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DCCJ 4891/2016
[2021] HKDC 208

**IN THE DISTRICT COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
CIVIL ACTION NO. 4891 OF 2016**

BETWEEN

TSANG PO MANN (曾宝雯) Plaintiff

and

TSANG KA KIT (曾家傑) 1st Defendant
SO SIU KI also known as SUKIE SO 2nd Defendant

Before: His Honour Judge Kent Yee in Court
Dates of Hearing: 28 and 31 August, 1 and 22 September 2020
Date of Judgment: 19 February 2021

JUDGMENT

Introduction

1. Madam Tsang Po Mann brought this action against her uncle and auntie Mr Tsang and Madam So (collectively “**the Couple**”) in respect

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of an anonymous letter (“**the Letter**”) sent to the primary school (“**the School**”) where Madam Tsang served as a NET, i.e. native-speaking English teacher.

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2. Madam Tsang was born and bred in England. Her parents emigrated to England from Hong Kong in 1960s. She came to Hong Kong for settlement in or about 1999. The Couple emigrated to England after their retirement in the same year. They were in a close relationship before their relocation to Hong Kong in or about 2003.

3. All of them now reside in the same village in Shatin, the New Territories (“**the Village**”). Mr Tsang is the village representative of the Village. The late father of Madam Tsang and Mr Tsang were brothers and neighbours in the Village and they were often at loggerheads with each other. Sadly, their animosity passed to his next generation and Madam Tsang and the Couple continue to have disputes every now and then.

4. The Letter was addressed to both Ms Yip and Ms Hau of the School. Ms Yip is the Principal whereas Ms Hau is the English Panel Chairperson (PSM). Each of them received a copy of the Letter on or about 13 November 2015.

5. The Letter was not dated. It contained only one sheet of paper on which a collage of four video captures (collectively “**the Photos**”) was shown with the following words (collectively “**the Words**”) printed underneath them:

“Miss Tsang Pomann, 當作自己是英國人，常用英語與
鄰居吵罵，擅自開啟他人閘門，帶狗隻隨處便溺”

6. Madam So admits that she prepared and sent the Letter to the School but she insists that Mr Tsang was not involved in any way and he had no prior knowledge of the Letter at all. She denies that she created the Letter and sent it to the School as an agent of Mr Tsang.

7. Madam Tsang finds the content of the Letter to be defamatory and claims that she has suffered loss and damage. She asks for an injunction and a retraction and damages including aggravated damages.

8. The Photos were made from the footages recorded by the CCTV cameras installed at the flat of the Couples. Madam Tsang further mounts a claim pursuant to section 66 of the Personal Data (Privacy) Ordinance, Cap.486 (“**the PDPO**”) against the Couple for compensation for injury to her feelings.

Issues

9. The parties have filed a document entitled “Joint Statement Of Issues In Dispute”. I cannot find any agreement of issues there, however and it is not helpful. Broadly speaking, based on the pleadings, the issues are:

- (1) Did the Words bear the meanings as alleged and pleaded by Madam Tsang?
- (2) If so, are they defamatory;

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- (3) If so, whether the Words are justified;
- (4) And whether the Words were published on an occasion of qualified privilege;
- (5) And whether the Words are fair comment;
- (6) If either or both the defence of qualified privilege and fair comment is established, is either or both of them defeated by the proof of malice?
- (7) Whether Madam So published the Words as an agent of Mr Tsang;
- (8) If defamation is established, what is the quantum of damages payable?
- (9) Whether the Couple or either one of them has contravened the PDPO?
- (10) If so, what is the quantum of the compensation to which Madam Tsang should be entitled?

Meaning of the Words

10. I am aware that I need to look at the Words as a whole and not to break it up on a sentence-by-sentence basis. The Words contain three complaints about Madam Tsang. The parties agree that the Words can be divided into three groups and each of them comprises a distinct and separate factual allegation referable to Madam Tsang.

11. The first group consists of the first two sentences: “(Madam Tsang) 當作自己是英國人，常用英語與鄰居吵罵” (“**the 1st Assertion**”). In the pleading, Madam Tsang provided this English translation: “Pretend

herself to be an English person, frequently uses English to quarrel with neighbours”.

12. The second group is “(Madam Tsang) 擅自開啟他人閘門” (“**the 2nd Assertion**”). The last group is “(Madam Tsang) 帶狗隻隨處便溺” (“**the 3rd Assertion**”). The English translation provided in her pleading is “Opening the doors to the house of others without authority or consent. Walking dogs and let the dog defecate and urinate anywhere”.

13. Lok J in *Multi-Winner Investment Ltd v Lau Ming Yee* [2017] 1 HKLRD 328 at §42 gave a summary of the relevant principles relating to the determination of the meaning of the words complained of in defamation cases:

- “(i) Words in an article are normally construed according to their natural and ordinary meaning, ie the meaning in which reasonable people of ordinary intelligence, with the ordinary person’s general knowledge and experience of world affairs, would be likely to understand them;
- (ii) The natural and ordinary meanings include implied, inferred and indirect meanings;
- (iii) Although the same words in an article may bear different meanings to different readers (because of their temperament, knowledge or experience etc), for the purpose of defamation litigation, the words have only one single meaning, and the court has to determine what that single meaning is;
- (iv) For the purpose of ascertaining the single meaning, the court puts itself in the position of a fictitious ordinary reader;
- (v) The fictitious ‘ordinary reader’ is described as one with the following characteristics:

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He is a sort of half-way house between the unusually suspicious and the unusually naïve. He is essentially fair-minded and reasonable and does not jump to hostile conclusions on flimsy evidence; but he may be guilty of a certain amount of loose thinking and does not read a sensational article with cautious and critical care ... and his capacity for implication or drawing inferences is greater than the lawyer's ... The layman reads in an implication much more freely, and ... is especially prone to do so when it is derogatory ...

- (vi) The hypothetical reader is taken to be **the representative of those who would read the publication in question;**
- (vii) In delimiting the range of permissible defamatory meanings, the court should rule out any meaning which *'can only emerge as the produce of some strained, or forced, or utterly unreasonable interpretation'*;
- (viii) The context and circumstances of the words in an article must be taken into consideration, and the article must be taken as a whole;
- (ix) Where the alleged libel is contained in a letter, the whole of the correspondence would form part of the context, for it may be assumed that the other party to the correspondence is aware of its contents;
- (x) Where there is disagreement as to what should count as context, it has been suggested that the test is what, having regard to all the circumstances, a reasonable person would be regarded as having read or seen."
(with my emphasis)

14. Moreover, the sense in which the words were in fact understood is treated as irrelevant though, it seems, regard will be had to the sort of people to whom the words were or were likely to have been published: *Duncan and Neil on Defamation* (2nd Ed.) §4.05 cited by Le Pichon J (as she then was) in *Hung Yuen Chan Robert v Hong Kong Standard Newspapers Ltd & Ors.* [1996] 4 HKC519 at p.527.

