

**IN THE HIGH COURT OF MALAYA IN KUALA LUMPUR
IN THE STATE OF FEDERAL TERRITORY, MALAYSIA
[CIVIL SUIT NO.: WA-23NCvC-37-05/2022]**

BETWEEN

**COLIN ANDREW PEREIRA
(NRIC NO.: 670728-10-6223)**

... PLAINTIFF

AND

**GOH YI-KHENG
(NRIC NO.: 880222-06-5300)**

... DEFENDANT

GROUND OF JUDGMENT

(ENCLOSURE 9)

INTRODUCTION

- [1]** This is an application by the Defendant to strike out the Plaintiff's claim (**Enclosure 9**) under Order 18 rule 19(1)(a), (b) and (d) of the Rules of Court 2012 (**ROC**). The Plaintiff had also filed an application to strike out the Defendant's defence (**Enclosure 11**) under Order 18 rule 19(1)(a), (b) and (d) of ROC. This Court dealt with Enclosure 9 first, because the determination of this Enclosure 9 will determine the entire suit.

BRIEF FACTS

- [2]** The Plaintiff and Defendant are both lawyers.
- [3]** The basis for the Plaintiff's claim is an action for libel against the Defendant, concerning one letter dated 18.12.2020 from Messrs. Kevin & Co., (the legal firm that was representing the Defendant at

that time) to Messrs. Valerie Chong & Co (the legal firm that was representing the Plaintiff at that time) **(Impugned Letter)**.

- [4] The Plaintiff in his Statement of Claim **(SOC)** stated that the Impugned Letter contained impugned defamatory words. The impugned wordings are-

"Our client states that your client took advantage of our client in your client's office. Our client regrets to have not lodged a police report against your client who portrays himself as a senior lawyer, a committee member of the Catholic's Lawyers Society and a member of the disciplinary committee of the Bar.

Our client welcomes your client's decision to expose the incident which happened in the library as our client will prove to court as to how your client being a man of his age and standing has taken advantage of a junior lawyer. Our client also feels that it is time that the public at large is made aware of your client's true identity whilst hiding behind the façade of a prudent, pious and integrous man, as our client is aware that there are other individuals (ladies) who has somewhat equal complaints pertaining to your client, whom our client is making" attempts to secure as a witness to corroborate our client's testimony pertaining to your client's character towards young woman."

(Impugned Words)

- [5] The Impugned Letter was a correspondence in the matter of the Kuala Lumpur Sessions Court Civil Suit No.: WA-A52NCvC-545-07/2020 **(KLSC Suit)** to a claim for breach to marry and fraud filed by the Plaintiff against the Defendant. Initially the claim was filed at the Kuantan Sessions Court but was later transferred to Kuala Lumpur Sessions Court. Subsequently, on 27.07.2022, the KLSC Suit was dismissed with cost.

- [6] The Plaintiff's SOC was filed on the 13.05.2022 and the Impugned Letter was dated 18.12.2020. It was not disputed that 17 months later, the Plaintiff filed this instant Suit in regards to the Impugned Letter.
- [7] The Impugned Letter was a 'Without Prejudice' correspondence between the solicitors representing the Defendant and the Plaintiff on the pending KLSC Suit as can be seen in the subject title of the Impugned Letter.

Plaintiff's Contention

- [8] The Plaintiff contended that the Defendant had published the Impugned Words to Messrs Valerie Chong & Co and its staffs. The Plaintiff pleaded that the impugned defamatory words were in their 'natural and ordinary meaning', meant and were understood in the estimation of right-thinking members of society generally.

