

CANADA / JUDGMENT

Zhao v. Corus Entertainment Inc.

2020 BCSC 1533

COURT

Supreme Court of British Columbia

DECIDED

16 October 2020

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2020 BCSC 1533 Zhao v. Corus Entertainment Inc.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Zhao v. Corus Entertainment Inc.,

2020 BCSC 1533

Date: 20201016

Docket: S199486

Registry: New Westminster

Between:

Zheng Zhao

Plaintiff

And

Corus Entertainment Inc., Lynda Steele, Justin "Drex" Wilcomes,

Andrew Wilkinson, Ming Pao Newspapers (Canada) Ltd., Sing Tao Newspaper

Canada Ltd., Coast Mountain Publishing & Media Management Corporation,

WESTCA Technology Ltd. and KZG Times Media Inc.

Defendants

Before: The Honourable Mr. Justice Milman

(via videoconference)

Reasons for Judgment

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Place and Dates of Summary Trial:

Vancouver, B.C.

September 14-16, 2020

Place and Date of Judgment:

New Westminster, B.C.

October 16, 2020

Table of Contents

I. Introduction. 4

II. The Facts. 6

A. The Foreign Buyer Tax. 6

B. Mr. Zhao and his Proposal 8

C. The CKNW Broadcasts and Article. 9

D. The Other Impugned Publications. 16

i. The Ming Pao Article. 16

ii. The Sing Tao Article. 20

iii. The Coast Mountain Articles. 20

iv. The WESTCA Article. 21

v. The KZG Article. 21

E. The Impact of the Publicity on Mr. Zhao. 22

III. The Pleaded Claims and Defences. 22

IV. The Defendants' Applications for Summary Trial. 28

V. The Law of Defamation. 30

A. The Elements of the Tort of Defamation. 30

B. The Defences. 30

i. Justification. 31

ii. Fair Comment 32

iii. Qualified Privilege. 33

iv. Malice. 35

VI. Discussion. 36

A. Suitability for Summary Trial 36

B. The Application of the Corus Defendants. 39

i. Was Mr. Zhao identifiable?. 39

ii. Are the defences of justification and fair comment available?. 41

C. The Application of Mr. Wilkinson. 46

D. The Applications of the Remaining Defendants. 48

VII. Summary and Conclusion. 49

I. Introduction

- [1] In December 2016, the plaintiff, Zheng Zhao, then a newly-licensed realtor, came up with what appeared to him to be a promising idea for a new line of business. The so-called "foreign buyer tax" had recently been put in place and he thought he had found a loophole in the legislation that he could exploit to help foreign residents purchase real estate in British Columbia without having to pay the tax. To that end, he posted an advertisement on an online Chinese-language forum and had flyers distributed at a Burnaby shopping mall in which, for several months, he touted his proposal to the public.
- [2] Unfortunately for Mr. Zhao, there were two serious problems with his idea that bring us here today. First, his supposed loophole was, as he now acknowledges, really no loophole at all. Second, the foreign buyer tax was then, as it still is now, an incendiary issue in British Columbia's provincial politics.
- [3] That second problem was compounded by the fact that British Columbia was, by the following spring, in the midst of a provincial election. As a result, his advertisement attracted an extraordinary amount of unwanted attention. It came, in particular, to the attention of an organisation known as "HALT" (Housing Action for Local Taxpayers). One of its members, Gary Liu, took Mr. Zhao's advertised claims at face value, seeing them as yet another indication that the provincial government had failed the public in enacting badly-needed remedial legislation that was not being properly enforced and could be so easily circumvented.
- [4] Mr. Liu brought those concerns to the defendants Lynda Steele and Justin "Drex" Wilcomes, who hosted a radio talk-show on CKNW, a local Vancouver radio station operated by the defendant Corus Entertainment Inc. ("Corus"). As Ms. Steele and Mr. Wilcomes were discussing the matter on the air during their show, the defendant Andrew Wilkinson, who was then a provincial cabinet minister with the governing Liberal Party running for re-election, happened to be listening. He did not agree with what he was hearing. In particular, he disagreed with the suggestion that Mr. Zhao's scheme, as it was being described, would be permitted by the legislation. He immediately called into the show and expressed that opinion on the air. Corus subsequently published a news report on the CKNW website describing what was said on the show.
- [5] The remaining defendants are newspapers or media organisations that later picked up on the story and published articles describing or purporting to describe what was said on the show and the reaction that it subsequently received.
- [6] Mr. Zhao commenced this action because he believes that on that show and in those publications, the defendants defamed him by:
- a) misrepresenting the terms of his proposal in various ways;
 - b) falsely suggesting that he had already acted on his proposal when he had not; and

- c) unfairly branding him as a fraudster and a tax evader who would be investigated and punished as such.
- [7] The defendants each bring their own individual applications under Rule 9-7 of the Supreme Court Civil Rules, seeking to have the action dismissed as against them by way of a summary trial. They argue that, for various reasons, Mr. Zhao's claims cannot succeed.
- [8] Mr. Zhao opposes the applications. He seeks judgment in his favour, or alternatively, an order dismissing the applications on the basis that the action should at least be allowed to proceed to trial.
- [9] For the reasons that follow, I have concluded that this action should be dismissed in its entirety.

II. The Facts

A. The Foreign Buyer Tax

- [10] In the summer of 2016, rising housing prices in British Columbia, and particularly in the Lower Mainland area around Vancouver, had become a pressing problem for the provincial government. There was a widespread perception that local buyers were being priced out of the market by offshore speculators.
- [11] In order to address the problem, the government enacted amendments to the Property Transfer Tax Act, R.S.B.C. 1996, c. 378 (the "Act") that had the effect of imposing an extra 15% in property purchase tax on foreign buyers of residential property in certain communities. The amendments (new ss. 2.01, 2.02, 2.03 and 2.04) came into effect on August 2, 2016 (there have since been further amendments to those provisions, but the discussion below pertains only to the legislation that was in effect at the material time).
- [12] Pursuant to s. 2.02(2)(b) of the amended legislation, the tax was to be payable if, among other things, the transferee was "a foreign entity or taxable trustee, or both." The term "foreign entity" was defined in s. 2.01 to mean "a foreign national or a foreign corporation."
- [13] The term "taxable trustee" was defined in that same provision to mean:
in relation to a taxable transaction, a trustee of a trust in respect of which
 - (a) any trustee is a foreign entity, or
 - (b) no trustee is a foreign entity but, immediately after the registration of the taxable transaction, a beneficiary of the trust who is a foreign entity holds a beneficial interest in the residential property to which that taxable transaction relates

- [14] Newly added s. 2.04 stated as follows:

Additional tax imposed -- anti-avoidance rule

2.04 (1) In this section:

"avoidance transaction" means a transaction

- (a) that, but for this section, would result, directly or indirectly, in a tax benefit, or
- (b) that is part of a series of transactions, which series, but for this section, would result, directly or indirectly, in a tax benefit,

but does not include a transaction that may reasonably be considered to have been undertaken or arranged primarily for bona fide purposes other than for the purpose of obtaining a tax benefit;

"tax benefit" means a reduction, avoidance or deferral of tax payable under section 2.02;

"transaction" includes an arrangement or event.

- (2) For the purposes of this section, a series of transactions is deemed to include any related transactions completed in contemplation of the series.
- (3) If a transaction is an avoidance transaction, the administrator may determine the tax consequences to a transferee in a manner that is reasonable in the circumstances in order to deny a tax benefit that, but for this section, would result, directly or indirectly, from that transaction or from a series of transactions that includes that transaction.
- (4) The tax consequences to any person, after the application of this section, must be determined only through an assessment under section 18.

[15] Subsection 34(2) created a series of offences for contravention of the Act, as follows:

- (2) A person commits an offence who does any of the following:
 - (a) makes or participates in, assents to or acquiesces in the making of a false or deceptive statement in a return or record required to be made or provided under this Act, or in information required to be provided under this Act;
 - (b) in order to evade remittance of tax owing by that person, destroys, alters, mutilates, secrets or otherwise disposes of a return or record of a transferor or transferee;
 - (c) in a record or return of a transferor or transferee, makes or assents to or acquiesces in the making of a false or deceptive entry or omits or assents to or acquiesces in the omission to enter a material particular;
 - (d) wilfully, in any manner, evades or attempts to evade compliance with this Act or the regulations or remittance or payment of taxes required by this Act or the regulations.

[16] The penalties that might be imposed for committing such an offence were set out in ss. 34(5) as follows:

An individual convicted of an offence under subsection (1), (2) or (3) is liable to

- (a) a fine equal to
- (i) the minimum of the amount of tax not paid or remitted, with interest, plus

- (ii) an amount not exceeding
 - (A) \$100 000, in the case of an offence in relation to the tax imposed under section 2.02, or
 - (B) \$25 000, in any other case,
- (b) imprisonment for not more than 2 years, or
- (c) both fine and imprisonment.

