

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 278

Suit No 194 of 2019

Between

Terrence Fernandez

... Plaintiff

And

(1) Genevieve Lim Shao Ying

(2) Goh Juak Kin

... Defendants

And

Serangoon Gardens Country Club

... Third Party

JUDGMENT

[Tort] — [Defamation] — [Justification]

[Criminal Law] — [Statutory offences] — [Protection from Harassment Act]

[Tort] — [Conspiracy]

TABLE OF CONTENTS

FACTS.....	2
BACKGROUND TO THE DISPUTE	2
<i>The Alfred Wong incident</i>	4
<i>Ms Lim's formal complaint</i>	8
THE SUIT, AND ISSUES TO BE DETERMINED.....	11
DEFAMATION	13
HAS THE DEFAMATORY STATEMENT BEEN PROPERLY PLEADED?	14
THE SUMMARY	14
THE COMPLAINT	17
WHETHER THE COMPLAINT WAS DEFAMATORY	17
DEFENCES – QUALIFIED PRIVILEGE AND JUSTIFICATION.....	20
<i>Qualified privilege</i>	20
<i>Justification</i>	26
CONCLUSION ON DEFAMATION CLAIM.....	34
CONSPIRACY	35
HARASSMENT.....	36
NEGLIGENCE.....	38
CONCLUSION.....	41

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Terrence Fernandez
v
Lim Shao Ying Genevieve and another

[2020] SGHC 278

High Court — Suit No 194 of 2019
Valerie Thean J
8–11, 14, 16–18 September, 16 November 2020

30 December 2020

Judgment reserved.

Valerie Thean J:

1 The present proceedings arise out of a work complaint, filed on 4 January 2018 by the first defendant, Ms Genevieve Lim, against the plaintiff, Mr Terrence Fernandez, in the context of her employment with Serangoon Gardens Country Club (“the Club”).

2 Mr Fernandez, who thereafter became and is at present the President of the Club, has brought this suit against Ms Lim for defamation, conspiracy to injure by defamation, and harassment under the Protection from Harassment Act (Cap 256A, 2015 Rev Ed) (“POHA”). The second defendant, Mr Goh Juak Kin, who was the General Manager of the Club at the material time, has been sued for conspiracy to injure by defamation, and negligence in the context of dealing with the complaint.

Facts

Background to the dispute

3 The Club is a social members’ club. Under its Constitution, the Club is managed by its General Committee,¹ which sets its direction, and whose members chair various Sub-Committees.² Employed staff would report to a General Manager charged with the overall management of the Club, while taking direction from the relevant Sub-Committee members. The General Manager and the heads of the various departments would oversee the operational issues in the club. At the material time, Mr Fernandez was a member of the Club’s General Committee and became Chairman of the Club’s Membership Relations Department (“MRD”) Sub-Committee on 26 June 2016.³ He remained so until 30 January 2018.⁴

4 Mr Goh joined the Club as General Manager (“GM”) from 1 March 2016.⁵ Ms Lim joined the Club to head the MRD as its Membership Relations Manager on 27 January 2017⁶ and in that capacity, sat on the MRD Sub-Committee as well.

5 Mr Fernandez and Ms Lim did not have a good working relationship. Within three weeks of starting work, Ms Lim had highlighted to the Human

¹ 1AB 324.

² 1AB 327.

³ 2AB 1073 and 1089.

⁴ 1AB 586.

⁵ 1AB 44; Goh Juak Kin’s Affidavit Evidence-In-Chief (“Juak Kin’s AEIC”) – Exhibit GJK-2.

⁶ 1AB 177; Genevieve Lim Shao Ying’s AEIC (“Ms Lim’s AEIC”) – Exhibit GLSY-1.

Resource manager, Ms Linda Loke (“Ms Loke”) that she had felt “tremendous work pressure” and “[insecure] in her role”, and sought confirmation that she reported to the GM (rather than Mr Fernandez).⁷ Ms Lim went on to discuss her grievances with Ms Loke a total of seven times over three months.⁸ Mr Goh was present at most of these meetings, and the matter was eventually escalated to the then-president of the Club, Mr Randy Sng (“Mr Sng”), as well.⁹

6 Ms Lim also communicated her worries to Mr Fernandez as early as 15 February 2017 (“I am starting to think of [*sic*] if this job is right for me”; “I am starting to feel the pressure that I need to achieve or show immediate results in so many areas”).¹⁰ Despite Mr Fernandez’s offer to “step back and give [Ms Lim] space”,¹¹ their working relationship did not improve.

7 On 24 April 2017, Ms Lim wrote a formal letter of complaint about Mr Fernandez, addressed to Mr Goh, criticising Mr Fernandez’s “damaging and disruptive behaviour”, alleging that working with him had been “painful, [frustrating], stressful, and on several occasion[s] belittling”. She asked in this letter for a change of the MRD Chairman.¹² Mr Fernandez was not informed about Ms Lim’s letter. On 25 April 2017, at a General Committee Meeting, Mr Sng clarified the roles of the General Committee and management, emphasising

⁷ 1AB 610 – 611; Juak Kin’s AEIC – Exhibit GJK-9 at pp 115 – 116; Plaintiff’s Bundle of Documents (“PB”) at p 43 – p 44.

⁸ 1AB 610 – 611 – Email from Mr Goh to DC members dated 14 February 2018; Juak Kin’s AEIC – Exhibit GJK-9 at pp 115 – 116; PB at pp 43 – 44.

⁹ Juak Kin’s AEIC – Exhibit GJK-9 at pp 115 – 116; PB at pp 43 – 44.

¹⁰ 1AB 191 – 192.

¹¹ 1AB 191 – 192.

¹² 1AB 244.

that General Committee members ought to focus on strategy and leave operational issues to staff.¹³ Mr Sng then arranged for a mediation session between Mr Fernandez and Ms Lim, in order to settle their differences (“the Mediation Session”).¹⁴ The session, held on 21 July 2017, ended with an amicable handshake, but Ms Lim and Mr Fernandez’s working relationship remained strained.

The Alfred Wong incident

8 Matters came to a head after Mr Alfred Wong (“Mr Wong”) visited the Club. On 8 December 2017, Mr Wong entered the Club premises with a female companion.¹⁵ He was not a member and was not signed in by any member of the Club.¹⁶ After a few hours in the Club, he came to Ms Lim inquiring about membership offers.¹⁷ After explaining, Ms Lim reminded Mr Wong that he should not be in the Club without being signed-in and accompanied by a member.¹⁸ He said he understood and left soon after. That same day, Mr Wong wrote to Mr Goh, about his “unpleasant encounter” with Ms Lim, who had apparently been “very rude” in telling him that “[he was] not allowed to be [there] at the club”.¹⁹ Mr Goh responded by asking Ms Lim to share her side of the story,²⁰ and setting up a meeting with Alfred on 26 December 2017.²¹

¹³ 1AB 261.

¹⁴ 1AB 296.

¹⁵ Ms Lim’s AEIC at para 31.

¹⁶ Ms Lim’s AEIC at para 30.

¹⁷ Ms Lim’s AEIC at para 31.

¹⁸ Ms Lim’s AEIC at para 31.

¹⁹ 1AB 472.

9 Mr Fernandez, in the meanwhile, came to know of the incident from Mr Wong and sent Mr Goh an email dated 21 December 2017 copied to Ms Lim and Mr Sng, as follows:²²

...

COMPLAINT AGAINST MS. GENEVIEVE LIM (MEMBERSHIP MANAGER)

...

