

**IN THE HIGH COURT OF MALAYA AT SHAH ALAM
IN THE STATE OF SELANGOR DARUL EHSAN, MALAYSIA**

CIVIL SUIT NO: 22-1514-2010

BETWEEN

- 1. MOX-LINDE GASES SDN BHD
(formerly known as MOX Gases Sdn Bhd
And prior to that as MOX Gases Berhad)
(Company No: 100783-W)**

- 2. WONG SIEW YAP** ... **PLAINTIFFS**

AND

LEE PEK LAN ... **DEFENDANT**

GROUND OF JUDGMENT

Introduction

1. The plaintiff's claim against the defendant are for an order for a permanent injunction to restrain the defendant and her agents from publishing and circulating defamatory words about the plaintiffs and general damages and aggravated damages for libel.

2. The defendant has from the beginning of this action in 2010 not entered appearance to date nor has she filed any defence to the plaintiffs' claim, and neither was she present in court on the date of the trial on **13.8.2014** despite a letter from the plaintiffs' solicitors informing her of the trial date in the Shah Alam High Court and requesting her attendance, having being sent to her on 30.7.2014 by registered post and also by hand delivering the same to the defendant's last

known address on **31.7.2014** and **1.8.2014**. [*The plaintiffs' Affidavit of Service was duly filed on 5.8.2014*].

B. CHRONOLOGY OF EVENTS UPON FILING OF THIS ACTION

1. On 26.11.2010, the plaintiffs' filed a writ of summons and statement of claim and an application for an interim injunction to restrain the defendant from publishing defamatory words about the plaintiffs ("the said Interim Injunction") and the same was personally served on the defendant on **29.12.2010** who presented herself at the plaintiffs' solicitors office. [*refer to the affidavit of service filed on 3.1.2011*].
2. On **18.4.2011**, the order for the plaintiff's application for the said interim injunction was granted by the High Court of Shah Alam (another court) pending the completion and disposal of the trial of this action.
3. The order for the said interim injunction was served vide the plaintiff's solicitors letter dated 5.7.2011 on the defendant on 6.7.2011 by registered post and personal delivery at the defendant's last known address on 7.11.2011.
4. The plaintiffs then discovered that defendant had breached the said interim injunction by again circulating 14 e-mails containing words that were defamatory of the plaintiffs in express breach of the court order for the said interim injunction against her. These said e-mails have been exhibited in **CBDA** from **pages 98-102**.
5. The plaintiffs accordingly sought leave of the court to commence committal proceedings against the defendant and the order for leave to commence committal proceedings (ex-parte) was granted on **4.10.2013** (another court).

6. Thereafter the plaintiffs filed their application for a committal order against the defendant on 17.10.2013 under Order 53 of the Rules of Court 2012, and the committal order dated **18.3.2013** was granted by the court (another court).
7. Pursuant to this a warrant of committal was issued by the court on 16.4.2014 and two attempts were made to execute the same by the Court Bailiff together with the local police on 19.6.2014 and 21.7.2014 respectively at both the defendant's last known addresses. However, both attempts were unsuccessful.

C. THE BRIEF FACTS/SUMMARY OF THE PLAINTIFFS' CLAIM

1. The plaintiffs make their claim action in defamation based on **3 defamatory publications** by the defendant, **circulated by way of e-mails** to various parties and organizations, which are:-
 - (i) **The e-mails dated 14.8.2010** with 3 attachments thereto, which was forwarded by the defendant vide 3 subsequent e-mails **dated 27.8.2010, 24.9.2010 and 28.9.2010**, appending the said e-mails of 14.8.2010 (hereinafter referred to as **"the 1st Publication"**). [See **pages 9-25 CBD**]. The 3 attachments to the said e-mail of 14.8.2010 was a letter dated 26.8.2008 from Maybank, a letter from Securities Commission dated 5.5.2009 and a letter dated 17.5.2009 from the defendant to Senator Murugiah and others. [See **pages 26-29 CBD**];
 - (ii) **The e-mail dated 15.10.2010** (hereinafter referred to as **"the 2nd Publication"**);
 - (iii) **The e-mail dated 31.10.2010** (hereinafter referred to as **"the 3rd Publication"**);

The 1st Publication (See the e-mails on pages 9-11, 12, 15 & 20 CBD dated 14.8.2010, 27.8.2010, 24.9.2010 and 28.9.2010 respectively).

2. The 1st publication was issued by way of e-mails that were circulated to various institutions within Malaysia and companies/organizations overseas which are directly and/or indirectly linked or connected to the 1st plaintiff and/or the Linde Group.

2.1 The e-mail dated 14.8.2010 was sent to various local and/or government agencies. [See e-mail on **page 9-11 CBD**];

2.2 The defendant then went on to attach the e-mail dated 14.8.2010 and sent it to the government agencies and circulated it via forwarded e-mails to individual recipients and companies which/who were directly within the Linde Group to which the 1st plaintiff belongs and also companies indirectly connected to or associated or indirectly connected to the 1st plaintiff which were overseas based organizations on **27.8.2010, 24.9.2010** and **28.9.2010**, such as the Singapore Linde Group, Korea Linde Group, Canada Linde Group, France Linde Group, Wonderwind (a German company), Chemogas, BOC- a United Kingdom health care company, Airproducts & the Temasek Group in Singapore. [See **pages 12, 15 and 20 CBD** respectively wherein the list of recipients is published];

3. Briefly, *inter alia*, in the 1st publication the defendant has made various defamatory statements both expressly and by imputations/innuendos and has also made accusations against the plaintiffs, which meant and were understood to mean the following:-

- That the 2nd plaintiff and his team had used their position in the 1st plaintiff to abuse their power and cause corruption;