B. Mr. Zhao and his Proposal

- [17] Mr. Zhao, formerly a translator, became a licensed realtor in October 2016. When he first reviewed the newly-enacted amendments to the Act set out above, he did not understand them to apply if title to the property was taken in the name of a partnership, even if one or more of the partners was a foreign national. That gave him an idea.
- [18] In December 2016, he posted what he has described as a "business proposal" on "Vansky", an online Chinese-language forum, seeking to entice prospective foreign buyers of Vancouver real estate to enter into partnership with him with a view to avoiding having to pay the tax. He also arranged for approximately 200 flyers with the same message to be distributed at a Burnaby shopping mall.
- [19] In one of his affidavits made in opposition to the defendants' applications, he summarized the essential terms of the proposal, and the rationale behind it, as follows:

A foreign buyer would form a partnership with me to buy real estate in Vancouver. The property would be bought and registered in the name of the partnership - not my own name, and the foreign buyer would pay me 3% of the purchase price - not 3% of the ownership of the property, plus a partnership fee of \$1,000 per year.

I created this business proposal based on my assumption that, since the foreign buyer tax was limited to foreign nationals, foreign corporations and taxable trusts, it should not be applicable to partnerships.

I was also under the popular impression that tax evasion and tax avoidance are different. The former is illegal by lying to the authorities while the latter is legal by minimizing taxes without breaking the law - no lying.

- [20] Without seeking legal advice, he prepared a draft agreement for prospective foreign buyers to enter into with him on those terms. In the end, he received about a dozen telephone inquiries but no one took him up on his offer before the advertisement was taken down, when he realised that his idea was, in fact, fatally flawed.
- [21] He explained the reason for his change of heart in that regard as follows:

In August 2018, I came to know that partnerships can not hold land title and partners in a partnership must register real estate in their own personal names. The Land Title Office would not sign off on any property in the name of a partnership. I realized my partnership was an illusion and would not work in the real world.

In a blow to my presumption, it came to me much later that the foreign buyer tax legislation makes no distinction between tax evasion and tax avoidance, as long as any transaction or any series of transactions would result in a direct or indirect tax benefit.

[22] In his examination for discovery, Mr. Zhao acknowledged that the sole purpose of the partnerships he had intended to form was to assist foreign buyers of Vancouver real estate in avoiding having to pay the foreign buyer tax.

C. The CKNW Broadcasts and Article

[23] When he saw Mr. Zhao's advertisement, Mr. Liu of HALT decided that something needed to be done to close the supposed "loophole" in the new legislation that Mr. Zhao and others appeared to be exploiting. He approached the media with the story and was eventually interviewed by Ms. Steele. The interview aired on April 26, 2017, as part of the talk-show that she hosts with Mr. Wilcomes on CKNW.

[24] In introducing Mr. Liu to the listeners, Ms. Steele began by saying that HALT had "uncovered what it believes to be a loophole that is widely accessible to all foreign buyers ". In the ensuing discussion between Ms. Steele and Mr. Wilcomes on the topic, they expressed the following views, among others:

- a) there appear to be too many loopholes in the new legislation;
- b) the government, at all three levels, must not be properly overseeing the new regime; and
- c) according to HALT, "someone named Mr. Zhao" had circulated an advertisement "offering up a partnership offer to prospective foreign buyers" that "allows them to dodge the 15 percent foreign buyer tax by essentially teaming up with a local."

[25] Mr. Liu then described his understanding of Mr. Zhao's proposal, as follows:

- a) Mr. Zhao "will be paid 3 percent of the closing cost of the purchase, plus one thousand dollars per month, or \$1,000 per year as a continuing partnership fee";
- b) the foreign buyer "will be able to purchase a home in the metro Vancouver area as a local legal person"; and
- c) the transaction "will be registered as a local legal purchase" that "will not be triggering the 15 percent tax".

- [26] Ms. Steele then summarised her understanding of the scheme that Mr. Liu had just described, as follows: "[d]uring the partnership, the foreign buyer is able to live in the house, decorate it, renovate it, enjoy it, rent it out basically they dodged the 15 percent."
- [27] To that point, the terms of Mr. Zhao's advertised proposal had generally been described accurately in their conversation. But then, Mr. Wilcomes asked Ms. Steele: "So essentially, you buy the house and you own 97 percent of the house. Is that how this would work?" Ms. Steele confirmed that it was. Mr. Wilcomes then asked if that meant that when the property was sold, Mr. Zhao would get 3% of the sale proceeds. Again Ms. Steele confirmed that to be so. In that exchange, the hosts appear to have inferred, incorrectly, that Mr. Zhao intended to take a 3% ownership interest in the property for himself, when in fact he intended to allocate ownership entirely to the new partnership and the proceeds of any subsequent sale entirely to the foreign buyer.
- [28] Ms. Steele then played a clip from the interview of Mr. Liu in which she asked Mr. Liu if he thought Mr. Zhao's proposal was legal. Mr. Liu answered that "[a]s far as we know that everything that's written in these offers are perfectly legal." She asked him if he thought the foreign buyer tax was, in light of that fact, a "kind of paper tiger" and he agreed that it was.
- [29] Mr. Wilcomes then asked Ms. Steele if she thought the scheme amounted to tax fraud. Ms. Steele responded that she did not think so, because, according to Mr. Liu, it was "legal the way this is done." Ms. Steel and Mr. Wilcomes then complained about the lack of government oversight and the failure to close such loopholes. They also noted their failed attempt to elicit a response to their queries from the provincial Ministry of Finance.
- [30] After a break, Mr. Wilcomes again posed the question as to whether Mr. Zhao's scheme would amount to tax fraud. Ms. Steel responded she did not know if it did, and proceeded to interview an economist.
- [31] Later that same day, they returned to the topic once more. Mr. Wilcomes described his understanding of Mr. Zhao's proposal in the following terms:

Linda is the foreign buyer, she comes in, she wants to buy a house but because she's a foreign buyer she [has] got to pay that 15 percent tax. I'm a permanent resident. You could partner with me. I retain 3 percent of the ownership of the house and you have the rest of the house, you gotta pay me a fee as well and your name is never sort of involved. Now, to me that sounds like some type of fraud. It goes against the spirit in why that tax was set up to begin with.

- [32] After replaying parts of their earlier conversation with Mr. Liu, they introduced Mr. Wilkinson, who had just called into the show himself. Ms. Steele asked him why he disagreed with HALT. Mr. Wilkinson responded as follows:

Well, there are a few layers to this. You know, I was there when the legislation was created and I practised law for 25 years - but I also make clear I am now a retired member of [the] law society so I am not speaking as a lawyer here. The legislation contains what's known as a generalized anti-avoidance provision, which is the same one that's used by Revenue Canada and has been

successfully prosecuted in the courts, so that anybody who tries to pull the trick that was described earlier by the man from HALT is subject to prosecution and the penalties are quite severe. It also provides that the tax is payable regardless of these avoidance provisions that individuals may engage in.

And there's another layer to this, of course. The land title system in British Columbia provides that the owner registered in the title is the owner. And so if the plan that he described the person with the 97 percent cash in the deal but no name on that title, the person with the 3 percent is entitled to say: joke's on you Mr. 97 percent, I own the place. Go ahead and sue me in a British Columbia court and see if you can prove that your fraudulent transaction is going to result in you having any claim to the title.

The third layer of this is that all of these transactions of course have to be processed through a notary or a lawyer and no lawyer is going to risk their career and a disciplinary action by the Law Society to assist in any kind of transaction like this. So the smarty pants person might say: well, it would be an offshore deal and somehow they would have it papered offshore and the BC lawyer never know about it. Well then it's going to be up to these people to try and enforce it in a BC court. And good luck with that when they come in with a fraudulent transaction. All they are going to do is find the Mr. 97 percent has lost all his money and is about to be prosecuted for tax evasion.

So you have to think how the cash flows here and the various check[s] and balances along the way. It is highly unlikely a transaction like this would make its way through the system. If it did, Mr. 97 percent is putting himself at risk of losing everything for the sake of saving some tax.

[33] After a further exchange, Ms. Steele asked Mr. Wilkinson:

Do you think it's possible that this Mr. Zhao who has put this ad on the Vansky website that is maybe a fraudster trying to rope in some naïve foreign investor who thinks that's a way for him to get around the tax?

[34] Mr. Wilkinson responded as follows:

Well, at the end of the day, both that gentleman and Mr. 97 percent are going to be very unhappy because they'll probably end up with nothing and with the prosecution on their hands - both of them, not just one of them.

[35] Mr. Wilcomes then asked Mr. Wilkinson where Mr. Liu should take his complaint if he believed that he had evidence of such a scheme. Mr. Wilkinson responded, "Ministry of Finance. The RCMP."

