DALAM MAHKAMAH TINGGI MALAYA DI SHAH ALAM
DALAM NEGERI SELANGOR DARUL EHSAN, MALAYSIA
(BIDANGKUASA SIVIL)
[GUAMAN SIVIL NO: BA-23NCVC-32-08/2019]

ANTARA

JASON JONATHAN LO
(NO. K/P: 750427-13-5645) ... PLAINTIF

DAN

1. **STAR MEDIA GROUP BERHAD**
   (No. Syarikat : 10894-D)
2. **ESTHER NG SEK YEE**
3. **ASOHAN ARYADURAY**
4. **TARRENCE TAN ... DEFENDAN-DEFENDAN**

GROUNDS OF JUDGMENT

Introduction

[1] The Plaintiff's suit is premised on the publication of three articles, two of which appeared on The Star Online owned by the 1st Defendant, and the third in the Facebook account of the 3rd Defendant. He claims the contents have defamed him for which he seeks to be compensated in damages.

Material facts

[2] The Plaintiff is a Malaysian artist, radio announcer and television talk show host. He is known by the name Jason Lo, and is no stranger to fans of the music industry.

[3] At the material time, he was also the director and former Chief Executive Officer of a telecommunication company known as Tune Talk Sdn. Bhd. He has his own record label and event promotion company known as Fat Boys Record.

[4] The 1st Defendant is the proprietor, publisher, printer and distributor of a daily newspaper 'The Star.' It is common knowledge that The Star is one of the mainstream newspapers with a wide circulation in Malaysia. The 1st Defendant is also the owner, host and administrator of a website known as 'The Star Online', the address of which is http://www.thestar.com.my. At all material times, The Star Online could be assessed by any user of the World Wide Web.

[5] The 2nd Defendant is the chief content officer of the 1st Defendant and is responsible for all its publications. The 3rd and 4th Defendants are journalists for the 1st Defendant.

[6] On 16.5.2019 at 9.10 p.m., the 1st Defendant via The Star Online published an article titled ***"Ex-telco CEO arrested for alleged death threats against ex-wife and family, trespass"*** **("16th May Article")**.

[7] The article was authored by the 4th Defendant. Amongst others, the gist of the 16th May Article states the following:-

> *"A former telco CEO and local musician has been arrested by the police for allegedly trespassing his ex-wife's house.*

It was understood that the individual was arrested between 5:30 pm and 7 pm, after he was called in for questioning at the Hulu Kelang police station on Thursday (May 16).

A source close to the case said that the police were investigating the individual under Section 448 of the Penal Code, after he had trespassed into his ex-wife's home and issued a death threat.

There have been violent outbursts from the individual, a father of three, where he had broken the front door of his ex-wife's house, and began a verbal spat.

…

The individual has reportedly a history of drug and domestic abuse problems.

…

It is learnt that the individual is being remanded for four days by the police to assist investigation."

(emphasis added)

[8] On 25th May 2019, the 1st Defendant published on the front page of its publication, the Star Exclusive, a title ***"In Public Company CEO in Private Accused of being a Molester".*** At page 4 of the Star Exclusive was the article titled ***"Ex-CEO allegedly molested own kids.*** Both the title on the front page and the article on page 4 of the Star Exclusive are collectively referred to as the "**25th May Article**"**.**

[9] Amongst others, the 25th May Article states the following:-

The arrest of a former telco chief executive officer last week for alleged trespass and threats against his ex-wife

and her family was just the tip of the iceberg. The Star has learnt that his ex-wife has lodged at least 15 police reports since 2015, after the couple had divorced, alleging that he had also molested and outraged the modest of their children.

…

Bukit Aman Sexual, Women and Child Investigations Divisions (D11) principal assistant director Asst. Comm Choo Lily confirmed that D11 had conducted investigations into these previous reports.

She said the cases were classified as NFA (No Further Action) after consultation with the deputy public prosecutors (DPPs) involved.

…

Some of these cases were classified as NFA by the DPP due to lack of evidence.

…

The earlier police reports, copies of which The Star has obtained, contained allegations by the mother that their children had been molested by their own father.

Based on one of these reports lodged in 2017, D11 applied for an Interim protection order for the ex-wife and their children under Section 14 of the Sexual Offences Against Children Acts 2017.

…

The Star has reached out to the former CEO for his side of the story, but there has been no response as at press time.

...

The trail goes back four years when the mother, suspecting something amiss, brought her two daughters to a licensed counsellor in 2015.

This counselling session was recorded on video, which The Star has seen.

In the session, the children graphically recount some of things their father allegedly did to them.

The counsellor, Wong Kah Peng aka Nicholas Wong, subsequently advised the mother to lodged a police report after hearing the accounts of the two girls, who were aged eight and 10 at the time. Wong also filed an affidavit with the Kuala Lumpur Syariah Court on May 8, 2015, during the couple's custody hearing, in which he testified that the 10-year old had told him that her father came to her bed and laid down beside her, then put his penis into her hand.

This woke her up and when she told her father that this made her uncomfortable, he told her to keep it a secret.

These allegations were present in the video The Star saw, through the daughter added that it might have been an accident.

Wong, in his affidavit, wrote that he was always read to speak out in court as he had a responsibility under the law to report any immoral activities done to children.

A spokesperson for the Women's Aid Organisation (WAO), an NGO that supports survivors of domestic violence and other forms of gender-based violence, confirmed that it has provided services to the mother at this time.

However, WAO could not provide any more information, citing confidentially.

In September 2015, the ex-wife lodged another police report at the Pantai police station. According to this police report, a copy of which The Star has seen the younger daughter had complained of abdominal pain and nausea to a nurse at the International school she was attending.

The nurse then brought the child to Pantai Hospital for a medical examination, and the doctor there referred the case to the University Malaya Medical Centre (UMMC) for further tests.

The UMMC team advised the mother to lodge the police report as they suspected the child had been molested by an "unknown person".

