IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR
IN THE FEDERAL TERRITORY OF KUALA LUMPUR
SUIT NO. WA-23CY-10-03/2018

Between

TAN SRI DAVID CHIU TAT-CHEONG … Plaintiff

And

SEEMA ELIZABETH ISOY ... Defendant

GROUNDS OF JUDGMENT

Introduction

1. The Plaintiff's ("**P**") claim against the Defendant ("**D**") is for defamation. The trial was part-heard by another judge on 29.5.2019. And then continued before me on 22.9.2020, 6.4.2021 and 7.4.2021. Arrangements were made for P to testify remotely from Hong Kong (via Zoom) due to the Movement Control Order that was imposed as a result of the Covid-19 pandemic. After a full trial, I dismissed P's claim. These are the grounds of my judgment.

Background

2. P is the founder and managing director of Malaysia Land Properties Sdn Bhd ("**Mayland**"). Mayland is the developer of Waldorf & Windsor Towers Service Apartments ("**W&W**"). In his written submissions, P stated that W&W is *"a property developed by David Chiu"*.

3. At all material times, D was the owner of an apartment unit at W&W. Further, D was:- (a) vice-chairman of the W&W management committee

for 3 terms from 2012 to 2015, (b) a member of the W&W management sub-committee from 2017 to 2019 and (c) chairman of the W&W management committee elected at the 2019 AGM (Annual General Meeting).

4. W&W is and was involved in the following suits, in which the opposing parties are Mayland, its related entities or individuals connected to the Mayland group:

(a) Kuala Lumpur High Court Civil Suit No. 22NCvC-460-2011 between Mayland and W&W Joint Management Body ("**JMB**");

(b) Court of Appeal (Appellate Division) Appeal No. W-02(NCvC)(W)-1150-05/2012 between Mayland and the JMB;

(c) Federal Court (Appellant Jurisdiction) Civil Application No. 08(f)-260-04/2013(W) between Mayland and the JMB;

(d) Kuala Lumpur High Court Civil Suit No. 22NCvC-13-01/2014 between various apartment owners and Mayland;

(e) Kuala Lumpur High Court Civil Suit No. WA-22NCvC-298-06/2017 between a Mayland connected person and W&W Management Corporation ("**MC**");

(f) Kuala Lumpur High Court Civil Suit No. WA-22NCvC-374-07/2017 between the MC and Mayland;

(g) Court of Appeal (Appellate Division) Appeal No. W-02(IM)(NCvC)-1918-09/2017 between Mayland connected persons and the MC;

(h) Kuala Lumpur High Court Application for Judicial Review No. WA-25-323-12/2017 between a Mayland connected person, the MC and DBKL;

(i) Court of Appeal Civil Appeal No. W-02(IM)(NCvC)-1454-07/2017 between a Mayland connected person and the MC.

5. In relation to the said suits, various issues and matters between W&W and Mayland, its related entities or individuals connected to the Mayland group were litigated or are in the midst of litigation, including:

(a) the JMB successfully re-claiming a substantial portion of the 7th floor of W&W from Mayland who had been found guilty of fraud and/or false misrepresentation in obtaining the title to the same. Mayland was found to have perpetrated fraud and/or false misrepresentation at the land office and JUPEM (the Malaysian Department of Survey and Mapping);

(b) 47 W&W owners initiating a class action against Mayland seeking compensation for costs incurred in renovating the unfinished portion of the 7th floor of W&W;

(c) the MC claiming unpaid contribution of maintenance fees and sinking fund (approximately RM1 million) against a Mayland connected person in respect of 414 parking bays linked to one residential apartment unit at W&W and operated as a commercial car park;

(d) the MC obtaining an interim injunction to remove proxies of Mayland and its related entities from holding positions in the W&W management committee due to irregularities at the 2017 AGM which contravened the laws on strata management. Had this injunction not been granted, the W&W management committee would have consisted solely of 3 proxies of Mayland and its related entities;

(e) the MC successfully appealing the injunction that had been granted which had allowed a Mayland related entity to attend the 2017 AGM.

Impugned Text

6. D was a participant in a WhatsApp group chat known as 'W&W Owners' ("**WhatsApp Group**"). The WhatsApp Group consisted of 56 participants, including D. All of whom were owners of W&W or their representatives. The WhatsApp Group was created on 27.8.2016 to discuss matters pertaining to W&W.

7. On 17.8.2017 at 10:15pm and 10:16pm, D texted the following message ("**Impugned Text**") to the WhatsApp Group:

> *"In order for owners to know all the facts, I believe we have to step back even more and ask "Who is Mayland?"*
>
> *Mayland is the CHIU family.*
>
> *So who is this Chiu family?*
>
> *Let's have a very brief look at the publicly known facts about this family:*
>
> *• The Chiu family is an extremely rich and successful family originating from China, then based in Hong Kong. Now with business in many countries, including Malaysia.*
>
> *I'm always happy for people's happiness and good fortune but..*
>
> *• Deacon Chiu (Sr.) has been in the past arrested and charged with conspiracy to falsify documents of the Far East Bank, where they were the major shareholders. For plotting to defraud the Commissioner of Banking by making false claims concerning the ownership of companies to which the bank had made advances of $352.5 million.*
>
> *• Duncan Chiu (Deacon Sr's son) has in the past been arrested for allegedly breaching the Theft Ordinance and the Companies Ordinance.*
>
> *• David Chiu (Deacon Sr's son) has been in the past arrested and charged for the same offenses as Deacon Sr. He also faced charges of conspiring to falsify documents purporting to show that more than $246 million in credit facilities had been granted to the bank by various companies.*
>
> *And now the climax to this family saga:*
>
> *• The same don (David Chiu) is the Founder and Chairman of Mayland!!!*
>
> *Mayland has been convicted of Fraud and Misrepresentation against W&W owners:*
> *At High Court level*
> *At Court of Appeal level*
> *At Federal Court level*
>
> *The apple doesn't fall far from the tree…*

Please google these names to read more.

** the same son"*

8. D gave evidence that nobody reacted or responded to the Impugned Text. And that within the hour, the subject changed to security concerns at W&W.

9. 10 days later, on 27.8.2017, D was removed from the WhatsApp Group by its administrator, one Curtis Brinton ("**Curtis**"). Curtis was included as a witness in P's list of witness and his witness statement was filed. However, he was not called as a witness at the trial.