- That the 1st plaintiff and/or its management can control and/or influence the actions of the police to the detriment of the defendant and/or her brother;
- That the 2nd plaintiff and/or 2nd plaintiff's team used their position in the 1st plaintiff and lodged a false police report which led to the arrest of the defendant and her brother wherein the defendant was remanded and with the intent of causing the defendant's company to lose its distributorship with the 1st plaintiff;
- That the 1st plaintiff's and/or 2nd plaintiffs team member had falsified documents to realize the defendant's Bank Guarantee previously given;
- That the 1st plaintiff and/or 2nd plaintiff's team had confiscated/taken all the defendant's customers gas cylinders and/or wrongfully interfered with the defendants trade/business;
- That both the plaintiffs had filed/initiated a false claim against the defendant in the High Court and/or obtained a court judgment on the wrong basis which resulted in the winding up of the defendant's company on 10.1.2007;
- That the 1st plaintiff and/or the 1st plaintiff's management can control the Securities Commission ("SC") and/or influence the SC and/or direct the SC to close a case against the 1st plaintiff to the detriment of the defendant;

- That the 2nd plaintiff had misappropriated millions of ringgit or is in possession of millions of ringgit which rightfully belongs to the 1st plaintiff's shareholders and has caused the 1st plaintiff to make less profit since 1980;
- That the 2nd plaintiff had instructed the 1st plaintiff's lawyers to inform financial institutions that the defendant and her brother had purportedly stood as guarantors which had resulted in the defendant being falsely blacklisted for bankruptcy;
- That the 1st and/or 2nd plaintiff's are thieves and/or have conspired to make false claims against the defendant.

3.1. The 3 attachments that were circulated along with the e-mails of the 1st publication contained the following defamatory imputations/innuendos:-
The First 2 attachments – i.e. the letter dated 26.8.2008 from Maybank and the letter from Securities Commission dated 5.5.2009. (See pages 26-27 CBD).

- (a) That due to the purported restructuring of Malaysian Oxygen Berhad to MOX Gases Bhd, the plaintiff could not call upon the defendant company's RM 40,000.00 bank guarantee;
- (b) That the 1st plaintiff's Customer Service Centre Manager had falsified Malaysia Oxygen Berhad's letterhead on 2.06.2004 to realize the defendant company's RM 40,000.00 bank guarantee;
- (c) That the 1st plaintiff and/or its Customer Service Centre Manager Hui Feng Huey had done something wrong, which should be investigated by the police;

- (d) That the missing gas cylinders that went missing, went missing from the 1st plaintiff's premises and/or that it was the 1st plaintiff that was somehow responsible for the missing gas cylinders.

3.2. From the 3rd said attachment (See pages 28-29 CBD):-

- (a) That the 1st plaintiff had victimized the defendant by making a false police report which had resulted in the defendant being kept in remand in the Subang Jaya police lock up for 10 days;
- (b) That the 1st plaintiff and/or 2nd plaintiff had not honoured the General Manager's of ISP MOX (at the material time) letter as to the temporary suspension of the defendant's company account;
- (c) That there weren't any gas cylinders lost and/or is a verbal admission by the 1st plaintiff's staff to that effect;
- (d) That the 1st plaintiff management can influence and/or direct the SC to close the defendant (Lee Pek Lan's) case and/or conceal the truth and/or tell lies and/or delay matters.

[See paragraphs 10, 14, 16 and 18 in the plaintiff's statement of claim "SOC" pages 80-83, 85-86, 87&91 in Ikatan Pliding "IP"].

- 4. The plaintiffs then via their solicitor's letter (Messrs Rajes Hisham Rahim & Gopal) dated 7.10.2010 (see pages 30 to 38 CBD) put the defendant on notice as to the clear defamatory nature of her 4 e-mails and the 3 attachments thereto and demanded *inter alia* that the defendant cease and desist from any further defamatory conduct, issue a public apology and retraction and undertake not to repeat the said defamatory allegations.

5. The defendant responded to the plaintiffs' solicitor's letter by circulating the e-mail of 15.10.2010 i.e. the 2nd publication.

The 2nd Publication [See the e-mails on **page 56-63 CBD dated 15.10 2010**]

6. The words used in the 2nd publication meant and were understood to mean in their natural and ordinary meaning or alternatively by way of innuendo, in addition to the allegations in the 1st publication (referred to paragraph 3 above) the following:-

- That notwithstanding complaints made to the Chairman of the 1st plaintiff, no action was taken by him;
- That the 2nd plaintiff is not concerned about litigation and/or the legal fees involved, as his legal fees are paid by the 1st plaintiff;
- That the 1st plaintiff and/or 2nd plaintiff can use litigation proceedings to drain the defendant's finances via legal fees;
- That the 1st plaintiff and/or 2nd plaintiff can use the law/litigation proceedings to wrongly silence the defendant;
- That the 1st plaintiff and/or 2nd plaintiff can use the law/litigation proceedings to prevent the government and/or 3rd parties from discovering the purported truth;
- That the 1st plaintiff and/or 2nd plaintiff and/or their lawyers can influence even the defendant company's lawyers to the detriment of the defendant's company and had the defendant blacklisted.

- That 2nd plaintiff uses the 1st plaintiff's Chairman through his relations can influence the Malaysian police to purportedly arrest the defendant and/or her brother;
- That the 1st plaintiff and/or 2nd plaintiff were responsible for the purported tarnishing of the defendant and/or her brothers alleged reputation;
- That the 1st plaintiff and/or 2nd plaintiff are misusing the law in order to purportedly victimize or “bully” the defendant and/or her brother and/or destroy the defendants company and/or to cause them suffering.

[see **paragraph 24** in the plaintiffs' SOC **pages 107-109 IP**].