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15. I should also bear in mind that the intention and knowledge of the publisher are immaterial: *Gatley on Libel and Slander* (12th ed.) §3.15 p.117.

16. I shall adhere to these established principles in ascertaining the meaning of the Words.

17. The specific addressees of the Letter were Ms Yip and Ms Hau, the superiors of Madam Tsang in the School. Knowing that Madam Tsang is an English teacher, Madam So made an effort to find out who the teacher in charge of the English panel was in the School.

18. To understand the context, I should also study the Photos. According to the data shown in the Photos, three of them were taken on 9 November 2015 (collectively “**9/11 Photos**”) and the last one was taken on 12 November 2015 (“**the 12/11 Photo**”). Madam Tsang featured in all the Photos. The quality of the Photos is poor and the facial expressions of Madam Tsang can hardly be discerned. For the 9/11 Photos, two of them show that Madam Tsang was standing in an open air apparently in front of the building where the Couple resided. In one of them, she was with another person and in the other, she was with more than one person. One of them show that a gate was closed with a dog in front thereof and the other one show that Madam Tsang was standing in front of the gate which had been opened. Her right hand was raised but I could hardly see what she was doing. Apparently these Photos relate to the allegation of Madam Tsang’s opening the gate of the others without permission.

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19. The 12/11 Photo shows that Madam Tsang was standing on a road alone with her hands on her hips and a dog was on the pavement. I could not see the face of Madam Tsang clearly and I could not tell what the dog was doing. I have no clue as to what it was intended to show even in light of the Words.

The 1st Assertion

20. I first deal with the 1st Assertion. The pleaded meaning is that Madam Tsang is a shameless and pretentious person pretending to be an Englishwoman denying her Chinese origin and that Madam Tsang is an arrogant and hot tempered person and would unreasonably and frequently quarrel with her neighbours in English.

21. The Couple pleads that it meant that Madam Tsang frequently uses English to argue with her neighbours in the Village.

22. I adopt the conventional approach to ask myself what overall impression the 1st Assertion made on me before studying the meaning pleaded by Madam Tsang: *Gatley*, §3.14. I should also avoid an over-elaborate analysis and should not take a too literal approach.

23. My first impression of the 1st Assertion, coming to it fresh, is that the focus is on Madam Tsang's frequent use of English in her quarrels with her neighbours. The natural and ordinary meaning I arrive at for the 1st Assertion is that treating herself as an English person, Madam Tsang frequently uses English when she quarrels with her neighbours. This accords with the pleaded meaning of the Couple.

24. I believe the complaint is that Madam Tsang opts to use English instead of Cantonese, the dialect which most local Chinese people speak, in her quarrels though Madam Tsang is not an English lady. This is an ignorant and illogical complaint in my view.

25. Nevertheless, I fail to see how the 1st Assertion could bear the pleaded meaning, by implications, inferences or otherwise, that Madam Tsang pretended to be an Englishwoman. First and foremost, as a matter of semantics of the Chinese language, treating herself as (當作) an English person is different from pretending to be (扮作) an English person.

26. Nor can I accept that the 1st Assertion bore the pleaded meaning by inference, implication or otherwise, that Madam Tsang has forgotten her Chinese origin when she opts to use English in her quarrels. It cannot be reasonably capable of bearing the meaning that Madam Tsang is a shameless person.

27. The gravamen of the complaint contained in the 1st Assertion is obviously about the choice of language in the quarrels of Madam Tsang. The meaning of the 1st Assertion is to be determined according to the time and place. Hong Kong is an international and multicultural city and nowadays many local people, especially the younger generation, are bilingual and speak both English and Chinese. Code switching is commonplace and is a matter of personal preference. This is common knowledge and those who work in the education sector in the territory including the actual recipients of the Letter. Madam Tsang's use of English in arguments, or any other kinds of verbal communication, *per se*, cannot possibly suggest that Madam Tsang pretends to be an Englishwoman. It

only indicates her choice of language on a particular occasion. Madam Tsang could not possibly, by any stretch of imagination, be taken as having forgotten her Chinese origin when she made the linguistic choice.

28. I also do not think that to a reasonable person in Hong Kong, Madam Tsang is pretentious when she argues with her neighbours in English instead of Chinese. The reasons are twofold. First, proficiency in both languages is rather common and both languages enjoy equal status. There is nothing to pretend when a non-native English speaker, let alone a NET, chooses to speak English as his second language. I can see no arrogance, either.

29. Secondly, nowadays one cannot assume that a person with a Chinese name and/or a Chinese face in Hong Kong must speak Chinese as his mother tongue or can speak any Chinese at all. It is no surprise that the first language of such a person can be some other languages including English. Thus, it is nothing untoward for him to argue in English and in doing so he cannot be taken to be pretending to be an Englishman.

30. I would also make an observation that there is nothing in the Words to indicate the linguistic inclination or ability of the neighbours with whom Madam Tsang quarrels. One cannot assume that the residents in the Village are monolingual or cannot manage English.

31. I cannot accept that the 1st Assertion is capable of bearing the general meaning that Madam Tsang is a hot tempered and would unreasonably and frequently quarrel with her neighbours. This is not the

overall general impression that the 1st Assertion gives to a reasonable reader.

32. The 1st Assertion only indicates that Madam Tsang frequently argues with her neighbours in English. There are many reasons for such frequent quarrels to occur between neighbours and one cannot normally jump to the conclusion that Madam Tsang must be hot tempered and unreasonable.

33. Madam Tsang also relies on innuendo. Her pleaded case is that the words “當作自己是英國人” are commonly understood in Hong Kong colloquialism as pretending to be a Caucasian/white person particularly in the context of referring to a person, often of Chinese race, with the intent to putting herself in an advantageous position.

34. As rightly pointed out by Mr Singh, for the Couple, this plea is defective in that no extrinsic facts and matters has been pleaded pursuant to Order 82 rule 3(1), Rules of the District Court.