Plaintiff's case

10. P pleaded that the Impugned Text, in its ordinary and natural meaning, meant and was understood to mean that:

(a) P is a fraudster;

(b) P is a fraudster because of his family heritage;

(c) P is dishonest and untrustworthy because of his family heritage;

(d) P has been convicted of fraud;

(e) P has committed fraud against W&W owners;

(f) P has misrepresented to W&W owners;

(g) P was convicted of fraud at the High Court level;

(h) P was convicted of fraud at the Court of Appeal level;

(i) P was convicted of fraud at the Federal Court level; and

(j) P is Don and is associated with the criminals or underworld.

11. P further pleaded that the Impugned Text, by way of innuendo, was to be understood to mean that:

(a) P is dishonest and untrustworthy;

(b) P has committed fraud and misrepresentation;

(c) P comes from a family of fraudsters or criminals;

(d) P was convicted because of fraud committed against W&W owners;

(e) P was convicted because of misrepresentation against W&W owners; and

(f) P because of conviction has served jail time.

12. In the Statement of Claim ("**SOC**"), P prayed for the following reliefs:

(a) damages of **RM1.5 million** or general damages including aggravated damages to be assessed;

(b) an order that D publishes an apology in leading Chinese newspaper, English newspaper and Bahasa Malaysia newspaper for a period of 14 days consecutively;

(c) an injunction to restrain D from publishing or spreading the Impugned Text or similar defamatory words.

Findings of the Court – Defamation

13. To succeed in his claim for defamation, P must establish, on a balance of probabilities, three requisite elements. Namely:- (a) the Impugned Text is defamatory, (b) the Impugned Text refers to him and (c) the Impugned Text was published to a third party.

14. The 3rd element is not in dispute. The Impugned Text was published to the other 55 participants of the WhatsApp Group. Only the other two elements needs to be considered.

1st element – whether the Impugned Text is defamatory

15. The test to be applied to determine whether the words complained of are defamatory is this. A statement is defamatory if it:– (a) tends to lower the plaintiff in the estimation of right-thinking members of society generally, (b) exposes the plaintiff to hatred, contempt or ridicule or (c) imputes to the plaintiff any dishonourable or discreditable conduct or motives or a lack of integrity on his part.

16. In *Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Berhad & Anor* [1973] 2 MLJ 56 at 58, the High Court said:

> *"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."*

17. In *Chok Foo Choo @ Chok Kee Lian v The China Press Bhd* [1999] 1 MLJ 371; [1999] 1 CLJ 461; [1999] 1 AMR 753, the Court of Appeal said (at page 374, MLJ):

> *"the **test** which is to be applied lies in the question: do the words published in their natural and ordinary meaning impute to the plaintiff any **dishonourable or discreditable conduct or motives** or a **lack of integrity** on his part? If the question invites an affirmative response, then the words complained of are defamatory."*

18. In *Bre Sdn Bhd & Ors v Tun Datuk Patinggi Hj Abdul Rahman Ya'kub* [2005] 3 MLJ 485; [2005] 2 CLJ 645; [2005] 3 AMR 1, the Court of Appeal said (at page 490, MLJ):

> *"[10] In coming to his findings we are of the opinion that the learned judge had adopted the **correct test** ie whether the words complained of were calculated to **expose the plaintiff to hatred, ridicule or contempt** in the mind of a reasonable man or would tend to **lower the plaintiff in the estimation of right thinking members of society generally**."*

19. To determine whether the Impugned Text conveys a defamatory meaning, I must objectively look at the ordinary and natural meaning of the words complained of (which may be literal, indirect, implied or inferred). From the viewpoint of a reasonable person using his general knowledge and common sense.

20. The standard that is usually adopted is that of an ordinary reasonable person who is not unduly suspicious or avid for scandal. Such an ordinary reasonable person would presume that a man is innocent until proven guilty, although the reality might sometimes be otherwise. (See the High Court case of *Dato' Seri Anwar bin Ibrahim v The New Straits Times Press (M) Sdn Bhd & Anor* [2010] 4 MLJ 492 at 504).

21. In *Mohamed Hafiz Mohamed Nordin v Eric Paulsen and another appeal* [2019] 1 MLJ 580 at 587, the Court of Appeal cited the following:

> *"[20] … the correct approach in the construction of the words complained of:*
>
> > *... is to consider the **meaning such words would convey to ordinary reasonable persons** using their **general knowledge and common sense**; it is **not confined to strict literal meaning** of the words but **extends to any reference or implication** from which persons can reasonably draw.*
>
> *[21] …*

In determining the natural and ordinary meaning of the words complained of, the sense or ***meaning intended by the appellant is irrelevant***. ***Nor*** *for such purpose is the sense or meaning in which the words were* ***understood by the respondent*** *relevant.* ***Nor is extrinsic evidence admissible*** *in construing the words. The* ***meaning must be gathered from the words themselves*** *and* ***in the context of the entire speech*** *made by the appellant on that occasion. It is the* ***natural and ordinary meaning as understood by reasonable members of the audience*** *…* ***using their general knowledge and common sense****. Such meaning is* **not confined to a literal or strict meaning** *of the words, but* ***includes any inferences or implications which could reasonably be drawn*** *by such persons".*

22. I find that the Impugned Text is not defamatory of P when read in totality and as a whole. The natural and ordinary meaning or imputation of the Impugned Text is that:

(a) there are a number of individuals in the Chiu family, including P, who have been arrested and charged for alleged or purported crimes;

(b) this was in the past;

(c) P is the founder and chairman of Mayland;

(d) Mayland has been found guilty of fraud and misrepresentation against W&W owners by the Malaysian courts.

23. The aforesaid was stated as a matter of listed and observable facts, divorced from emotion or speculation. And D went no further than that. Hence I conclude that no defamatory imputation can be accorded to the Impugned Text.

24. I am of the opinion that the Impugned Text does not, expressly or impliedly, convey the meanings pleaded by P.

(a) The words 'fraud', 'fraudster', 'dishonest', 'untrustworthy', 'misrepresented', 'convicted' or any other words inferring the like were never used in relation to P. There is no imputation that P has served jail time because of conviction. The Impugned Text only conveys the meaning that Mayland was found guilty of fraud and misrepresentation against W&W owners.