- 6.2 The defendant's said e-mail was her reply to the plaintiffs' legal notice dated 7.10.2010, but this was however copied to a large number of other readers who were not related to the matter.
- 6.3. From the list of recipients, the defendant clearly intended for a wider group of persons to read her e-mail in the 2nd publication, which included the 1st plaintiff's competitors (like the Air Products Group) and other unrelated parties such as the Temasek Group.
7. As a result of the 2nd publication, the plaintiffs sent a final notice to the defendant dated 29.10.2010 to inform the defendant that since she had willfully persisted and continued her defamatory conduct via the 2nd publication, the plaintiffs would no longer be engaging her by way of further correspondence and would proceed to enforce their legal rights.

The 3rd Publication [See e-mail on page **68 – 71 CBD dated 31.10.2010**]

8. Once again the defendant responded to the plaintiffs solicitor's letter of 29.10.2010 by circulating the 3rd publication which once again was sent to a wide range of readers which included the 1st plaintiff's competitors (such as the Air Products Group) and other unrelated parties such as the Temasek Group.

8.1 The words used in **the 3rd publication** were largely repetitious and contained the same and/or similar defamatory contents as the meanings referred to in paras 3 and 6 above, in the way they were meant or understood in their natural and ordinary meaning and/or by innuendo. (See **para 29** of the SOC, **page 116 IP**).

9. The plaintiffs immediately proceeded to instruct their solicitors to institute legal action against the defendant wherein this action was filed on 26.11.2010.

10. However, even after obtaining the said interim injunction, the defendant deliberately breached the same and this time went on to circulate 14 defamatory separate e-mails of a similar nature to the 1st, 2nd and 3rd publications to a wide range of readers that include the 1st plaintiff's competitors and unrelated third parties. (See **pages 98 to 169 CBDA**).

D. **THE ISSUES BEFORE THIS COURT**

1. The issues to be tried that were filed are as follows:-

(i) Whether the words in the 1st, 2nd and 3rd publications ("**the 3 said publications**") refer to both of the plaintiffs?

(ii) Whether the words in the 1st, 2nd and 3rd publications are defamatory in that they were calculated to injure the reputations of the plaintiffs?

(iii) Whether the defendant published the 1st, 2nd and 3rd publications?

- (iv) Whether the defendant by her conduct and/or behavior acted in a defamatory manner towards the plaintiffs and the likelihood of the defendant continuing to engage in libel towards the plaintiff if not restrained by a permanent injunction?

DECISION OF THE COURT

FIRST ISSUE

- (i) ***Whether the words in the 1st, 2nd and 3rd publications refer to both the plaintiffs.***

1. From the outset, there is no ambiguity or doubt as to who the defendant was casting aspersions upon. Both the 1st plaintiff and the 2nd plaintiff have been referred to in various parts of the 3 said publications jointly and respectively, as is clearly evidenced by all the relevant e-mails in the said publications exhibited in CBD and also CBDA.
2. Therefore the first issue has been answered in the affirmative, that the words in the 1st, 2nd and 3rd publications clearly refer to the plaintiffs.

SECOND ISSUE

- (ii) ***Whether the words in the 1st, 2nd and 3rd publications are defamatory in that they were calculated to injure the reputations of the plaintiffs.***

1. For ease of reference, certain excerpts of the 3 said publications are produced herein below:-

1.1 **From the 1st publication:-**

- **E-mail dated 14.8.2010 (page 10-11 CBD)**

“SUBJECT: WONG SIEW YAP AND HIS TEAM USE THEIR POSITION IN MOX TO ABUSE OF POWER AND CORRUPTION”

- “ Wong Siew Yap (WSY) uses Tan Sri Dr. Ahmad Tajuddin Bin Ali’s (Chairman, MOX) relative (Selangor CPO) to have Selangor CID Chief SAC11 Abu Bakar Mustafa comes to our office on Friday 6.02.2004 to arrest both my brother Lee Chin Chai and me (female).”**
- “ Hui Feng Huey (WSY’s team) falsifies Malaysian Oxygen Berhad (3928-D) letterhead dated 2.06.2004 to take my Bank Guarantee.”**
- “ Ng Cheng Meng (WSY’s team) with Wong Tow and Gasline drivers confiscate my customers’ cylinders and tell not to buy and pay me.”**
- “ WSY using the lawyer, Rajes Hisham Pillai & Gopal base on the following false claim to obtain court judgment in default of defence on 1.11.2004.”**
- “ ... I did not owe MOX this amount because the next day of my police detention, WSY and his team using their MOX position to take all the cylinders.”**
- “ I have lodged a complaint to securities Commission on 11.07.2007 and 13.12.2007 why RM5 million worth of cylinders lost on 5.02.2004 did not mention in MOX’s Annual Report 2004 Cammie Leong says Sujatha can help them to close my case.”**

“ In 2004, MOX is a public listed company, WSY and his team use their position in MOX:-

a. to lodge a false police report to take away my company MOX distributorship:-

b. make a falsified claim to obtain High Court order to wind up my company on 10.01.2007.”

“ WSY and his team use their position in MOX to abuse power and corruption has caused to MOX to make less profit since 1980.”

“ By arresting Lim Yeow Chee (2004 false police case informer) the truth will reveal whereby the government and MOX shareholder can recover at least multi-million ringgit from Lim Yeow Chee, Wong Siew Yap and his team, LTS and Wong Tow.”

➤ E-mail dated 24.9.2010 appending e-mail dated 14.8.2010 (page 16 CBD)

“... I have clearly stated complaining against Wong Siew Yap and his team using their position in MOX (a reputable, listed and multinational company).

i. for their personnel benefits by conspiring with LTS (transport) and Wong Tow (distributor) to cheat MOX;

ii. victimize my company, my brother and myself.”