In 2017, the mother lodged another report after her younger daughter allegedly told her that their father had molested her and her elder sister at various locations, including at his home. The mother also lodged a police report last November after her son allegedly told her that he had been forced to sleep in the nude beside his father.

[10] The journalists for the 25th May Article were the 3rd and 4th Defendants.

[11] On 25.5.2019 at 10.26 a.m. the 3rd Defendant circulated the 25th May Article on his Facebook Account by posting The Star Online link of the 25th May Article ("**Facebook Post**"). The 3rd Defendant added the following commentary on his Facebook Post:-

> *"It took a long time to get this, and to get it right. Rumours and buzz. Enlisting help from other desks. Putting feelers out. Long effort to try to track down people who were living in fear. Many false starts. Unearthing facts that were very tragic and disturbing. @ Tarrence Tan had to do so much legwork, sniffing around, and sifting through so many documents. Then many long consultations with our lawyers to make sure we got it right. Tarrence and I had to check each other when we were writing the story. Emotive passages had to be removed. It had to be dry, just the facts, man. Reading through a police report and tapping out a para, and going, "Fuck lah, his own kids?" Watching video where you had to pause, "Fuck, I don't believe this." We had to bring this out though. The authorities have no choice but to act now."*

[12] The 3rd Defendant's Facebook Post was followed by his responses to the readers, some of which are reproduced as follows:

> *"Readers: Good job. I really hope it spurts more protection for child victims in the future because it appears both his professional connections and the system are working against that…*
>
> *Asohan's Response: Yes, exactly that!*
>
> …
>
> *Readers: Do you think the investigation/research is the reason why he "visited" his wife 2 weeks go?*
>
> *Asohan's Response: He "visited" the wife the day she found out her interim protection order had ended.*
>
> …

Readers: How are these poor kids going to go to school and face their teachers and friends now that the news is out there?

Asohan's Response: How long more should they (the children) suffer in silence? The system kept failing them. Something needed to be done.

...

Readers: Video recording from the counsellor is not evidence... Certain thing may be a coached and some may be bias

Asohan's Response: Even if that were true, then that is an indication of emotional abuse. Either way, intervention was needed. Yet the state did not act. One of the things we looked out for while watching the video was signs of coaching. The experts we consulted didn't believe so.

[13] The Plaintiff claims that the publication of the 16th May Article, the 25th May Article and the Facebook Post were all defamatory of him, causing him to suffer loss of his personal and professional reputation and potential business opportunities. The actions of the Defendants had also resulted in the Plaintiff being subjected to unwanted negative media attention for which he suffered emotional distress, embarrassment and personal humiliation.

[14] In defence, the Defendants contend that firstly, the Plaintiff was not named in these impugned articles, hence the Plaintiff was not the person referred to in these articles. Secondly, the contents of both the 16th May Article and the 25th May Article are not defamatory of the Plaintiff.

[15] In the event this Court finds these articles to be defamatory of the Plaintiff, the Defendants rely on the defence of justification and qualified privilege.

[16] As for the Facebook Post, no specific defence was pleaded save for a denial of the intention in which the Facebook Post was published.

[17] To pre-empt the Defendants' defence of qualified privilege, the Plaintiff pleaded malice in its Statement of Claim, the particulars of which included the Defendants' failure to verify the truth of the impugned articles, publishing untrue statements and failure to objectively report the events in the impugned articles.

Issues for determination

[18] The fact of publication by the Defendants is not in dispute. That being the case, what remains to be determined, from the respective rival position taken by the parties, are the following :-

(i) whether the 16th May Article, 25th May Article and Facebook Post refer to the Plaintiff;

(ii) whether the 16th May Article, 25th May Article and Facebook Post are defamatory of the Plaintiff;

(iii) whether the defences of justification and qualified privilege are available to the Defendants, and if so, whether the defence of qualified privilege is defeated by malice;

(iv) in the event the Plaintiff succeeds in establishing the liability of the Defendants, the appropriate damages to be ordered.

Analysis and findings of this court

Whether the words refer to the Plaintiff

The 16th May Article

[19] It is not in dispute that the Plaintiff was not named in the 16th May Article. However, it is trite law that an essential element of the tort of defamation is that the words complained of should be published of the Plaintiff. Therefore, the burden lies on the Plaintiff to establish that words employed in the impugned would reasonably lead people to conclude that he was the person referred to. (See: *Datuk Seri Anwar bin Ibrahim v. Wan Muhammad Azri bin Wan Deris* [2014] 9 MLJ 605**;** *Yeo Ing King v. Melawangi Sdn Bhd* [2016] 5 MLJ 631**, Court of Appeal**).

[20] The test of whether it refers to the Plaintiff is an objective one. The House of Lords in *Knupffer v. London Express Newspaper Ltd* [1944] AC 116 held,

> ...it is an essential element of the cause of action for defamation that the words complained of should be published 'of the plaintiff.' Where he is not named the test of this is whether the words would reasonably lead people acquainted with him to the conclusion that he was the person referred to. The question whether they did so in fact does not arise if they cannot in law be regarded as capable of referring to him.

[21] Thus, if an ordinary reader reading the article reasonably identifies the Plaintiff in the article, then the impugned article is said to refer to the Plaintiff. (See also: *Morgan v. Odhams Press Ltd* [1971] 1 WLR 1239**,** *Pardeep Kumar a/l Om Prakash Sharma v. Abdullah Sani bin Hashim* [2009] 2 MLJ 685).

[22] The publication of the 16th May Article caused an internet buzz soon thereafter, evident from the comments of the readers on several of the social media platform. They pinpointed the Plaintiff as the person referred to in the article. Some of the tweets are reproduced below,

Tweet by esKahn on 16.5.2019,

Jason Lo seems to fit the bill

Tweet by Edrei Goblin Slayer Tinkerer Zahari on 16.5.2019

Jason Lo? What happened

Tweet by Syefri Zulkefli ***Ex-CEO of a telco Local musician***

I don't know of anyone else that fit this description except one particular person...o.O

Reply on mforum by PinkiePie on 17.5.2019 at 7.18 am

Hanya Jason Lo dalam pikiran I sekarang

Reply on mforum by PinkiePie on 17.5.2019 at 7.29 am

Kalau tengok profile ex wife nya Ann Ibrahim, ada gambar dgn 3 kids. Sah la dia.