Defendant's Contention

- [9] The Defendant denied that the Impugned Words were defamatory and denied any publication either in fact or in law to constitute a cause of action for defamation. The Defendant contended that the Impugned Letter was a reply to a letter by the Plaintiff's Solicitors dated 17.12.2020. It was written in *bona fide* to refute the Plaintiff's accusations against the Defendant. Thus, the Impugned Letter was not intended to be read by other lawyers and staff of Messrs. Valerie Chong & Co, except those who are related to the KLSC Suit.
- [10] The Impugned Letter as reproduced (Plaintiff's SOC/Lampiran A)-

KEVIN & CO

ADVOCATES & SOLICITORS

TRADE MARK AGENTS, ARBITRATION & ADJUDICATION,
COMPANY SECRETARY & COMMISSIONER FOR DATE

Partners

DATO KUYEN SATHASEELAN & JOSHUA KEVIN

LL.B (HONS) / LOND, CLP, LL.M

LAM TSE HEUNG

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FARHANNA ROSLAN

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CHAN KAY DINH, DAMIEN

LL.B (HONS) / CARINVA, BARRISTER AT LAW,

MIDDLE TEMPLE

TENG JIA XIN, ALEX

LL.B (HONS) / CARDIFF, CLP

IAN HANNIBAL LIANG BIN DANIAL LIANG

LL.B (HONS) / KUALA

LENG WIE MUN

LL.B (HONS) / LOND, CLP, LL.M, DIP. INT. COM. ARB

NG QIN LIANG, JEFF

LL.B (HONS) / LIVERPOOL, CLP

LEE JING YAO, WILLIAM

LL.B (HONS) / MANCHESTER, CLP

LIM JIA WEI, JOEY

LL.B (HONS) / NORTHUMBRIA, BARRISTER AT LAW,

MIDDLE TEMPLE

By Fax

By Hand

By Certificate of Posting

☐ By Courier/ Email/ Mailing

☐ By Registered Post

☐ By AR Registered Post

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Date : 18.12.2020

Our Ref : KC.LT.DM.GYK.200032

Your Ref : VAL/20021433/CAP

MESSRS VALERIE CHONG & CO

Advocates & Solicitors

No. 3-32, The Scott Garden

Kompleks Rimbun Scott

289 Jalan Klang Lama

58000 Kuala Lumpur

(Attn: Ms. Valerie and Ms. Yong)

"WITHOUT PREJUDICE"

Dear Sirs,

RE : IN THE MATTER OF THE SESSIONS COURT AT KUALA LUMPUR CIVIL SUIT NO.:

WA-A52NCvC-545-07/2020

PLAINTIFF : COLIN ANDREW PEREIRA

DEFENDANT : GOH YI KHENG

We refer to the above matter and to your letter dated 17.12.2020 ("your letter").

We have our client's instructions to respond to the 4th paragraph of your letter.

Our client states that your client took advantage of our client in your client's office. Our client regrets to have not lodged a police report against your client who portrays himself as a senior lawyer, a committee member of the Catholic's Lawyers Society and a member of the disciplinary committee of the Bar.

Our client welcomes your client's decision to expose the incident which happened in the library as our client will prove to court as to how your client being a man of his age and standing has taken advantage of a junior lawyer. Our client also feels that it is time that the public at large is made aware of your client's true identity whilst hiding behind the façade of a prudent, pious and integrous man, as our client is aware that there are other individuals (ladies) who has somewhat equal complaints pertaining to your client, whom our client is making attempts to secure as a witness to corroborate our client's testimony pertaining to your client's character towards young woman.

KEVIN & CO

ADVOCATES & SOLICITORS

-2-

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As your client has stated that your client would expose our client's conduct in the legal firm's library, we on the other hand ask of you if you have any videos, CCTV recordings or photos in support of your allegation as we would like to file an application for discovery. Kindly revert on this point.

Our client's rights are hereby reserved.

Yours Faithfully,



MESSRS KEVIN & CO

Written By: Chan Kay Ding, Damien /

Email: damienchan@kevinco-law.com /

Ian Hannibal Liang Bin Danial Liang

ian@kevinco-law.com

C.c. Client

[11] The Impugned Letter was a reply to a letter by the Plaintiff dated 17.12.2020 as reproduced below-



VALERIE CHONG & CO
Advocates & Solicitors
Licensed Trademark Agent

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Valerie Chong Wei Chuan
LLB (Hons) University of Leeds, CLP

Dr. Hong Tai Hock Gnan
LLB (Hons) University of London, CLP
LLM (Distinction) Staffordshire University
Ph.D. (Higher Distinction) Trinity Theological Seminary, USA