(b) The Impugned Text conveys that 3 persons from the same family have been arrested and charged in the past. But this cannot mean that P is a fraudster or criminal by heritage. A reasonable reader would not believe or give credence to the imputations alleged by P. To do so would be a fallacy and unnatural leap in logic.

(c) The word *"don"* was mentioned initially. But it was a typo and immediately thereafter corrected to *"son"*. A reasonable reader would understand and know this. The words 'criminal' or 'underworld' were never mentioned, nor can it be inferred.

25. D explained that she had used an asterisk (*) to correct the word *"the same don"* to *"the same son"* as soon as she realised the misspelling. This is a common way of correcting a misspelling on WhatsApp. The letters '*s*' and '*d*' are next to each other on the mobile phone key pad used in the WhatsApp application. I believe this explanation which sounded plausible. Moreover, the correction was done in the space of a minute. Namely at 10:16pm. The initial message was sent at 10:15pm.

26. Actually, P and his counsel conceded this point during cross-examination:

> *"Q: … My question is, do you agree with my suggestion that the **asterisk followed by the words, 'the same son' is there to correct the phrase 'the same don**.' Or you don't know?*
> *A: I think so, **yes**.*
> *Q: Ok, so you agree?*
> *A: Yes.*
> *…*
> *A: Yes, I'm the same son. Yes, yes. Ok.*
> *Q: Ok, so he's agreed to it. It's a correction.*
> *P/C: Yang Arif, just for the record, there's **no dispute to that**. There's no dispute to that."*

27. The Impugned Text was reproduced in the SOC and in P's Witness Statement (at Q&A 17) in its incomplete form. Namely, without the correction in asterisk of *"don"* to *"son"*. This unduly skews and colours the perception of the Impugned Text. Without *"don"*, there can be no potential imputation of P being a criminal in the underworld.

28. Throughout the Impugned Text, clear words were used to distinguish P's arrest and charges, and the finding of fraud made against Mayland. When speaking of P, D's words were *"in the past arrested and charged"*, *"faced charges"* and *"purporting"*. This is to be distinguished from the wording used when it comes to Mayland which were *"has been convicted of fraud and misrepresentation"*.

29. The dichotomy of the wording must be taken into account as P was clearly referred to in a way that was different and distinguishable from Mayland. Hence any imputation of fraud, dishonesty, untrustworthiness,

misrepresentation, conviction and such like can only be in respect of Mayland, if at all. By virtue of the dichotomy, it cannot be in respect of P.

30. This was conceded by P during cross-examination:

> *"Q" When the Defendant talked about you, in her text, the words she used were arrested and charged for offences, which is true, right?*
>
> *A: Yes.*
>
> *Q: **When she talked about Mayland the words she used was different compared to when she is talking about you**. Correct? Her wording is different.*
>
> *A: … **Yes**."*

31. The following clarification provided by D during re-examination seems reasonable:

> *"Well, it also depends on the definition of whole because yes, it's all in one green block but every single paragraph there is a different message. So it cannot be read as one long sentence. And I'm **very specific in the words that I've used**. When I talked about Deacon, Duncan and David, I have **said been in the past arrested**. I've **made clear that it's in the past that they were arrested and charged**. I've **used the words 'purporting to show'**. I've **not said showing**. Which I realised was also wrongly translated but that's a different matter. But I did point that out to my lawyer. That, that word 'purporting' was left out of the Malay translation of the statement of claim. Ok.*
> *Yes. And yes, so if your, if you say you've got to read this as a whole, then I say you have to **read this as a whole with the entire chat**, from the day the, the group was formed. You **cannot look at this entire green block by itself and take it out of context and claim that it's defamatory**. Everything I've said there is true. This was the owner's group. There are others who said that. I think there's one owner who said that defamation suits we should leave to the politicians. There is no place for such a thing in this owner's forum. So this is a private, privilege group. It doesn't give you the right to say anything but everything said is to do with the welfare of W&W and W&W owners. So you cannot just take this post and put it out there and say this is what she said and that's it, full stop."*

32. In my view, the ordinary and natural meaning and innuendo meaning of the Impugned Text does not impute to P a conduct which is

dishonourable or discreditable. It does not tend to lower P in the estimation of right-thinking members of society generally. It does not expose P to ridicule, contempt or hatred. Accordingly, my conclusion is that P has not proven, on a balance of probabilities, that the Impugned Text is defamatory of him.

2nd element – whether the Impugned Text refers to Plaintiff

33. Admittedly, the Impugned Text refers to P. The 4th bullet point stated that P (Deacon Sr's son) has been in the past arrested and charged for the same offences as Deacon Sr. The 5th bullet point stated that the same *"son"* is the founder and chairman of Mayland. But as discussed earlier, those words are not defamatory of P.

34. I accept D's explanation that the focus of her WhatsApp text was on Mayland. The WhatsApp Group was a private group chat operated in a protected setting. Its purpose was to spread information and awareness of issues and events concerning W&W between W&W owners. There was discussion, feedback and exchange of updates, concerns, opinions, critique, information and documents between the participants.

35. The matters discussed in the WhatsApp Group were, amongst others:- (a) maintenance and management of W&W, (b) its MC (Management Corporation), (c) financial and legal matters of W&W, (d) issues affecting W&W or the owners of W&W, (e) raising awareness and rallying the support of the owners of W&W in respect of W&W issues and to participate in AGMs and meeting with the MC, (f) concerns about the possible mismanagement of owners' funds by the MC, (g) concerns about the possible violations of the Strata Management Act by the MC and (h)

suggestions and solutions on how best to resolve W&W issues. This is evident from the thread of messages in the WhatsApp Group contained in the Bundle of Documents.

36. P complains that the statement *"Mayland is the Chiu family"* is factually wrong. Because in the Chinese context, Chiu family includes all his siblings and relatives amounting to about 200 people. According to P, a more accurate description would have been 'Mayland is David Chiu and family'. That may very well be so but I think it is quite irrelevant as the said statement, in any event, is not defamatory.

37. Next, P takes offence at the statement *"Mayland has been convicted of Fraud and Misrepresentation against W&W owners"*. However, that statement does not refer to P but rather to Mayland. And Mayland is not the plaintiff here.

38. As the words referring to P are not defamatory, I find, on a balance of probabilities, that P has failed to prove his case for defamation against D.

Defendant's defence

39. In view of my finding against defamation, it is unnecessary for me to consider the defences pleaded by D. But in case I am wrong, I will consider the said defences.

