 at para 31.

restricted themselves to publications and damage within Singapore. Nonetheless, future litigants are well advised that they should state their cases clearly and explicitly when seeking leave for service out of jurisdiction. If litigants wish to reserve their position on certain matters, they should state so plainly and at the outset of proceedings.

162 For completeness, I also address the Maags' argument relating to their further and better particulars. The Maags argue that they did not act in abuse of process as they had indicated in their further and better particulars that several recipients of the posts were located outside of Singapore and Mr Modi did not object to the further and better particulars.[170] This argument does not take the Maags far. In my view, Mr Modi's failure to object to the further and better particulars is understandable as he would raise the same objection in his submissions for the amendment application a month later. The further and better particulars were served on Mr Modi on 9 January 2024.[171] The Maags' application to amend their statement of claim was filed earlier, on 28 December 2023.[172] Mr Modi filed his written submissions for the amendment application on 15 February 2024.[173] In those written submissions, Mr Modi contended that the proposed amendments were an abuse of process.

Issue 5: Whether it is nonetheless just to allow amendments A2, B2, B4, and D

163 Lastly, I turn to consider the third stage of the *Wang Piao* framework, *ie*, whether it is nonetheless just to allow the remaining amendments. In this

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170 CWS1, pp 5–6 and 27 at paras 8–9 and 56.

171 CWS1, pp 5–6 at para 8.

172 JBOD, Vol 1, p 107.

173 JBOD, Vol 2, p 258.

inquiry, the court can consider a non-exhaustive list of factors but will primarily consider the following: (a) whether the amendments would cause any prejudice to the other party which cannot be compensated in costs; and (b) whether the party applying for permission to amend is effectively asking for a "second bite at the cherry" (see *Wang Piao* at [18]).

164 In the proceedings below, the AR held that any prejudice occasioned by the amendments could be compensated in costs as Mr Modi had primarily objected to the Maags' claim for foreign damage. The decision as to whether such foreign losses are recoverable could be left to the trial Judge. If such losses are not recoverable, Mr Modi could then be compensated by costs after the trial.[174]

165 Mr Modi argues that the AR erred in concluding that any prejudice occasioned to Mr Modi could be compensated by costs. The proposed amendments relate to the *jurisdiction* of the court and do not merely relate to the trial judge's assessment of damages.[175] If the amendments are allowed, Mr Modi would be prejudiced as he would be deprived of the opportunity to object to the order granting the Maags leave to effect service out of jurisdiction.[176] In response, the Maags submit that Mr Modi could have raised such objections when the Maags obtained leave to effect service out of jurisdiction. He did not do so.[177]

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174 JBOD, Vol 2, pp 432–433.

175 DWS1, p 26 at para 62.

176 DWS1, p 26 at para 63.

177 CWS3, p 10 at para 12.

166 As a preliminary matter, it appears that Mr Modi's arguments were initially made in the context of amendments C1 and C3 as those were the only disputed amendments when the parties filed their first set of submissions. Further, Mr Modi's position in these proceedings is that he only objects to the amendments in so far as they relate to foreign publications which caused damage to the Maags entirely outside of Singapore. He does not object to the amendments which relate to foreign publications that caused damage to the Maags in Singapore (see above at [31]). In my view, the amendments which Mr Modi's argument applies to are A2, B2, B4, and D as these amendments relate to damage sustained outside of Singapore. However, for the reasons given above, these amendments will not allow for the determination of the real issues in controversy between the parties as they are liable to be struck out. This is a sufficient basis to disallow the relevant amendments: see *Wang Piao* at [48]. Nonetheless, for completeness, I do not consider it to be just to allow the relevant amendments under the third step of the *Wang Piao* framework.

167 First, the issue of whether foreign damage can be recovered in this context relates to the court's *jurisdiction* (see [82] and [104]–[105] above) and is not a mere matter of the assessment of damages. The prejudice occasioned to Mr Modi is that, if he is correct, he would have been subjected to proceedings which this court has no jurisdiction to hear. In my view, the issue of whether the court has the jurisdiction to hear claims for foreign damage should not be resolved by leaving the issue to the trial judge to determine, at the close of trial.

168 Second, our courts have also recognised that there is an interest in preventing the wastage of judicial resources in adjudicating a claim which has nothing to do with the home jurisdiction (albeit in the context of a challenge to the jurisdiction of the court): *Review Publishing* at [29]. The court should ensure that judicial resources are appropriately and proportionately used in accordance

with the requirements of justice: *Review Publishing* at [29], citing with approval *Jameel (Yousef) v Dow Jones & Co Inc* [2005] QB 946 at [54]. In my view, there would be a waste of judicial resources if the amended claims are allowed to proceed to trial only for the trial Judge to conclude that the court does not have the jurisdiction to hear these claims.

169 For these reasons, I am of the view that it will not be just to allow the relevant amendments. I thus disallow amendments A2, B2, B4, and D on this basis as well.

Conclusion

170 In conclusion, the following amendments are allowed:

(a) Amendment A1.

(b) Amendment A3, in so far as the relevant paragraphs do not aver that the Maags suffered reputational damage.

(c) Amendment B3, provided that the deficiencies in the Revised Statement of Claim are amended within 14 days.

(d) Amendments C1–C4.

(e) The uncontested amendments, which are: (i) the amendment to the header of Section E of the Revised Statement of Claim; (ii) the amendment to the header of Section F of the Revised Statement of Claim; (iii) para 61.3A of the Revised Statement of Claim; and (iv) para 65 of the Revised Statement of Claim.

171 The following amendments are disallowed:

(a) Amendment A2.

(b) Amendment B1, unless the Maags amend the Revised Statement of Claim within 14 days to plead the fact of republication in Singapore.

(c) Amendment B2.

(d) Amendment B4.

(e) Amendment D.

(f) Amendment E.

172 I thus allow the appeal in part and award Mr Modi costs here and below.

Dedar Singh Gill
Judge of the High Court

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for the claimants;
Abraham Vergis SC, Hari Veluri and Timothy Hew Zhao Yi
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