[36] After Mr. Wilkinson signed off, the hosts continued their own discussion on the topic. Ms. Steele added this:

BC Liberal candidate for Vancouver-Quilchena and basically good on him was listening to the radio, called in, because he heard our conversation with Gary Liu from HALT and he said your allegation that there was some sort of loophole that he had discovered in a way for foreign buyers

that team up with a local so that they didn't have to pay for the foreign buyer tax. You know it seemed reasonable to me and I've kind of heard a little bit about that in the past. But Andrew though, no, no, no, that's not the case he was part of the group that drew up the legislation and they had made sure that there was not way that that could happen. But I'll tell you what, there's a lot of people laundering a lot of money in this city and there's a lot of people not paying their fair share of taxes who are foreigners. And I'm not saying what country, whatever country. So it's not out of the question that someone would lie and use a local to try to skirt the rules.

[37] Overnight, (on April 27, 2017), Corus posted a news report on the CKNW website (the "CKNW Article") with a link to the audio-recording of the show that had aired the previous day. The CKNW Article stated as follows:

A housing advocacy group is calling foul after finding a person allegedly trying to help foreign real estate investors duck out of the 15 per cent tax. Housing Action for Local Taxpayers' Gary Liu says a person named 'Mr. Zhao' will create a partnership with a foreigner for the price of 3 per cent of the property, and \$1,000 per year.

'Any purchase that's made by this agreement under this process will be registered as (a) local purchase. So any effort to investigate or any effort to take data will be completely useless.'

Liberal candidate Andrew Wilkinson says anyone who tries these kinds of tricks is subject to prosecution with heavy penalties.

Liu and Wilkinson were guests on CKNW's Steel and Drex. The full segment can be heard below.

[38] On April 29, 2017, Mr. Zhao saw the Ming Pao Article (described below) while at a local library and later found the CKNW Article online. He listened to the online recording of the April 26, 2017 show. Unhappy with how his proposal had been presented, he sent an email to Corus to complain. He requested a meeting with the two hosts "to set the record straight."

[39] CKNW's Executive Producer, Kathryn Stewart, responded to the email by inviting Mr. Zhao to appear on the show himself to tell his side of the story. He agreed to do so. The resulting interview was aired on May 5, 2017. Although Mr. Zhao allowed the hosts to review a copy of his template partnership agreement while he was there, he refused to let them keep a copy.

[40] The evidence before me conflicts on whether the interview was aired intact and in its entirety. Mr. Zhao has deposed that, in his view, the broadcast on the date did not accurately reflect what he said, but was, rather, the product of "dishonourable and deceitful editing" through which the discussion was unfairly distorted. The effect of that editing, according to Mr. Zhao, "was to portray me to the audience as having low personal ethical standards and being guilty of making home ownership unaffordable for the local people in Metro Vancouver."

[41] Ms. Stewart denies the allegation that the interview with Mr. Zhao was altered in any way before it was aired. She has deposed as follows:

Regarding Mr. Zhao's suggestion that there are 'out-take' portions from his May 5, 2017 interview that were not broadcast or posted to the website, there are none. I recall being personally involved and, given Mr. Zhao's complaint, we at Corus made a point of ensuring that everything he said in his interview setting out his side of the story was broadcast and posted to the website. The May 5 interview was broadcast and posted exactly as it occurred in studio. Mr. Zhao's claim that it was altered in any way is false.

[42] According to the transcript of the May 5, 2017 show that Corus has produced, the show began with Ms. Steele summarising the background to the issue as follows:

last week we told you about this new business that was showing up in Metro Vancouver. We're talking about basically legal partnerships apparently where people who live here Canadians or permanent residents I guess set up a corporate entity that allows foreign buyers to then skirt around the foreign buyer tax in Vancouver. And of course the local guy gets a fee. Right. This is how it works. And this all started with an ad posted by a Mr. Zhao in Vancouver to the popular Vansky website with the sort of details about this partnership agreement.

[43] She described Mr. Zhao's reaction as follows:

He wasn't very happy with Andrew Wilkinson's take on what the situation was, saying his partnership system is totally above board and legal. He says neither the name of a foreign buyer nor his own name as a local guy setting it up would appear on the title. So there's no way he could be bilking a foreign investor and taking the property. He said he could not be prosecuted by the general anti-tax avoidance clause because the foreign buyer tax law wasn't written to tax legal partnerships. Even if one of the partners is a foreign buyer.

[44] At the outset of the interview, Mr. Zhao stated that he agreed with the hosts' assessment that the proposed partnership arrangement that was discussed on the show the week before was "a tax evading shenanigan designed to bilk innocent foreign buyers and should be subject to prosecution." The arrangement described was entirely different, however, from the arrangement that he was actually proposing. As he put it:

everything you said, everything that has been said in your program last week was not true. Everything that you said, everything that has been aired on this program about the original ideas of my partnership is fabricated.

[45] Ms. Steele then asked Mr. Zhao to elaborate on what was untrue about what they had said. Mr. Zhao responded as follows:

What I have actually advertised to the entire world is that a foreign buyer and a Canadian person will establish a partnership, which is a perfectly legal structure under the Partnership Act of British Columbia. This partnership has a perfect legal standing under the British Columbia law. The additional property transfer applied to three types of foreign entities: foreign individuals, foreign corporations and taxable trusts. Since the tax doesn't apply to partnership[s], then the partnership is perfectly legal to purchase real estate without paying the additional property transfer tax.

[46] Ms. Steele then asked what was in it for him. Mr. Zhao responded as follows:

I have a private partnership agreement with potential foreign buyer. According to the agreement, the foreign buyer would agree to pay me 3 percent of the total value of the property that he purchased and he will pay the full price for the property. He will pay all the fees, taxes, costs, expenses related to the purchase, holding and the eventual disposal of that property. And in turn, he is able renovate, to occupy, to use, to enjoy, to rent out the property at his discretion without my interference and he has got to keep all the economic benefits of any rental income during that holding of the real estate property. The only name that appears on the title is the partnership, not myself nor the foreign buyer.

[47] In the remainder of the interview, the hosts pressed Mr. Zhao on whether he was nevertheless circumventing the spirit if not the letter of the law, and thereby contributing to the problem that the legislation was intended to address. He refused to answer their question as to whether he had actually created any such partnerships. They later questioned whether the Real Estate Council believes "everything is still above board."

[48] After the interview, there was a further discussion, off air, among Mr. Zhao, one or both of the hosts, Ms. Stewart and a fourth individual. There is conflicting evidence before me as to what was said at that time. Mr. Zhao has deposed that in response to his earlier complaints, Ms. Stewart, "twice offered to publish a full page retraction on CKNW website the following day." According to him, when asked why Corus had not contacted him to get his side of the story, Ms. Stewart responded "that they had simply forgotten to do so." In her affidavit, Ms. Stewart denies having made those statements. By her account, the conversation consisted primarily of Mr. Zhao's repeated demands for immediate monetary compensation.

[49] I will refer to the programs that were aired on April 26 and May 5, 2017 as the "CKNW Broadcasts."

D. The Other Impugned Publications

i. The Ming Pao Article

[50] The defendant Ming Pao Newspapers (Canada) Ltd. ("Ming Pao") is a media company that publishes exclusively in Chinese characters. Its publications include the "Ming Pao Daily News" and the "Canadian Chinese Express" both of which are available digitally and in print. On April 29, 2017, Ming Pao published an article in both of those publications reporting on Mr. Zhao's advertised proposal and the reaction to it (the "Ming Pao Article").

[51] The contents of the Ming Pao Article, using the translation that is attached to Mr. Zhao's affidavit, can be summarised as follows:

- a) HALT has found that "someone is flagrantly running an ad on a Chinese-language website, claiming to have created a plan to use a partnership to assist in property purchase so as to help overseas buyers evade the foreign buyer tax and to take 3% of the house price as profits";

- b) HALT "believes that this reflects some loopholes in the current policies";
- c) "Andrew Wilkinson responds by saying that the above practice is not a loophole, but a direct illegal act" and that "those who get implicated in such transactions would be prosecuted";
- d) "Gary Liu, the representative for HALT, alleges on social media that a man named Mr. Zhao runs an ad with detailed information on a Chinese language website, entitled 'How to Avoid 15% Foreign Buyer Tax?' The ad introduces his partnership structure for helping potential foreign buyers avoid the foreign buyer tax";
- e) "According to the details for cooperation for both parties listed in the ad: a buyer can, as a partner, join Mr. Zhao's registered partnership enterprise at the time of property purchase and then buy a property in the name of the partnership. After the purchase, the buyer shall pay Mr. Zhao 3% of the purchase price with additional annual membership fee of \$1,000";
- f) Andrew Wilkinson responded to this newspaper's inquiries by stating that:
 - i. "the proposed transactions on that ad are illegal and both parties will face legal consequences; it is not a 'loophole' in the system";
 - ii. "the investigators on the Ministry of Finance will track, audit and prosecute those cases under suspicion";
 - iii. "the public should also report to the Ministry of Finance or the police if they find any house purchase with suspected tax evasion through illegal means";
 - iv. "anybody involved in the illegal activities will likely face losses or even criminal responsibilities";
 - v. "both parties in the transaction may lose everything in the end"; and
 - vi. he "makes no comment as to whether the ad content shows any attempt to commit frauds, but he points out that both parties would end up with nothing, instead they would face a heap of prosecution charges";
- g) Alexander Ning, a notary in Vancouver, states that:
 - i. "it is illegal, and not a loophole for a Canadian citizen or immigrant acting in the name of a partner to help overseas buyers to skirt 15% foreign buyer tax that they should pay";
 - ii. the foreign buyer will "definitely sustain enormous losses in case of any legal dispute";
 - iii. "quite a number of potential foreign buyers have checked with him if they could partner with Canadian citizens or immigrants to purchase houses";
 - iv. he has not encouraged them because "there would be serious legal disputes in case of investigation by the provincial government or the Canada Revenue Agency and the legal interests of the foreign buyer would not be protected";