40. The pleaded defences are:- (a) justification, (b) qualified privilege and (c) fair comment. The burden of proving these defences rests entirely on D.

41. In *International Times & Ors v Leong Ho Yuen* [1980] 2 MLJ 86, the Federal Court held that the burden of proof for such defences lies on the defendant. The Court said (at page 87):

> *"The appellants in the present appeal relied on **justification** and **fair comment**. Therefore, the **burden of proving these defences rests entirely upon them**".*

Findings of the Court – Justification

42. As a general rule, the defence of justification is a complete defence to a defamation action. The burden is on the defendant to show that the defamatory imputations are substantially true. (See the Federal Court case of *Syarikat Bekalan Air Selangor Sdn Bhd v Tony Pua Kiam Wee* [2015] 8 CLJ 477 at 497).

43. The burden does not lie on the plaintiff to prove that the defamatory words are false, because the law presumes this in his favour. (See the Supreme Court case of *S Pakianathan v Jenni Ibrahim* [1988] 2 MLJ 173 at 177-178; [1988] 1 CLJ (Rep) 233 at 240).

44. My opinion is that the defence of justification has been proven on a balance of probabilities in the instant case. D has discharged her burden of showing that the Impugned Text is substantially true.

45. Firstly, it is a fact that Mayland was found by the Court of Appeal to have fraudulently and/or through false misrepresentation obtained a title in W&W. The Court of Appeal Order dated 25.3.2013 in Appeal No. W-02(NCvC)(W)-1150-05/2012 remains undisturbed, as leave to appeal to the Federal Court was denied.

46. In its grounds of judgment, the Court of Appeal said (at pages 35 and 37):

> *"(k) In our judgment we are of the view that the **Appellant had obtained the strata title through fraud and/or misrepresentation perpetrated on the Land Office (and JUPEM**) being the issuing authority. Had the Land Office not been **wrongfully induced** by the Drawings and Plans submitted by PW1 in respect of the whole of the 7th Floor which included the Disputed Area, it is without doubt that the Land Office would not have issued the strata title to the Appellant.*
> *…*
> *(m) The Court has no issue with the submission of counsel for the Appellant that for the claim of fraud to succeed in the context of Section 340(2)(a) of the National Land Code, it must be proved to be **actual and not constructive or equitable fraud** on the part of the person where title or interest is being impeached. It must **involve dishonesty** of some sort which was committed prior to or at the time of registration … Here, in the present case the Court is **satisfied beyond reasonable doubt** that the **Appellant is guilty of fraud and/or false misrepresentation** (and not just through mistake or negligence) when it submitted the Drawings and Plans effectively showing to the Land Office and JUPEM that the Disputed Area had been included as part of the whole of the 7th Floor of the W&W Tower belonging to the Appellant."*

47. Undoubtedly, the Impugned Text stated that Mayland was *"convicted"* rather than was 'found guilty' of fraud and misrepresentation. However, Mayland is not the litigant in the instant suit. Furthermore, I do not think D's choice of words can be faulted as the Court of Appeal had stated that it was *"satisfied beyond reasonable doubt"* of Mayland's guilt of fraud and false misrepresentation.

48. In any event, a reasonable reader would understand *"convicted"* to mean 'found guilty of' in this context. And not associate it with crime, criminality or a finding in a criminal court. Especially in the present case where the readers of the Impugned Text are aware of the litigation between W&W and Mayland, and that the said litigation involves civil suits.

49. Secondly, it is also a fact that P has in the past been arrested and charged for the same offences as his father, Deacon Sr and faced charges of conspiring to falsify documents. This information is available in the public domain and was included as Part B documents in the Bundle of Documents. Its contents were not challenged by P.

50. Thirdly, P admitted the truth of the Impugned Text regarding himself during cross-examination.

> *"Q: When the **Defendant talked about you, in her text**, the words she used were **arrested and charged for offences**, which is **true**, right?*
>
> *A: **Yes**.*
>
> *…*
>
> *Q: Ok. I also put to you that whatever, when the **Defendant has referred to you**, which is at the fourth bullet point of page 19, ok, all the facts alleged there are **true**. Agree or disagree?*
>
> *A: **Yes**.*
>
> *…*
>
> *Q: No, my question was very, was more specific, Tan Sri. I'm talking about the fourth bullet point of page 19 which carries on to page 20 which is when **she refers specifically to you**. Right? All of the facts there –*
>
> *A: Yes, yes –*
>
> *Q: Is **true**.*
>
> *A: You mean **David Chiu has been arrested, I've been arrested, yes**.*
>
> *…*
>
> *Q: Ok. Now, all the **facts that were stated by the Defendant in her text** of 17.08.2017, including the fact of **your arrest and charge** are **true**. Would you agree with me?*
>
> *A: **Yes**."*

51. Fourthly, it is noteworthy that the Impugned Text concluded with a disclaimer. Namely *"Please google these names to read more."* D was inviting and encouraging the participants of the WhatsApp Group to do their own research, draw their own conclusions and to inform themselves of what was going as regards W&W. She was not attempting to excite an

adverse opinion against P. This leads me to the next defence i.e. qualified privilege.

Findings of the Court – Qualified Privilege

52. A privileged occasion is one where the person who makes a communication has an interest or a duty (legal, social or moral) to make it to the person to whom it is made. And the person to whom it was made has a corresponding interest or duty to receive it. This reciprocity is essential. (See the House of Lords case of *Adam v Ward* [1917] AC 309 at 334).

53. In *Financial Information Services v Haji Salleh Hj Janan* [2012] MLJU 1761, the Federal Court outlined the conditions for qualified privilege as follows:

> *"[17] The* ***conditions for qualified privilege*** *to arise as a defence was laid out long ago in Toogood v Spyring [1834] 1 CM & R 181 and from this passage of Baron Parke's which has been described by Lindley L.J in Stuart v Bell [1891] 2 QB 341 as having "been frequently quoted, and always with approval." That illustrious passage speaking of the publication of statements false in fact and injurious to the character of another states -*
>
> > *"The law considers such publication as malicious unless it is* ***fairly made by a person in the discharge of some public or private duty****, whether legal or moral, or in the* ***conduct of his own affairs****, in* ***matters where his interest is concerned****. In such cases the* ***occasion prevents the inference of malice****, which the law draws from unauthorized communications, and affords a* ***qualified defence depending on the absence of actual malice****. If* ***fairly warranted by any reasonable occasion or exigency, and honestly made****, such communications are* ***protected for the common convenience and welfare of society****; and the law has not restricted the right to make them within any narrow limits."*

54. Qualified privilege is afforded to those who make defamatory statements in the discharge of some public or private duty, whether legal or moral, or in the conduct of their own affairs, in matters where their interest is concerned. But only if the publication derived from right and honest motives.