35. The reliance on the alleged Hong Kong colloquialism is misplaced and must be rejected. In *Yam Chi Ming v Sing Pao Newspaper Co. Ltd.* (unreported, HCA 99 of 2005, 28.8.2006), DHCJ To (as he then was) refused to accept that Hong Kong colloquialism can constitute an extrinsic facts for the purpose of pleading innuendo. I agree. The alleged Hong Kong colloquialism is not in itself or by any extension an additional fact or matter in support of any alleged defamatory sense of the 1st Assertion.

36. In any event, pleading deficiency aside, the alleged Hong Kong colloquialism appears to be unreasonable and even illusory. It is certainly not reflective of the values of our society in recent years.

37. In the circumstances, I hold that the 1st Assertion is not capable of bearing the pleaded meaning advanced by Madam Tsang and I agree to that of the Couple. I do not find any defamatory imputation.

The 2nd Assertion

38. The pleaded meaning of the 2nd Assertion is that Madam Tsang is a reckless person without regards to the privacy of others. The rival meaning advanced by the Couple is that Madam Tsang opened someone else's door without permission. This is the meaning they seek to justify.

39. The 2nd Assertion is a factual allegation. It is alleged that Madam Tsang without the prior permission or consent opens the gate(s) of others. I must make it clear that to me the Chinese words (閘門) normally refer to gates rather than doors.

40. The 2nd Assertion has to be understood in its context and the content of the Letter including the Photos and the entirety of the Words must be considered together. The Chinese adverb “常” (frequently) qualifies the verb “用” (use) and it is preceded by a participle clause. The 1st Assertion is a self-contained sentence consisting of an independent

complaint. The Chinese adverb “常” should not qualify the verbs in other clauses including the 2nd and 3rd Assertions.

41. In the absence of any adverbs or adverbial clauses, the 2nd Assertion seems to relate to a single isolated incident rather than a habitual act of Madam Tsang. There is no mention about the motive, innocuous or ulterior, of Madam Tsang in that incident. The Photos are of no assistance in this respect. This is a big question mark about the implication of the 2nd Assertion.

42. Moreover, the following questions spring to mind upon reading the 2nd Assertion. First, I need to know who the owner(s) of the gate in question was. He or she should not be the one with whom Madam Tsang argues in English. Also I have no idea to where the gate leads. It may lead to a unit of another person or it may only lead to a reception area or a stairway in the common area. I also want to know the reaction of the owner(s) of the gate.

43. On a fair reading of the 2nd Assertion, given all the unknowns, the meaning that I can arrive at is that Madam Tsang opened another person's gate without his or her permission and in doing so she acted without due respect of others' right. In a way, she could be reckless. It may not be a matter of privacy, however. It very much depends on what was behind the gate pulled open by Madam Tsang.

44. As a reasonable reader, I would have thought this act of Madam Tsang was thoughtless and insensitive. She did not have any or

sufficient regard as to whether the owner of the gate would be offended.
This is the meaning I can arrive at against all the uncertainties.

45. For completeness, I should also consider the plea of innuendo of Madam Tsang. It is pleaded that the 2nd Assertion company understood in Hong Kong colloquialism as “without regards to the privacy and/or breaking in” particularly in the context of referring to a person may have committed criminal acts relating to burglary and/or criminal damage.

46. I have no hesitation in rejecting this plea. It suffers the same deficiency as with the 1st Assertion. Moreover, the alleged Hong Kong colloquialism does not make sense to me.

47. Now I have to determine whether the meaning of the 2nd Assertion conveys a defamatory imputation. The following passage in *Gatley* (§2.1) sets out the usual considerations.

“At common law, an imputation will be treated as defamatory if:

(1) the words complained of fall within one, or more, of the several tests that have, at various times, been offered by the courts. That is to say the imputation must be to the claimant’s discredit; or tend to lower him in the estimation of others; or cause him to be shunned or avoided; or expose him to hatred, contempt or ridicule.

(2) Whatever definition of defamatory is adopted, “it must include a qualification or threshold of seriousness so as to exclude trivial claims.”

48. Applying the first batch of tests to the 2nd Assertion, I do not think the alleged act of Madam Tsang, albeit undesirable and unpleasant, can cause harm to her credit or makes others think less of her or even shun

or avoid her. I do not think her alleged act was illegal, unethical or immoral. Nor can I accept that the imputation, albeit negative, can ridicule her.

49. Further, there is a threshold of seriousness of a statement to be met before it can be found to be defamatory. The following passage in *Gatley* (§2.4) is instructive;

“Threshold of seriousness. In addition to the requirement that the imputation conveyed must have an effect identified in one of the definitions discussed above, the imputation must meet the necessary level of seriousness. As Tugendhat J explained in *Thornton v Telegraph Media Group*: ‘Whatever definition of ‘defamatory’ is adopted, it must include a qualification or threshold of seriousness, so as to exclude trivial claims.’ Such threshold was required for two reasons. First, it is in accordance with the true interpretation of Lord Atkin’s speech in *Sim v Stretch* in which his lordship made clear that exhibitions of bad manner or discourtesy were not to be placed on the same level as attacks on character. Secondly, such a threshold is required by the development of the law recognized in *Jameel (Youssef) v Dow Jones & Co Inc* as arising from the passing of the Human Rights Act 1998: ‘regard for Art 10 and the principle of proportionality both require it’.

Whether the threshold of seriousness has been met is a multi-factorial question, that must be viewed in light of the rights in art 8 and art 10, and that will require the court to consider matters such as the nature and inherent gravity of the allegation, whether the publication was oral or written, the status and number of publishees and whether the allegations were believed, the status of the publisher and whether this makes it more likely that the allegation will be believed, and the transience of the publication. The result in each case will depend on the particular facts of some guidance as to how it is likely to be treated can be gleaned from several recent cases.”

50. On this issue, I take into account the following matters.

(1) As it now stands, the 2nd Assertion is not a serious allegation and it merely gives rise to some queries;

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(2) The publisher of the Letter remains anonymous. He or she should be someone living in the Village since the acts under complaint were carried out in the Village. It would appear to be very much a matter of dispute between neighbours who obviously could not get along very well with each other. Three unrelated complaints were strung together and all of their subject matters were rather petty. It is, more likely than not, that a reasonable and rational recipient of the Letter would not think negatively of Madam Tsang without further ado owing to the 2nd Assertion. I believe that Ms Yip and Ms Hau should not do so.