v. Canadian local residents who in the name of foreign partners help foreign buyers avoid the 15% foreign buyer tax are suspected of illegal activities:

vi. regardless of how registration is done, only the owner registered with the Land Title Office will be recognized as the property owner under the law;

vii. the foreign buyer who is not registered on title will have no protection under the law; and

viii. in the event of an investigation by the Canada Revenue Agency, "all participants in suspected tax evasion will be punished, including paying two times the payable tax and the corresponding interests";

h) Mr. Zhao says that:

i. a "partnership" is not an enterprise or a company and is therefore exempt from the tax;

ii. he does not think there is anything wrong in helping overseas buyers; and

iii. he has been receiving many phone calls from potential Chinese buyers but refuses to disclose if any property has been purchased successfully by such means, nor does he specify if the lawful interests and rights of the property owners can be guaranteed after the purchase of the property by the foreign buyer through this method.

[52] In conjunction with the Ming Pao Article, Ming Pao also published a copy of Mr. Zhao's original advertisement, but with his name, telephone number and email address redacted.

[53] Mr. Wilkinson has no memory of being interviewed for the Ming Pao Article, although he does not deny that he was. He has deposed that he believes the comments attributed to him in the Ming Pao Article to be accurate.

ii. The Sing Tao Article

[54] The defendant Sing Tao Newspaper Canada Ltd. ("Sing Tao") operates a Chinese-language daily newspaper with separate editions published in Eastern and Western Canada. It also operates online new websites.

[55] On April 27, 2017, Sing Tao posted a three-paragraph article on its website based on the CKNW Article (the "Sing Tao Article"). The Sing Tao Article stated as follows:

Title: An organization in Vancouver indicated that there is a loophole in BC's policy regarding the additional property transfer tax imposed on overseas buyers

A Vancouver housing concern group has indicated that there are people to assist foreign investors to avoid the 15% additional property transfer tax imposed on foreign buyers by setting up partnerships with foreign investors, English-language radio CKNW reported.

Gary Liu, spokesperson of Housing Action for Local Taxpayers, said a person by the name of Mr. Zhao sets up partnerships with foreign investors and charges 3% of the property purchase price as well as an annual fee of \$1,000. Transactions as such would be considered as local deals and would not be investigated.

Andrew Wilkinson, the BC Liberal Party Leadership candidate, said people who avoid the tax through similar schemes will face penalties.

[56] Mr. Zhao does not dispute the accuracy of that translation of the Sing Tao Article.

iii. The Coast Mountain Articles

[57] The defendant Coast Mountain Publishing & Media Management Corporation ("Coast Mountain") is a commercial news publishing company based in Vancouver.

[58] On April 28, 2017, Coast Mountain posted a verbatim copy of the Sing Tao Article on one of its news websites. On April 29, 2017, Coast Mountain posted a verbatim copy of the Ming Pao Article on the same website.

[59] I will refer to both of the articles posted by Coast Mountain on its website as the "Coast Mountain Articles."

iv. The WESTCA Article

[60] The defendant WESTCA Technology Ltd. ("WESTCA") operates an online Chinese-language news website. On April 27, 2017, WESTCA published a three-paragraph article (the "WESTCA Article") that stated as follows, according to the translation obtained by Mr. Zhao and attached to his affidavit:

According to Housing Action for Local Taxpayers, they have discovered that recently someone is helping overseas buyers to evade the 15% foreign buyer tax under the guise of forming a partnership with foreign investors.

It is reported that a man called Mr. Zhou [sic] has proposed that he will establish partnership with overseas buyers in exchange for 3% of the property price and an annual fee of \$1,000 from the foreign buyers. Thereafter, according to the above-mentioned agreement [sic], the property will be bought in the name of the local buyer so as to evade the 15% foreign buyer tax.

BC Liberal candidate Andrew Wilkinson points out that anyone who attempts to evade tax payment through illegal means, once discovered and prosecuted, will face severe sentencing.

v. The KZG Article

[61] The defendant KZG Times Media Inc. ("KZG") publishes a weekly Chinese- language newspaper by the name of "Vision Times."

[62] On April 29, 2017, KZG published the following article in the Vision Times (the "KZG Article"):

Someone Colludes to Avoid Foreign-buyer Tax

Vancouver Housing Initiative Organization announced on April 26th that it was recently found out that someone attempted to assist foreign real property investors to avoid the 15% foreign-buyer title transfer tax. The Greater Vancouver Housing Action member Jiali Liu (Gary Liu) said, someone called Mr. Zhao charges 3% of the purchase price plus \$1,000 per year from foreign buyers to help them avoid taxes by forming a partnership with them. Since the real properties will be registered under local buyers, the foreign buyer tax will exist in name only.

[63] Mr. Zhao does not expressly dispute the accuracy of that translation of the KZG Article and has not provided an alternative translation of his own, except as pleaded in his notice of civil claim. Instead, he has deposed that he considers the translation "invalid" because the translator is said to be certified to translate from English to Chinese, but not from Chinese to English.

E. The Impact of the Publicity on Mr. Zhao

[64] Mr. Zhao has deposed that in the aftermath of the unwanted publicity described above, he received a number of angry and threatening phone calls, emails and text messages from strangers. He was subsequently investigated by the Real Estate Council of British Columbia, but the matter ultimately concluded on December 4, 2018 with no disciplinary action taken against him. Nevertheless, he deposes that he has been unable to pursue his career in real estate as a direct result of the adverse publicity he received.

[65] These experiences left him humiliated, anxious and upset. He attributes a trip-and-fall and resulting facial lacerations, a facial infection and "two close calls from rear-end collision in the early morning traffic" to the adverse impact of these events on his state of mind.

III. The Pleaded Claims and Defences

[66] Mr. Zhao commenced this action on February 19, 2018.

[67] As amended, his pleaded allegations can be summarised as follows:

- a) Mr. Zhao's advertised proposal consisted of the following terms:
 - i. Mr. Zhao and the foreign buyer would form a partnership;
 - ii. the partnership would purchase real property in the name of the partnership "at the sole discretion and with the personal funds of one of the two partners";
 - iii. the foreign buyer would have "the full and exclusive right to use, enjoy, occupy, renovate and lease" the property, with any rental income generated by the property flowing exclusively to the foreign buyer;
 - iv. the foreign buyer would have the right to sell the property and keep all of the proceeds;

- v. the foreign buyer would pay "[a]ll the applicable taxes, fees, expenses and/or commission relating to the purchase, holding and final disposition" of the property; and
- vi. the foreign buyer would pay Mr. Zhao "a one-time fee of 3% of the fair market value of the said property upon completion of the sale and an annual partnership fee of \$1,000."
- b) in their natural and ordinary meaning, the statements of Corus, Ms. Steele and Mr. Wilcomes (collectively, the "Corus Defendants") made during the CKNW Broadcasts and in the CKNW Article were defamatory in that they meant and were understood to mean that:
 - i. Mr. Zhao "partners with a foreign buyer to purchase properties in Vancouver area using [his own] name";
 - ii. Mr. Zhao "enables the foreign buyer to evade the foreign buyer tax by the fraudulent means of registering title of the house under [Mr. Zhao]'s name as a Canadian person";
 - iii. Mr. Zhao's "takes 3% of the ownership of the property";
 - iv. the foreign buyer "keeps only 97% of the ownership of the house";
 - v. Mr. Zhao "is the registered owner of the house";
 - vi. "the foreign buyer who pays the full price has no claim whatsoever to the ownership of the house purchased with his or her own funds because his or her name does not appear on the title";
 - vii. "the partnership is a fraud";
 - viii. Mr. Zhao "will grab the entire interests of the house by denying any claim to the property in question from the foreign buyer";
 - ix. Mr. Zhao "is a liar";
 - x. Mr. Zhao "is a fraudster trying to rope in some naïve foreign investors";
 - xi. Mr. Zhao "should be investigated by the Ministry of Finance and RCMP";
 - xii. "By investigation of the Ministry of Finance, [Mr. Zhao] is involved in tax evasion";
 - xiii. "By RCMP investigation, the partnership is of criminal nature";
 - xiv. Mr. Zhao "will be prosecuted for criminal offence [sic] with severe penalties";
 - xv. Mr. Zhao "will be disrespectful and scornful toward the foreign buyer while denying her property rights"; and
 - xvi. Mr. Zhao "is involved in money laundering in Vancouver."
- c) in their natural and ordinary meaning, Mr. Wilkinson's statements were defamatory in that they meant and were understood to mean that:

- i. Mr. Zhao "partners with a foreign buyer to purchase properties in Vancouver area using [his own] name";
 - ii. Mr. Zhao "enables the foreign buyer to evade the foreign buyer tax by the fraudulent means of registering title of the house under [Mr. Zhao]'s name as a Canadian person";
 - iii. Mr. Zhao's "takes 3% of the ownership of the property";
 - iv. the foreign buyer "keeps only 97% of the ownership of the house";
 - v. Mr. Zhao "is the registered owner of the house";
 - vi. "the foreign buyer who pays the full price has no claim whatsoever to the ownership of the house purchased with his or her own funds because his or her name does not appear on the title";
 - vii. Mr. Zhao "will grab the entire interests of the house by denying any claim to the property in question from the foreign buyer";
 - viii. Mr. Zhao "should be investigated by the Ministry of Finance and RCMP";
 - ix. "By investigation of the Ministry of Finance, [Mr. Zhao] is involved in tax evasion";
 - x. "By RCMP investigation, the partnership is of criminal nature";
 - xi. Mr. Zhao "will be prosecuted for criminal offence [sic] with severe penalties"; and
 - xii. Mr. Zhao "will be disrespectful and scornful toward the foreign buyer while denying her property rights";
- d) in their natural and ordinary meaning, Ming Pao's and Coast Mountain's statements were defamatory in that they meant and were understood to mean that:
- i. Mr. Zhao runs a "direct" or "outright" illegal partnership;
 - ii. Mr. Zhao evades the foreign buyer tax and helps foreign buyers do so;
 - iii. Mr. Zhao's proposal calls for the property to be purchased and registered exclusively in Mr. Zhao's name as a partner;
 - iv. the foreign buyer "will sustain enormous losses" and "lose everything in the end";
 - v. the foreign buyer "has no legal protection, when it comes to the disposal of the property and his right to live in the property";
 - vi. Mr. Zhao is suspected of criminal activities or lawbreaking and will be investigated by the Ministry of Finance, prosecuted and will face criminal penalties;
 - vii. Mr. Zhao and the foreign buyer "will be severely punished by the authorities";
 - viii. Mr. Zhao "will run the risk and break the law", "disdains the law" and "does not protect the rights and interests of the foreign buyer" and "has no idea how to do so"; and

ix. Mr. Zhao "is unethical in the sense that [he] cares about his own personal gains at the expense of the foreign buyer;"

e) in their natural and ordinary meaning, Sing Tao's statements were defamatory in that they meant and were understood to mean that:

i. Mr. Zhao "helps foreign buyers evade the foreign buyer tax";

ii. Mr. Zhao "is a tax evader"; and

iii. Mr. Zhao "will face fines";

f) in their natural and ordinary meaning, WESTCA's statements were defamatory in that they meant and were understood to mean that:

i. Mr. Zhao "is in a collusion to evade the foreign buyer tax";

ii. Mr. Zhao's proposal calls for the property to be purchased in Mr. Zhao's name so as to evade the foreign buyer tax; and

iii. Mr. Zhao "will be prosecuted and will face very severe sentencing";

g) in their natural and ordinary meaning, KZG's statements were defamatory in that they meant and were understood to mean that:

i. Mr. Zhao "is in a tax evasion collusion to evade the foreign buyer tax";

ii. Mr. Zhao "owes government tax money";

iii. the property will be registered exclusively in Mr. Zhao's name; and

iv. the government has begun an investigation to get back the money that Mr. Zhao owes it.

[68] Mr. Zhao seeks damages from the defendants for having publicly made or published those statements.

[69] In their responses to Mr. Zhao's claim, the defendants plead, among other things, that:

a) they did not make the statements that Mr. Zhao attributes to them;

b) the statements that they did make do not convey the defamatory meanings attributed to them by Mr. Zhao; and

c) the statements do not identify Mr. Zhao.

[70] The defences raised include the following:

a) justification;

b) fair comment;

c) responsible communication; and

- d) qualified privilege.

IV. The Defendants' Applications for Summary Trial

- [71] Although this action has, more than once, been scheduled for trial, the trial has been ordered adjourned on each such occasion before it took place. Most recently, by order made March 10, 2020, Master Keighley struck the Notice of Trial previously filed by Mr. Zhao and directed, among other things, that the parties schedule a hearing of the defendants' anticipated summary trial applications.
- [72] In August 2020, each of the defendants brought an application seeking dismissal of Mr. Zhao's claims against them by way of summary trial under Rule 9-7, relying on some or all of their pleaded defences, affidavits filed in support of the applications, and transcripts of Mr. Zhao's examinations for discovery.
- [73] In his application response, Mr. Zhao opposed the relief sought by the defendants. In Part 4 (Factual Basis), he reiterated and added to the factual allegations pleaded in the amended notice of civil claim. In Part 5 (Legal Basis), he asserted that:
- a) he is identifiable in the defendants' defamatory statements and publications "through allusion to my partnership proposal", as evidenced by the fact that "[t]otal strangers reached me via phone call, email and text message" and the real estate council "singled me out for investigation";
 - b) the defences of justification and fair comment are unavailable to the defendants because they have not proved the truth of the statements and publications that are alleged to be defamatory;
 - c) the defence of qualified privilege is not available to Andrew Wilkinson because:
 - i. "[n]o qualified occasion existed";
 - ii. his interview was not related to the performance of his government employment;
 - iii. the government had nothing to do with his interview;
 - iv. his public charges exceeded reasonable limit;
 - v. he recklessly disregarded the truth; and
 - vi. he advanced a truth defense;
 - d) the defendants should be found to have acted maliciously because:
 - i. they "insist upon the truth in spite of the known facts";
 - ii. they have offered no apologies;
 - iii. Mr. Wilkinson "didn't care about the truth";

- iv. Coast Mountain and KZG resisted Mr. Zhao's attempts to effect service of process on them;
- v. Sing Tao's counsel did not comply with the Supreme Court Civil Rules during this litigation; and
- vi. Ming Pao and Corus allege "without proof" that Mr. Zhao "had a bad reputation before their libel."

[74] In addition, he asserts that a full trial is necessary to resolve this action because:

- a) the defence of qualified privilege is not suitable for summary trial;
- b) "conflicting affidavits are [an] insufficient means to establish the full circumstances of the publication, determine the credibility and the state of mind of the defendants"; and
- c) the complexity and wide scope of the case call for a trial with live witnesses.

V. The Law of Defamation

A. The Elements of the Tort of Defamation

[75] The elements of the tort of defamation were conveniently summarised by Adair J. in *Casses v. Canadian Broadcasting Corporation*, 2015 BCSC 2150 at paras. 315-317 as follows:

[315] A plaintiff in a defamation action is required to prove three things to obtain judgment and a remedy: (1) that the impugned words were defamatory, in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person; (2) that the words in fact referred to the plaintiff; and (3) that the words were published, meaning that they were communicated to at least one person other than the plaintiff. If these elements are established on a balance of probabilities, falsity and damage are presumed. See *Grant v. Torstar Corp.*, 2009 SCC 61, at para. 28.

[316] The onus of proving a statement was defamatory is on the plaintiff.

[317] Any imputation that may tend to lower the plaintiff in the estimation of right-thinking members of society generally or to expose him or her to hatred, contempt or ridicule is defamatory. In determining the meaning of a publication and whether it is defamatory, the court may take into consideration all of the circumstances of the case, including any reasonable implications the words may bear, the context in which the words are used, the audience to whom they were published and the manner in which they were presented. See *Botiuk v. Toronto Free Press Publications Ltd.*, [1995] 3 S.C.R. 3, at para. 62.

[76] The onus of establishing the elements of the tort remains on Mr. Zhao, even though it is the defendants who have applied for judgment by way of summary trial: *Gichuru v. Pallai*, 2013 BCCA 60, at para. 35.

B. The Defences

[77] If the plaintiff proves the elements of the tort, the onus shifts to the defendant to establish one or more of the available defences: *Taseko Mines Limited v. Western Canada Wilderness Committee*, 2016 BCSC 109 at para. 11, rev'd on other grounds 2017 BCCA 431. The defences raised here include justification, fair comment and qualified privilege.

i. Justification

[78] The elements of the defence of "justification" were conveniently summarised by Adair J. in *Casses* at para. 550 as follows:

[550] Justification is an absolute defence to defamation. It applies to statements of fact. It will succeed if the defendant proves, on a balance of probabilities, the truth of what is alleged to be defamatory. However, what is required to be proven is not the truth of each and every word or the literal truth of the statement. Rather, a defendant must only prove on a balance of probabilities that the gist or sting of the defamation was true, and it is sufficient if the defendant proves that a defamatory expression was substantially true. Minor inaccuracies do not preclude a defence of justification so long as the publication conveyed an accurate impression. The test is whether the defamatory expression, as published, would have a different effect on a reader or listener than what the pleaded truth would have produced. ...