55. In *Dato' Dr Low Bin Tick v Datuk Chong Tho Chin and other appeals* [2017] 5 MLJ 413, the Federal Court held that the defence is not available if the defendant has been actuated by malice or has used the occasion for some indirect or wrong motive. The Court said (at page 435):

> *"[55] The prima facie defence of* ***qualified privilege is not available*** *if it is shown that a* ***defendant has been actuated by actual or express malice*** *or if he has* ***used the occasion for some indirect or wrong motive****. In Royal Aquarium & Summer and Winter Garden Society v Parkinson (1892) 1 QB 43 Lopes LJ said:*
>
> > *Not only must the* ***occasion create the privilege****, but the* ***occasion must be made use of bona fide and without malice****. The defendant is only entitled to the protection of the privilege if he* ***uses the occasion in accordance with the purpose for which the occasion arose****. He is not entitled to the protection of the privilege if he uses the occasion for some indirect or wrong motive."*

56. Qualified privilege depends on the occasion upon which the communication is made, and not the communication itself. The communication must be made in pursuance of a duty or on a matter in which there was a common interest in the party making and the party receiving it. Whether an occasion is a privileged occasion depends on the circumstances of each case, the nature of the information and the relation of speaker and recipient. In *Dr Low* (supra), the Federal Court said (at page 433):

> *"[46]* ***Qualified privilege depends on the occasion upon which the communication is made, and not the communication itself****. A qualified privilege occasion is an occasion where the person who makes a communication*

> *has an interest or a duty, legal, social or moral to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it. If the* ***communication were made in pursuance of a duty or on a matter in which there was a common interest in the party making and the party receiving*** *it, the occasion is said to be one of qualified privilege.* ***Whether an occasion is a privileged occasion depends on the circumstances of each case, the nature of the information and the relation of speaker and recipient****. It is for the judge alone to determine as a matter of law whether the occasion is privileged …"*

57. I find, on a balance of probabilities, that D has discharged her burden of proving the defence of qualified privilege. My reasons are as follows.

58. The Impugned Text was communicated in a closed and private WhatsApp chat group setting constituted by participants who were interested in the welfare of W&W. It was transmitted in line with the purpose for existence of the WhatsApp Group. D sent the text in pursuance of her duties and in her capacity as a member of the management committee of W&W. In order to raise awareness of the various legal disputes in which Mayland and its related entities were the counter-parties with opposing interests. This is evident from the opening line of the Impugned Text. Namely *"In order for owners to know all the facts, I believe we have to step back even more and ask "Who is Mayland?"*.

59. The context for D's text is due to the legal disputes involving Mayland and its related entities. D as one who had knowledge of such matters, and who had been in the management committee of W&W, was clarifying such matters. Such context is evident from the thread of the WhatsApp messages contained in the Bundle of Documents. D's text was not intended for general circulation or for any eyes other than the participants of the WhatsApp Group.

60. D’s text stemmed from the alleged infractions of the 2017 AGM. From 2.8.2017 onwards, including at 8.45pm on the night of 17.8.2017 prior to the Impugned Text at 10:15pm the same night and even afterwards, the discussions in the WhatsApp Group were in respect of the 2017 AGM. Regarding its minutes, the audited accounts, the alleged hijacking of W&W management committee by Mayland and its proxies. There were also discussions regarding the 2017 AGM just prior to 22.7.2017 (the date the said AGM was convened) and immediately after.

61. Because of the litigation in which Mayland and its related entities have interests antithetical to W&W owners, there was a need to raise awareness of who and what Mayland was. Particularly in the light of an impending EGM in which collective action of owners would be required. It therefore is a matter of interest, rather than disinterest, for W&W owners to know the players in the litigation matters involving W&W and W&W owners’ interests.

62. In short, D has an interest or a duty to communicate the Impugned Text. And the W&W owners to whom the communication was made has a corresponding interest or duty to receive it. Reciprocity clearly exist. The occasion was fit and proper. There was common interest in the person making (i.e. D) and the persons receiving (i.e. W&W owners) the WhatsApp text. This was done in the conduct of their affairs as W&W owners. And in matters where their interest is concerned pertaining to W&W.

63. In *Tan Sri Dr Muhammad Shafee Abdullah v Tommy Thomas & Ors* [2018] 12 MLJ 98 at 127, the Court of Appeal said:

> *"[77] The **defence of qualified privilege accords freedom of communication in certain relationships without the fear of a defamation action**. Those **relationships encompass situations or circumstances where the person communicating the statement has a legal, moral or social duty to make it and the recipient has a corresponding interest in receiving it**. Instances such as communications between teachers and parents, local councillors, officers of companies, employers and employees, or traders and credit agencies, are all **relationships that are protected by qualified privilege**. Whether what is communicated is true or not is irrelevant provided that the required relationship exists and that the statement made is not motivated by malice."*

64. Arising from the instant suit, I might add communications between fellow owners or residents of a condominium or apartment to the relationships that would be protected by qualified privilege. The occasion in the present case is a privileged occasion. Having regard to the circumstances surrounding the sending of the Impugned Text, the nature of the WhatsApp text and the relation of sender and recipients. I am satisfied that D has not used the occasion for any indirect or wrong motive. Thus, I conclude that the defence of qualified privilege is afforded to D in the instant case.

Findings of the Court – Fair Comment

65. I turn to the final defence pleaded by D i.e. fair comment.

66. To succeed in the defence of fair comment, the defendant must establish that:- (a) the words complained of are comments, although they may consist or include inferences of fact, (b) the comment is a matter of public interest, (c) the comment is based on facts and (d) the comment is one which a fair minded person can honestly make on the facts proved. (See the Court of Appeal case of *Dato' Sri Mohd Najib bin Tun Hj Abdul*

Razak & Anor v Mohd Rafizi Ramli and another appeal [2018] 1 MLJ 295 at 303).