Tong Hui Joo
LLB (Hons) University of London, CLP

Pathe Yong Zhen Yang
LLB (Hons) NUS

17th December 2020

Your Reference: KCLT.DM.GYK.200032
Our Reference: VAL./200214133/CAP

Messtrs Kevin & Co
Advocates & Solicitors
16-6 & 16-3A,
Menara 1 Mont Kiara,
No. 1 Jalan Kiara, Mont Kiara,
50480 Kuala Lumpur

"WITHOUT PREJUDICE"

By Fax (03-6419 3321) and By email

Dear Sirs,

Kuala Lumpur Sessions Court Suit No.: WA-A52NCvC-545-07/2020
Colin Andrew Pereira ...Plaintiff
Goh Yi-Kheng ...Defendant

We refer to the above matter and your letter dated 6/11/2020.

Kindly note that the issue of an amicable settlement was raised by the learned Judge and not by our Client. Our Client was merely following up on the said suggestion.

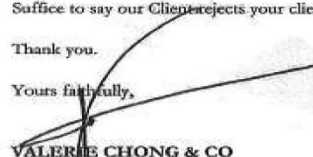
We do not propose to address the issues raised in your letter as they are irrelevant to the issue of settlement and will be addressed during the trial. Be that as it may, our Client is indeed bemused by your client contending that she looked up to our Client but at the same time contending that our Client was an "absolute bully".

In fact, when it comes to your client's modesty, your client can be rest assured that your Client's conduct in our Client's legal firm's library will be exposed during the trial.

Suffice to say our Client rejects your client's proposal.

Thank you.

Yours faithfully,


VALERIE CHONG & CO

No. 3-92, The Scott Garden, Kompleks Rimbun Scott, 259 Jalan Kelang Lama, 58000 Kuala Lumpur, Malaysia
Tel: 03-27320275 Fax: 03-27320276 Mobile: 012-6553456 Email: vc@valeriechong.com
Business hours: Mon - Thurs: 0900 - 1800; Fri: 0900 - 1500
www.valeriechong.com

FINDINGS AND ANALYSIS

Striking out under 0 18 r 19 of the ROC

[12] The principle for striking out of pleadings pursuant to 0 18 r 19 of the ROC is well settled, see *Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd* [1993] 4 CLJ 7; [1993] 1 MLRA 611; [1993] 3 MLJ 36; [1993] 2 AMR 1969, *Sim Kie Choon v. Superintendent of Pudu Prison & Ors* [1985] CLJ (Rep) 293, [1985]

1 MLRA 167; [1985] 2 MLJ 385; ***Middy Industries Sdn Bhd & Ors v. Arensi Marley (M) Sdn Bhd*** [2013] 3 MLRA 114; [2013] 3 MLJ 511 and *Gasing Heights Sdn Bhd v. Aloyah bte Abd Rahman & Ors* [1996] 2 MLRH 631; [1996] 3 MLJ 259; [1996] 3 CLJ 695; [1996] 3 AMR 3000).

- [13] In ***Indah Desa Saujana Corp Sdn Bhd & Ors v. James Foong Cheng Yuen, Judge, High Court Malaya & Anor*** [2008] 2 MLJ 11, the Court of Appeal deliberated of what constitute abuse of the process -

Abuse Of The Process

[80] *The court has an inherent jurisdiction to prevent an abuse of its process: Raja Zainal Abidin Raja Hj Tachik & Ors v. British-American Life & General Insurance Bhd* [1993] 3 CLJ 606; [1993] 1 MLRA 372; [1993] 3 MLJ 16 SC; [1993] 2 AMR 2073.

[81] *Illustrations of an abuse of the process of the court include:-*

(a) *An intention to embarrass the defendants: Ansa Teknik (M) Sdn Bhd v. Cygal Sdn Bhd* [1989] 4 MLRH 80; [1989] 2 MLJ 423; or

(b) *Where the process of the court has not been used in a bona fide manner and has been abused: Hadi Hassan v. Suria Records Sdn Bhd & Ors* [2004] 8 CLJ 225; [2005] 1 MLRH 11; [2005] 3 MLJ 522; [2005] 5 AMR 235.