[79] The elements of the defence were also summarised conveniently by Funt J. in *Taseko* at paras. 20-23, as follows:

[20] A complete defence to a defamation claim is justification (truth). The meaning of the words (or expression) must be true or substantially true in order for the defence to succeed.

[22] Raymond E. Brown, *Brown on Defamation: Canada, United Kingdom, Australia, New Zealand, United States*, 2nd ed. (Toronto: Carswell, 1999) (loose-leaf updated 2013, release 1) vol. 3 describes the substantially true test (at 10-45 to 10-48):

Substantial truth is the test. "An allegedly defamatory statement is not actionable if it is substantially true." "It is sufficient if the substance of the allegation is justified." The defence applies if the words are true in substance and in fact. If the defence is pleaded to multiple imputations, the court must consider whether the evidence is sufficient to prove that each of the imputations is substantially true.

"A statement is substantially true where the alleged defamatory statement is no more ignominious in the mind of the average listener than a true statement would have been." Minor inaccuracies are acceptable and will be ignored. The literal truth of the precise statement made does not have to be shown. The law "overlooks minor inaccuracies and concentrates upon substantial truth." The test is substantial, not literal, accuracy. "A technically false statement may nonetheless be considered substantially true if, viewed 'through the eyes of the average reader,' it differs from the truth 'only in insignificant details.'" If the defamatory charge is true in substance, it is immaterial that there are slight inaccuracies in the details of the expression, or with respect

to secondary items of importance.

If a false statement in the publication is immaterial to the gist or sting of the libel, it does not render an otherwise true statement defamatory.

And further (at 10-56 to 10-57)

The test is "whether the libel as published would have a different effect on the mind of the reader from that which the pleaded truth would have produced." In other words, does the publication make the plaintiff significantly worse off than a literally true publication would have, or would the plaintiff have been exposed to any more opprobrium if the publication had been free from error? It must be "so misleading that it produces a different effect on a reader's mind than would the truth". If "the truth is so near to the facts as published that fine and shaded distinctions must be drawn and words pressed out of their ordinary usage to sustain a charge of libel, no legal harm has been done."

[Footnotes omitted]

[23] In short, in order for the defence of justification to succeed, the defendants must justify the sting by showing that it is true or substantially true.

ii. Fair Comment

[80] In *Grant v. Torstar Corp.*, 2009 SCC 61, McLachlin C.J.C., writing for the majority of the Court, summarised the elements of the fair comment defence, at para. 31 as follows:

[31] statements of opinion, a category which includes any "deduction, inference, conclusion, criticism, judgment, remark or observation which is generally incapable of proof" (*Ross v. New Brunswick Teachers' Assn.*, 2001 NBCA 62, 201 D.L.R. (4th) 75, at para. 56, cited in *WIC Radio*, at para. 26), may attract the defence of fair comment. As reformulated in *WIC Radio*, at para. 28, a defendant claiming fair comment must satisfy the following test: (a) the comment must be on a matter of public interest; (b) the comment must be based on fact; (c) the comment, though it can include inferences of fact, must be recognisable as comment; (d) the comment must satisfy the following objective test: could any person honestly express that opinion on the proved facts?; and (e) even though the comment satisfies the objective test the defence can be defeated if the plaintiff proves that the defendant was actuated by express malice. *WIC Radio* expanded the fair comment defence by changing the traditional requirement that the opinion be one that a "fair-minded" person could honestly hold, to a requirement that it be one that "anyone could honestly have expressed" (paras. 49-51), which allows for robust debate. As Binnie J. put it, "[w]e live in a free country where people have as much right to express outrageous and ridiculous opinions as moderate ones" (para. 4).

[81] In *WIC Radio Ltd. v. Simpson*, 2008 SCC 40, Binnie J. distinguished between facts (subject to the justification defense) and "comment" at paras. 26-27 as follows:

- [26] In *Ross v. New Brunswick Teachers' Assn.* (2001), 201 D.L.R. (4th) 75, 2001 NBCA 62, at para. 56, the New Brunswick Court of Appeal correctly took the view that "comment" includes a "deduction, inference, conclusion, criticism, judgment, remark or observation which is generally incapable of proof". Brown's *The Law of Defamation in Canada* (2nd ed. (loose-leaf)) cites ample authority for the proposition that words that may appear to be statements of fact may, in pith and substance, be properly construed as comment. This is particularly so in an editorial context where loose, figurative or hyperbolic language is used (Brown, vol. 4, at p. 27-317) in the context of political debate, commentary, media campaigns and public discourse. See also, R. D. McConchie and D. A. Potts, *Canadian Libel and Slander Actions* (2004), at p. 340.
- [27] "What is comment and what is fact must be determined from the perspective of a 'reasonable viewer or reader'" ...
- [82] Justice Binnie added (at para. 31) that to attract the defence, the speaker must indicate what facts the comment is based upon:
- [31] It is true that "[t]he comment must explicitly or implicitly indicate, at least in general terms, what are the facts on which the comment is being made"; Brown, vol. 2, p. 15-36, and Gatley on *Libel and Slander* (10th ed. 2004), at para. 12.12. What is important is that the facts be sufficiently stated or otherwise be known to the listeners that listeners are able to make up their own minds on the merits of [the speaker's] editorial comment. If the factual foundation is unstated or unknown, or turns out to be false, the fair comment defence is not available .

iii. Qualified Privilege

- [83] Justice Joyce summarised the elements of the defence of qualified privilege in *Lewis v. Terrace Tourism Society*, 2008 BCSC 361 at para. 54 as follows:
- [54] The defence of qualified privilege is described in Raymond E. Brown, *The Law of Defamation in Canada*, 2nd ed., (loose-leaf) (Toronto: Carswell 1999,) at p. 13-4 as follows:

There are certain occasions on which a person is entitled to publish untrue statements about another, where he or she will not be liable even though the publication is defamatory. One such occasion is called a conditional or qualified privilege. No action can be maintained against a Defendant unless it is shown that he or she published the statement with actual or express malice. An occasion is privileged if a statement is fairly made by a person in the discharge of some public or private duty, or for the purpose of pursuing or protecting some private interest, provided it is made to a person who has some corresponding interest in receiving it. The duty may be either legal, social or moral. The test is whether persons of ordinary intelligence and moral principal, or the great majority of right-minded persons, would have considered it a duty to communicate the information to those to whom it was published.

[84] In *Lane v. Board of School Trustees of School District 68 (Nanaimo-Ladysmith)*, 2006 BCSC 129, Tysoe J. (as he then was) had occasion to consider the applicability of the defence when raised by public officials. He wrote as follows, at paras. 85-87 and 89:

[85] If a defamatory statement is made on an occasion of qualified privilege, the maker of the statement is not liable unless it was made with malice towards the defamed person. The leading description of qualified privilege is contained in the decision of *Adam v. Ward*, [1917] A.C. 309 (H.L.) at p. 334:

a privileged occasion is, in reference to qualified privilege, 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. This reciprocity is essential.

This passage was quoted with approval by the Supreme Court of Canada in *Hill v. Church of Scientology* at ¶143. It was also quoted by the B.C. Court of Appeal in *Moises v. Canadian Newspaper Co. (c.o.b. Times-Colonist)* (1996) 24 B.C.L.R. (3d) 211 (C.A.), which contains a discussion of the topic of qualified privilege at ¶17 through ¶28. The topic was also discussed at length in *Parlett v. Robinson* (1986), 5 B.C.L.R. (2d) 26 (C.A.).

[86] One of the qualifications to the defence discussed in *Moises* is that a publication of the statement to the public generally (or "to the world") will exceed the privilege unless there is proper reason for doing so. For example, the B.C. Court of Appeal held in *Parlett v. Robinson* that a publication to the world was not overly broad because the Canadian electorate had a genuine interest in the matter. In *Adam v. Ward*, it was held that a publication to the world was not too wide when the defendant was responding to a charge that the plaintiff had likewise published to the world.