(3) Indeed, my belief is reinforced by the lack of any action taken by either of them arising from the Letter. There is no evidence that either of them treated Madam Tsang differently because of the Letter. I do not place any weight on Madam Tsang's evidence that her colleagues avoided her and treated her differently. The Letter was not published to them and there is no evidence that Ms Yip and/or Ms Hau disclosed the Words to any of her colleagues. Further, there is no evidence to give rise to an inference that they accepted the validity of the complaints. Madam Tsang only said under cross-examination that Ms Yip had commented on the 12/11 Photo that she looked fierce. There is no evidence that there was any investigation undertaken by them let

alone any disciplinary action taken against Madam Tsang. They did not even seek to verify the truth in the Words with Madam Tsang.

51. Therefore, I am driven to the conclusion that the 2nd Assertion falls below the threshold of seriousness. I hold that it is not defamatory.

The 3rd Assertion

52. For the 3rd Assertion, the pleaded meaning is that Madam Tsang lets her dogs urinate and defecate everywhere and she is a selfish, thoughtless person without regards to social morality, cleanliness and hygiene of the surrounding areas.

53. The Couple contends that the 3rd Assertion means that when Madam Tsang walked a dog, the dog defecated and urinated wherever it wished.

54. The Photos are not of any assistance in regard to the 3rd Assertion contrary to the submission of Mr Singh. The two of them depicting a dog are too blurred. None of them really captured the act complained of in my view. I refuse to accept Mr Singh's submission that it was shown in 12/11 Photo that a dog was excreting beside Madam Tsang. I am unable to see what it was doing to the best of my ability.

55. The clear impression given by the 3rd Assertion to me is that Madam Tsang lets her dogs urinate and defecate everywhere. But this *per*

se does not have any negative connotation, let alone defamatory imputation in my view.

56. Dogs are popular pets in Hong Kong and one can easily see dog owners walking their dogs in public places, particularly in public parks and residential areas where dogs are allowed. It is within an ordinary person's general knowledge and experience that dogs do excrete wherever they like. It is unrealistic to expect dog owners can prevent their dogs from doing so.

57. I would also observe that dog toilets are not really common public amenities and no reasonable person would expect that dogs can only excrete in dog toilets in Hong Kong and dog owners must be able to train their dogs to do so. This is certainly not the culture here to my knowledge.

58. Section 13 of the Public Cleansing and Prevention of Nuisance Regulations, Cap. 132BK ("**the Provision**"), in a way, lends support to my observation. Section 13(1) makes it an offence if a person in charge of a dog allows it to defecate in common parts of a building or in the street or a public place or to urinate in common parts of a building except in an area set aside as a latrine area for dogs. However, section 13(3) creates an exemption if the person in charge removes such faeces or urine and cleans the place where it was deposited before leaving the place.

59. A reasonable and fair-minded member of this society would only expect dog owners to clean up the excretions of their dogs immediately and this expectation is shown in the Provision. The usual tools

are water and old newspapers or any waste paper. This is within the general knowledge and experience of an ordinary member of society.

60. When one reads the allegation in the 3rd Assertion that Madam Tsang allows her dogs to defecate and urinate everywhere in the context of the Letter, he cannot jump to the conclusion that she will not do the clean-up job afterwards. Thus, in my judgment, the sheer allegation in the 3rd Assertion does not convey the defamatory imputation pleaded by Madam Tsang.

61. Perhaps the real complaint of the Couple is that Madam Tsang failed to clean up the excretions of her dogs in public places and not that her dogs failed to defecate and urinate only in any designated places or that they do so in any particular inappropriate places. I remind myself that the subjective intention of the publisher is immaterial.

62. This complaint is plainly not part of the 3rd Assertion. It cannot be a matter of an inference or implication. It is a specific allegation which should not now be artificially added to the 3rd Assertion. I note that there is no such allegation in the pleading of Madam Tsang too.

63. Mr Chung, for Madam Tsang, does not rely on this allegation in his opening submissions. He only mentions the Provision in his closing submissions and submits that the 3rd Assertion leads to an inference that Madam Tsang has been engaged in criminal offences. I am unable to accept his submissions by reason of the pleading of Madam Tsang.

64. Though much time was spent on the allegation that Madam Tsang failed to clean up the excretions of her dogs at trial, including the showing of 8 video clips featuring a dog, it remains a non-issue because it is simply not part of the 3rd Assertion and the natural and ordinary meaning cannot be extended to include such a specific factual allegation.

65. In passing, for what it is worth, I should point out that in the video clips shown to me, which were taken only after the publication of the Letter, Madam Tsang did clean up the excretions of her dogs. The video clips were recorded by the 10 CCTV cameras installed by Mr Tsang at his home. It begs the question why he was unable to produce one single video clip showing that Madam Tsang left the excretions of her dogs unattended before or after the publication of the Letter.

66. In light of my findings, it is not necessary for me to consider the innuendo pleaded by Madam Tsang in respect of the 3rd Assertion. Suffice it for me to say that her reliance on the alleged Hong Kong colloquialism is similarly misplaced and must be rejected. There is basically no extrinsic facts or matters pleaded in support of the plea of innuendo.

67. To conclude, I hold that none of the 1st, 2nd and 3rd Assertions is defamatory. The defamatory claim must be dismissed.

68. I shall nevertheless proceed to consider the validity of the defence to the 2nd Assertion for completeness. In doing so, I shall, for the 2nd Assertion, work on the basis that it is defamatory.

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Defence

Justification

69. The parties have no dispute about the well-settled legal principles. A defamatory imputation is presumed to be false and the burden is on the defendant to show that the imputation is substantially true.

70. Further, it is pertinent to take note of the following summary made by Lok J in *Bawang International (Group) Holding Ltd v Next Magazine Publishing Ltd* (unreported, HCA1109/2010, 23.5.2016) at §78:

“In considering the defence of justification, the court then has to determine: (i) whether Words bear the Lucas-Box meanings as contented for by the Defendant; (ii) if so, whether as a matter of fact that any of all of the Lucas-Box meanings is true; and (iii) whether the proved meanings are sufficient to meet the libellous stings conveyed by the Worse in the Article. It is only when each of the stings is properly met with true facts that the defence of justification succeeds.”

71. The following matters, which are not in dispute, are borne out by the evidence:

- (1) The gate referred to the 2nd Assertion is the gate leading to the communal staircase in the three-storey building (“**the Building**”). In other words, it does not directly lead to any particular units in the Building. Each unit has its own door.
- (2) The Building is owned by Mr Tsang. At the material time, the flats on the ground floor and the first floor were leased to his tenants whom Madam Tsang does

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not know. The Couple resided on the second floor which is the top floor.