67. I find, on a balance of probabilities, that D has discharged her burden of proving the defence of fair comment. My reasons are as follows.

The Impugned Text is a matter of public interest

68. The Impugned Text is a matter of public interest. It concerns Mayland, of which P is founder and chairman. It concerns the legal disputes between Mayland and W&W, a property which is said by P to have been developed by him.

69. In the SOC, P pleaded his standing in society and on the global stage. As a prominent member of society and reputable businessman who has been featured in various mainstream and online media. In short, a public figure. In his written submissions, P describes himself as *"a successful international business mogul"*.

70. The SOC stated:

> *"3. Plaintiff who is a* ***prominent member of society*** *and popularly known as Tan Sri David Chiu and/or David Chiu, and is a successful businessman in Malaysia, Hong Kong, the United Kingdom and Australia.*
>
> *4. The Plaintiff is also the founder of a number of companies in Hong Kong, Malaysia, Australia and Japan.*
>
> *5. The Plaintiff is also the Chairman and CEO of the Far East Consortium Ltd and also the Managing Director of Malaysia Land Properties Sdn Bhd.*
>
> *6. The Plaintiff is currently involved in a number of ongoing developments in Malaysia as well as in overseas.*

7. The Plaintiff has over 30 years' experience in the property development industry.

8. The Plaintiff has been featured in a number of mainstream media like Fobes Asia, newspapers and websites locally as well as overseas."

The Impugned Text is based on facts

71. The Impugned Text is based on true facts. The underlying facts for the Impugned Text are that:- (a) there are a number of individuals in the Chiu family, including P, who have been arrested and charged for alleged or purported crimes, (b) this was in the past, (c) P is the founder and chairman of Mayland and (d) Mayland has been found guilty of fraud and misrepresentation against W&W owners by the Malaysian courts.

72. P argued that the words *"The apple doesn't fall far from the tree"* means that P's father was a criminal, as is P. I disagree. Those words cannot be read in isolation but must be read in the proper context. Taking into account the preceding paragraphs. The context being that P and his father had been arrested and charged for criminal offences. Taken as a whole, the said statement is a fair expression of opinion. D explained that it was a popular idiom which she used to express that father (i.e. Deacon Sr) and sons (i.e. Duncan and P) had crimes charged or alleged against them in the past. This explanation is reasonable and I accept the same.

The Impugned Text is such that a fair minded person can honestly make on the facts proved

73. The Impugned Text is such that a fair minded person can honestly make. It was stated in a matter-of-fact manner, straightforward and

unemotional. It does not exceed the bound of fair comment and just criticism. The language used was measured and not extreme. I conclude that the Impugned Text is a genuine expression of D's opinion.

74. P complains that the Impugned Text is unfair and a half-truth because D did not disclose that the charges against P were dropped. According to P, to say that a person was arrested and charged for a criminal offence without stating that he was acquitted constitutes a defamatory statement. P contends that the publication of a half-truth without stating the full facts is defamatory. And cited a decision of the Supreme Court of British Columbia in *Olive Hospitality Inc et al v Woo* (2006 BCSC 1554) which said:

> *"[164] The allegations that I have found to be true are **true only because of Mr. Woo's conduct in making them so**. This **brings into play the principle that proof that statements are literally true will not be sufficient justification if the words reasonably convey an overall impression that is false**. For example, if facts have been omitted, which, if reported, would create an entirely different impression from the facts reported taken alone, the statement may be defamatory."*

75. *Olive Hospitality* (supra) however is neither on point nor binding and is distinguishable. The facts there were that the defendant was a former director of the company. In his resignation letter, the defendant defamed the company by highlighting the company's various defaults in payments. The court found the fact of these defaults to be true. But also found that it was the defendant himself that had made the fact true by not attending to such payments when it was his responsibility to do so. The half-truth was in respect of the defendant himself creating the situation of default which he then used against the company. This was the premise on which the court applied the 'half-truth' principle.

76. In the present case, D did not cause the fact of P's arrest and charges against him, or even Mayland's fraud and false misrepresentation, to be true. Such information regarding P and Mayland is already in the public sphere, through no fault of D. And there is nothing inherently unlawful in stating such publicly available facts.

77. P also cited *V. Radhakrishna v Alla Rama Krishna Reddy* 2019 Cri LJ 1 (SC) 302 at 320 where the Indian court said:

> *"94 … the press cannot exceed its limits and publish news items at their pleasure, since print media have a great responsibility also to see that the news they present is accurate and serve the interest of the people. If the print media convey false news that may harm the reputation of a person or a section of society, it may do great damage since reputation is a valuable asset for a person. Even if the media subsequently correct a statement, the damage done may be irreparable. Hence, the media should take care to carefully investigate any news item before reporting it.* ***Sometimes the media present twisted or distorted news that may contain an element of truth but also an element of untruth****.* ***This, too, should be avoided because a half-truth can be more dangerous than a total lie****. The media should avoid giving any slant to news, and avoid sensationalism and yellow journalism."*

78. *Radhakrishna* (supra) likewise is neither on point nor binding. That case is distinguishable on the facts as it was a criminal prosecution brought against the Telugu Daily newspaper in India. The passage quoted above was a discussion in obiter about the freedom of expression given to the press in India. It was an expression of caution from the court about taking that freedom too far. There is no nexus to the issues in the instant suit. And such obiter cannot be regarded as a legal and binding principle of law, or even applicable on the facts.

79. Nowhere in the Impugned Text did D say that P is a criminal or was convicted or found guilty of any criminal offence. If at all, the only 'sting' that can be questioned is that P was arrested and charged with criminal offences in the past. But that is not defamatory, quite apart from the fact that it is true. In this regard, the following Malaysian case law are on point.