Good day GM,

It has been brought to my attention yesterday that there is a potential new member by the name of Mr. Alfred who has made a COMPLAINT (a statement that something is unsatisfactory or unacceptable) against our Membership Manager, Genevieve Lim.

As Chairman, Membership Relations & Service Quality, I would like an update on the following:

- 1) the nature of the Complaint – details of what happened, who, what, where, when & why. Is it about process, professionalism or attitude?
- 2) the validity of the complaint – true or [false]
- 3) the club's official intended response on this complaint

This incident is of utmost importance as one of the main objectives of our Membership Relations Team is to increase sales and to protect and grow the image of SGCC.

It is very troubling that I had to hear this from other sources and not directly from the 'team' which is Genevieve or your good self.

Nevertheless, I have kept this between ourselves, for now.

Regards,

²⁰ 1 AB 453.

²¹ 1AB 471.

²² 1AB 457.

terrence fernandez

[emphasis in original]

10 Mr Goh duly replied on 22 December 2017, noting that Mr Fernandez “need not be overly alarmed by this”, it was a “trivial matter” that he was resolving, and which did not need to involve the General Committee. In his view, it could be handled at “[Mr Goh’s] level”.²³

11 Mr Fernandez disagreed. His reply on the same day used the language of disciplinary proceedings, stating that “[t]his is the inquiry stage so we should not be giving our opinion on whether there is sufficient evidence and gravity”.²⁴ He proposed that both Mr Sng and he should be present when Mr Goh met with Mr Wong as the incident was a possible “BREAKDOWN IN SERVICE QUALITY” and it was “one of [his] responsibilities as an elected General Committee member”.²⁵ He communicated these views to an even wider audience, copying not just Mr Sng and Ms Lim but other members of the staff who supposedly had interacted with Alfred before.²⁶

12 Mr Sng replied on 22 December to reiterate that this “is a simple feedback case” and “should be handled by the normal operational process”.²⁷ He was of the view that Mr Wong ought not to have been at the Club, likening

²³ 1AB 458.

²⁴ 1AB 460.

²⁵ 1AB 460.

²⁶ 1AB 460.

²⁷ 1AB 463.

his act to “trespassing”, and commented that Mr Wong’s stated familiarity with the Club did not assist his case.²⁸

13 The matter was resolved amicably with Mr Wong on 26 December 2017 at the meeting set up by Mr Goh, with an email from Mr Wong affirming the resolution.²⁹ Mr Fernandez, despite this, continued to pursue the matter. On 27 December 2017, he proposed a meeting with Mr Sng to discuss “the Service Quality”, this time suggesting the involvement of the trustees or patrons “for the purpose of fairness”.³⁰ Mr Sng declined. He reminded Mr Fernandez that there was a process in place, suggesting that Mr Fernandez “follow the process” for handling complaints and feedback, and that he should “read the constitution for better understanding of running the club and [his] role as a [General Committee] member”.³¹ Mr Fernandez replied stating that he would involve the trustees and patrons of the Club “if [Mr Sng thought] that there [was] no reason [they] should talk this through”.³² He wrote: “[o]nce you know what I know, you will think differently”.³³ He also suggested in another email that even more people be involved in the matter: “[w]e should include Say Yeow and Jin Kit since they will be running for President of SGCC next year.”³⁴

²⁸ 1AB 463.

²⁹ 1AB 471.

³⁰ 1AB 473.

³¹ 1AB 474.

³² 1AB 475.

³³ 1 AB 475.

³⁴ 1 AB 477.

Ms Lim's formal complaint

14 On 4 January 2018, Ms Lim filed a formal complaint against Mr Fernandez (“the Complaint”). Quoting lines from the email correspondence between Mr Fernandez, Mr Sng and Mr Goh, Ms Lim indicated that she had felt victimized and harassed. She complained of Mr Fernandez’s allegedly “insulting, threatening remarks and comments against [her]”,³⁵ and took issue with Mr Fernandez’s suggestion that she been unreceptive to “any sort of communication or productive suggestions”.³⁶ This was accompanied by a chronology that started with Mr Wong’s visit on 8 December 2017 and ending with Mr Fernandez pressing on with a complaint against her despite the matter having been settled amicably with Mr Wong. Mr Goh received Ms Lim’s complaint at 6.30 pm, and he forwarded the Complaint, together with his own views (“Goh’s Report”) to Mr Sng at 7.26 pm.³⁷

15 Following this, Mr Sng sent the Complaint to Mr Fernandez on 9 January 2018, requesting a meeting within the next five days, together with the vice president, honorary treasurer and honorary secretary of the Club (“the Club Exco”).³⁸ Mr Fernandez did not attend such a meeting, despite multiple attempts to accommodate his schedule.³⁹ On 12 January 2018, he wrote to ask for specific

³⁵ 1AB 529.

³⁶ 1AB 530.

³⁷ Documents Disclosed under Third Party’s 2nd Supplementary List of Documents dated 7 September 2020 (“2PBOD”) at p 3 and 7.

³⁸ 1AB 534.

³⁹ 1AB 566.

information of workplace harassment and victimisation “over and above those mentioned”.⁴⁰ He also stated:⁴¹

On my part, I would want Ms. Genevieve Lim to retract her allegations against me immediately and apologies [*sic*] for her baseless accusations because I felt there is Defamation and Libel clearly mentioned in her letter.

16 On 15 January 2018, Mr Fernandez sent a further email expressing a willingness to meet. However, he seemed to disagree with Mr Sng’s wish to meet to discuss the complaint against him, instead countering that:⁴²

Frankly, it is two separate matters. On Ms Genevieve’s allegations, I reiterate that she has defamed me and I demand a written apology and a retraction of her allegations before our meet up. Failing which I will have no choice but to seek legal advice on this defamation.

17 After Mr Sng continued to attempt to set up a meeting, Mr Fernandez, while expressing a willingness to meet, was again not available on the suggested dates. He reminded:⁴³

On the same note, I want to put on record that the matter on the defamatory letter from Ms. Genevieve Lim to Mr. Goh Juak Kin remains a separate issue between her and me. I have sought legal advice and will be issuing her a letter of demand soon. This is a ‘non-negotiable’ matter for discussion during our upcoming, without prejudice meeting.

18 A common date was found for 22 January 2018, but Mr Fernandez again was not available and suggested a deferment. Mr Sng decided that matters were

⁴⁰ 1 AB 544

⁴¹ 1AB 545.

⁴² 1AB 547.

⁴³ 1AB 561.

too urgent to be deferred to February. The Exco met without Mr Fernandez on 22 January 2018 as scheduled.⁴⁴

19 At the 30 January 2018 General Committee meeting, Mr Fernandez was removed as MRD Chairman.⁴⁵ It was communicated to Mr Fernandez that his removal from office were not an assessment of “who is right, or who is wrong”.⁴⁶ A disciplinary committee (“DC”), staffed by three General Committee members⁴⁷ then took over investigations on 7 February 2018.⁴⁸ The DC requested Mr Goh for a list of all conduct that Ms Lim was relying upon on 8 February 2018, and 6 and 13 March 2018.⁴⁹ This was duly collated by Ms Lim (“the Summary”). On 30 April 2018, Mr Fernandez was served with formal charges (“the Charges”),⁵⁰ together with a copy of the Complaint and the Summary. A disciplinary inquiry then commenced.⁵¹

20 Before the hearing fully ran its course,⁵² a new team of General Committee members were voted into office on 24 June 2018. Mr Fernandez was elected president of the Club, together with a new crop of General Committee

⁴⁴ 1AB 562 to 566.