- “1. WSY uses Tan Sri Datuk Dr Ahmad Tajuddin bin Ali’s (Chairman MOX) relative (Selangor CPO) to lodge a false police report that MOX lost RM5 million worth of cylinders on 5 February 2004.”**
- “2. WSY using the lawyer, Rajes Hisham Pillai & Gopal, to obtain court judgment in default of defence on 1 November 2004 using the following false claim:-**
- 3.1: unreturned cylinders amounting to RM271,950.00. I did not owe MOX this amount because the next day of my police detention, WSY and his team using their MOX position to take all the cylinders;**
- 3.2: outstanding payment amounting to RM134,765.83. The actual amount outstanding is RM78,960.83;**
- 4: after obtain High Court order to wind up my company on 10 January 2007, they send monthly statement claiming that my company still owing MOX-Linde Gases Sdn Bhd (100783-W) RM94,687.83.”**
- “ late 2009 and early 2010, my brother Lee Chin Chai I/C No. 520720-10-5169 go to Maybank-Damansara Jaya, UMW Toyota-Section 14 and Ambank-Jalan Yap Kwan Seng to take car loan. They reject Lee Chin Chai because WSY using MOX for bankruptcy. Both my brother Lee Chin Chai and I, Lee Pek Lan, DID NOT give any personal guarantee to MOX.”**

- **E-mail dated 28.9.2010 appending e-mail dated 14.8.2010 (page 20 CBD)**

“WONG SIEW YAP AND HIS TEAM USE THEIR POSITION IN MOX MALAYSIA TO ABUSE OF POWER AND CORRUPTION”

“WSY works in MOX since 1988 and belongs to Soh Tong Hwa (STH) team. They conspire with LTS to (1) steal cylinders (2) steal liquid from the tank and (3) make false claim on transport.”

- 1.2 There were also 3 attachments with these e-mails which appear on pages 26-29 CBD which imply defamatory imputations against the plaintiff, which have been described in further detail in the paragraphs above.

2.2 **From the 2nd Publication:-**

- **E-mail dated 15.10.2010 (page 56-63 CBD)**

“ I have complaint to Tan Sri Dr Ahmad Tajuddin Bin Ali (Chairman, MOX) but no action taken by him. Wong Siew Yap has said to me he not afraid of lawyers as his legal fees is paid by MOX whereas I’m using my own money. Legal fee drain my money and my 6 years of suffering, humiliation and being a victim of false police report make by Wong Siew Yap and his team and false claim by you to obtain High Court order to wind up company that cause me to complaint to the government and companies/organization linked to MOX.”

“ Wong Siew Yap refuse to honour Chris Brown (General Manager ISP MOX) letter “Temporary suspension of supply of

industrial gases” dated 11.2.2004 even I have the clearance letter from head Quarters of Police Department’s letter “MELEPASKAN DARI JAMINAN POLIS” dated 12.4.2004. Chris Brown’s letter stated he temporary suspend my company account pending the outcome of the police investigations.”

“ On 22 July 2008 at MOX, Devamala in the presence of Cammie Leong and an undisclosed man has admitted on 5 February 2004 there isn’t any cylinder lost. She hinted they have the backing of Tan Sri Dr Ahmad taaajuddin Bin Ali. Cammie Leong hinted Sujatha would help to close this case.”

“ As a Assistant General Manager & Head Investor Affairs & Complaint, Sujatha want to conceal the truth by telling lies, diverting the topics and dragging time by giving me a letter that I’m the person who lodge the police report on the cylinders missing on 5 February 2007.”

“ Can you deny that Hue Feng Huey has abuse his power as a Customer Service Centre Manager to falsify Malaysian Oxygen Berhad (3928-D) letterhead dated 2.06.2004 to take my RM40,000.00 bank guarantee?”

“Wong Siew Yap and his team have abuse of power and corruption based on;

- Wong Siew Yap (WSY) uses Tan Sri Dr Ahmad Tajuddin bin Ali’s (Chairman MOX) relative (Selangor CPO) to have Selangor CID chief SAC II Abu Bakar Mustafa comes to our office on Friday 6 February 2004 to arrest both my brother Lee Chin Chai and me (female). They lodge a false police report that MOX lost of RM5 million worth of cylinders on 5 February 2004.”

- *Hue Feng Huey falsify Malaysian Oxygen Berhad (3928-D) letterhead dated 2.06.2004 to take my RM40,000.00 bank guarantee whereby on that date is known is MOX Gases Berhad (100783-W)."*

- *After I hand in the appeal letters to reinstate my company MOX distributorship from YB Datuk Astaman Abdul Aziz (Member of Parliament, Titiwangsa) dated 14 May 2004 and YB Mr. Yew Teong Look (Mmeber of Parliament, Kawasan Wangsa maju) dated 15 Maay 2004, Ng Cheng Meng (WSY's team) with Wong Tow and Gasaline drivers confiscate my customer's cylinders and tell not to buy and pay me. Ng Cheng Meng immediately stop the confiscation after I hand in the appeal letter to reinstate my company MOX distributorship from Y.Bhg Dato' Noh Bin Haji Omar (Timbalan Menteri Keselamatan Dalam Negeri) dated 3 June 2004. Few years later, Ng Cheng Meng want to confiscate my customers' cylinder by making another police report in Ampang based on 2004 police report."*

- *You make a false claim to High Court by including the cylinders taken on 7 February 2004 which you valued RM271,950.00 to wind up my company. **My lawyer Norisman Bin Ismail did not defend my case as he favours you and Wong Siew Yap. My lawyer Theng Book (taken RM20,000.00 from us) did not appeal my case as he favours you and Wong Siew Yap instead he tell us to let the company wind up by you which we strongly objected and very hurt. Due to Norisman Bin Ismail did not defend on 1 November 2004. You use law to bully***

us, kill my company built up using blood & sweat money and make us suffer in silence.”