- (3) The intercom on the ground floor of the Building beside the gate had been out of order for years before Madam Tsang pulled open the gate on 9 November 2015. When the intercom was in working condition, any visitors would first seek the permission of the residents in the Building to enter the Building by the use of the intercom. The residents would then unlock the gate remotely from their homes so that their visitors could walk through the gate and reach their respective units if they approved their entry.
- (4) The gate was not locked and the intercom was out of order at the material time.
- (5) After Madam Tsang pulled open the gate, she decided not to enter the Building.
- (6) The Couple was not immediately alive to the fact that that Madam Tsang had pulled open the gate.

72. The evidence of Madam Tsang is that on the material day, she saw Mr Tsang holding a handheld recording device making a video recording of her brother and her. They were then having a discussion with a contractor working on a new house constructed adjacent to her home. She then went to the Building and intended to go up to the flat of the Couple to reason with Mr Tsang.

73. Since the intercom on the ground floor of the Building was out of order, it is the evidence of Madam Tsang that it was the standard

practice to leave open the gate so that any visitors would be able to enter and go up to a particular floor which they would like to visit. This was why she pulled open the gate. But upon the advice of her brother, she decided not to go up the stairs afterwards.

74. Madam Tsang frankly admitted that she did not have the consent of the Couple or any residents in the Building before opening the gate.

75. Madam Tsang does not plead any standard practice in her Reply. Nevertheless, it is indisputable that the gate had been left unlocked all along; otherwise Madam Tsang could not have pulled open it with bare hands.

76. Mr Chung submits that without the intercom and the gate being left unlocked, the Couple must have given an implied consent to their visitors to go through the gate for the purpose of reaching the doors of the units in the Building.

77. It appears to be a reasonable submission. Yet, the problem is that Madam Tsang can hardly be a lawful visitor or invitee of the Couple. This was not even suggested to the Couple under cross-examination. There is no suggestion that Madam Tsang had ever notified the Couple that she was going up the Building to visit them. Clearly, the emotions were high and their relationship was tense on that particular occasion. Madam Tsang was angry about being filmed by Mr Tsang without her consent. She could not possibly believe that the Couple had impliedly agreed to her intended

home visit. There is no basis to say that Madam Tsang had the implied consent of the Couple to open the gate and go up the staircase.

78. In my judgment, Madam Tsang should have obtained the express consent of the Couple but she failed to do so. She could not be presumptuous. She was indeed thoughtless and insensitive and did not pay sufficient regard as to whether she would offend the Couple and/or other occupants of the Building when she pulled open the gate.

79. In the premises, I accept that the meaning of the 2nd Assertion is justified on the evidence. It is indeed a very trivial matter without leading to any significant consequences.

80. In light of my conclusion on the defence of justification, I am reluctant to further assess the merit of the defence of qualified privilege and fair comment. I am only minded to deal with them very briefly.

Qualified privilege

81. In the Amended Defence of Madam So, which is a separate document from the Re-Amended Defence of Mr Tsang, she raises a defence of qualified privilege. To establish this defence of qualified privilege, she has to prove that she, being the publisher of the Letter, has an interest or a duty, legal, social, moral, to make the Assertions to Ms Yip and Ms Hau and they have a corresponding interest or duty to receive them. The reciprocity is essential: *Adam v Ward* [1917] AC 309.

82. The pleaded case of Madam So is that Madam Tsang and she are members of the Village. The Letter was sent to Ms Yip. Being the principal of the School, she was in the best position to address the issues raised in the Letter with Madam Tsang. She then avers that Madam So and Ms Yip had a common and corresponding interest in the subject matter of the Letter.

83. Her alternative case is that Madam So was under a moral and/or social duty to publish the Letter to Ms Yip and Ms Yip had a reciprocal duty and/or interest to receive or hear them.

84. Another alternative case is that Madam So published the Letter in a reasonable and necessary protection of the interests of the Village to preserve harmony. Ms Yip has a corresponding legitimate interest in hearing and receiving the same as Madam Tsang was both a member of the Village and employee of the School of which Ms Yip is in charge.

85. With respect, the pleaded case of qualified privilege is thoroughly bad. To begin with, it does not cover the publication of the Letter to Ms Hau at all. It follows that even if this plea is established, it has no effect on the libel claim in so far as liability is concerned.

86. Whether or not Ms Yip was in the best position to address the issues raised in the Letter with Madam Tsang has no bearing on whether Ms Yip had a common or corresponding interest in the subject matter of the Letter. In any event, I cannot see how Ms Yip being the Principal of

A
B the School had any interest in the trivial matters of Madam Tsang in her
C private life.

D 87. Mr Singh refers me to *Wong Sui Fung v Dr Yip Siu Keung*
E (unreported, HCA 5595/2000, 23.9.2003). There, DHCJ A Cheung (as he
F then was) concluded that the defence of qualified privilege applied in the
G publication of a complaint letter about the plaintiff who was a civil servant
H by the defendant to the Financial Secretary, the Secretary for Education
I and Manpower and the Secretary for Civil Service. The parties were
neighbours. Mr Singh submits that the facts there are similar to the present
case.

J 88. I cannot agree with Mr Singh. In that case, the judge found
K that the complaint letter was issued against the plaintiff as a civil servant.
L It is trite that public officers belong to a special category. *Gatley*, §14.59
M (the same passage in its older edition was cited in the judgment at §93) has
the following explanations:

N “Thus, it is not only for the victim, in his own interests, but it is
O the duty of everyone, in the interests of public efficiency and good
P order, to bring any misconduct or neglect of duty on the part of a
Q public officer or employee, or any public abuse, to the notice of
R the proper authority for investigation. Any complaint or
S information as to such misconduct, neglect of duty, or abuse is
privileged, provided it is made in good faith to the person or body
T who has the power or duty to remove, punish or reprimand the
U offender, or merely to inquire into the subject-matter of the
V complaint. And the citizen who bona fides believes that wrong has
been done has the right and duty to bring the alleged fact before
the proper authority for investigation. In doing so he exercises an
undoubted privilege which it is not in the public interest to
penalise.”

89. This is clearly not the case here. Madam Tsang was a teacher at the material time and cannot be regarded as a public officer or employee.