[82] *The categories of abuse of process of the court are never closed and will certainly proliferate pursuant to the myriad of circumstances available from the factual matrix found in each particular case."*

- [14] In *Serac Asia Sdn Bhd v. Sepakat Insurance Brokers Sdn Bhd* [2013] 6 CLJ 673; [2013] 5 MLRA 175; [2013] 5 MLJ 1; [2013] 4 AMR 385 (FC), it was held that '*where the claim on the face of it is obviously unsustainable, the claim should be struck out*'.
- [15] It was submitted by the Defendant's Counsel that a claim for libel is *prima facie* unactionable if a 'scandalous' statement was not published to a third person besides the Plaintiff and the Defendant (See *S Pakianathan v. Jenni Ibrahim* [1988] 2 MLJ 173 (SC); *Dato' Sri Dr Mohamad Salleh bin Ismail & Anor v. Nurul Izzah bt Anwar & Anor* [2021] 2 MLJ 577 (FC); *Lim Lip Eng v. Ong Ka Chuan (as a public officer of a society registered as Malaysian Chinese Association)* [2022] 4 MLJ 454 (FC); *Federal Land Development Authority & Anor v. Tan Sri Hj Mohd Isa bin Dato' Hj Abdul Samad & Ors* [2022] 7 MLJ 883; *Ayob Bin Saud v. Ts Sambanthamurthi* [1989] 1 MLJ 315).
- [16] Further, in *S Pakianathan* (*supra*) the Supreme Court held-
- "[12] In order to constitute publication, the defamatory matter must be published to a third party, and not simply to the plaintiff. By publication is meant the making known of the defamatory matter, after it has been written, to some person other than the person of whom it is written. The uttering of a libel to the party libelled is no publication for the purposes of a civil action: *Wennhak v. Morgan* [1880] 20 QBD at p 637. A plaintiff will not, as a rule, be permitted to wait until after discovery before naming the persons to whom a libel was published: *Barham v. Lord Huntingfield* [1913] 2 KB 193, CA."
- [17] This Court observed that the Impugned Letter was not published to any third party other than the Plaintiff' solicitors being the lawyer representing the Plaintiff in the KLSC Suit. The Plaintiff and his Solicitors, thus, represent the same entity in the legal proceedings.

The law is clear that the relationship between Solicitors and client is founded on contract, agency and fiduciary principles' as deliberated in the case of ***Majlis Peguam Malaysia v. Lim Yin Yin [2018] MLJU 986*** where the Court of Appeal held-

"[14] Be that as it may, what distinguishes an advocate and solicitor from other professionals? Put simply, an advocate and solicitor is a person who is legally qualified to manage matters in law for others. As such, when a person engages an advocate and solicitor, he places his confidence, good faith, reliance and trust in the advocate and solicitor, whose aid, advice or protection is sought in some matter. Recognising the intricate solicitor-client relationship, for the protection of the client the law enjoins the advocate and solicitor from disclosing any communication made to him by or on behalf of his client unless the client gives his express consent: s 126 of the Evidence Act 1950."

[18] Therefore, this Court finds that on this point alone, the claim by the Plaintiff is not sustainable as the Impugned Letter was not published to any third party other than the Plaintiff' solicitors only and for the purpose on an ongoing proceedings.

Limited Publication

[19] The Impugned Letter was written by the Defendant's solicitors to the Plaintiff's solicitors on a without prejudice basis, and was meant only for the Plaintiff's Solicitors with limited audience. The Impugned Letter was even addressed to specific solicitors having conduct of the Plaintiff's matter in the KLSC Suit, to the exclusion of anybody else in the Plaintiff's solicitors' firm.

[20] The question is whether it is proportionate, on a cost-benefit analysis, for this suit to go to trial by analysing the damages the

Plaintiff may receive if he succeeded based on the extend and impact of the publication of the Impugned Letter?