- ***Wong Siew Yap and his team influence Sujatha Sekhar Naik, Assistant General Manager & Head Investor Affairs & Complaints, Securities Commission Malaysia to give me the letter SC/GC/CD/3/80-2007 dated 5 May 2009 stating that I'm the person who lodge the police report on the cylinders missing on 5 February 2007.***

- ***Wong Siew Yap and his team have lodge a police report using Lim Yeow Chee (my lorry driver/nephew) as the informer that my company stolen RM5 million worth of cylinders from MOX on 5 February 2004?***

Because of the police report

- ***I was remand in Subang Jaya police lockup for 10 days.***
 - ***Tarnish our reputation as this RM5 million loss of cylinders has reported in the TV and newspapers (The Star, Malay Mail and New Straits Times-Saturday 7 February 2004;***
 - ***Suspend and subsequently terminate my company MOX distributorship;***
 - ***Advertise the termination in the newspaper to enable the informer Lim Yeow Chee and Wong Tow (MOX distributor) to rob my company good customers;***
- ***Wong Siew Yap and his team using their position in MOX have taken away all the cylinders on 7 February 2004?***

- *On 8 January 2007, Puan Jamilah (secretary to YB Dato' Noh Bin Haji Omar) calls Tan Sri's secretary. Subsequently, she faxes Tan Sri reply dated 4 January 2007. Puan Jamilah informs her that we can immediately make payment at Tan Sri office and at the same time want to sign the contract. **Tan Sri's secretary rejects our request and insists we deal with Wong Siew Yap.***

- *You obtain High Court order to wind up my company on 10 January 2007 by including the all cylinders (you billed as RM271,950.00) taken by Wong Siew Yap and his team on 7 February 2007 and you deny the fact we can pay on 8 January 2007.*

- *Can you commit there isn't any liquid, cylinders lost and false claim on transport since 1980?*

- *Maybank letter 27-14534/LPL/SK dated 26 August 2008 suggest I lodge a police report and let the police investigate with Malaysia Oxygen Berhad on Hui Feng Huey. Are you admitting that Wong Siew Yap and his team have lodged a police report using Lim Yeow Chee (my lorry driver/nephew) as the informer that my company stolen RM5 million worth of cylinders from MOX on 5 February 2004?*

- ***Wong Siew Yap does not want to uplift the suspension and instead dragging time to allow you to obtain High Court order to wind my company.***

- *On 22 July 2008 at MOX, Devamala in the presence of Cammie Leong and an undisclosed man has admitted on 5 February 2004 there isn't any cylinder lost.*

- ***Wong Siew Yap and his team have taken all the cylinders on 7 February 2004 whereby you include this taken cylinders to make a claim against us for the High Court order.***

- *Late 2009 and early 2010, my brother Lee Chin Chai I/C No. 520720-10-5169 got to Maybank Damansara Jaya, UMW Toyota-Section 14 and Ambank Jalan Yap Kwan Seng to take car loan. **They reject Lee Chin Chai because you inform the financial institutions that he is blacklisted by MOX for brankruptcy.***

- “ ***I complaint to the government and companies/organization linked to MOX by relating the truth and facts of the whole episode of Wong Siew Yap and his team using their position to abuse of power and corruption.***

- ***Legal fee drain my money***
- ***My 6 years of suffering, humiliation and being a victim of false police report make by Wong Siew Yap and his team and false claim by you to obtain High Court order to wind my company.***
- ***Is to obtain justice for my lose of MOX distributorship, embarrassment, tarnish in image & reputation, mental & financial torture and suffering that my brother and I are***

facing Wong Siew Yap cannot use his lawyer to make Lee Chin Chai I bankruptcy after winding my company as we DID NOT sign and DID NOT give any personal guarantee to MOX.”

“ You want to sue me for defamation to silence me to complaint to the governments and companies/organization linked to MOX. You are using law to stop the government and/or anyone to reveal truth of this whole episode of Wong Siew Yap and his team abuse of power and corruption.”

“ How are you going to compensate me being a victim of false police report make by Wong Siew Yap and his and false claim by you to obtain High Court order to wind my company?”

3.1 **From the 3rd Publication:-**

➤ **E-mail dated 31.10.2010 (page 68-71 CBD)**

- Largely a repeated publication of the earlier e-mail dated 15.10.2010 (2nd Publication).

4. Applying the test of what constitutes a defamatory nature of a statement enunciated in ***Syed Husin Ali v Sharikat Perchetakan Utusan Melayu Bhd & Anor [1973] MLJ 56, Mohamed Azmi J***, as His Lordship then was, (when referring to ***Gatley on Libel and Slander 6th Edition at p.4 para 4*** held:

“Gatley on Libel and Slander, 6th Edn. at p.4,para 4 says:

*'There is no wholly satisfactory definition of a defamatory imputation. Any imputation which may tend to lower the plaintiff in the estimation of right-thinking members of society generally to cut him off from society or to expose him to hatred, contempt or ridicule, is defamatory of him. **An imputation may be defamatory whether or not it is believed by those to whom it is published.'***

Further, at p.14 para 31, Gatley says:

*'A defamatory imputation is one to a man's discredit, or which tends to lower him in the estimation of others, or to expose him to hatred, contempt or ridicule, or to injure his reputation in his office, trade or profession, or to injure his financial credit. The standard of opinion is that of right-thinking persons generally. **To be defamatory an imputation need have no actual effect on a person's reputation; the law looks only to its tendency.'***

Thus, the test of defamatory nature of a statement is its tendency to excite against the plaintiff the adverse opinion of others, although no one believes the statement to be true. Another test is: would the words tend to lower the plaintiff in the estimation of right-thinking members of society generally? The typical type of defamation is an attack upon the moral character of the plaintiff attributing crime, dishonesty, untruthfulness, ingratitude or cruelty."