Reply on mforum by kiah mai pulak on 17.5.2019 at 8.07 am

Jason LO je lah retis yang jd telco

[23] Defence counsel attempted to argue that the description in the 16th May Article was general and unspecific, as there were several personalities who could fit the bill of "*ex-telco CEO and musician*". Defence counsel even suggested one such personality

in his cross-examination of the Plaintiff. However, the 16th May Article went further to state some other specific particulars *inter alia*, a father of three who had an ex-wife, and who allegedly trespassed into her home.

[24] To my mind, the fact that the readers could identify the Plaintiff soon thereafter effectively demolishes the defence contention that the Plaintiff was not the person referred to.

[25] On 17.6.2019, the New Straits Time Online via their Twitter account @ NST_Online also identified the Plaintiff as the person in the 16th May Article. The Twitter account then had 656,000 followers.

[26] The Defendants attempted to argue that the readers must be called to testify that they identified the Plaintiff through the 16th May Article, and what they meant by their comments. None of them were called as witnesses. I am of the view that as the authenticity of the documents containing the comments is not in dispute, there is no denial as to the fact that there were in fact made. There is therefore no need to call them to testify. From their comments it is clear that they had concluded the Plaintiff to be the person targeted in the 16th May Article.

[27] To reiterate the point, as the Plaintiff was identified from the readers' tweet as well as the twitter account of the New Straits Time Online, I find that the contents of the 16th May Article are reasonably capable of being understood to refer to the Plaintiff.

The 25th May Article

[28] I shall now deal with the 25th May Article. Similar to the 16th May Article, the publication again generated an active discussion soon thereafter on the social media platform. Some of the comments are as follows,

Comment by St0rmFUry on 25.5.2019 at 8.11 am,

Damn…can't believe it's JLo.

Comment by even-steven on 25.5.2019 at 8.55 am.

So now Jason Lo will be in the Evening News?

Comment by billythecat on 25.5.2019 at 10.24 am

Ayyoooo keji jijik bangsat ya amat yaaaa bapak yg molest anak sendiri. Org cani elok meringkuk je dlm penjara. Silap2 banduan dlm penjara pon pukul ko sbb diaorang pon xleh terima orang yg molest darah dgg sendiri. Bodoh lah si jlo ni.

[29] The comments speak for itself and affirmatively answers the issue whether the 25th May Article refers to the Plaintiff.

Facebook Post

[30] As for the Facebook Posting, it was a republication of the 25th May Article with added commentaries from the 3rd Defendant himself. There is no question of the Plaintiff being the person referred to in the Facebook Posting.

Whether the words are defamatory

[31] Various formulations have been laid down by authorities on whether a statement is defamatory. The law has been well captured in the judgment of the Federal Court in *Dato' Sri Dr Mohamad Salleh bin Ismail & Anor v. Nurul Izzah bt Anwar & Anor* [2021] 2 MLJ 577, where it was held,

> The law in respect of what amounts to defamatory matter is well-settled. An imputation would be defamatory if its

effect is to expose the plaintiff, in the eyes of the community, to hatred, ridicule or contempt or to lower him or her in their estimation or to cause him or her to be shunned and avoided by them (see *Dato' Seri Anwar bin Ibrahim v. The New Straits Times Press (M) Sdn Bhd & Anor* [2010] 2 MLJ 492; [2010] 3 AMR 514; *Syed Husin Ali v. Sharikat Penchetakan Utusan Melayu Berhad & Anor* [1973] 2 MLJ 56; *JB Jeyaretnam v. Goh Chok Tong* [1985] 1 MLJ 334; *Tun Datuk Patinggi Haji Abdul-Rahman Ya'kub v. Bre Sdn Bhd & Ors* [1996] 1 MLJ 393; *Chok Foo Choo @ Chok Kee Lian v. The China Press Bhd* [1999] 1 MLJ 371). In order to prove a claim in defamation, it is also essential that the offending words are not only defamatory and that they are published but also that they identify the plaintiff as the person defamed.

The defamatory nature of the imputation is to be judged by the ordinary and reasonable members of the community or an appreciable and reputable section of the community (see *Jones v. Skelton* [1963] 3 All ER 952; *Peck v. Tribune Co* [1909] 214 US 185; *Hepburn v. TCN Channel Nine Pty Ltd* [1983] 2 NSWLR 682). The ordinary reasonable person has been held to be one of fair average intelligence (see *Slatyer v. Daily Telegraph Newspaper Co Ltd* [1908] 6 CLR 1, who is not avid for scandal (see *Lewis v. Daily Telegraph Ltd* [1962] 2 All ER 698) but who may engage in some degree of loose thinking (see *Morgan v. Odhams Press Ltd and another* [1971] 2 All ER 1156) and reading between the lines (see *Farquhar v. Bottom* [1980] 2 NSWLR 380), but who, at the same time, should not be unduly suspicious (see *Keogh v. Incorporated Dental Hospital of Ireland* [1910] 2 Ir R 577).

(See also: *Dr Chong Eng Leong v. Tan Sri Harris bin Mohd Salleh* [2017] 4 MLJ 611).

16th May Article

[32] Reverting to the contents of the 16th May Article, the Plaintiff contends that the words employed in its natural and ordinary meaning is understood to mean that the Plaintiff is violent and hot- tempered, goes on a rampage, has a history of drug and domestic abuse and had maliciously trespassed into his ex-wife's house.