90. I see no merit in the two alternative cases. I cannot accept that Madam So had a moral or social duty to issue the Assertions in the Letter to Ms Yip. I reject her far-fetched allegation that she only acted for the reasonable and necessary protection of the interests of the Village to preserve the harmony of the Village. Nor can I find any reciprocal duty and/or interest for Ms Yip to learn about the Assertions from Madam So.

Fair comments

91. This defence is a complete non-starter. The pleading and the evidence cannot support this plea at all. The 2nd Assertion is a factual allegation and cannot be a comment in my view. This defence must be rejected.

92. In view of my determination of the meaning of the three Assertions, the alleged libel cannot be proved regardless of whether Mr Tsang was involved to whatever extent in the publication of the Letter. Nevertheless, I proceed to render my analysis on the evidence relating to this seriously contested factual issue as it may assist the resolution of the remaining claim made under the PDPO.

The involvement of Mr Tsang

93. On this issue, the position of Madam Tsang is that Mr Tsang and/or Madam So mailed and published or caused to be mailed and

published the Letter to Ms Yip and Ms Hau. Alternatively, Madam So did so for and on behalf of Mr Tsang as his agent.

94. The alternative case was pleaded due to the purported admission of Madam So that she, on her own initiative, prepared and published the Letter without any knowledge let alone involvement of Mr Tsang in her Amended Defence (“**the Purported Admission**”).

95. On this issue, Madam Tsang and her witnesses (her sister Madam Ann Tsang and her brother Mr Fuson Tsang) could give no direct evidence in support of her position though all of them appeared to me to be honest and straightforward. The creation and the publication of the Letter were completed without their personal knowledge.

96. Both Mr Tsang and Madam So were vigorously cross-examined on this issue and Madam So insisted on the Purported Admission. Mr Chung submits that Mr Tsang clearly intends to shift all the blame onto Madam So in order to avoid any adverse financial consequences due to this litigation.

97. The Photos were taken from the CCTV footages and it was Mr Tsang who installed the 10 CCTV cameras for security reasons. According to Mr Tsang, he set a password for access to the website where the recordings of the CCTV cameras can be viewed online and the password was made known to his family members including Madam So.

98. Mr Tsang denies any personal involvement in the creation and the publication of the Letter to Ms Yip and Ms Hau in the witness box and

Madam So supports his position. I do not believe them for the following reasons.

99. First and foremost, both Mr Tsang and Madam So struck me as evasive and unreliable. In particular, Mr Tsang very often second-guessed the intention of the cross-examiner and took a long while to answer simple questions. He did not appear to be spontaneous and genuine.

100. Madam Li on behalf of Privacy Commissioner for Personal Data, Hong Kong (“**the Commissioner**”) sent a letter dated 18 April 2016 to Mr Tsang (“**the 18/4 Letter**”). In the 18/4 Letter, Madam Li specifically referred to a written reply of Mr Tsang dated 31 March 2016 (“**the Written Reply**”) and their telephone conversations on three previous dates in the wake of the complaint lodged by Madam Tsang in relation to the Photos.

101. Madam Li went on to set out the complaint of Madam Tsang and then summarized the response of Mr Tsang. She stated that Mr Tsang had confirmed that his wife had posted the Photos to the workplace of Madam Tsang in the hope that her employer could give her advice (“**the Confirmation**”) and that she had acknowledged her wrong (“**the Acknowledgment**”). Madam Li warned Mr Tsang that such a use of the Photos deviated from the intended purpose of the use of the data to be collected by his CCTV cameras. Mr Tsang was reminded of Principle 3 of Schedule 1 of the PDPO and that a civil claim is possible under section 66 of the PDPO.

102. On the same day, Madam Wu who was Chief Personal Data Officer sent a letter to Madam Tsang to report the findings of the

investigation of her complaint. It was reported, among other matters, that Mr Tsang had confirmed that the Photos were taken with his CCTV cameras and that he had been warned against any future breach of the PDPO.

103. I note that it was not stated that Mr Tsang had ever denied any knowledge of Madam So's use of the Photos in the 18/4 Letter. The Written Reply must be a revealing document which should shed light on his involvement or non-involvement in the creation of the Letter. Yet, it was not disclosed. Mr Tsang said it was a questionnaire and he agreed that he could obtain a copy from the Commissioner but he did not think it was of any importance. As a result, he did not ask for a copy.

104. Notwithstanding the Confirmation and the Acknowledgement, Mr Tsang in his Defence dated 10 December 2016 pleaded that "it is specifically denied that the defendant (he) mailed or published the Letter". He made no mention whatsoever about Madam So's publication of the Letter.

105. When Madam So was joined as the 2nd defendant herein, Mr Tsang filed his Re-Amended Defence on 26 June 2018. Instead of stating the Confirmation and the Acknowledgement, conveniently he amended "the defendant" in the foregoing specific denial to "the defendants" to include Madam So. He even saw fit to add that they deny having mailed or published the Letter whether by themselves, through any agent, or as agent, or otherwise. It is a blatant lie. Curiously enough, Mr Tsang did not sign a Statement of Truth for this pleading and up till now, he still did not find it necessary to remove the misleading denial and plead the true picture.

106. Madam So told the same lie in the Defence filed on 4 July 2018. I do not know how she could sign the Statement of Truth to verify the truth in the facts stated in this pleading.

107. It was not until she filed her Amended Defence on 28 June 2019 that she made the Purported Admission.

108. Mr Tsang was very economical with the truth in his first witness statement dated 2 August 2017. He alleged that he only became aware of the Letter in mid-March 2016 as a result of the complaint lodged by Madam Tsang to the Commissioner. He referred to the letter sent to Madam Tsang by Madam Li and merely accepted that the Photos were taken from his CCTV cameras. He even came up with an explanation that he had been advised by the people who had installed the CCTV cameras for him that the security of this type of home CCTV cameras was not high and others might gain access to the recordings.¹ He seemed to suggest that the Photos were actually captured by a stranger outside his family.

109. Remarkably, Mr Tsang was totally silent on the 18/4 Letter in which the Confirmation was made. He said nothing about Madam So's publication of the Letter to Ms Yip and Ms Hau and he merely denied that he had sent the same to them. The silence is deafening. He probably thought the 18/4 Letter would never be disclosed.

¹ §11 of D1's witness statement.

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110. His supplemental witness statement fares no better if not worse. He pointed out that he could notice that the Photos had been cropped and edited. He denied he had ever done this himself.

111. He then referred to the 18/4 Letter for the first time. Instead of telling the truth, he sought to explain away the Confirmation. He alleged that he had not consulted Madam So before making the Confirmation to the Commissioner and he merely deduced that it should be Madam So who had sent the Letter.