5. The plaintiffs' counsel, Ms Joanna Thevathasan submitted, and I agree, that irrespective of whether the readers of the e-mails in the 3 said publications believed them or not; the imputations of, *inter alia*, abuse of power, corruption, dishonesty, falsifications of legal documents, misappropriation of the 1st plaintiff's funds and monies that would cause the shareholders to be deprived of their due profits, malice and all other vicious allegations cast by the defendant in the 3 said publications would indeed have the tendency to lower the plaintiffs in the estimation of right-thinking members of society generally and expose the plaintiffs to hatred, contempt or ridicule. This is so since:

5.1. The defendant attacked the moral character of the 2nd plaintiff and the dignity and/or standing of the 1st plaintiff in the corporate world wherein both the 1st and the 2nd plaintiff enjoy a local multinational presence, using

words that were calculated to injure the plaintiffs' reputations in the eyes of right-thinking members of society generally.

- 5.2. Any ordinary reasonable person would construe the words in the said publications to mean the various meanings attributable by the words complained of as listed in the paras above to make the plaintiffs, *inter alia*, out to be without honour and credibility, corrupt and cheats.
- 5.3. Based on this, the second issue is also answered in the affirmative and the said 3 publications are clearly defamatory of the plaintiffs.

THIRD ISSUE

(iii) **Whether the defendant published the 1st, 2nd and 3rd publications?**

6. The e-mails in the 3 publications in CBD showed that they were "**sent**" at the said dates and times and were "**From: Lee Pek Lan.**"
7. The 2nd plaintiff (PW1), Mr Wong Siew Yap, who is the managing director of the 1st plaintiff gave evidence that the e-mail in the 1st publication had come to his attention because it had been forwarded to him by some of the recipients within the 1st plaintiff's group of companies. (See answer to **Q23A** in witness statement of PW1 "WSPW1").
 - 7.1. The plaintiffs also referred to **pages 12 and 39 of CBD** that showed that a Mr Guy De Backer of the 1st plaintiff's Linde Group and also a Mr Eric Matthijs, a sales and marketing manager of Chemogas in Belgium had received the e-mail sent by the defendant

- 7.2. This is evidence that there was indeed publication of the defendant's e-mails wherein there was a wide range of readers.
- 7.3. ***In Ng Koo Kay Benedict and Another v Zim Integrated Shipping Services Ltd [2010] SGHC 47***, the High Court in Singapore recognized publications by way of disseminations of e-mails where the e-mail messages had been received and seen by a recipient other than the person defamed, who is capable of understanding it, and concluded that it has therefore been published. **The court in that case also inferred that substantial publication of the defamatory statements had taken place given the large number of persons and e-mail addresses on the list of recipients.**

At page 873, Lai Siu Chiu J, stated:

“Was the statement published?”

As a general principle, publication takes place where the defamatory material is published by the defendant and communicated to a third party (other than the claimant). At law, publication to even one person will suffice to make out a finding of liability, with the scale of publication affecting, instead, the quantum of damages: see Gately on Libel [11] at para 6.1 (citing The Capital and Counties Bank, Limited v George Henty & Sons [1882] 7 App Cas 741 at 765.

In the book by M Collins “The Law of defamation and the internet (Oxford University Press, 2005) (“Collins”), the learned author succinctly summarized the law on the circumstances in which the court could infer substantial publication for materials that are made available on the internet, as follow (para 5.04):

Proof that internet communications have been published is therefore not usually a difficult task. Every email-message which has been received and seen by a recipient, other than the person defamed, who is capable of understanding it, has been published.”

At page 880, para 45, his lordship went on to say:

“With the List of Recipients, I hold that the plaintiffs have established that there was substantial publication of the statement within Singapore. I note that Scofield could not positively aver that every person on the list of recipients had downloaded and accessed the e-mail in Singapore. However, given the large number of persons and e-mail addresses on the list of recipients, it seems more likely that not that a not insubstantial number of persons would have downloaded and read the e-mail in Singapore..... As such, I would infer that substantial publication of the statement had taken place in Singapore through dissemination of the E-mail, applying the test suggested by Collins (as quoted above).”

- 7.4. Thus on that score, there was clear publication of the defamatory e-mails to people other than the plaintiffs herein.
8. The defendant also sent the 2nd and 3rd publications to not only the plaintiff’s solicitors but various other recipients from the local government agencies, the 1st plaintiff’s group in Singapore, the 1st plaintiff’s competitors ie. the Airproducts Group and unrelated companies such as the Temasek Group, as clearly evidenced by the list of recipients in these e-mails.
9. The list of recipients on all the 3 said publications exhibit that the e-mail addresses such as info@linde.com, info@dk.aga.com, contract-france@fr.linde-gas.com, info@chemogas.com, infor@wonderwind.de, infor@se.aga.com, info@soxal.com, infosale@airproducts.com, info@sprm.gov.my, customer service, investor relations which demonstrate that the e-mails in the said publications have been treated as general e-mails accessible by anyone stationed and/or designated to man the various companies service desk who are usually tasked with opening e-mails from the public to attend to thevarious customer needs.
- 9.1. In such a situation, it is akin to the principle of presumed publications since by their very nature such general e mails would normally be seen by persons who are third parties.

9.2. Therefore, there is a legal presumption that these e-mails are published on being sent without actual proof that anyone did in fact read them. In the book of the **“Law of Defamation in Singapore and Malaysia”, 2nd Edition by Keith R Evans published by Butterworth, 1993, at page 34,** the writer states:

*“Similarly there may be presumed publication of other type of materials sent in the post. **Telegram and postcards, by their very nature, would normally be seen by persons other than those to whom they are addressed,** and it would be quite easy to demonstrate publication to third parties of defamatory allegations contained in such transmissions. **Indeed, there is a legal presumption that these are published on being sent through the post without actual proof that anyone did in fact read them.** The presumption is theoretically rebuttable, although it is very difficult to conceive the rebutting evidence to the effect that no one had read the document could be given.”*

10. The above was adopted and applied in the case of **Tan Lan Chu v Robbin Ong Kim Chuan [2012] 5 MLRH 420** where it was held, at pg 10:

“The same principle applies, that there is a presumption that they are published once they are transmitted and received through the fax machine without actual proof that anyone did in fact read them since by their very nature, would normally been seen by persons other than those to whom they are addressed.”