[33] To my mind there is validity in the complaint of the Plaintiff that the statements are defamatory. The entire tenor of the 16th May Article is accusatory of the Plaintiff and what he had allegedly done. On the face of it, it imputes unbecoming conduct of the part of the Plaintiff. It causes a reasonable reader to question his character. My finding is fortified by the various comments by online readers, some of which are reproduced as follows,

> Reply on mforum by unguaurora on 17.5.2019 at 8.09 am
>
> ***Pernah jd CEO tp perangai rempit sgt ambil dadah bagai, Ntah cmne la gaya heols masuk ofism meeting bla3 x semenggah***
>
> Reply on mforum by namieamuro on 17.5.2019 at 11.07 am
>
> ***Alamak Jason Lo e…lols pernah minat dia..tak sangke terjebak jua mendadah…syg nye..knp la yg berbakat tapi membuduhkan diri dgn dadah..***
>
> Reply on mforum by cmf Strawberry on 17.5.2019 at 11.11 am

…

Sedih baca berita2 macam ni…diaorang ni kalua tak ganas, tak pukul wife, tak ambil dadah tak boleh ke..kenapa orang lelaki Malaysia ni semua panas baran

[34] In defence, the Defendants contend that read in its proper context, the words were merely reporting from another source as they used words such as "*allegedly*" "*reported history of drug and domestic abuse problems*" and "*it is learnt*".

[35] The defendants cannot expect to hide behind the use of such words to defend themselves by attributing the source of the information for such publication to a third party. This goes against responsible journalism especially if it injures the reputation of a person. I shall say more of this defence later. In any event, I do not find the contents as neutral and dispassionate in substance as the Defendants contend.

25th May Article

[36] This article was sensational and gripping. The headlines on the front page of the Star Exclusive IN PUBLIC COMPANY CEO IN PRIVATE ACCUSED OF BEING A MOLESTER was clearly designed to attact the attention of its readers. The presentation of the title in the front page was eye catching for the wrong reasons. The imputation is that the Plaintiff appeared respectable in public but guilty of heinous and vile conduct in private.

[37] The 25th May Article also suggested that the present publication followed the 16th May Article as it made reference to "*the arrest of a former telco chief executive officer last week for the alleged trespass and threats against his ex-wife*". To such conduct, the Defendants added words such as "*just the tip of the iceberg*"

which to my mind, meant there were more serious accusations against him such as the alleged molest. In addition, the use of the word "*molester*" connotes the commission of a sexual crime by the Plaintiff.

[38] The contents caused an online storm, evidenced by the negative and disparaging comments by readers which had been reproduced in the earlier part of this judgment. To those, I add a few other online comments,

Reply on mforum by DundalkA91 on 25.5.2019 at 9.46 am

Laaaa Ingatkan educated, urban and well mannered (katanyalahhhh)

takde isu molest. Keji punya bapak!

Reply on mforum by billythecat on 25.5.2019 at 10.24 am

Ayyoooo keji jijik n bangsat ya amat yaaaaa bapak yg molest anak sendiri. Org camni elok meringkuk je dlm penjara. Silap2 banduan dlm penjara pon pukul ko sbb diaorg pon xleh terima org yg molest darah dgg sendiri

Reply on mforum by smeetassmitten on 25.5.2019 at 10.58 am

Maigod jenis bapak ape ni molested his own daughters? Sangat sgt pelacur pun ade kn?euwwwww pedo dalam diam..jijik sejijiknya jantan mcm ni

[39] In my view, the reaction of the readers can be reasonably relied on as evidence of the issue whether the statements were defamatory.

[40] The Defendants again deny that the 25th May Article is defamatory as it was merely reporting information obtained,

amongst others, from the 15 police reports lodged by the Plaintiff's ex-wife (DW8) on the allegations of molest by the Plaintiff and her account of related incidents on the matter, the statement by Principal Assistant Director of D11, Lily Choo (DW6) then Head of Bukit Aman Sexual, Women and Child Investigation Division, that there were investigations into the reports lodged. These reports were later classified as NFA.

[41] Reading the contents of the 25th May Article objectively, I cannot but conclude that complaint of the Plaintiff that he is depicted as a sexual offender, a paedophile and one whom his children is unsafe to be with, justified. The sting of the article is that the Plaintiff's private life is morally reprehensible and that in spite of the police reports lodged, it did not lead to legal action against the Plaintiff. It would be almost impossible for one to remain neutral towards the Plaintiff after reading the said article.

[42] I therefore find the 25th May Article to be defamatory.

Facebook Post

[43] On 25th May 2019, soon after the publication of the 25th May Article, the 3rd Defendant republished the said article by attaching an online link to it on his Facebook Post which was accessible to readers. He added his comments which I have set out above in paragraph 11 and 12 of this judgment. His comments were biased, accusatory and showed that he had concluded that the Plaintiff was guilty of the act of molest he was accused of. Using very strong language for emphasis, he denounced the Plaintiff and added that the authorities will now have to act.

[44] The response of the readers to his Facebook post speaks for itself. The 3rd Defendant had influenced the readers into believing the truth of the 25th May Article which had the effect of vilifying the Plaintiff. Upon considering the Facebook Post as a whole, I find the contents to be defamatory.

Defence of justification

16th May Article

[45] The Defendants contend that even if the contents of the 16th May Article are defamatory, they are not liable as the statements therein are true. They rely on the defence of justification.

[46] In *Dr Chong Eng Leong v. Tan Sri Harris bin Mohd Salleh* [2017] 4 MLJ 611, Abang Iskandar JCA held.