[87] An occasion of qualified privilege can arise with respect to statements made by public officials. The requisite duty is discussed in *The Law of Defamation in Canada* (2nd ed., 1994) at p. 698:

Public officials at every level of government have a duty to keep each other, the government and the public informed on matters relating to the public interest. Thus, city or town council members and county commissioners have an obligation to keep each other informed on matters falling within their competence, a mayor may be obligated to inform them regarding the actions of persons representing the interests of citizens

[89] In *Moises* (at ¶19), the Court accepted the following statement from *Sapir v. Leader Publishing Co. Ltd.*, [1926] 2 W.W.R. 268 at 271 (Sask. C.A.) with respect to the factors to be considered by a court when determining whether an occasion is one of qualified privilege:

In determining whether or not it is so privileged, the Judge will consider the alleged libel, who published it, why, and to whom, and under what circumstances. He will also consider the nature of the duty which the defendant claims to discharge, or the interest which he claims to safeguard, the urgency of the occasion, and whether or not he officiously volunteered the information, and determine whether or not what has been published was germane and reasonably appropriate to the occasion.

iv. Malice

- [85] Two of those defences, fair comment and qualified privilege, can be defeated by a showing of malice. The circumstances in which that will occur were discussed by Kirkpatrick J.A., writing for the Court, in *Smith v. Cross*, 2009 BCCA 529, at para. 30-34 as follows:
- [30] The defence of qualified privilege can be defeated by a finding of malice on the part of the defendant or by a finding that the limits of the privilege were exceeded. Malice in this sense is also called "express malice" or "malice in fact" to differentiate it from the legal malice assumed by the very publication of defamatory comments (*Brown*, *The Law of Defamation in Canada*, looseleaf, 2nd ed. (Toronto: Carswell, 1999 at 16.2(1))).
- [31] The defence of fair comment is also defeated by malice, and malice "for the purpose of defeating the defence of qualified privilege is the same as malice for the purpose of defeating the defence of fair comment." (*Creative Salmon Company Ltd. v. Staniford*, 2009 BCCA 61, 307 D.L.R. (4th) 518 [*Creative Salmon*] at para. 32).
- [32] The term "malice" is more expansive than the everyday meaning of a desire to harm another. *Brown* at 16.3(2) suggests the alternate language of "bad faith". This Court summarized the definition in *Creative Salmon* at para. 37:

In *Botiuk* at para. 79, malice was defined to include "ill will" and "any indirect motive which conflicts with the sense of duty created by the occasion [in the case of qualified privilege]". The definition of malice stated by Mr. Justice Dickson in *Cherneskey* at 1099, and adopted by Mr. Justice LeBel in *WIC Radio* at para. 102, includes "spite or ill will" and "any indirect motive or ulterior purpose".

- [33] The Supreme Court of Canada summarized the law of malice and qualified privilege in *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130, 126 D.L.R. (4th) 129 at para. 145:

Malice is commonly understood, in the popular sense, as spite or ill-will. However, it also includes, as Dickson J. (as he then was) pointed out in dissent in *Cherneskey*, *supra*, at p. 1099, "any indirect motive or ulterior purpose" that conflicts with the sense of duty or the mutual interest which the occasion created. See, also, *Taylor v. Despard*, [1956] O.R. 963 (C.A.). Malice may also be established by showing that the defendant spoke dishonestly, or in knowing or reckless disregard for the truth. See *McLoughlin*, *supra*, at pp. 323-24, and *Netupsky v. Craig*, [1973] S.C.R. 55, at pp. 61-62.

[34] In *Canadian Libel and Slander Actions* (Toronto: Irwin Law, 2004) at 299, R.D. McConchie and D.A. Potts reduce this statement to a helpful framework for the categories under which a finding of malice can be made. A defendant is actuated by malice if he or she publishes the comment:

- i) Knowing it was false; or
- ii) With reckless indifference whether it is true or false; or
- iii) For the dominant purpose of injuring the plaintiff because of spite or animosity; or
- iv) For some other dominant purpose which is improper or indirect, or also, if the occasion is privileged, for a dominant purpose not related to the occasion.

More than one finding can be present in a given case (McConchie and Potts at 299).

VI. Discussion

A. Suitability for Summary Trial

[86] The test to be applied in determining whether a defamation action such as this is one that is suitable for disposition by way of summary trial under Rule 9-7 was conveniently summarised by D. Smith J.A., writing for the Court, in *Gichuru*, at paras. 30-31:

[30] In *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202 (C.A.), the court confirmed that the court under this rule "tries the issues raised by the pleadings on affidavits", that "a triable issue or arguable defence will not always defeat a summary trial application", and that "cases will be decided summarily if the court is able to find the facts necessary for that purpose, even though there may be disputed issues of fact and law" provided that the judge does not find "it is unjust to do so" (p. 211). In determining the latter issue (whether it would be unjust to proceed summarily), the Chief Justice identified a number of relevant factors to consider (at p. 215):

In deciding whether it will be unjust to give judgment the chambers judge is entitled to consider, *inter alia*, the amount involved, the complexity of the matter, its urgency, any prejudice likely to arise by reason of delay, the cost of taking the case forward to a conventional trial in relation to the amount involved, the course of the proceedings and any other matters which arise for consideration on this important question.

[31] To this list has been added other factors including the cost of the litigation and the time of the summary trial, whether credibility is a critical factor in the determination of the dispute, whether the summary trial may create an unnecessary complexity in the resolution of the dispute, and whether the application would result in litigating in slices: .

[87] In this case, the essential facts are, in general, not disputed. Although there is, as I have noted above, some conflicting evidence before me, I have concluded that I am able to make the factual findings necessary to resolve the dispute in its entirety.

- [88] Mr. Zhao argues that a summary trial would not be appropriate here in light of the "conflicting affidavits" which, he says, "are insufficient to establish the full circumstances of the publication, determine credibility and the state of mind of the defendants." I do not find that argument persuasive.
- [89] The conflicts that I have identified in the evidence are not extensive and are confined to only a very narrow suite of issues.
- [90] There is, first, conflicting evidence before me as to whether Mr. Zhao's May 5, 2017 interview on CKNW was improperly edited by Corus before it was aired. I do not find Mr. Zhao's allegation in that regard to be credible, however. Ms. Stewart has deposed that Corus produced the original audio recording on which the transcript was based. Had it really been edited as alleged, the edits would presumably have been discernible in the audio recording, but Mr. Zhao has adduced no evidence to suggest anything of the kind. Moreover, the transcript of the interview that is in evidence before me does not contain any obvious breaks or lack of continuity in the discussion. Overall, I find it far more likely that Mr. Zhao's memory of the interview has been distorted by the highly charged emotional state that he acknowledges having been in at the time.
- [91] There is also conflicting evidence before me about the conversation that occurred between Mr. Zhao and the Corus Defendants after his May 5, 2017 interview. Regardless of which version is correct, however, I am satisfied that the contents of that conversation have no bearing on the issues that arise in connection with the claim against the Corus Defendants.
- [92] Mr. Zhao also argues that there is conflicting evidence on the question of whether Mr. Wilkinson was actually interviewed by Ming Pao for the Ming Pao Article. There is not. Mr. Wilkinson cannot recall the interview but does not deny that it occurred. Moreover, he has deposed that the statements attributed to him in that article are true and consistent with what he had said when he was interviewed on CKNW.
- [93] Finally, Mr. Zhao also takes issue with some of the translations of the impugned Chinese-language publications that have been adduced in evidence by some of the other defendants. I do not find the discrepancies in the translations I have seen to be significant or material. In any event, I have generally sought to avoid the issue by relying exclusively on Mr. Zhao's translations where possible.
- [94] In summary, I have found that I am able to make the factual findings necessary to resolve all of the issues arising in this action. Those issues are not, in my view, particularly complex. I am satisfied, moreover, that there would be no advantage, but only greater cost, in forcing the parties to proceed to a conventional trial.
- [95] For those reasons, I have concluded that it would not be unjust for this action to be tried summarily.

B. The Application of the Corus Defendants

[96] The Corus Defendants seek to have Mr. Zhao's claim against them dismissed on the basis that:

- a) Mr. Zhao was not identifiable in the CKNW Broadcasts and the CKNW Article because "Zhao" is a common surname; and
- b) the defences of justification and fair comment apply.
- i. Was Mr. Zhao identifiable?

[97] Corus and several other defendants argue that Mr. Zhao was not identifiable in their respective statements, broadcasts and publications.

[98] The test to be applied in determining whether that element of the tort has been satisfied was conveniently summarised by Goepel J. (as he then was) in *P.G. Restaurant Ltd. v. Norther Interior Regional Health Board*, 2004 BCSC 294, rev'd on other grounds 2005 BCCA 210, at paras. 125-126 as follows:

[125] The leading case in British Columbia on identification of a plaintiff in a defamatory statement where the plaintiff is not specifically named is *Dale's Trad'N Post Ltd. v. Rhodes* (1987), 19 B.C.L.R. (2d) 73 (S.C.). In *Dale's*, Mrs. Rhodes placed two advertisements in a newspaper published in Prince George. She was unhappy with an Arrow fireplace insert she had purchased from the plaintiff. However, the advertisements did not refer to the plaintiff by name. Legg J. concluded that even though the plaintiff was the only vendor of these inserts in Prince George, that the advertisements were published in a Prince George newspaper, and that the advertisements indicated that Mrs. Rhodes bought the insert from a local vendor, the language was not capable of referring to the plaintiff and would not lead a reasonable person to the conclusion that the advertisements referred to the plaintiff.