11. The defendant also went on to breach the interim injunction by sending 14 defamatory e-mails to various of the 1st plaintiff group of companies overseas such as in Canada, France, Italy, Korea and Singapore as can be seen by the e-mails in CBDA and therefore engaged in further publication of defamatory material against the plaintiffs.

Therefore, based on the above, the third issue is also answered in the affirmative and the defendant has been shown to have clearly published not only the 3 said

publications but the subsequent 14 defamatory e-mails (in breach of the said interim injunction).

FOURTH ISSUE

(iv) **Whether the defendant by her conduct and/or behavior acted in a defamatory manner towards the plaintiffs and the likelihood of the defendant continuing to engage in libel towards the plaintiff if not restrained by a permanent injunction?**

12. The plaintiffs submit that in light of the above nature and scope of the 3 said publications to the wide range of readers, both locally and worldwide including the 1st plaintiff's competitors and unrelated groups, the defendant has demonstrated defamatory conduct and ill will towards the plaintiffs.
13. Further in view of the defendant's subsequent breach of the interim injunction order dated 18.4.2011 wherein the defendant again circulated 14 similarly defamatory e-mails to a largely international group of readers, the defendant has, evidenced by her conduct, a very strong likelihood or inclination to continue engaging in libel towards the plaintiffs if she is not restrained by a permanent injunction against her.

Therefore, the fourth issue is also answered in the affirmative that the defendant by her conduct and/or behavior has been clearly shown to have acted in a defamatory manner towards the plaintiffs and that there is a great likelihood or inclination of the defendant continuing to engage in libel towards the plaintiffs if not restrained by a permanent injunction.

THE REMEDIES SOUGHT BY THE PLAINTIFFS/ QUANTUM OF DAMAGES

- (i): **A permanent injunction against the defendant/her agents from further circulating and publishing defamatory words against the plaintiffs.**

14. Given the behavior and conduct of the defendant in this matter who has not shown any remorse or regret over her actions and who dared to breach the interim injunction order of court pending the completion and disposal of this matter, a permanent injunction as prayed by the plaintiffs in para 38(a) of the statement of claim is allowed. (*Tan Lan Chu v Robbin Ong Kim Chuan [2011] 1 LNS 826* and *Dato' Mohamad Salim Fateh Din v Nadeswaran Rajah [2013] 4 CLJ 961* refers).

(ii) **The plaintiffs also prayed for general and aggravated damages**

15. It is trite law that **libel is a tort actionable per se i.e. without proof of actual harm**. The law presumes that when a man's reputation is assailed, some damage must result. (See *MGG Pillai v Tan Sri Dato Vincent Tan Chee Yioun & 2 other appeals [1995] 2 CLJ 912*).

15.1. In *Pemegang Amanah Lembaga Zakat Selangor (MAIS) & another vs Haji Saari Sungib [2013] 10 CLJ 588*, the High Court referred to the Federal Court's case of *Ling Wah Pres (M) Sdn Bhd & Ors v Tan Sri Dato Vincent Tan Chee Yioun [2000] 3 CLJ 728* and held at para 77 page 616:

"Awards of damages in defamation cases cannot be equated with awards of damages in personal injury cases.

The award of damages given to the plaintiff in a defamation case serves as a vindication of the plaintiff to the public and as a consolation to him for a wrong done."

16. In *Gatley on Libel and slander 11th Edition*, it states that the factors that can be taken into account when assessing damages are the conduct of the claimant, his position and standing, the nature of the slander or libel, the mode and extent of the publication and the absence or refusal of any retraction or apology. The basic guideline for assessment of damages are set out in *Syed Husin Ali v Sharikat*

Penchetakan Utusan Melayu Bhd & Anor [1973] 1 LNS 146; MGG Pillai v Tan Sri Dato Vincent Tan Chee Yioun & 2 other appeals [1995] 2 CLJ 912.

16.1 The plaintiffs' submitted that the position and standing of the plaintiffs has to be taken into consideration in awarding damages. Ms Joanna Thevathasan argued that the 1st plaintiff is a leading industrial gas supplier in Malaysia and is a subsidiary of an international gas and engineering company having its head office in Germany. In other words, it is part of an international group and its presence is worldwide. With reference to page 6 of exhibit P1 and the last Q & A No. 36 of WSPW1, as at 18.6.2013, the 1st plaintiff is seen to generate an annual revenue of approximately RM802,000.00.

The 2nd plaintiff is the managing director of the 1st plaintiff i.e. Linde Malaysia Sdn Bhd and also enjoys a regional and multinational presence and high standing in society.

16.2. Apart from that the gravity and seriousness of the libel has also to be taken into consideration. The defendant has attacked the dignity of the 1st plaintiff and moral character of the 2nd plaintiff with allegations of, *inter alia*, abuse of power, corruption, dishonesty, falsifications of legal documents, misappropriation of the 1st plaintiff's funds and monies.

16.3. The size and influence of the circulation is also another factor. The extent of the circulated e-mails reaches various other recipients within the Linde Group locally and internationally, from the local government agencies to the 1st plaintiff's competitors i.e. the Airproducts Group and unrelated companies such as the Temasek Group, as clearly evidenced by the list of recipients.

16.4 The effect of the publication has caused mental distress, hurt, anxiety and anguish to the 2nd plaintiff who gave evidence that the defendants' e-mails

were brought to his attention by other recipients within the 1st plaintiff group and had exposed him to scandal, odium and contempt and that he suffered considerable embarrassment and distress.