- [21] The principle on limited publication was laid down in the English Court of Appeal case of ***Dow Jones & Co v. Jameel [2005] EWCA Civ 75***. In that case, the impugned article was only published to 5 people. The English Court of Appeal held that the harm done to the claimant's reputation by the said publication was minimal and even if the claimant succeeded in his claim, the amount between damages and the cost of defamation would be out of proportion since the damage suffered by the claimant was minimal.
- [22] ***Jameel*** (*supra*) was followed in ***Chan Tse Yuen & Co v. Yap Chin Gaik, Elaine & Ors [2017] MLJU 1459***, where the Court held-

"[127] The next point is whether the suit should be struck out because of the limited publication to Messrs Chew Biman only. In so far as there was publication only to Messrs Chew Biman, the question is whether it is proportionate, on a cost-benefit analysis, for this suit to go to trial.

*[128] The cost-benefit calculation is done by analyzing the damages that a plaintiff may receive in the event he succeeds at trial, which is in turn analyzed premised on the extent of publication of the defamatory words. In Jameels case, the defamatory words were published to five people, one of whom was the plaintiff's solicitor, and another three who were persons associated with the plaintiff. The English Court of Appeal struck out the plaintiffs claim on the basis that damages, if awarded, would be a small amount, which would have been disproportionate to the cost of trial. The approach in Jameel has since been affirmed in our jurisdiction in *Sulaihah Maimunni v. UEM Builders Bhd & Anor [2012] MLJU 1088* which struck out a defamation suit by adopting the same approach. There is no doubt at all that publication was limited*

to Messrs Chew Biman who, much like the case in Jameel, is of the same camp with the plaintiff as he was and still is the plaintiff's solicitor. Therefore, following Sulaihah's case, the present suit should be struck out for the same reasons."

[23] This Court finds that the Impugned Letter was limitedly published to the Solicitors of the Plaintiff and no one else, and based on the limited publication which would be disproportionate to the cost of trial, if awarded, thus, warrants the striking out.

Absolute Privilege

[24] In ***BHLB Trustee Bhd & Anor v. HSBC (M) Trustee Bhd & Ors*** [2006] 4 MLJ 48, the Court held-

"[15] ... Legally speaking, the defence of absolute privilege is a complete bar to an action for defamation. This is so notwithstanding how false or malicious the words complained of may be. The defence of absolute privilege is different from that of qualified privilege. Absolute privilege cannot be destroyed or watered down by malice. Examples of absolute privilege may be stated as follows:

- (1) Parliamentary privilege: statements made in the course of parliamentary proceedings by the Members of Parliament.*
- (2) Judicial privilege: statements made in the course of judicial proceedings which include certain communications passing between the legal advisers and their clients.*
- (3) Official privilege: this covers statements made in the course of state proceedings.*
- (4) Statutory privilege: this covers statements of other public officials which are protected by statute.*

- (5) *Reports of Parliamentary proceedings in whatever forms.*
- (6) *Newspaper reports of judicial proceedings.*
- (7) *The question of public policy: it bestows immunity from suit upon a defamatory publication."*

(Emphasis Added)

[25] In the case of ***Chan Tse Yuen & Co*** (*supra*), it was held-

"[11] It is now settled law that statements made in the course of judicial proceedings or statements contained in documents made in judicial proceedings are absolutely privileged (Coopers & Lybrand v. Singapore Society of Accountants & Ors [1988] 3 MLRH 414; [1988] 3 MLJ 134 at pp 136 to 137)."

[26] In this instant Suit, the defence of absolute privilege was pleaded on the basis that it was a communication pertaining to the KLSC Suit.

[27] Does the contents of the Impugned Letter were statements made in the course of judicial proceedings? This Court finds that it is in the affirmative based on the fact that there were strings of letters exchanged between solicitors pertaining to the KLSC Suit and the Impugned Letter was one of it.

[28] In this context, the Court in ***Chan Tse Yuen & Co*** (*supra*), further held-

"[16] It is ideal to remember that the legal consequence of absolute privilege is this. That whether the words are relevant or irrelevant, true or false, malicious or bona fide, the action must be regarded as baseless and frivolous (Fitzherbert v. Acheson [1921] NZLR 265, 269, SC).

[17] In Re Lilley; Ex parte Roney [1892] 61 LT 270, CA, a letter of complaint in the statutory form against a solicitor in respect of his professional conduct was held to be protected by absolute privilege in defamation proceedings. Likewise here, the impugned letter written by the first defendant is also protected by absolute privilege."