⁴⁵ 1AB 586, Item 9.

⁴⁶ 1AB 562; 1AB 567; 1AB 599.

⁴⁷ 2AB 1057

⁴⁸ 1AB 601.

⁴⁹ 1AB 604; 1AB 610; 1AB 618.

⁵⁰ 2AB 752.

⁵¹ 2AB 752.

⁵² 2AB 776; 2AB 836.

members.⁵³ Mr Goh and Ms Loke resigned on 24 June 2018,⁵⁴ while Ms Lim resigned on 11 July 2018.⁵⁵ A new DC was constituted, and the charges were dismissed by the new DC on 4 September 2018.⁵⁶

The suit, and issues to be determined

21 On 20 February 2019, Mr Fernandez filed this suit against the defendants. He claimed that the Complaint and the Summary were “false and published maliciously”,⁵⁷ that Ms Lim’s conduct had caused “harassment, alarm or distress”,⁵⁸ and that the two defendants (Ms Lim and Mr Goh) had conspired with each other “to defame [Mr Fernandez] by making and publishing the Complaint and/or the Summary”.⁵⁹ The Conspiracy, he claimed, had been an attempt to besmirch his good name, sabotage his bid for Club presidency and to “hinder or prevent further inquiry” into a lease which the Club had granted to a child-care business at 22 Kensington Park Road more than 10 years ago.⁶⁰ The Statement of Claim did not make clear whether he was pursuing a case in lawful or unlawful means conspiracy. Finally, Mr Fernandez claimed that Mr Goh had

⁵³ 3AB 1249, Item 9

⁵⁴ 2AB 853 to 854.

⁵⁵ 2AB 865.

⁵⁶ 2AB 888.

⁵⁷ Mr Fernandez’s Statement of Claim dated 25 March 2019 (“Statement of Claim”) at paras 24, 43 and 71.

⁵⁸ Statement of Claim at para 73.

⁵⁹ Plaintiff’s Closing Submissions dated 30 October 2020 (“PCS”) at para 250.

⁶⁰ Statement of Claim at para 78.

“failed or neglected to properly conduct the investigation into the facts alleged in the Complaint and the Charge”.⁶¹

22 Ms Lim denied all allegations. She averred that the Complaint and Summary had been true in substance and in fact.⁶² Accordingly, the statements contained therein had been justified. Ms Lim also claimed that the Complaint and Summary had been published on an occasion of qualified privilege.⁶³ As for the allegations of harassment, Ms Lim contended that at all times, she had only been seeking to protect herself from workplace harassment and victimization.⁶⁴ There had been no intention to be malicious, or to cause harassment, alarm or distress. With regard to the alleged conspiracy, both Mr Goh and Ms Lim flatly denied the existence of any such conspiracy.⁶⁵

23 Finally, with regard to the alleged negligence and breaches of duty, Mr Goh responded in three ways. First, the duty was denied. Second, Mr Fernandez’s standing to bring suit was questioned - such a duty, even if accepted, would be owed to the Club and not to Mr Fernandez. Third, Mr Goh denied that Mr Fernandez had suffered any losses at all.⁶⁶

24 Mr Goh joined the Club as a third party, which counterclaimed against him. Mr Goh and the Club settled mid-way through trial, and leave was granted to discontinue their claim and counterclaim against each other.

25 The remaining claims raise four issues:

⁶¹ Statement of Claim at para 80.

⁶² Ms Lim’s Defence at para 10.

⁶³ Ms Lim’s Defence at para 11.

- (a) whether the Complaint and Summary were defamatory and if so, whether any defences to the allegations of defamation applied;
- (b) whether the defendants (Mr Goh and Ms Lim) had engaged in the Conspiracy;
- (c) whether Ms Lim's conduct amounted to harassment under ss 3 and/or 4 of the POHA, read with s 11 of the POHA; and
- (d) whether Mr Goh had been negligent in discharging his duties as General Manager.

Defamation

26 The elements of defamation were set out in *Golden Season Pte Ltd and others v Kairos Singapore Holdings Pte Ltd and another* [2015] 2 SLR 751 at [35]. The requirements are:

- (a) a statement bearing a defamatory meaning;
- (b) that the statement was published to a third party; and
- (c) reference made to the complainant within the statement.

27 The last two elements are not disputed. The Complaint was made to Mr Goh, a third party. The Summary was given to the DC, a third party as well. Reference was made to Mr Fernandez. The issue is whether the statements

⁶⁴ Ms Lim's Defence at para 12.

⁶⁵ Ms Lim' Defence at para 13; Mr Goh's Defence at paras 7, 10, 12 and 14.

⁶⁶ Mr Goh's Defence at para 13.

complained of bear a defamatory meaning, and if so, whether any defences apply. Before I address the substantive questions, I turn first to the preliminary matter of pleadings.

Has the defamatory statement been properly pleaded?

28 Generally, it is accepted that “[t]he words used in the defamatory utterance or in the defamatory publication are material facts and thus, must be pleaded”: Doris Chia, *Defamation: Principles and Procedure in Singapore and Malaysia* (LexisNexis, 2016) at para 19.11 (“*Doris Chia*”). As in the present case, when “the claimant is suing in respect of words contained in a book or a long ‘feature’ article in a newspaper [...] it will not be appropriate to set out the article or book in its entirety”: Alastair Mullis *et al*, *Gatley on Libel and Slander* (Sweet & Maxwell, 12th Ed, 2013) at para 26.12 (“*Gatley*”). Instead, the claimant must clearly identify the particular passages complained of (*Gatley* at para 26.12), and he/she must clearly plead the defamatory meaning or meanings which he claims were borne by the words or other publications of which he/she complains: *Gatley* at para 26.20.

29 Mr Fernandez’s claim specifies two incidents of defamation, the Complaint and the Summary. I deal with the Summary first, because its characterisation on the pleadings is the more problematic of the two.

The Summary

30 In the present case, Mr Fernandez’s Statement of Claim did not cite any part of the Summary at all. He merely rephrased it (in his own words) as an annex to his Statement of Claim. He did not specify what parts he was relying

on for his claim and how those parts were defamatory.⁶⁷ His Statement of Claim merely asserted that the Summary, like the Complaint, was false and published maliciously.⁶⁸

31 The role of pleadings is fundamental to natural justice and the fair conduct of trial. They define the issues between the parties and impose structure on the proceedings. Natural justice is at play as well. The plaintiff's pleadings inform the defendant of the case to meet. These concerns are particularly pronounced in defamation suits since it is "an area where there are bound to be subtle distinctions": *Lait v Evening Standard Ltd* [2011] 1 WLR 2973 at [27]. Mr Fernandez's pleadings severely fell short of the standard expected.

32 *DDSA Pharmaceuticals Ltd v Times Newspapers Ltd and another* [1972] 3 All ER 417 ("*DDSA Pharmaceuticals*") provides much guidance on how to address such defective pleadings. There, the defendants published an illustrated article entitled "The Great Drug Fraud" ("the *DDSA* article"). The titular fraud described in the article involved some "chemists" (pharmacists) dispensing cheap imitation drugs to the patient but claiming from the National Health Service the full cost of the brand-name drug. The plaintiff was supposedly implicated by an imputation that they had supplied the cheaper imitation drugs and had also shut their eyes to the fraud perpetrated by the pharmacists. In its pleadings, the plaintiff simply stated that the article had been falsely and maliciously published, that its reputation had been seriously injured, and enclosed a copy of the article in its statement of claim. Being so bereft of

⁶⁷ Statement of Claim at para 71.