> **[40]** Justification as a defence affords a complete exoneration from any liability for the defendant, although as a matter of fact and of law, the impugned statement was indeed defamatory. Justification connotes the truth of the statement. The rationale upon which this defence is founded is really simple, namely the truth. Stating the truth can never be a wrong in law, though often a time, it may cause hurt to the plaintiff. Nothing can compromise a truth. A truth, however hurtful, once established, cannot be rebutted. Just like antidote is to venom, truth neutralizes falsehoods. For that reason, if a defendant were to publish for the whole world to hear, that the plaintiff is a rogue or a scoundrel, the truth of the same statement, once proven by the defendant, would provide a complete and full defence against any liability for defamation. In *Chiew Foo Hua v. The Publisher Miri Daily News & Anor* [2000]

MLJU 664; [2000] 8 CLJ 68, the court there had held as follows:

> In order to succeed in the defence of justification, the defendants must establish the truth of all the material statements in the words complained of which may include defamatory comments made therein. In order to justify such comments, it is necessary to show that the comments are the correct imputations or conclusions to be drawn from the proved facts.

[41] Again, the law does not require that the defendant come up with the absolute truth pertaining to the whole of the impugned statement that has disparaged the plaintiff and put the latter in public odium or disrepute. It would suffice if the defendant is able to prove that the defamatory statement is in substance the truth. As such, there is no escaping for a defendant to prove the truth of the material part of the impugned statement that had injured the plaintiff. If he succeeds in doing so, then the publication of the statement, however defamatory, is justified and no liability sticks on him. In fact, under s 8 of the Defamation Act 1957 (Act 286) provides as follows:

> 8 Justification
>
> In an action for libel or slander in respect of words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges.

> **[42]** To our minds, the operative words under that s 8 would be 'if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges.' In other words, the sting of the defamatory remark that has materially injured the plaintiff must nevertheless be proven to be the truth by the defendant (see *Dato Seri Mohammad Nizar bin Jamaluddin v. Sistem Televisyen Malaysia Bhd & Anor* [2014] 4 MLJ 242; [2014] 3 CLJ 560).

[47] The burden lies on the Defendants to prove that the defamatory statements are substantially true. The Defendants contend that nowhere in the 16th May Article was it stated that the Plaintiff had in fact committed trespass. Instead it only stated that the Plaintiff was arrested for alleged trespass. The Plaintiff admitted as much in cross examination. While that may be true, the 16th May Article stated more than just the fact of arrest and the reason for the arrest.

[48] The 16th May Article was authored by the 4th Defendant (DW1). DW1 stated that the Plaintiff was arrested between 5:30 pm and 7 pm on the evening of the 16th of May, 2019 and that he "*is being remanded for four days by the police to assist investigations*." In his evidence he stated that the source of his information was DW7 who is now married to the ex-wife of the Plaintiff. The information about the Plaintiff's arrest was communicated to DW1 by DW7 on the evening of the 16th of May.

[49] The Plaintiff's counsel submitted that the remand order could not have been issued on the same day he was arrested. The Plaintiff could not have been remanded then as a remand order could only have been obtained the following day. I agree with the submission. This is a material fact as it implies that the police upon his arrest found grounds to immediately remand him

for a period of four days. The Defendants therefore failed to discharge the onus of showing that it was true and accurately stated.

[50] DW7 admitted in cross examination that he merely told DW1 what was conveyed to him by the Investigating Officer. This is hearsay evidence as the Investigating Officer was not called as a witness. It is no defence for DW1 to say that he was reporting information told to him without making any attempts to verify the truth of it.

[51] The 16th May Article also stated that the Plaintiff "*had broken the front door of his ex-wife's hous*e..." However, no credible evidence was produced before this court as proof of the statement.

[52] As for the statement that the Plaintiff "*has reportedly a history of drug and domestic abuse problems*" the Defendants allege that it is justified as there were news articles that the Plaintiff was arrested for drugs in Dubai. The Plaintiff agreed to the extent that there were such articles written. In addition, the Plaintiff also admitted that his ex-wife (DW8) had lodged police reports that she was physically abused by him. However the 16th May Article has no attribution to these police reports.

[53] The Defendants appear to rely on news articles of the Plaintiff's arrest in Dubai for drugs to justify stating that he has reportedly a history of drug abuse. It would be contrary to responsible journalism to state that the Plaintiff has a history of drug abuse merely based on articles referring to such matter. Further, in writing the way he did, DW1 had completely ignored a previous article published in the subsidiary of the 1st Defendant which refuted the Plaintiff's arrest in Dubai for drug related offences.

[54] On 10.11.2017, it was published in "**mStar**", that the former Inspector General of Police, Tan Sri Mohamad Fuzi had confirmed that the Plaintiff was never arrested for anything relating to drugs in Dubai. DW1 admitted in cross examination that he was aware of the statement by the then IGP. Notwithstanding his knowledge, DW1 chose to state that the Plaintiff has a reported history of drug abuse. This statement to me, remains an unproven fact.

[55] I therefore find that the Defendants have failed to prove that the substance of the 16th May Article is true. The defence of justification in publishing the said article therefore fails.

25th May Article

[56] The Defendants also plead justification in respect of the 25th May Article. The article was co-authored by both the 3rd and 4th Defendants. The Defendants contend that the instances of alleged molest and unseemly conduct on the part of the Plaintiff was based on the police reports lodged by DW8.

[57] DW8 was called to confirm that she made the police reports as she suspected molest on the part of the Plaintiff and that she had obtained an interim protection order granted by the Magistrate's Court. The 25th May Article also quoted DW6 on the result of the investigation conducted which concluded with an NFA result by the police.

[58] In essence, the Defendants contend that premised on the reports lodged, it is true that the Plaintiff was alleged to have molested his own kids. They were merely stating the fact that police reports were made. Even the Plaintiff agreed in cross examination that nowhere in the article was it stated that he was guilty of the alleged acts. Therefore, the 25th May Article was

but a mere reporting of the contents of the police reports made by DW8. It was also true that DW8 had brought her daughters to a licensed counsellor, DW4, who then had a counselling session with one of the Plaintiff's daughters. A video recording of the session was produced in evidence. After DW4 had spoken to one of the Plaintiff's daughters, he advised DW8 to lodge a police report. DW4 also affirmed an affidavit testifying to what the said daughter told him during the counselling session. This affidavit was for use in the Syariah Court proceedings involving the Plaintiff and DW8. Therefore, all that was reported in the 25th May Article are true.