112. Moreover, with respect to the Acknowledgment, Mr Tsang said that he had merely told the Commissioner that he would apologise on behalf of Madam So with a view to resolving the matter and in fact when he was asked to sign an acknowledgment that Madam So was at fault, he refused to do so.

113. His evidence is unbelievable. I cannot accept that Mr Tsang would have made the Confirmation to the authority without even asking Madam So beforehand, particularly given his doubts about the editing work done to the Photos. His explanation given in the witness box that Madam So was in the Mainland on a holiday trip at that time and hence was unreachable is incredible. In this day and age, with the prevalence of smartphones, Madam So must be contactable when she holidayed with her friends in the Mainland in 2015. Even if her phone could not work as alleged, she could easily borrow her friends' smartphones to keep in touch with Mr Tsang and she actually did once.

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B 114. In the unlikely event that she could not be contacted, there is
C no reason why Mr Tsang, being investigated about a serious complaint by
D the authority, did not ask for more time to wait for the return of Madam So
E to find out what had happened before making a substantive reply to the
F authority. Instead, he made the Confirmation and the Acknowledgment,
G which might lead to adverse consequences to Madam So. Mr Tsang said
H he did not know when Madam So would finish her holiday and return to
I Hong Kong. This is wholly unacceptable given their allegedly close
J relationship.

K 115. More alarmingly, Madam So actually told a different story.
L She testified that her trip to Sichuan was only from 15 to 20 March 2016.
M In other words, she came back well before the Written Reply was given on
N 30 March 2016. Mr Tsang had ample time to discuss the complaint with
O her.

P 116. In addition, it is inexplicable that Mr Tsang failed to disclose
Q the Written Reply. I could only infer that it does not support his evidence.

R 117. Lastly, Mr Tsang in his 2nd supplemental witness statement
S alleged that Madam So only disclosed to him that she had sent the Letter
T to Ms Yip and Ms Hau on 27 March 2019, long after the present action had
U commenced. He did not allege that prior to that disclosure Madam So had
V ever denied to him that she was the sender as now contended by Madam
So.

118. This is again incredible. I cannot believe that Mr Tsang could
have refrained from discussing the investigation with Madam So upon her

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return and, more importantly, after the Confirmation and the Acknowledgment were made. At the very least, he should have told Madam So about the Confirmation and the Acknowledgment. I do not believe Mr Tsang, a proud man holding a few public offices set out in his witness statement, could have swallowed all these without finding out the true picture with his wife for three years, even after the commencement of this action.

119. I now focus on the evidence of Madam So, another unimpressive witness. In her witness statement, she merely stated that she sent the Photos with the Words to Ms Yip and Ms Hau on 15 November 2015. She said absolutely nothing about the involvement or non-involvement of Mr Tsang. Nor did she say anything about the circumstances under which the Letter was created and posted to the School.

120. Under cross-examination, when requested for the details as to how the Letter was produced and mailed, Madam So explained that she reviewed the CCTV footages on 12 November 2015 with the password to find out more about the arguments between Madam Tsang and Mr Tsang on 9 November 2015. She captured the Photos from the footages and made a collage of them and added the Words to produce the Letter. She mailed the Letter on the same day.

121. Madam So testified that she took the chance when Mr Tsang was away from home to do all these so as to keep him in the dark. She said that Mr Tsang had previously asked her not to stir up troubles with Madam Tsang and she knew Mr Tsang would not approve the Letter.

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B 122. I cannot believe her evidence. She said she had no idea when
C Mr Tsang had gone and he might do some shopping or he might have a
D conference. In that case, Mr Tsang could have returned home any time
E whilst the whole process relating to the Letter was quite elaborated and
F took some time. Madam So had to select the photos to be captured from
G the CCTV footages to support the Assertions and do some editing work on
H such photos too. Moreover, she had to look up the website of the School
I and found out the school address and the identities of the Principal and the
J Chairperson of the English panel.

K 123. I do not think Madam So told this court truthfully about her
L alleged creation of the Letter. I think she merely tried to exculpate Mr
M Tsang. I should also mention that when asked why she painted a false
N picture in her Defence, she answered that she had just told a lie out of good
O intentions. When further asked what the good intentions were, she
P answered that she did not want Mr Tsang to be unhappy. She has no
Q credibility in this matter at all.

R 124. In the premises, after reviewing their evidence, which is
S riddled with inconsistencies and inherent improbabilities, I conclude that I
T cannot rely on their assertions. I cannot believe that Mr Tsang was innocent
U and had nothing to do with the Letter. I can only find, on balance of
V probabilities, that the Letter was created by the joint effort of the Couple
and sent to Ms Yip and Ms Hau pursuant to the Couple's common intention.

The PDPO claim

125. Madam Tsang relies on the following provisions in the PDPO:

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- (1) Section 2 sets out the definition of a data user to be a person who, either alone or jointly or in common with other persons, controls the collection, holding, processing or use of the data.
- (2) Section 4 provides that a data user shall not do an act, or engage in a practice, that contravenes a data principle unless the act or practice, as the case may be, is required or permitted under the PDPO.
- (3) Principle 3(1) of the Data Protection Principles in Schedule 1 of the PDPO provides that personal data shall not, without the prescribed consent of the data subject, be used for a new purpose.
- (4) Principle 4(1) of the same Schedule provides that a data user shall take all practicable steps to ensure that personal data is held against unauthorized or accidental access, etc.
- (5) Section 66(1) provides that an individual who suffers damage by reason of a contravention of a requirement under the PDPO by a data user which relates, whether in whole or in part, to personal data of which that individual is the data subject, shall be entitled to compensation from that data user for that damage.
Section 66(2) makes it clear that for the avoidance of doubt, damage referred to in subsection (1) may be or include injury to feelings.

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B 126. Though the CCTV cameras were caused to be installed by Mr
C Tsang, they were installed for the security of his matrimonial home and
D hence for the use of his family. Both Mr Tsang and Madam So had equal
E access to the CCTV footages and they could process and use any personal
F data contained in them. Both of them are data users within the meaning of
G the PDPO.

H 127. The 18/4 Letter confirmed that the publication of the Photos
I obtained in the CCTV footages to Ms Yip and Ms Hau constituted a use of
J the personal data collected for a new purpose. Without the consent of
K Madam Tsang featured in the Photos, the Couple contravened Principle
L 3(1).