⁶⁸ Statement of Claim at paras 24 and 71.

particulars, the claim was struck out at first instance and the order was later upheld by the English Court of Appeal.

33 Much in the same way, the parts of the Statement of Claim relating to the Summary (paragraphs 43 and 71) are defective. The Summary is an A3-sized table, containing some 29 incidents which Ms Lim alleges are examples of workplace harassment, victimization and “sabotage”.⁶⁹ It is unclear which of these listed incidents Mr Fernandez takes issue with. Much like the *DDSA* article, the Summary was foisted “on to the defendant [...] without picking out the parts said to be defamatory”: *DDSA Pharmaceuticals* at 419F – 419G. It too, like the *DDSA* article, was a mixed bag of accusations – some parts clearly portrayed Mr Fernandez unflatteringly (“[Mr Fernandez] was difficult when called upon to help with interviews”;⁷⁰ “[Mr Fernandez] sow [*sic*] discord between MR and Ms Wong Sook Yee”);⁷¹ some appeared to be fairly trivial complaints (“asking [Mr Fernandez] to be around for token of appreciation for Cambridge Kids performance. [Mr Fernandez] was late.”);⁷² while others were neutral observations (“[Mr Fernandez] wanted to update at [General Committee] meeting that [Ms Lim] would develop a sales & marketing program that will bring in \$1.35m for the next financial year”).⁷³ To characterise the entire Summary as defamation is, as Lord Denning put it in *DSSA Pharmaceuticals* (at 419G), “highly embarrassing”.

⁶⁹ 2AB 630.

⁷⁰ 2AB 630

⁷¹ 2AB 630

⁷² 2AB 630

⁷³ 2AB 630

34 There is, in sum, no discernible cause of action in defamation in the part of the Statement of Claim concerned with the Summary that the defendants could fairly be asked to respond to, I therefore dismiss the part of the claim relating to the Summary.

The Complaint

35 As the for Complaint, Mr Fernandez reproduced it in the Statement of Claim in its entirety but omitted to specify which parts of the Complaint were alleged to be defamatory. As Williamson J put it in *Scott* at 339 to 340:

... it must be a rare case where a plaintiff can plead a whole article without particularising the passages in the article that he complains of. It may be appropriate to plead the whole article in order to claim that certain passages or libellous statements take their meaning from the article as a whole, but in order to focus the dispute it is important that the allegedly defamatory passages be sufficiently identified.

36 Having failed to specify those, it naturally followed that Mr Fernandez also failed to plead what was the defamatory meaning being imputed. Moreover, he did not plead his case as to what exactly about those words were supposedly defamatory.⁷⁴ Nor has he pleaded any legal innuendo.

Whether the Complaint was defamatory

37 The meaning of the impugned statement is that which is understood in its natural and ordinary sense. This, in turn, would be the meaning which, objectively speaking, was conveyed to an ordinary, reasonable person. Such a person is neither unduly suspicious nor avid for scandal, but capable of reading

⁷⁴ Mr Fernandez's Statement of Claim at para 24.

between the lines and drawing inferences: *Chan Cheng Wah Bernard and others v Koh Sin Chong Freddie and another appeal* [2012] 1 SLR 506 at [18] (“*Bernard Chan*”). Further, the standard is not pegged to *any* ordinary, reasonable person. The inquiry looks to the class of readers or hearers to whom the alleged defamatory words were published and determines what an ordinary reasonable person in such a position would have understood the words to mean: *Bernard Chan* at [19]. The impugned statement is defamatory in nature if it tends to (Gary Chan & Lee Pey Woan, *The Law of Torts in Singapore* (Academy Publishing, 2nd Ed, 2016) (“*The Law of Torts*”) at para 12.015):

- (a) lowers the plaintiff in the estimation of right-thinking members of society generally;
- (b) causes the plaintiff to be shunned or avoided; or
- (c) exposes the plaintiff to hatred, contempt or ridicule.

38 Here, the readers of the Complaint would have been either the DC or Mr Goh (who served as the DC’s communicative conduit). Other readers would have been members of the Club’s Exco and the new DC that was constituted after the Club elections in June 2018. While Mr Fernandez contended in his closing submissions that the General Committee would have read it,⁷⁵ none of the documents support his contention.⁷⁶ Whereas the Complaint was dealt with at a 30 January 2018 General Committee meeting, it appears from the minutes that Mr Sng merely referenced the Complaint by explaining it had been brought

⁷⁵ PCS at para 82.

⁷⁶ 1 AB 567; 1 AB 586.

to the Exco's attention, rather than referring to its details.⁷⁷ The readership, in any event, would have been select office-bearers in the Club, who would have approached the issue on the basis of a workplace complaint. Therefore, the "ordinary reasonable person" would be someone occupying such a position of leadership with the general knowledge and perspective attendant to it. This was accepted by Mr Fernandez in his closing submissions as well.⁷⁸

39 What would such an ordinary reasonable person have been apprised of? First, he/she would have been apprised of the nature of the document. It is a complaint. The allegations would not have been taken at face value, in much the same way that words uttered by someone's enemy would be regarded with scepticism by a third-party audience: *Segar Ashok v Koh Fonn Lyn Veronica and another suit* [2010] SGHC 168 at [100]. Second, the ordinary reasonable person would have understood the Complaint to be part of a larger disciplinary framework. The truth of Ms Lim's allegations would, in other words, be unsettled until due process has been accorded to it. Indeed, the readership (especially the two DCs) would have been *expected* to reserve judgment on the veracity of Ms Lim's allegations.

40 In my view, the natural and ordinary meaning of the words in the Complaint was that Mr Fernandez was "damaging and disruptive" or that he "micromanaged". Was this, however, capable of being defamatory in law? I think not. The sting of any insult was neutralised by the context of the publication. It is trite that allegedly defamatory words must be understood within their context: *Gatley* at para 3.30. Taken in its proper context, the

⁷⁷ 1AB 586,

⁷⁸ PCS at para 74.

Complaint would have been understood as part of a workplace complaint that necessarily entails levying allegations. This in turn, would necessarily attract a certain degree of fair-minded scepticism from the ordinary reasonable reader who was privy to the Complaint. In the light of the particular audience and the context, Mr Fernandez's suggestion in his closing submissions that the words in the Complaint amounted to calling him a "sociopath"⁷⁹ held no water. The context would have necessarily called for cautious reading and that such circumspection would have neutralized the sting of the publication.

Defences – Qualified Privilege and Justification

41 Though no longer necessary, I address the defences for completeness.

Qualified privilege

42 As stated in *Doris Chia* at para 11.6, qualified privilege may arise where:

- (a) the statements were made between parties who share a common or mutual interest in the subject matter of the communication;
- (b) the statements were made due to the existence of a duty (whether legal, social or moral) or interest on the part of the defendant to make the statement and a corresponding duty or interest on the part of the recipient to receive it;
- (c) the statements were made in the protection of the statement-maker's self-interest and the recipient has a corresponding interest or duty in relation to the statement; or

⁷⁹ PCS at paras 80 - 81.

- (d) they are fair and accurate reports of judicial or parliamentary proceedings.