- 16.5 The behavior of the defendant is disrespectful. The defendant has always been informed of the various court dates and put to notice that she had to attend court for all hearings. Notwithstanding the interim injunction order dated 18.4.2011 by the Shah Alam High Court (another court), the defendant continues to libel the plaintiffs with 14 e-mails (she has admitted receipt of the said order which was served on her through the plaintiffs' solicitor's letter dated 5.7.2011 in her defamatory e-mails). See page 100 CBDA, where the defendant has written:

“RHRG want me to attend Shah Alam High Court on the pretext of defamation by threaten to put me in prison as per his letter dated 12.1.2011 and 5.7.2011. Wong Siew Yap fail to take defamation law suit against me.”

This clearly demonstrates the complete lack of remorse on the defendant's part and the absence or refusal of any correction, retraction or apology from the defendant.

17. In line with the principles of ***MGG Pillai v Tan Sri Dato Vincent Tan Chee Yioun & 2 othr appeals [1995] 2 CLJ 912*** and also the High Court cases of ***Dato' Mohamad Salim Fateh Din v Nadeswaran Rajah [2013] 4 CLJ 961*** and ***Chan Yoke Sim vs ChoongTeck Fook and 2 others [2013] 1 LNS 425***, the plaintiffs are entitled to receive an award for aggravated damages so as to send a strong message against the defendant who is in a position to disseminate information widely through the internet that she must exercise a proper degree of care and diligence not to injure others. (See page 979 ***Dato' Mohamad Salim Fateh Din v Nadeswaran Rajah [2013] 4 CLJ 961***).

17.1. In the case of ***Ling Wah Press (M) Sdn Bhd v Tan Sri Dato Vincent Tan Chee Yioun (2000) 4 MLJ 77***, the Federal Court when referring to the case of *Sutcliffe v Pressdram (1991) 1 QB 153* at pg 184 states:

“The conduct of the defendant which often be regarded as aggravating the injury to the plaintiff’s feelings to support a claim for aggravated damages, includes a failure to make any or any sufficient apology and withdrawal; and a repetition of the libel persistence by way of prolonged and hostile cross-examination of the plaintiff.”

17.2. In the case of ***Tan Lan Chu v Robbin Ong Kim Chuan [supra]*** the court awarded RM30,000.00 in a similar situation where the defendant did not appear to defend herself and where the defamatory letters had been faxed only to the plaintiff’s office and were deemed to have been read by the plaintiff’s staff locally.

17.3. In contrast to the case of ***Tan Lan Chu (supra)***, on the facts of this case, the dissemination of defamatory words through the defendant’s e-mails in the 3 said publications and more, were far more widespread and far reaching, and in fact has reached an international groups of readers in a number of countries.

18. The plaintiffs prayed for an award of general damages and aggravated damages that would vindicate their reputations both in Malaysia and internationally, and seek a total sum of RM 500,000.00: RM 200,000.00 for general damages and RM 300,000.00 for aggravated damages.

In the circumstances, I feel, RM 150,000.00 for general damages and RM 50,000.00 for aggravated damages is sufficient to vindicate the plaintiffs in this case.

CONCLUSION

The plaintiffs claim is allowed. Prayer 38 (a) SOC for an order for a permanent injunction to be entered against the defendant to restrain her, her servants or agents from further publishing the defamatory words is allowed. General damages (prayer b) and aggravated damages (prayer c) are allowed at RM 150,000.00 and RM 50,000.00 respectively. Interest of 8% under prayer 38 (d) and interest of 5 % under prayer 38 (e) are also allowed.

COSTS

Ms Joanna Thevathasan prayed for RM 20,000.00 for costs. I feel, since the defendant was absent during trial, a sum of RM 15,000.00 for costs is adequate.

Plaintiffs claim allowed for prayers 38 (a), (b), (c), (d), (e) and (f).

SURAYA OTHMAN
Judge, Civil Court 5,
High Court of Malaya
Shah Alam, Selangor.

Dated this 29th day of October, 2014

Case(s) referred to:

1. Syed Husin Ali v Sharikat Perchetakan Utusan Melayu Bhd & Anor [1973] MLJ 56;
2. Ng Koo Kay Benedict and Another v Zim Integrated Shipping Services Ltd [2010] SGHC 47;
3. Tan Lan Chu v Robbin Ong Kim Chuan [2012] 5 MLRH 420;
4. Dato' Mohamad Salim Fateh Din v Nadeswaran Rajah [2013] 4 CLJ 961;
5. MGG Pillai v Tan Sri Dato Vincent Tan Chee Yioun & 2 other appeals [1995] 2 CLJ 912;

6. Pemegang Amanah Lembaga Zakat Selangor (MAIS) & another vs Haji Saari Sungib [2013] 10 CLJ 588;
7. Ling Wah Pres (M) Sdn Bhd & Ors v Tan Sri Dato Vincent Tan Chee Yioun [2000] 3 CLJ 728;
8. Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Bhd & Anor [1973] 1 LNS 146;
9. Chan Yoke Sim vs ChoongTeck Fook and 2 others [2013] 1 LNS 425;
11. Ling Wah Press (M) Sdn Bhd v Tan Sri Dato' Vincent Tan Chee Yioun (2000) 4 MLJ 77

Legislation(s) referred to:

1. Order 53 of the Rules of Court 2012

Book(s) referred to:

1. Gatley on Libel and Slander 6th Edition
2. Gatley on Libel and slander 11th Edition
3. The Law of defamation and the internet (Oxford University Press, 2005 ("Collins"))
4. Law of Defamation in Singapore and Malaysia", 2nd Edition by Keith R Evans published by Butterworth, 1993.

Solicitors:

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