80. In *Anwar Ibrahim* (supra), the High Court said (at page 504):

> *"[20] … case law suggests that the standard that is usually adopted is that of ordinary reasonable people … who are of fair average intelligence … but who are not avid for scandal … This person may engage in some degree of loose thinking … or reading between the lines … but he or she should not be unduly suspicious … As such, an* ***ordinary reasonable person would presume that a man is innocent until proven guilty*** *although the reality might sometimes be otherwise. This is necessary to protect the media who* ***go no further than merely to report that a person is being investigated by police or has been arrested and charged with a criminal offence****."*

81. In *Sivabalan P Asapathy v The News Straits Times Press (M) Bhd* [2010] 7 CLJ 885 at 895, the High Court said:

> *"[18] To my mind, on plain reading of exh. P1, it becomes clear that the* ***news report merely makes an allegation*** *of rape, among others, against the plaintiff* ***as opposed to saying that the plaintiff is guilty*** *of rape and the several other allegations. This is clear from the heading of the news report by the use of the word "****alleges****" including the use of the words in the body of the news report such as "allegedly" (1st paragraph), "apparently" (2nd paragraph), "suspicion" (3rd paragraph) and "allegedly" (4th paragraph). Thus, the '****sting' of the offending news report is that the plaintiff is merely suspected or alleged to have committed the several acts referred to*** *and that the* ***police have detained him*** *merely for investigations."*

82. In *Binaan Sentosa Sdn Bhd v Ng In Kun & Anor* [2012] 2 CLJ 232 at 237, the High Court said:

> *"[14] … Reading the newspaper article in its totality and within its context, I agree with D2 that the* ***article makes nothing more but merely an allegation*** *that*

plaintiff had charged the properties purchased to a bank instead of applying for and obtaining individual strata title. ***Nowhere has it been stated that plaintiff is guilty of wrongdoing****. This is evident from the words "Pemaju didakwa", "membuat laporan" dan "mendakwa". The* ***article takes the form of complaints against plaintiff contained in a police report which is to be investigated upon****."*

83. In *Tan Sri Dato' Tan Kok Ping, JP v The New Straits Times Press (Malaysia) Bhd* & *Yang Lain* [2010] 3 CLJ 614 at 632, the High Court said:

"[50] … saya berpuas hati bahawa laporan itu merupakan ***laporan kepada perkara yang benar-benar terjadi di mana siasatan polis telah pun mengambil tempat****,* ***siasatan sahaja tidak bermakna plaintif dimaksudkan bersalah****, ini jelas kerana selepas itu tiada pertuduhan dibuat terhadap plaintif di mana-mana mahkamah."*

84. P's argument of 'half-truth' is untenable. Malaysian case law show that when an allegation is made, an ordinary reasonable reader would understand it to be just an allegation. Stating that P was in the past arrested and charged, which fact and imputation are true, cannot constitute defamation.

85. At worse, D might perhaps be said to have been robust and overzealous in sending the Impugned Text without disclosing that the charges against P were withdrawn. But I think that is mitigated by the disclaimer which invited the readers to do their own research and find out more. Furthermore, robust and even outrageous statements do not negate the fair comment defence.

86. I rely on the Court of Appeal case of *Muhammad Shafee Abdullah* (supra) which said (at page 130):

"[86] Fair comment defence is set out in s 9 of the Defamation Act 1957 as follows:

*In an action for libel or slander in respect of **words consisting partly of allegations of fact and partly of expression of opinion**, a **defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved** if the **expression of opinion is fair comment** having regard to such of the facts alleged or referred to in the words complained of as are proved.*

*[87] Fair comment can be said to be a privilege and right developed by the courts to **allow robust, even outrageous published or spoken opinions about public officials and public figures**. Fair comment provides the press the freedom to publish statements on matters of public interest, as long as the same are not made with ill will, spite, or with the intent to harm the plaintiff."*

No malice to defeat defence of Qualified Privilege and Fair Comment

87. For completeness, I find no malice on the part of D. Which would otherwise defeat her defence of qualified privilege and fair comment.

88. In *Raub Australian Gold Mining Sdn Bhd (in creditors' voluntary liquidation) v Hue Shieh Lee* [2019] 3 MLJ 720, the Federal Court interpreted malice as being reckless or acting intentionally without just cause or excuse. The Court said (at page 738):

*"[40] 'Malice' has been judicially interpreted by the courts as **being reckless**, unreasonable, prejudice or unfair belief in the truth of the statement. 'Malice' may be established by showing that the defendant did not belief in the truth of what he uttered …*

[41] As defined in the Osborn's Concise Dictionary (7th Ed) the word 'malice' means:

Ill-will or evil motive: personal spite or ill-will sometimes called actual malice, express malice or malice in fact. …

*[42] In law an act is **malicious if done intentionally without just cause or excuse**. So long as a person believes in the truth of what he says and is not reckless, 'malice' cannot be inferred from the fact that his belief is unreasonable, prejudiced or unfair".*

89. In my opinion, D was not actuated by malice. She had an honest belief in the truth of her WhatsApp text. Nothing in D's text indicate that P was a target of an improper motive. She urged the participants in the WhatsApp Group to *"google … to read more"* i.e. to do their own research and draw their own conclusions. D did not say anything that was untrue. She used credible and valid news sources and Hong Kong case law, and did not speculate on the same. Such information regarding P is already in the public domain.

90. I am of the opinion that D was not reckless in making the Impugned Text. She did not send the WhatsApp message without just cause or excuse. Her text was not offensive or abusive. Its truth is unchallenged. D was not motivated by ill-will. There was no intention to vent personal spite against P. In short, no malice on the part of D.

Damages

91. Given my finding against defamation and in favour of the defences pleaded by D, the question of assessing damages does not arise. Be that as it may, I am inclined to make some observations since P prayed for RM1.5 million as general damages in the SOC and in submissions.

92. Firstly, general damages should not have been quantified. Doing so is in breach of Order 18 rule 12(1A) of the Rules of Court 2012 which reads:

> *"No party shall quantify any claim or counterclaim for general damages."*

93. Secondly, the award of damages must not be exorbitant or excessive. Damages should be compensatory and not punitive. The tort of defamation exists to protect, not the person or the pocket, but reputation of the person defamed. In actions for defamation, damages are awarded to compensate the plaintiff for the injury to his reputation and the hurt to his feelings. They operate to vindicate the plaintiff to the public and to console him for the wrong done.

94. As stated by the Federal Court in *Lim Guan Eng v Ruslan bin Kassim and another appeal* [2021] 2 MLJ 514 at 572; [2021] 4 CLJ 155 at 199:

> *"[180] Now, the **award of damages is meant to be compensatory and not a scheme for untold wealth**. In a case where there is damage to reputation, the compensation must include such sum as would vindicate his or her good name and take into account the distress, hurt and humiliation which the defamatory publication has caused."*

95. Thirdly, the trend of damages awarded show that it is no longer in the realm of millions of ringgit. As remarked by the Court of Appeal in *Syed Nadri Syed Harun & Anor v Lim Guan Eng & other appeals* [2019] 4 MLJ 259 at 275; [2019] 2 CLJ 631 at 649, *"the days of million Ringgit award for defamation has long gone and consigned to history"*. I think that sentiment remains valid, notwithstanding that the decision of the Court of Appeal was overruled by the Federal Court by a majority decision. (See *Lim Guan Eng* (supra)).