43 The defence may be defeated by proof of express malice. Malice, for such purposes, focuses on the motive of the defendant (as opposed to the honesty of the defendant's belief): *Basil Anthony Herman v Premier Security Co-operative Ltd and others* [2010] 3 SLR 110 at [60].

44 In my view, the present case is a paradigmatic example of a statement-maker protecting his/her self-interest, with the recipient having a corresponding interest in receiving such information. A *bona fide* workplace complaint is typically filed by the employee with a view to addressing any mistreatment experienced by him/her at the workplace. The right-minded employer – concerned with ensuring a safe and congenial workplace – would naturally be interested in hearing these complaints. Here, Ms Lim reported feeling victimized and harassed, and that her job security was under threat.⁸⁰ She was looking out for herself in raising her grievances. The Club in turn, was interested in hearing those complaints. In fact, its staff handbook encouraged employees to step forward with their grievances.⁸¹

45 *D v Kong Sim Guan* [2003] 3 SLR(R) 146 (“*Kong Sim Guan*”) is a case in point. There, the plaintiff lodged a complaint to the Singapore Medical Council (“SMC”), alleging that the defendant (“Dr Kong”) had been negligent in his examination of the plaintiff's child, and had come “to the wrong conclusion that the child had been sexually assaulted by [the plaintiff]”: *Kong*

⁸⁰ 1AB 529.

⁸¹ 1AB 36; 1AB 515.

Sim Guan at [84]. Dr Kong was called on by the SMC to respond to the plaintiff's complaint ("the Rebuttal"). This Rebuttal was later singled out by the plaintiff as being defamatory: *Kong Sim Guan* at [89]. Rajendran J dismissed the suit and held, *inter alia*, that the Rebuttal had been published on an occasion of qualified privilege: *Kong Sim Guan* at [96].

46 Ms Lim's Complaint, much like Dr Kong's Rebuttal, was motivated by a desire to protect herself. Much as how Dr Kong's Rebuttal was rooted in "the need to defend his professional reputation" (*Kong Sim Guan* at [96]), Ms Lim's complaint stemmed from fears about her job security.⁸² The Club's DC had a corresponding interest in receiving Ms Lim's Complaint, much like SMC's Complaints Committee in relation to Dr Kong's Rebuttal. In these circumstances, I find that Ms Lim's Complaint amply falls within the ambit of this defence's protection.

47 The Complaint could also be characterised as a statement given under circumstances where the statement maker and the recipient shared a common interest in the communication of the statement. The communication of Ms Lim's workplace complaint would be in everyone's common interest. Mr Goh, as Ms Lim's supervising officer, would be interested in matters that affected the welfare of those under his charge. Mr Sng, as the Club's then-president, would have been interested in matters that affected the smooth operation of the Club, as well as any matter that involved one of his General Committee members. Doubtlessly, it would also have been of interest to members of the two DCs. Everyone's interests aligned.

⁸²

1AB 529.

48 Against this, Mr Fernandez simply contends in his closing submissions that Ms Lim “does [not] have any right to imagine attacks against her”.⁸³ This misunderstands the purpose of this defence. The defence of qualified privilege recognizes that certain statements are protected for the common convenience and welfare of society and that the law accommodates some situations where candour would promote public good (*Low Tuck Kwong v Sukanto Sia* [2014] 1 SLR 639 at [58]). Willes J in *Huntley v Ward* (1859) 141 ER 557 at 559 noted that:

... In such cases, no matter how harsh, hasty, untrue or libellous the publication would be but for the circumstances, the law declares it privileged because the amount of public inconvenience from the restriction of freedom of speech or writing would far outbalance that arising from the infliction of a private injury ...

49 In other words, there is a certain degree of latitude afforded to those who fall under the protection of qualified privilege, subject to the recognized exception that proof of express malice would extinguish the privilege (see *Doris Chia* at para 13.20). Ms Lim’s genuine interest in seeking redress for her grievances planted her firmly within the ambit of this defence.

50 Her *bona fide* motives were evinced by two things. First, there was a long, documented history of her disagreements with Terrence.⁸⁴ Second, nothing about the Complaint suggested that it had been motivated by vindictiveness or spite. In fact, prior to lodging a formal complaint, she had first agreed to a mediation brokered by Mr Sng and had shaken hands with Mr Fernandez at the

⁸³ PCS at para 200.

⁸⁴ Juak Kin’s AEIC – Exhibit GJK-9 at pp 115 – 116.

end of the session.⁸⁵ This in my opinion, was clearest proof that not only was Ms Lim feeling genuinely distressed, but also that she was interested in seeking a resolution to her problems. In my view, the search for a resolution to her woes was the impetus for her Complaint. This being her motive for launching the Complaint, the corollary to my findings here is that Ms Lim did not publish the Complaint with malice.

51 Mr Fernandez disagrees. He has three arguments. First, he argues that the mere fact that he was “targeted” by the Complaint and Summary, suggested that Ms Lim had intended to injure him.⁸⁶ This, he submits, is proof of her malice. While Mr Fernandez was indeed the subject of the Complaint and while he may indeed have felt aggrieved, it does not follow that Ms Lim had *intended* to injure him. I do not accept that an inference of malice automatically arises.

52 Second, Mr Fernandez argues that it was malicious of Ms Lim to include multiple extraneous allegations which were not related to the Alfred Wong incident in the Summary.⁸⁷ In my view, there was nothing malicious about Ms Lim referencing other instances of harassment. She was simply substantiating her point that her grievance stemmed from a long pattern of behaviour exhibited by Mr Fernandez (“This is not the first time I subject myself to workplace harassment and victimi[s]ation. [Mr Fernandez] has constantly made insulting, threatening remarks and comments against me”).⁸⁸ More importantly, the Summary was not drafted on Ms Lim’s prerogative at all. It was a response to

⁸⁵ 1AB 297.

⁸⁶ PCS at paras 203(b) and 257.

⁸⁷ PCS at para 203(c)

⁸⁸ 1AB 531.

the DC's request for her to "specify what conduct she is complaining of",⁸⁹ and for all complaints to be reduced into an "exhaustive list".⁹⁰ Mr Fernandez had himself asked Mr Sng for a list when the Complaint first surfaced.⁹¹ As events unfolded, it became logical and logistically expedient for Mr Christopher Tan ("Mr Tan"), a member of the DC and a lawyer by training, to ask for a "complete list of all the conduct that [Ms Lim was] relying on for her complaint" and a bundle of documents that corresponded to the "complete list" requested for.⁹² In my view, there was nothing malicious about producing a document pursuant to such administrative instructions.

53 Third, Mr Fernandez contends that it was malicious of Ms Lim to include in the Summary several items which had "already been resolved by the [the Mediation Session]",⁹³ the implication being that Ms Lim was attempting to dredge up the past and resurrect old grievances. I find this to be an unfair characterisation of Ms Lim's actions. Ms Lim had simply been asked to put up a comprehensive summary, and that was what she did.

54 I address a final point. In his opening statement, Mr Fernandez asserted that in cases involving qualified privilege, the malice that is used to defeat such a defence is typically *presumed*.⁹⁴ Such submission was without any basis. The authority cited in support of that proposition in fact, stated the converse. Mr

⁸⁹ 1AB 604.

⁹⁰ 1AB 610; 1AB 618; 2AB 620.

⁹¹ 1AB 544.

⁹² 2AB 620.

⁹³ PCS at para 203(d).

⁹⁴ Transcript 8 September 2020, p 13 line 15 – p 14 line 22.