[59] To my mind, what the Defendants are essentially contending is that they cannot be held liable for merely repeating what is already stated elsewhere.

[60] The same argument was advanced by the Defendants in *City Team Media Sdn Bhd & Ors v. Tan Sri Datuk Nadraja a/l Ratnam* [2022] 2 MLJ 608**.** They contended that they were merely repeating the contents of an Originating Summons and Affidavit filed by one MM in support in another suit where certain statements were made imputing guilt on the part of the plaintiff in the use of the temple funds.

[61] The Court of Appeal held,

> **[32]** …learned counsel submitted that the mere reporting of a legal case and the statements made by a litigant in relation to that case cannot tantamount to making a conclusion of the allegations made therein. It is submitted that the articles were in respect of a suit filed by MM which was already in public domain. It is submitted that the articles also stated

that the respondent denies the allegations made against him and that he had filed an application to strike out the claim against him.

…

[39] …It is trite law that repeating someone else's libelous statements cannot form a defence and offends the repetition rule.

[40] In *Gatley on Libel and Slander* (10th Ed) at p 850, para 27.10, the learned authors state:

> Further, 'there is a rule of general application in defamation (dubbed the repetition rule' …) whereby a defendant who has repeated an allegation of a defamatory nature of the claimant can only succeed in justifying it by proving the truth of the underlying allegation — not merely the fact that the allegation has been made.

[41] In *Lewis v. Daily Telegraph Ltd* [1964] AC 234 at p 260, Lord Reid held 'repeating someone else's libellous statement is just as bad as making the statement directly'.

[62] I would also refer to the case cited by the Plaintiff's counsel on the repetition rule, which I find to be of great assistance. In *Mark v. Associated Newspapers Ltd,* [2002] EWCA Civ 772**,** the repetition rule was further explained as follows,

(i) The Repetition Rule

27 This issue on analysis arises strictly independently of the bane and antidote argument and logically falls to be considered first. It is Mr Warby's contention that the repetition rule cannot survive the decisions of the ECHR in *Thoma v. Luxembourg* (Application No 3 843 2/97, 29

March 2001) and *Verdens Gang and Aase v. Norway* (Application No 45710/99, 16 October 2001), at any rate in the case of an essentially neutral media publication. Before examining the argument it is necessary to remind oneself just what the repetition rule is. I shall hope to be forgiven for doing so by reference to two judgments of my own in this court:

> "The repetition rule ... is a rule of law specifically designed to prevent a jury from deciding that a particular class of publication
>
> - a publication which conveys rumour, hearsay, allegation, repetition, call it what one will - is true or alternatively bears a lesser defamatory meaning than would attach to the original publication itself. By definition, but for the rule, those findings would otherwise be open to the jury on the facts; why else the need for a rule of law in the first place?" (*Stern v. Piper* [1997] QB 123, 135-136)
>
> "At first blush one might wonder why a correctly attributed and unadopted allegation is defamatory at all; to state that the allegation has been made is, after all, true. Such a report is, however, plainly defamatory under what is known as the repetition rule: a report of a defamatory remark by A about B is not justified by proving merely that A said it: rather the substance of the charge must be proved. A jury cannot be invited to treat the allegation as reported as bearing any lesser defamatory meaning that the original allegation (*Al Fagih v. HH Saudi Research and Marketing (UK) Limited* [2002] EMLR 13, paragraph 35)

28. I noted in *Stern v. Piper* Lord Reid's *dictum* in *Lewis v. Daily Telegraph Limited* [1964] AC 234, 260:

> "Repeating someone else's libellous statement is just as bad as making the statement directly."

I noted too Lord Denning's observation in "*Truth" (NZ) Limited v. Holloway* [1960] 1 WLR 997,1003:

> "If the words had not been repeated by the newspaper, the damage done ... would be as nothing compared to the damage done by this newspaper when it ... broadcast the statement to the people at large..."

29. Although, therefore, it is true to say, as indeed I said in *Stern v. Piper*, that the repetition rule, where it applies, "dictates the meaning to be given to the words used", that is by no means to say that the meaning dictated is an artificial one. Rather the rule accords with reality. If A says to B that C says that D is a scoundrel, B will think just as ill of D as if he had heard the statement directly from C. If, moreover, A is a respectable newspaper, D's position will be worse than if B had merely heard the statement directly from C. It will be worse in part because there will be many more Bs, and in part because responsible newspapers do not generally repeat serious allegations unless they think there is something in them so that the very fact of publication carries a certain weight. If, of course, in retailing C's statement, A says that C is often unreliable so that B should not suppose the statement necessarily to be true, that would certainly mitigate the gravity of the libel. Just as it would aggravate the libel if A said that C's statements ordinarily turned out to be true. But in either event, D's reputation would be damaged and

the repetition rule precludes A from pretending the contrary (ie, justifying by asserting that what he said was true, the only defamer being C).

[63] Guided by these authorities, I find that the Defendants cannot avoid liability on the basis that they were merely reporting an allegation made by DW8. The 26th May Article taken as a whole, was not a case of neutral reporting or merely attributing what was reported to some other third party source. The sting of the 25th May Article was an insinuation of guilt. Having repeated the allegations, the Defendants must be prepared to prove the truth of it. Before me, there is no evidence adduced of any charge or conviction against the Plaintiff. Instead what is before this court is that the investigation resulted in NFA. Apart from the allegations of DW8, there is no independent proof of the allegations of molest.

[64] The Defendants called the family therapist and counsellor (DW4) who interviewed the Plaintiff's daughter to support their defence of justification. The Plaintiff's daughter was not called to testify. The evidence of DW4 in relation to what she told him is clearly hearsay.

[65] In the circumstances, like the 16th May Article, I find the defence of justification also fails in respect of the 25th May Article.