[29] The Court in ***Chan Tse Yuen & Co (supra)*** made further remark on the issue of absolute privilege and held-

[101] In so far as Roger Wongs case is concerned, it is my view, that it is a momentous decision in defamation jurisprudence. But it appears to have gained traction in a rather incremental fashion. It is a case which examines the juridical basis for absolute privilege and its necessary conceptual boundaries. It is therefore relevant in the present context to refer the following erudite passages from the judgment of Geoffrey Ma JA (as he then was) (presently Chief Justice of the Hong Kong Court of Final Appeal) where he said: -

*"23. The defence of absolute privilege is, as the name suggests, absolute in nature. It will provide a complete answer to any claim for defamation even where the relevant remarks are completely untrue or made with malice. It is precisely because of the intrusive nature of this defence into what otherwise would be a person's right to sue for defamation that the courts have traditionally been quite guarded in its application. In *Royal Aquarium and Summer and Winter Garden Society Ltd v. Parkinson* [1892] 1 QB 431, at 451, Lopes LJ remarked in relation to absolute privilege that, 'It is, however, a privilege which ought not to be extended'.*

24. *It would be wrong to say that the categories of absolute privilege are closed and one can see how absolute privilege has been made to apply to situations not envisaged at the time of the Royal Aquarium case (see for example the application of the defence to statements made prior to legal proceedings). Nevertheless, it is important to bear in mind, when considering this defence, the underlying rationale.*

25. *This is of course the public interest. As Devlin LJ said in Lincoln v. Daniels [1962] 1 QB 237, at 255, But absolute privilege is granted only as a matter of public policy and must therefore in principle be confined to matters in which the public is interested and where therefore it is of importance that the whole truth should be elicited even at the risk that an injury inflicted maliciously may go unredressed.*

26. *As to the defence of absolute privilege in judicial proceedings, which is relevant in the present case, the public interest consists of the administration of justice. As Brett LJ said in Munster v. Lamb [1883] 11 QBD 588, at 604, 'the rule of law is that what is said in the course of the administration of the law, is privileged'.*

27. *Thus, in considering questions of absolute privilege in relation to judicial proceedings and the acts of those involved in it (among them judges, barristers and solicitors), it is I think important that one bears in mind at all times this aspect of the administration of justice.*

28. *There is a danger when having regard to the three categories of absolute privilege identified by Devlin LJ in Lincoln v. Daniels at 257, to analyse them as words in a statute. Such an approach is apt to give rise to confusion*

and unnecessary difficulties. Esoteric and ultimately quite pointless questions arise such as whether documents brought into existence for the purpose of the proceedings (second category) must also be 'practically necessary' (third category).

29. *In my view, as long as it is borne in mind that the underlying theme is the administration of justice and that the three categories can and often do overlap, they provide in most cases a ready answer to any questions involving absolute privilege.*

.....

31. *In the present case, for the reasons given by Le Pichon JA, I share the view that the letter fell within the second and third categories. **In my view, solicitors' correspondence (such as the letter) made in the course of legal proceedings which set out a party's position or stance in relation to any part of the proceedings, advance the administration of justice and are thus absolutely privileged. Such solicitors' correspondence are also 'practically necessary' for the same reason.***

*It will be recalled in the passage quoted from Devlin LJs judgment in *Lincoln v. Daniels* at 263, that it is practically necessary for a litigant to engage a solicitor. Solicitors, too, have a crucial role to play in the administration of justice."*

(pp 135-136 of the judgment)"

(Emphasis added)

[30] It is notable that in ***Chan Tse Yuen & Co (supra)***, the Court allowed the striking out application by the Defendants which was predicated

on the defences of absolute privilege, qualified privilege and/or on the basis that the suit should be struck out as being an abuse of process. See also the Court of Appeal case in ***Nor Hazliza Ismail & Anor v. Mohamed Yusoff Shaik Madar [2024] MLJU 270***, which affirmed the decision of the Sessions Court that allowed the Defendant's application to strike out a defamation suit.