M 128. Madam Tsang is entitled to claim damages under section 66
N if she could prove that she has suffered damage by reason of the
O contravention on the part of the Couple.

P 129. In her witness statement, Madam Tsang stated that upon
Q discovery of the Letter, she had been unable to sleep well and always felt
R paranoid and feared that she would be watched and filmed all the time.
S Whenever she heard noises outside her window she became very nervous.
T She had to seek medical assistance and was prescribed sleeping pills on
U one occasion.

V 130. I accept her evidence in this regard and I can well understand
the injury to her feelings by the Couple's use of the Photos. Mr Tsang
admitted that some of his 10 CCTV cameras actually cover the building in
which Madam Tsang resides. Madam Tsang could not have expected let

alone agreed that the Couple would make pictures out of the CCTV footages and use such pictures to her detriment. Her feelings must have been hurt as a result of the misuse of the personal data collected by the Couple in the CCTV footages despite the fact that the Photos *per se* were not particularly offensive. The threat that the Couple would misuse the CCTV footages again to her is not unreal.

131. I do not accept the submission of Mr Singh that Madam Tsang's claim under the PDPO is not genuine and that she has suffered no injury to her feelings. I can find no culpable delay of her claim which can disprove its validity.

132. Mr Chung does not address me on the appropriate amount of compensation payable to Madam Tsang under section 66 of the PDPO. Mr Singh merely submits that no compensation should be ordered because there is no credible evidence of her injury and loss.

133. As a result, I have zero assistance on the quantum of compensation to which Madam Tsang should be awarded. Guided by the relevant principles in the discrimination cases such as *Prison Service v Johnson* [1999] ICR 275, 袁慧嫻 訴 南方安老事務有限公司 [2005] 2 HKLRD 277 and my previous decision in 秦秀清 對 長鴻鋁窗裝飾工程有限公司 [2019] HKDC 1749, I assess the appropriate amount of compensation at HK\$70,000 having taken into account the gravity of the injury to her feelings and the manner in which the Photos were misused.

Costs of the Summons of the Couple dated 24 August 2020 (“the Summons”)

134. On the other hand, I should determine the costs issue in respect of the Summons. It was taken out by the Couple to set aside the Writ of Subpoena Duces Tecum issued by Madam Tsang on 3 July 2020.

135. The Office of the Privacy Commissioner Personal Data (“PCDA”) took out a summons to set aside the Writ of Subpoena Duces Tecum on 20 August 2020. 4 days later, the Couple took out theirs for the same purpose.

136. Both summonses were before this court in the afternoon before the first day of the trial. Upon the agreement of all the parties, Madam Tsang agreed to withdraw the Writ of Subpoena Duces Tecum and I so ordered. After hearing counsel for PCDA and Mr Chung, I granted a costs order in favour of PCDA. I indicated that Madam Tsang and the Couple should make written submissions on costs in respect of the Summons, which is the only remaining live issue, at the end of the trial and I should make a determination on paper.

137. As I have indicated to the parties, I accept the submissions of counsel for PCDA that the Writ of Subpoena Duces Tecum was without merit and should be set aside in any event. My only concern is whether the Couple may not have the locus to set it aside as submitted by Mr Chung. He cited to me a passage in *Disclosure* (5th Ed.) which says that ordinarily

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B the other parties to the action lack standing to make an application to set
C aside the witness summons².

D 138. However, Mr Singh draws my attention to the following
E paragraph of the same work³ which says that the Australian courts
F recognize that the opposing party to the litigation has the right to set a
G subpoena aside so that the trial is not expanded beyond the pleadings.

H 139. Furthermore, both *Waddington Ltd v Chan Chun Hoo Thomas*
I (unreported, CACV136/2013, 19.7.2013) and *Big Island Construction (HK)*
J *Limited v Wu Yi Development Company Limited & Anor.* (unreported, HCA
K 1957/2005, 29.1.2010), helpfully cited to me by Mr Singh, have stated
clearly that the opposing party does have the locus to set aside a subpoena
out of case management concern.

L 140. The Writ of Subpoena Duces Tecum, if allowed to stand,
M would have unnecessarily protracted the trial and the Couple did have an
N interest in setting aside the same. I am convinced that the Couple should
O have the locus to set it aside.

P 141. The Writ of Subpoena Duces Tecum having been set aside,
Q the only order I make on the Summons is that Madam Tsang should pay
R the costs of the Couple of the Summons with certificate for counsel, to be
S taxed if not agreed.

T

² §10.29

U ³ § 10.30

Conclusion and orders

142. I can well understand why Madam Tsang was unhappy about the Letter and the manner it was sent to Ms Yip and Ms Hau. I have little doubt that the Couple intended to cause some harm to Madam Tsang and make her superiors in the School think little of her by the Letter especially after their arguments on 9 November 2015. The noble intention claimed by Madam So is plainly absurd. Mr Tsang is the manager of a school and Madam So is a retired English teacher in a famous local school. What they did is distasteful and regrettable.

143. However, for the reasons given, I conclude that the Words are not defamatory regardless of the subjective intention of the Couple. In any event, the 2nd Assertion is justified on the evidence. Madam Tsang's defamation claim against the Couple must be dismissed.

144. On the other hand, Madam Tsang's claim under the PDPO is established against the Couple. I order that Mr Tsang and Madam So are jointly and severally liable to pay HK\$70,000 to Madam Tsang as compensation.

145. Costs in this case is not a straightforward issue. Being given an award of compensation under the PDPO, Madam Tsang is the ultimate winner though the amount of the compensation is on the low side and her defamation claim is dismissed. Madam Tsang's defamation claim took up the lion share in this action but I am mindful of the overlapping issues in both of her claims. I should also consider the conduct of the Couple in their defence to her claims and, in particular, their readiness to allow

untruth statements to be pleaded in their pleadings despite their respective Statements of Truth.

146. The fairest costs order in my view is that the Couple should bear 70% of the costs of Madam Tsang, including any costs previously reserved, with certificate for counsel, to be taxed if not agreed. This order is made on a *nisi* basis subject to any application for variation by way of summons within 14 days from the date of this Judgment.

147. Lastly, I thank Mr Chung and Mr Singh for their assistance.

(Kent Yee)
District Judge

Mr. Hylas Chung, instructed by K.Y. Woo & Co., for the plaintiff

Mr. Harprabdeep Singh, instructed by Patrick Chu, Conti Wong Lawyers LLP, for the 1st and 2nd defendants