Fernandez relied⁹⁵ on Bankes J's exposition in *Smith v Streatfeild and others* [1913] 3 KB 764 at 769 – 770 (“*Streatfeild*”):

The principle upon which the law of qualified privilege rests is, I think, this: that where words are published which are both false and defamatory the law presumes malice on the part of the person who publishes them. The publication may, however, take place under circumstances which create a qualified privilege. If so, the presumption of malice is rebutted by the privilege, and [...] **the plaintiff has to prove express malice on the part of the person responsible for the publication.**

[Mr Fernandez's emphasis in italics underline; mine in bold italics]

55 The parts emphasized by Mr Fernandez did not go towards supporting his contention at all. They simply refer to a presumption of malice that arises when one establishes a *prima facie* case of defamation (*ie.* when the words are false and defamatory). They do not at all suggest that there is a presumption of malice that extinguishes qualified privilege. In the very same passage, Bankes J explicitly stated that where qualified privilege is established, the plaintiff must *prove* express malice.

56 Malice having not been proven, Ms Lim's defence of qualified privilege remains intact and undisturbed.

Justification

57 As for the defence of justification, a defendant must prove that the defamatory imputations are true in substance and in fact. This involves two steps. First, the defamatory meaning must be proven and pleaded. Second, the facts must be shown to support the same: *Doris Chia* at para 7.1.

⁹⁵ PCS at para 201.

58 The first step is identifying the true meaning of the allegedly defamatory imputation. At this stage, it is essential for the plaintiff to have pleaded the meaning which he alleges to be the meaning of the defamatory imputation. This achieves two things. First, it enables the defendant to plead a defence to the defamation alleged: *Doris Chia* at para 7.6. Second, it sets an upper limit on how injurious the plaintiff can claim the words to be. Indeed, even the court cannot find that the offending words bear a more defamatory meaning than that pleaded by the plaintiff (“the rule in *Slim*”) (*Review Publishing Co Ltd and another v Lee Hsien Loong and another appeal* [2010] 1 SLR 52 at [118] and [128] (“*Review Publishing*”):

118 ... the rule in [*Slim v Daily Telegraph Ltd* [1968] 2 QB 157 (“*Slim*”)] is that the plaintiff may not rely on and the court may not find a meaning more defamatory than that pleaded by the plaintiff, although the plaintiff may rely on and the court may find a less defamatory meaning ...

...

128 In our view, the rule in *Slim* is a sensible and fair rule in defamation cases, and this court was correct in following it in [*Goh Chok Tong v Jeyaretnam Joshua Benjamin* [1998] 2 SLR(R) 971 (“*Goh Chok Tong*”)], although it justified its decision on the ground that to find that the offending words bore a more defamatory meaning than the meaning pleaded by the plaintiff “*would be giving to the plaintiff more than what he [had] asked for*”... The general rule in an adversarial litigation system is that the plaintiff should be bound by his pleadings... In our view, ***the plaintiff must be the best person to know how, where and why he has been defamed by the offending words, and, therefore it would be unfair to the defendant if the plaintiff were allowed at trial to rely on a more defamatory meaning than that which he has pleaded.***

[Emphasis in italics in original, emphasis in bold italics, mine]

59 The defendant may then either adopt and accept the meaning that the plaintiff has ascribed to the words or plead a defamatory meaning *different* from that propounded by the plaintiff: *Review Publishing* at [135]. I pause here to

note that contrary to what was suggested by Mr Fernandez in his closing submissions,⁹⁶ a defendant is not obliged to plead the natural and ordinary meaning of the allegedly defamatory words/remarks but if he/she puts forth and seeks to justify a defamatory meaning different from that pleaded by the plaintiff, the defendant must clearly and unequivocally plead the meaning which he/she seeks to justify: *Review Publishing* at [135]. In my view, it was reasonably clear that Ms Lim was seeking to prove (and justify) that Mr Fernandez had given undue attention to the Alfred Wong Incident,⁹⁷ and this defamatory meaning was sufficiently pleaded in Ms Lim's defence (see paras 10(ii) and 10(iv)).

60 Ultimately, when identifying what the reasonable reader would infer as the meaning of the words in their natural and ordinary sense, the court's assessment is not bound by what the parties pleaded; it is free to ascertain for itself what the true meaning of the impugned statement is (*Gatley* at para 11.5), subject only to the rule in *Slim: Review Publishing* at [128]. The meaning of the words in their natural and ordinary sense was already discussed above at [40]. There, I examined whether *the readership* would understand the natural and ordinary meaning of the words to be *defamatory*. I found that that they would not. I turn now to examine whether the impugned statement *itself* was true in substance and in fact, for the purposes of the defence of justification.

⁹⁶ PCS at para 89.

⁹⁷ Transcript 16 November 2020, p 13 lines 11 – 13.

61 Mr Fernandez suggested in his closing written⁹⁸ and oral submissions⁹⁹ that the sting of the Complaint is that he had been the perpetrator of “Workplace Harassment, Victimisation and Sabotage”.¹⁰⁰ In my view, Mr Fernandez’s characterisation is too broad. The title of the Complaint has to be understood in its context. When the Complaint is read as a whole, the allegation of workplace harassment is clearly referring to the Alfred Wong incident. In that context, the sting of the complaint would only be that Mr Fernandez had micromanaged the Alfred Wong incident and victimised Ms Lim in the process. In my view, the facts bear out the sting of the Complaint.

62 First, Mr Fernandez did manage the Alfred Wong incident too closely. The handling of Mr Wong was properly under Mr Goh’s purview as General Manager. As Mr Goh explained in his emails, dealing with such feedback was part of “day-to-day operational issues.”¹⁰¹ Mr Sng too, regarded this as a “simple feedback case [to be] handled by the normal operational process”.¹⁰² Mr Fernandez interposed not merely to suggest how Mr Goh should be handling the matter (“I propose that both [Mr Sng] and I be present with you to meet with Mr. Wong add balance [*sic*]”),¹⁰³ but to insist on his views that this incident represented a “possible BREAKDOWN IN SERVICE QUALITY... [and] of grave concern”.¹⁰⁴ He continued to maintain this view and pursued the matter

⁹⁸ PCS at para 77.

⁹⁹ Transcript 8 September 2020, p 8 line 4 – p 12 line 23.

¹⁰⁰ PCS at para 77.

¹⁰¹ 1AB 458.

¹⁰² 1AB 463.

¹⁰³ 1AB 460.

¹⁰⁴ 1AB 460.

long after the incident had been resolved between the Club and Mr Wong.¹⁰⁵ This was despite Mr Sng telling him in no uncertain terms that “[the Club has] a process in place for all kinds of feedback/complaints” and to “read the constitution for better understanding of running the club and [his] role as a [General Committee] member”.¹⁰⁶

63 Second, Mr Fernandez’s conduct in relation to the Alfred Wong incident resulted in Ms Lim being victimized as well. The matter was resolved amicably on 26 December 2017 when Club representatives met with Mr Wong to address his complaint.¹⁰⁷ Notwithstanding this, Mr Fernandez later wrote to Mr Goh:¹⁰⁸

Thank you GM for this update [about the meeting with Mr Wong on 26 December 2017]

...

On the issue of ...“GM [sic] – the above is the incident that has happened. I am sure I was not rude.” (Genevieve), what is the status on the Service Quality? Your e-mail to me does not address this which was the main COMPLAINT against our HOD, Genevieve Lim.

...