[31] In ***Noor Azman bin Azemi v. Zahida bt Mohamed Rafik [2019] 3 MLJ 141*** it was held as follows:

"[24] ...When the defence of absolute privilege applies in certain situations, it offers complete protection and the defamation action will be struck out for disclosing no reasonable cause of action. If the occasion is absolutely privileged, then it will be complete defence to a defamation action even if the statement was actuated by malice..."

[32] This Court is of the view that since the Impugned Letter was issued by the Defendant's solicitors to the Plaintiff's solicitors within the context of an ongoing litigation that is the KLSC Suit, it accordingly enjoys the protection that is afforded by the defence of absolute privilege.

[33] As rightly pointed out by the Defendant's counsel, the defence of Absolute Privilege cloaks correspondences exchanged in the course of ongoing legal proceedings. It is clear that the recipient of the letter was the Solicitors' firm that represented the Plaintiff in the KLSC Suit.

[34] Thus, the Impugned Letter falls squarely under the defence of Absolute Privilege based on Common Law.

[35] In the case of ***S Ashok Kandiah & Anor v. Dato' Yalumallai Muthusamy & Anor [2010] MLJU 2218 (CA)***, it was held-

"[16] It is ideal to remember that the legal consequence of absolute privilege is this. That whether the words are relevant or irrelevant, true or false, malicious or bona fide, the action must be regarded as baseless and frivolous (Fitzherbert v. Acheson [1921] NZLR 265, 269, SC).

[17] In Re Lilley; Ex parte Roney [1892] 61 LT 270, CA, a letter of complaint in the statutory form against a solicitor in respect of his professional conduct was held to be protected by absolute privilege in defamation proceedings. Likewise here, the impugned letter written by the first defendant is also protected by absolute privilege.:".

[36] The Impugned Letter was addressed to specific solicitors from the Plaintiff's solicitors' firm and not to anyone else and also it was on a 'Without Prejudice' basis. The law on 'without prejudice' correspondence is clear (see **Hadi Bin Hassan v. Suria Records Sdn Bhd & Ors [2005] 3 MLJ 522**).

[37] Obviously, this defamation claim against the Defendant, was an attempt for a payback attack for the issuance of the Impugned Letter which contained allegations pertaining to the Plaintiff's conduct *vis-a-vis* matters which are the subject of an ongoing legal proceedings.

CONCLUSION

[38] In light of the foregoing, after having appraised the facts adduced by all the parties through the affidavits and exhibits, and having considered the submissions by the learned counsels for both parties, this Court finds that it is sufficient to determine at this juncture that the Defendant's application under Enclosure 9 for striking out which grounded on the no reasonable cause of action and an abuse of process satisfies the **Bandar Builder's** test, and thus, be allowed. The claim by the Plaintiff is, in the circumstances, obviously unsustainable. The Court of Appeal in *Harapan Permai Sdn Bhd v.*

Sabah Forest Industries Sdn Bhd [2011] 1 CLJ 285, [2010] 3 MLRA 37; [2011] 2 MLJ 192 held that an '*abuse of the process of the court*' arises where the process of the court has not been used in a *bona fide* manner and has been abused (*Raja Zainal Abidin Raja Haji Tachik & Ors v. British-American Life & General Insurance Bhd* [1993] 3 CLJ 606; [1993] 1 MLRA 372; [1993] 3 MLJ 16; [1993] 2 AMR 2073, SC; *Ng Kian Chong & 2 Ors v. Saw Seng Kee* [1994] 4 CLJ 857; [1994] 3 MLRH 30; [1994] 3 MLJ 691; [1994] 3 AMR 2651).

[39] Therefore, the Plaintiff's claim is dismissed with cost. Hence, it is not necessary for this Court to deal with Enclosure 11 as the Suit is struck off in total.

Dated: 8 APRIL 2024

(SUZANA MUHAMAD SAID)

Judicial Commissioner Of The High Court

Ncvc 1

Kuala Lumpur Court.

Counsel:

For the plaintiff – M/s Lily Chua & Associates

No. 65-1-10,

Fadason Business Centre,

Jalan 1/17, Taman Fadason,

52000 Kuala Lumpur

For the defendant – M/s Jailani & Sheni

236C, Jalan Bandar 13,

Taman Melawati,

53100 Kuala Lumpur