96. In *Liew Yew Tiam & Ors v Cheah Cheng Hoc & Ors* [2001] 2 CLJ 385, the Court of Appeal reduced the awards totalling RM1 million to RM100,000. The following observation of the Court (at page 395) is instructive:

> *"In the process of making our assessment we have not overlooked the **recent trend in this country of claims and awards in defamation cases running into several million ringgit**. No doubt that trend was set by the decision of this Court in MGG Pillai v Tan Sri Dato Vincent Tan Chee Yioun (supra). It is a decision that has been much misunderstood. The underlying philosophy of that decision is that injury to reputation is as, if not more, important to a member of our society than the loss of a limb. But we think the time has come when we **should check the trend set by that case**. This is to **ensure that an action for defamation is not used as an engine of oppression**. Otherwise, the constitutional guarantee of freedom of expression will be rendered illusory."*

97. Fourthly, the various factors that should be taken into account in assessing damages was set out by the Court of Appeal in *Chin Choon v Chua Jui Meng* [2005] 2 CLJ 569 at 573. Namely:- (a) the gravity of the allegation, (b) the size and influence of the circulation, (c) the effect of the publication, (d) the extent and nature of the claimant's reputation, (e) the behaviour of the defendant and (f) the behaviour of the claimant. In that case, the Court of Appeal reduced the award of damages from RM1.5 million to RM200,000.

98. In the instant suit, a relevant factor is that the Impugned Text was not widely transmitted. This is not a case where the words complained of were published to all and sundry by means of print or online media. Thereby bringing it into public domain in permanent fashion. Here, transmission of the Impugned Text was restricted to about 55 participants in a private WhatsApp Group.

99. The size, influence and effect of the dissemination of the Impugned Text is therefore limited to that extent. As held in *Liew Yew Tiam* (supra) at page 390, the width or extent of a publication is always a relevant consideration when assessing damages. This is not a case of wide reportage or scandal.

100. P argued that it was within D’s contemplation that the Impugned Text would be re-published to people outside the WhatsApp Group. However no evidence was adduced of any wide re-publication. This point has also not been pleaded. PW1, the group legal manager of Mayland, testified that she was shown the Impugned Text. Curiously, PW1 stated that she was testifying on behalf of Mayland.

101. P was not a participant in the WhatsApp Group. P testified that the Impugned Text was shown to him by a participant of the WhatsApp Group. But declined to identify who the participant is due to promise of secrecy.

102. Another relevant factor is that the Impugned Text was sent to W&W owners in the context of a litigation between W&W and Mayland. The recipients of the WhatsApp text were W&W owners who were involved or interested in the said litigation. They are people ‘in the know’, so to speak. In the sense that they are or should be cognizant of the legal dispute between W&W and Mayland, which formed the background leading to the sending of the WhatsApp message.

103. As regards the existence or otherwise of an apology, D pleaded that she had offered to publish a retraction of the Impugned Text. This was in response to P’s letter of demand dated 3.11.2017, so as to avoid protracted dispute and without any admission of liability. The same was rejected by P. As the said offer of retraction was made on a ‘without prejudice’ basis, it cannot be relied upon by D. I therefore pay no regard to this.

104. I am conscious that damages for defamation are 'at large'. There is no fixed scale or formula. Each case is to be decided on its own merits, based on its own facts and circumstances.

105. Nevertheless, I adopt the perspective advocated by the Federal Court in *Lim Guan Eng* (supra). That damages for injury to reputation should not be greater than damages for personal injury claims. Or at least, a sense of proportion should be maintained between the two. The Court said (at page 573-574, MLJ):

> *"[182] … in the most serious cases of defamation in respect of integrity and honour, I* ***cannot imagine general damages to exceed the quantum that is usually awarded in personal injury claims to a claimant who is fully disabled****. These* ***injuries are in most cases permanent and irreversible*** *whilst a* ***man's reputation may be restored and the damage can in some cases be transient*** *in character.*
>
> *[183] Axiomatically, a* ***man who has been defamed cannot be said to be in a worse position than one who has lost the use of vital parts of his or her anatomy****. In McCarey v Associated Newspapers Ltd (No 2) [1965] 2 QB 86 at p 109, Diplock LJ said: 'I* ***do not believe that the law today is more jealous of a man's reputation than of his life and limb****'. Thirty years later, in John v MGN Ltd [1996] 2 All ER 35 ('John v MGN'), the UK Court of Appeal, in similar vein, said:*
>
> > *It is in our view* ***offensive to public opinion, and rightly so, that a defamation plaintiff should recover damages for injury to reputation greater, perhaps by a significant factor, than if that same plaintiff had been rendered a helpless cripple or an insensate vegetable****. The time has in our view come when judges, and counsel, should be free to draw the attention of juries to these comparisons.*
>
> *[184] Now, of course, there are other views which reject such comparisons and attempts to equiparate damages for personal injuries and damages for defamation (see Cassell & Co Ltd v Broome and another [1972] 1 All ER 801 at p 824). There is no doubting that the two torts are different and the law awards damages differently although the compensation principle remains the same. Those views notwithstanding, it is* ***essential in the public interest****, in my assessment, to* ***maintain a sense of proportion between damages for each of those wrongdoings to avoid legitimate public criticism that the law***

***favours one over the other**. It would in this way **serve as a check**, as Sir Thomas Bingham MR (later Lord Bingham) observed in John v MGN, on the **reasonableness of the award of damages for defamation**.”*

Conclusion

106. On a balance of probabilities, I find that P has failed to prove his claim for defamation against D. Furthermore I find, on a balance of probabilities, that D has succeeded in proving her defence of justification, qualified privilege and fair comment. I therefore dismissed P’s claim. I ordered P to pay costs of RM80,000 to D.

Dated 23 June 2021

Quay Chew Soon
Judicial Commissioner
High Court of Malaya, Kuala Lumpur
Civil Division NCvC 10

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