64 In my view, Mr Fernandez’s references to “Service Quality” were thinly veiled insinuations that something be done about Ms Lim. This was clear from his initial emails (“This incident is [...] about a possible BREAKDOWN IN

¹⁰⁵ 1AB 473.

¹⁰⁶ 1AB 474.

¹⁰⁷ 1AB 467.

¹⁰⁸ 1AB 473.

SERVICE QUALITY between [Ms Lim] and a potential member”),¹⁰⁹ his correspondence with Mr Sng,¹¹⁰ and his suggestions to escalate the matter to the trustees and patrons “[f]or the purpose of fairness”.¹¹¹ Moreover, Mr Fernandez was not just doggedly pursuing this matter, but also taking pains to ensure that Ms Lim was copied in his 21 and 22 December emails to Mr Goh.¹¹² He admitted in trial that he *intended* for Ms Lim to be aware of these email exchanges.¹¹³ Taken together, these facts suggest that Mr Fernandez’s critical gaze had fallen on Ms Lim and that he had taken steps to apply pressure on her. In that regard, Ms Lim reasonably felt victimised and that her employment was at stake.

65 Third, Ms Lim’s fears could be viewed in the larger context of Mr Fernandez’s history of work with the Club. Ms Lim’s complaints about Mr Fernandez were extensive and well documented (see [5] – [7] above). Her grievances were consistently centred on Mr Fernandez’s unrealistic expectations,¹¹⁴ his tight control over what she did and how she executed her responsibilities.¹¹⁵ In an email that further illustrates these points, Ms Dawn Lee (“Ms Lee”), assistant manager of the MRD, recounted Mr Fernandez’s complaints to her about Ms Lim, who was her supervisor, on 18 April 2017:¹¹⁶

[Mr Fernandez] explained if he had spoken to you he expect you to at least text him. Let him know you’re working on it. Then

¹⁰⁹ 1AB 460.

¹¹⁰ 1AB 465.

¹¹¹ 1AB 473.

¹¹² 1AB 457; 1AB 460.

¹¹³ Transcript 9 September 2020, p 8 lines 23 – 25.

¹¹⁴ 1AB 244.

¹¹⁵ 1AB 191.

¹¹⁶ 1AB 270.

write him email, list out the things he had spoken about. Put in the timeline, when can you get the things done, goes back to him for clearance on how you want to do them. If you don't write to him he will assume. "Why are you not replying?" "Are you doing the things he wants?" "Do you understand?" He said then he will start to assume. I said "I'm surprise [sic], why assume? He went on to explain liked [sic] a person writes in feedback, that person will wants [sic] some form of answered [sic], right.

66 Similarly, at a General Committee meeting, Mr Goh reminded members that "there should not be any micro-management by [the General Committee]" and that "there should be some form of empowerment for the Management team".¹¹⁷ Mr Goh too, in private correspondence with Mr Sng, candidly described Mr Fernandez's conduct as "unprofessional, disruptive and damaging". He recounted that Mr Fernandez had:¹¹⁸

... undermined [his] capability and capacity as General Manager many times – in front of [his] staff, members and guests. [Mr Fernandez] had undermined [the Heads of Departments as well]. In his capacity as [a General Committee member] and [MRD Sub-Committee chairman], he overstepped the boundaries and crossed into other areas

67 These concerns were also shared by the Club leaders. Mr Sng, the then president of the Club, evidently felt it was serious enough to warrant it being raised at the Club's 9th General Committee meeting (2016/2017).¹¹⁹ There, he made it clear to the General Committee that the "Heads of Departments do not report to the chair of Sub-Committees. The direct reporting is to the GM who is responsible for their performance evaluation" and implored the General

¹¹⁷ 1AB 110.

¹¹⁸ 2PBOD at p 5.

¹¹⁹ 1AB 261.

Committee members to “[w]ork with the Management team”.¹²⁰ The then vice-president of the Club expressed similar views (“[General Committee] should not micro-manage”).¹²¹ In my view, these were clear responses from Club leadership after Ms Lim’s first written complaint about Mr Fernandez on 24 April 2017.¹²²

68 At the Mediation Session that was the result of the April complaint, Mr Fernandez was expressly counselled by Mr Sng to “not always have ‘tall orders’”¹²³ and to “take a step back and think if what he wanted was achievable”.¹²⁴ At this session, Mr Fernandez “highlight[ed] all the great things he did since he was appointed MR[D] Chair[man]”.¹²⁵ At trial, Mr Fernandez denied that this had been a mediation session at all,¹²⁶ much as how denied having problems working with Ms Lim (“‘difficulty’ may not be the appropriate word. It may be different working styles”),¹²⁷ or with Ms Lee (“I won’t classify it as unpleasant”).¹²⁸ It was in this context in which the Alfred Wong incident must be viewed.

¹²⁰ 1AB 261.

¹²¹ 1AB 261.

¹²² 1AB 244.

¹²³ 1AB 297.

¹²⁴ 1AB 296.

¹²⁵ 1AB 296.

¹²⁶ Transcript 8 September 2020, p 124 line 9 to p 126 line 11.

¹²⁷ NEs 8 September 2020, p 126 line 25 – p 127 line 5.

¹²⁸ NEs 8 September 2020, p 114 lines 1 – 8.

69 From the evidence, it was clear that Mr Fernandez involved himself heavily in the operational matters of the MRD and supervised matters closely. His dissatisfaction with Ms Lim (and Mr Goh) became clear to all after the Alfred Wong incident. This dissatisfaction was expressed most strongly to Mr Sng in the face of Mr Sng's unwillingness to deviate from the usual process: "[o]nce you know what I know, you will think differently" ([13] above). His suggestions and proposals for action, even wanting to involve the trustees and patrons of the Club, reasonably led her to feel, in the context of her and her predecessor's working relationship with Mr Fernandez, victimised. I conclude that Ms Lim has met her burden of proof on the defence of justification.

Conclusion on defamation claim

70 Mr Fernandez's defamation claim rested on two of Ms Lim's publications, the Summary and the Complaint. I find that the defamation claim pertaining to the Summary is too lacking in detail. It would be unfair to expect Ms Lim to know what to respond to (at [34]). As for the Complaint, I find that the elements of defamation are not made out (at [40]). Further, the defences of justification and qualified privilege have been successfully raised (see [42]–[69]). Mr Fernandez also failed to prove any express malice that could have defeated the defence of qualified privilege (see [50]–[56]). The defamation claim is dismissed.

Conspiracy

71 As for the conspiracy claim, Mr Fernandez's pleadings did not make clear whether this was a claim in lawful or unlawful means conspiracy.¹²⁹ He clarified in his closing submissions that the claim was in both lawful and unlawful means conspiracy.¹³⁰ For reasons I shall explain, I dismiss both claims.

72 The elements of lawful and unlawful means conspiracy were set out in *Visionhealzone Corp Pte Ltd v HD Holdings Pte Ltd and others and another appeal* [2013] SGCA 47 at [44]:

- (a) there must be a combination of two or more persons and an agreement between and amongst them to do certain acts;
- (b) there must be intention to cause damage or injury to the plaintiff, and where lawful conspiracy is alleged, this must be the predominant purpose;
- (c) the acts must actually be performed in furtherance of the agreement; and
- (d) damage must be suffered by the plaintiff.

73 Regarding unlawful means conspiracy, this is premised on an unlawful act. As Mr Fernandez failed to make out a case in defamation, there was no unlawful act and no basis for this claim.

¹²⁹ Mr Fernandez's Statement of Claim at para 78.

¹³⁰ PCS at para 261 and 245.