Qualified privilege

[66] Apart from the defence of justification, the Defendants also contend that the publication was made on an occasion of qualified privilege now known as the Reynolds privilege. It accords freedom of communication in certain relationships

without the fear of defamation (See: *Tan Sri Muhammad Shafee Abdullah v. Tommy Thomas & Ors* [2018] 12 MLJ 98).

[67] The Federal Court in *Datuk Harris Mohd Salleh v. Datuk Yong Teck Lee (sued in his personal capacity and as an officer of the second respondent) & Anor* [2017] 6 MLJ 133 held,

> [51] In *Syarikat Bekalan Air Selangor*, explaining the *Reynolds* privilege defence, this court said:
>
> > [34] The *Reynolds* privilege defence is predicated on public interest and 'responsible journalism'. In the context of the present case, the Reynolds privilege defence required the defendant first, to establish that the impugned words were uttered on a matter of public interest and the public had a corresponding interest in receiving the same. Once that was established, the court must consider whether the defendant acted reasonably in publishing the impugned words. *This second test has been described as the test of 'responsible journalism' (see Reynolds v. Times Newspapers Ltd and Jameel And Another v. Wall Street Journal Europe SPRL*. Although the test refers to 'journalism', it is merely a convenient description because as we have decided earlier the *Reynolds* privilege defence is in no way limited to journalistic publications. If the defendant passed the test of responsible journalism, the issue would be determined in his favour. Lord Nicholls in *Reynolds v. Times Newspapers Ltd* sets out a number of factors to be taken into account in determining the issue of responsible journalism. These factors, which are not exhaustive, are, *inter alia*, as follows:

(1) The seriousness of the allegation. The more serious the charge, the more the public is misinformed and the individual harmed, if the allegation is not true.

(2) The nature of the information, and the extent to which the subject matter is a matter of public concern.

(3) The source of the information. Some informants have no direct knowledge of the events. Some have their own axes to grind, or are being paid for their stories.

(4) The steps taken to verify the information.

(5) The status of the information. The allegation may have already been the subject of an investigation, which commands respect.

(6) The urgency of the matter. News is often a perishable commodity.

(7) Whether comment was sought from the plaintiff. He may have information others do not possess or have not disclosed. An approach to the plaintiff will not always be necessary.

(8) Whether the article contained the gist of the plaintiff's side of the story.

(9) The tone of the article. A newspaper can raise queries or call for an investigation. It need not adopt allegations as statements of fact.

(10) The circumstances of the publication, including the timing

[68] The Defendants claim that the publication of the 26th May Article is a matter of public interest as the issue of sexual abuse amongst children is of public concern evidenced by specific legislation enacted such as the Sexual Offences Against Children Act 2017.

[69] Undeniably, the matter reported is of public interest and I agree that the Defendants are obliged to report on such matters. However, these are not the only factors to satisfy before the Defendants can avail themselves of the defence of qualified privilege.

[70] They are also obliged to verify the information by responsible steps. From the evidence led, the 3rd and 4th Defendants had only spoken to DW7 and DW8. They are clearly not neutral witnesses. DW8 is estranged from the Plaintiff. DW7 is married to her. Although the Plaintiff was contacted for his side of the story, the 26th May Article stated that there had been no response as at press time.

[71] The silence of the Plaintiff must be viewed in the light of the other available evidence. The 3rd Defendant said that he reached out to the Plaintiff on 23.5.2019 by Whatsapp message in an attempt to obtain his side of the story. The 3rd Defendant told the Plaintiff about his intention to run the story on the alleged molest the following day However, he received no response. The next day, on 24.5.2019 at 10:11 am, the Plaintiff was again informed that a response was needed by 2 pm, at the latest. The Plaintiff then replied to recount an incident at school earlier where his daughter was teased about the incident, and to express his anguish at having to deal with the situation.

[72] Nonetheless, the next day, the 25th May Article was published. I find the timeline given to the Plaintiff to respond to be most unreasonable in view of the seriousness of the allegations raised

in the article. There was no publication of the Plaintiff's side of the story. There were only feeble attempts made to obtain his version. It was the Defendants' own version that they had been working on this story for 2 years. That being the case, the haste to publish the story is inexplicable.

[73] It would appear from the answers given in cross examination that the Defendants were eager to publish the breaking news ahead of the other press. In the circumstances, I do not find the requirements stipulated in *Reynold's case* fulfilled. The defence of qualified privilege fails.

Malice

[74] It is trite law that once qualified privilege is established it can only be defeated by proof of malice. See: (*Datuk Harris Mohd Salleh v. Datuk Yong Teck Lee & Anor* (*supra*).

[75] The Plaintiff has also pleaded malice in his Statement of Claim to pre-empt the plea of qualified privilege. The Defendants contend there is no compliance with the Order 78 rule 3(3) of the Rules of Court 2012 which requires particulars of malice to be in the Reply. Further, even if the procedural non-compliance can be excused, the Plaintiff failed to give particulars of the facts from which malice can be inferred as he merely pleaded effect of malice and not proof of malice.

[76] With regard to the Defendants' contention, I am of the view that the rules do not make it mandatory for particulars of malice to be only in the Reply. Pleading malice early in the Statement of Claim serves to give notice to the Defendants that the Plaintiff intends to defeat the plea of qualified privilege, if relied on. Secondly, the Defendants appear to have mis-read the Plaintiff's plea of malice in paragraph 42 of the Amended Statement of

Claim, which I find to have clearly stated the facts substantiating malice. Although the determination of malice is now unnecessary having found the defence of qualified privilege to be unavailable to the Defendants, I find much of the particulars of malice supported by the evidence led at the trial. Therefore, even if the defence of qualified privilege was available to the Defendants, malice would have defeated the defence.

Quantum

[77] Having found the Plaintiff to have succeeded in establishing liability, I now consider the issue of quantum to be awarded.