74 Regarding lawful means conspiracy, a key requirement is the predominant intention to injure or cause damage to the plaintiff. My findings on Ms Lim's motives and lack of malice are sufficient to show that injury to Mr Fernandez was not her predominant intention. Her primary intention was to stop what she perceived as victimising behaviour and to safekeep her employment.

75 For completeness, I would add that despite lengthy cross-examination in various directions, the trial did not reveal any evidence of collusion between the defendants. Ms Lim filed a complaint, which Mr Goh necessarily dealt with in the course of his work. In doing so, he took instructions from the Club's President, and members of General Committee and DC at the point in time.

76 Accordingly, I dismissed both of Mr Fernandez's claims for conspiracy.

Harassment

77 I then turn to Mr Fernandez's claim in harassment. He contended that the filing of the Complaint had amounted to breaches of ss 3 and 4 of the POHA. These are two similar sections, in which s 3 requires that the harassment be intentional while s 4 does not. Section 11 of the POHA permits a victim under ss 3 and 4 to bring civil proceedings. Sections 3 and 4 (at the time of the acts complained of) read as follows:

Intentionally causing harassment, alarm or distress

3.— (1) No person shall, with intent to cause harassment, alarm or distress to another person, by any means —

(a) use any threatening, abusive or insulting words or behaviour; or

(b) make any threatening, abusive or insulting communication,

thereby causing that other person or any other person (each referred to for the purposes of this section as the victim) harassment alarm or distress.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and, subject to section 8, shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months or both.

(3) In any proceedings for an offence under subsection (2), it is a defence for the accused person to prove that his conduct was reasonable.

Harassment, alarm or distress

4.— (1) No person shall by any means —

(a) use any threatening, abusive or insulting words or behaviour; or

(b) make any threatening, abusive or insulting communication,

which is heard, seen or otherwise perceived by any person (referred to for the purposes of this section as the victim) likely to be caused harassment, alarm or distress.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and, subject to section 8, shall be liable on conviction to a fine not exceeding \$5,000.

(3) In any proceedings for an offence under subsection (2), it is a defence for the accused person to prove —

(a) that he had no reason to believe that the words or behaviour used, or the communication made, by him would be heard, seen or otherwise perceived by the victim; or

(b) that his conduct was reasonable.

78 Both these provisions prohibit the use of threatening, abusive or insulting words, behaviour or communications to cause or likely to cause harassment, alarm or distress. However, both provisions permit reasonable conduct. While aspects of the Complaint or Summary can be said to be insulting, the particular word must be understood in its statutory context of harassment,

alarm or distress. More fundamentally, it is clear from my earlier findings that they amounted to reasonable conduct.

79 Accordingly, the POHA claims are dismissed.

Negligence

80 Mr Fernandez alleged negligence on the part of Mr Goh in the context of his handling of the Complaint. At para 80 of his Statement of Claim, the particulars of the negligence were stated as follows, that Mr Goh had:¹³¹

- (a) failed to take any or reasonable care to ascertain the merits of the Complaint;
- (b) failed to take any or reasonable care in the conduct of the “*main investigative, and administrative burdens of... a DC hearing*”; and
- (c) failed to take any or reasonable care in the presentation of the results of the investigation to the DC.

[emphasis in original]

81 Mr Fernandez did not make clear in his Statement of Claim whether the duty of care upon which his allegation of Mr Goh’s negligence being pleaded was contractual in nature or a common law duty of care (see *Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR(R) 100). Because of Mr Fernandez’s heavy reliance on the Club’s

¹³¹ Statement of Claim at para 80.

Constitution in defining and demarcating Mr Goh's duty of care,¹³² Mr Goh assumed in his written submissions that Mr Fernandez pleaded a contractual duty of negligence.¹³³ However, the Club's Constitution is not a contract between Mr Goh and members of the Club, and could not found a duty of care, as conceded by Mr Fernandez in his oral closing response.¹³⁴ In his written submissions, Mr Fernandez particularized the duty as a common law duty of care to "investigate every written complaint made against Members under Rule 38 of the Constitution and to present the results of such investigations to the Disciplinary Committee of the Club".¹³⁵ Nevertheless, Mr Fernandez appears not to have pleaded the material facts necessary for the tort of negligence, such as factual foreseeability and legal proximity between himself and Mr Goh. Those material facts were only asserted belatedly in his closing submissions.¹³⁶

82 Notwithstanding, there is no evidence of negligence on Mr Goh's part. Article 26.1(a) of the Club's Constitution vests the *General Committee* with the responsibility of disciplining office bearers.¹³⁷ It is also the *General Committee* that appoints a DC to deal with any complaints about a member "[acting] in any way prejudicial to the interests of the Club or of its Members or [contravening] the provisions of any Clause of the Constitution or a Bye-Law of the Club".¹³⁸

¹³² Statement of Claim at paras 5 and 26.

¹³³ DCS at para 79.

¹³⁴ Transcript 16 November 2020 at p 30 lines 6 – 7.

¹³⁵ PCS at para 230 and 233.

¹³⁶ PCS at para 235.

¹³⁷ 1AB 326.

¹³⁸ 1AB 339.

It was hard to see how the Club's Constitution established any duty of care on Mr Goh's part, much less a breach of the same.

83 Mr Fernandez's case rests on comments made by Mr Tan explaining disciplinary matters at the 60th Annual General Meeting held on 24 June 2017. Mr Tan explained that:¹³⁹ "[a]s a matter of good practice, the Management would explore the possibility of whether the complaint can be resolved amicably". It was only if the attempts at dispute resolution fail, then the full disciplinary procedure (as laid out in Article 38 of the Club's Constitution) would be invoked.¹⁴⁰

84 In my view, Mr Tan was merely explaining the process of a typical complaint at the AGM. Under the Constitution, the duty clearly rested on the General Committee, and any preliminary work of employed staff would be to assist the General Committee. Nothing in the Constitution specified a responsibility on Mr Goh's part. There was no formal convening order of the sort seen when the Club's General Committee charged Ms Lim, Ms Loke and the Finance Manager, Ms Lai, to investigate "allegations of corruption in the Swimming Committee".¹⁴¹ Indeed, the Club's practice when investigating those allegations (of corruption in the Swimming Committee) suggested that when the General Committee delegated its investigatory powers to paid staff, there was a formal process involving a convening order. No such process was invoked here.

¹³⁹ 1AB 292.

¹⁴⁰ 1AB 293.

¹⁴¹ 1AB 416.

85 In the present case, Mr Goh forwarded Ms Lim's complaint to Mr Sng with his assessment of the same. This complaint was the culmination of a series of events that Mr Sng was familiar with as President of the Club. Mr Goh was given specific instructions by Mr Sng as to how to deal with the matter. Subsequently, the DC itself concluded that there was sufficient cause for investigation. Mr Goh could not be said to be negligent in following the instructions set out by the President and General Committee members.

Conclusion

86 In the result, I dismiss all Mr Fernandez's claims. I will hear counsel on costs.

Valerie Thean
Judge

Goh Kok Leong, Daniel Tan An Ye and Dillion Chua Hong Bin (Cai Hongbin) (Ang & Partners) for the plaintiff;
Bernard Sahagar s/o Tanggavelu and Beh Eng Siew (Lee Bon Leong & Co) for the first and second defendant;
Lok Vi Ming SC, Lee Sien Liang Joseph and Qabir Singh Sandhu (LVM Law Chambers LLC) for the third party (withdrawn).