[78] In *Datuk Harris Mohd Salleh v. Datuk Yong Teck Lee (sued in his personal capacity and as an officer of the second respondent) & anor* (*supra*), the Federal Court held,

> **[76]** The tort of defamation exists to protect, not the person or the pocket, but reputation of the person defamed (see *Jameel* per Baroness Hale, at p 1322). In *Chin Choon @ Chin Tee Fut v. Chua Jui Meng* [2005] 3 MLJ 494; [2005] 2 CLJ 569, the Court of Appeal said at p 498 (MLJ); p 573 (CLJ):
>
>> In *Defamation Law, Procedure & Practice* by Price & Duodu (3rd Ed, para 20-04 at p 208) the learned authors set out the several factors that a court must take into account in assessing compensatory damages. This is what they say:
>>
>> The amount of damages awarded in respect of vindication and injury to reputation and feelings depends on a number of factors: (1)The gravity of the allegation.

(2)The size and influence of the circulation. (3)The effect of the publication.

(4)The extent and nature of the claimant's reputation. (5)The behaviour of the defendant.

(6)The behaviour of the claimant.

This list is most helpful. But it must be borne in mind that this is not by any means exhaustive of the matters which the court may take into account when making an assessment.

[79] It his Statement of Claim, the Plaintiff claims that he has suffered pecuniary losses to the tune of RM 49 million. However, he led no evidence as to the computation of these losses. At the conclusion of the trial, his counsel submitted that award of RM 500,000 to RM 600,000 for general damages and RM 100,000 to RM 250,000 for exemplary damages. The Defendants on the other hand contend that recent judicial trend favour a global award and a sum of RM 100,000 to RM 200,000 to be a fair amount.

[80] To decide on the question of damages I have examined the authorities on the damages that have been awarded in defamation suits. I note that the highest quantum awarded is RM 800,000 for the case of *Datuk Seri Anwar bin Ibrahim v. Wan Muhammad Azri bin Wan Deris* [2014] 9 MLJ 605. The basis was the aggravating factors where the words employed were obscene and obnoxious and cast serious slurs on the character of the plaintiff who was a political leader. In the case of *Datuk Harris Mohd Salleh v. Datuk Yong Teck Lee (sued in his personal capacity and as an officer of the second respondent) & anor* (*supra*) RM 600,000 was awarded, taking into account *inter alia*, the adverse effect of the defamatory statements on the

plaintiff's dignity and reputation and the absence of remorse for defaming the plaintiff.

[81] Firstly, I do not think an award for exemplary damages is warranted as the Plaintiff has not shown his case to come within the circumstances laid down in *Rookes v. Barnard* [1964] UKHL 1. Neither do I think it warrants an award for aggravated damages which is awarded in instances where the injury has been caused by the exceptional conduct of the Defendants. Reference is made to the Federal Court case of *Sambaga Valli a/p KR Ponnusamy v. Datuk Bandar Kuala Lumpur & Ors and another appeal* [2018] 1 MLJ 784 where Mohd Zawawi Salleh JCA (now FCJ) noted as follows:

> [32] Now, aggravated damages are classified as a species of compensatory damages, which are awarded as additional compensation where there has been intangible injury to the interest of personality of the plaintiff, and where this injury has been caused or exacerbated by the exceptional conduct of the defendant.

(See also: *Lim Guan Eng v. Ruslan bin Kassim and another appeal* [2021] 2 MLJ 514]

[82] Thirdly, whilst I am of the view that the Defendants had overstepped the boundaries of responsible reporting to the point of being reckless, some of the matters published by them is already in the public domain being the subject of numerous police reports and the Syariah Court custody proceedings.

[83] I am therefore of the view that guided by judicial precedents on the quantum awarded for defamation, general damages of RM 200,000.00 is reasonable compensation.

Conclusion

[84] This case again brings to focus the delicate balance to be achieved between right to freedom of expression and the individual's right to reputation. Where the balance has been wrongly tilted, the court is obliged to grant redress for the wrong caused.

[85] Premised on the reasons as aforesaid, the claim of the Plaintiff is allowed. Judgment is given for the sum of RM 200,000 as damages. I also order that interest be paid on the judgment sum at the rate of 5% on the general damages awarded from date of judgment until realization.

[86] A sum of RM 40,000 is also awarded for the costs occasioned by the proceedings of a trial.

Dated: 12 MARCH 2024

(ALICE LOKE YEE CHING)
Judge
High Court in Malaya
at Shah Alam

COUNSEL:

For the plaintiff - Hariharan Tara Singh & Effa Azuin Aidrul Hisham; M/s Scivetti & Associates

For the defendants - Mohd Izral Khairy & Joycelyn Goh; M/s Izral Partnership

Case(s) referred to:

Datuk Seri Anwar bin Ibrahim v. Wan Muhammad Azri bin Wan Deris [2014] 9 MLJ 605

Yeo Ing King v. Melawangi Sdn Bhd [2016] 5 MLJ 631

Knupffer v. London Express Newspaper Ltd [1944] AC 116

Morgan v. Odhams Press Ltd [1971] 1 WLR 1239

Pardeep Kumar a/l Om Prakash Sharma v. Abdullah Sani bin Hashim [2009] 2 MLJ 685

Dato' Sri Dr Mohamad Salleh bin Ismail & Anor v. Nurul Izzah bt Anwar & Anor [2021] 2 MLJ 577

Dr Chong Eng Leong v. Tan Sri Harris bin Mohd Salleh [2017] 4 MLJ 611

City Team Media Sdn Bhd & Ors v. Tan Sri Datuk Nadraja a/l Ratnam [2022] 2 MLJ 608

Mark v. Associated Newspapers Ltd, [2002] EWCA Civ 772

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Sambaga Valli a/p KR Ponnusamy v. Datuk Bandar Kuala Lumpur & Ors and another appeal [2018] 1 MLJ 784

Lim Guan Eng v. Ruslan bin Kassim and another appeal [2021] 2 MLJ 514

Legislation referred to:

Defamation Act 1957, s. 8

Rules of Court 2012, O. 78 r. 3(3)