[126] In reaching his decision, Legg J. referred to *Knupffer v. London Express Newspaper Ltd.*, [1944] 1 All E.R. 495 (H.L.), specifically at p. 78 to the following passage in Viscount Simon's judgment at p. 497:

There are two questions involved in the attempt to identify the appellant as the person defamed. The first question is a question of law - can the article, having regard to its language, be regarded as capable of referring to the appellant? The second question is a question of fact, namely, does the article in fact lead reasonable people, who know the appellant, to the conclusion that it does refer to him? Unless the first question can be answered in favour of the appellant, the second question does not arise, and where the trial judge went wrong was in treating evidence to support the identification in fact as governing the matter, when the first question is necessarily, as a matter of law to be answered in the negative.

[99] The defendants argue that while Mr. Zhao may be able to meet the first branch of the test, insofar as the reference to "Mr. Zhao" in their statements, broadcasts and publications may have been legally capable of identifying him, he fails on the second branch. The defendants argue, in particular, that their statements, broadcasts and publications would not lead

reasonable people, who know Mr. Zhao, to the conclusion that they were referring to him. The defendants have adduced evidence showing that "Zhao" is a very common name in the Chinese community.

[100] In support of that submission, the defendants cite Downard, P. *The Law of Libel in Canada*, 4th ed. (Toronto: LexiNexis Canada 2018) at para 4.4:

A reference to the plaintiff will usually be obvious if the plaintiff's name is stated in the words in issue. Where the name referred to is a very common one, however, further evidence of the context of the article and its publication may be necessary to show the words referred to the plaintiff. An article referring to 'John Smith' may be shown to refer to a particular plaintiff of that name by, for example, showing that it is the plaintiff who is known to have been involved in other matters referred to in the article, or that the plaintiff is known to possess particular characteristics attributed to the person in the article.

[Footnotes omitted.]

[101] I am not persuaded that the commonality of Mr. Zhao's surname would preclude those who know him from recognising that he was the person referred to in the defendants' various statements, broadcasts and publications. In them, the defendants provided additional information about the "Mr. Zhao" they were referring to, including, most importantly, the fact that he had publicly advertised a proposal to enter into partnership with foreign buyers of real estate in British Columbia with a view to helping them avoid having to pay the foreign buyer tax. Anyone familiar with that fact (which would include, most importantly, the intended audience for those advertisements) could readily identify the plaintiff as the "Mr. Zhao" referred to by the defendants.

[102] For that reason, I am satisfied that Mr. Zhao was identified with sufficient specificity to satisfy both branches of the test set out above.

ii. Are the defences of justification and fair comment available?

[103] To appreciate the nature of the defamatory messages that were conveyed by the Corus Defendants, the CKNW Broadcasts must be considered in three distinct phases.

[104] In the first phase, the discussion focused on the perceived problem that there were too many loopholes in the legislation that Mr. Zhao and others appeared to be exploiting. The primary target of the hosts' criticism at that stage was not Mr. Zhao but the government, which they were blaming for having created those loopholes and allowing them to be exploited so easily. Still, as the conversation concluded, Mr. Wilcomes also asked Ms. Steele twice if she thought the scheme under discussion amounted to tax fraud. The first time, Ms. Steele responded that she did not think so, given Mr. Liu's assertion that it was perfectly legal. The second time she was unsure.

[105] In the second phase, when Mr. Wilkinson came on the show, the tenor of the discussion changed dramatically. In introducing Mr. Wilkinson, Mr. Wilcomes expressed the view (no longer just a question), that the scheme under discussion "sounds like some type of fraud." Mr. Wilkinson then added his own three layers to the defamatory sting. In essence, the view he expressed was that the proposal under discussion, if acted upon:

- a) would be unlikely to achieve its goal of avoiding the tax;
- b) would expose both of the putative partners to investigation and prosecution; and
- c) would leave the foreign buyer vulnerable to being taken advantage of by the resident partner because the foreign buyer's name would not be registered on title to the property.

[106] In the third phase of the CKNW Broadcasts, Mr. Zhao himself was interviewed. The defamatory sting conveyed by the hosts at that stage was that his scheme, legal or not, was of dubious legitimacy insofar as it would, if acted upon, contribute to the mischief that the legislation was intended to address.

[107] The statements of purported fact concerning Mr. Zhao and his proposal were made primarily during the first phase of the CKNW Broadcasts. They included:

- a) the undisputed fact that Mr. Zhao had advertised a proposal to partner with foreign buyers with a view to helping them avoid having to pay the tax; and
- b) the specific details of his proposal (not all of which were presented accurately).

[108] I have concluded that none of those statements of purported fact can give rise to liability because they either:

- a) carried no defamatory sting, regardless of whether they were accurate or not; or
- b) were "substantially true" (in the sense that they were "no more ignominious in the mind of the average listener than a true statement would have been") so as to engage the defence of justification.

[109] What clearly "stung" for Mr. Zhao were not those statements of purported fact but rather the various observations, inferences, judgments and opinions that the hosts and Mr. Wilkinson offered to the listening audience with respect to the proposal's perceived legitimacy or legality. Much of the venom in that sting flowed from their predictions as to the financial and legal consequences that would be likely to follow for Mr. Zhao and his putative partners if the proposal were to be carried out.

[110] All such remarks are properly classified as "comment," as that term has been defined in the jurisprudence, insofar as they were matters of "deduction, inference, conclusion, criticism, judgment, remark or observation which is generally incapable of proof." The outcome of this action therefore turns to a large degree on whether those particular remarks are properly classified as "fair comment," as that term has been defined in the jurisprudence. As I noted earlier, to qualify as such, they must have been:

- a) expressed in relation to a matter of public interest;
- b) based on fact;
- c) recognisable as comment; and
- d) an opinion that a person could honestly express on those facts.

[111] I have no difficulty in finding that the foreign buyer tax, and the existence of a potential loophole in the legislation implementing it, were matters of public interest. In any event, Mr. Zhao does not appear to dispute that fact.

[112] The controversy in this case lies primarily in the second branch of the test: namely, whether the impugned commentary was based on fact. Mr. Zhao asserts that it was based on a series of falsehoods, including the following:

- a) that his proposal contemplated that he would take title to the property in his own name;
- b) that his proposal contemplated that he would retain a 3% ownership interest;
- c) that his proposal had already been carried out; and
- d) that he intended to commit fraud by lying to the tax authorities and the foreign buyers who partnered with him.

[113] Mr. Zhao also pleads that the following defamatory messages were communicated by the Corus Defendants to the public through the CKNW Broadcasts and the CKNW Article:

- a) Mr. Zhao "partners with a foreign buyer to purchase properties in Vancouver area using [his own] name";
- b) Mr. Zhao "enables the foreign buyer to evade the foreign buyer tax by the fraudulent means of registering title of the house under [Mr. Zhao]'s name as a Canadian person";
- c) Mr. Zhao's "takes 3% of the ownership of the property";
- d) the foreign buyer "keeps only 97% of the ownership of the house";
- e) Mr. Zhao "is the registered owner of the house";
- f) "the foreign buyer who pays the full price has no claim whatsoever to the ownership of the house purchased with his or her own funds because his or her name does not appear on the title";

- g) "the partnership is a fraud";
- h) Mr. Zhao "will grab the entire interests of the house by denying any claim to the property in question from the foreign buyer";
- i) Mr. Zhao "is a liar";
- j) Mr. Zhao "is a fraudster trying to rope in some naïve foreign investors";
- k) Mr. Zhao "should be investigated by the Ministry of Finance and RCMP";
- l) "By investigation of the Ministry of Finance, [Mr. Zhao] is involved in tax evasion";
- m) "By RCMP investigation, the partnership is of criminal nature";
- n) Mr. Zhao "will be prosecuted for criminal offence [sic] with severe penalties";
- o) Mr. Zhao "will be disrespectful and scornful toward the foreign buyer while denying her property rights"; and
- p) Mr. Zhao "is involved in money laundering in Vancouver."

[114] I am not persuaded that the remarks that were made during the CKNW Broadcasts and in the CKNW Article can fairly be said to have conveyed those specific messages. No one said that Mr. Zhao's proposal had already been carried out. On the contrary, the hosts were curious to learn whether it had or not, but when they asked Mr. Zhao about that, he refused to tell them. There was also no assertion that Mr. Zhao himself was involved in money laundering.

[115] Although the hosts appear to have inferred, incorrectly, that Mr. Zhao intended under his proposal to take a 3% ownership interest in the property to be purchased, that inference carried no defamatory sting and formed no part of the factual basis for the remarks that did.

[116] What did form the basis for those remarks was the undisputed fact that Mr. Zhao's actual proposal was unworkable. Moreover, it could only have been made workable if either Mr. Zhao himself or another local resident or entity had taken legal title to the property in trust for the foreign buyer, but that would have led to the other consequences identified by Mr. Wilkinson and decried by the hosts. Either way, any foreign buyer who took Mr. Zhao up on his offer:

- a) was never going to be on title personally;
- b) was never going to avoid having to pay the tax as promised without contravening the legislation; and
- c) would therefore have been legally and financially exposed in precisely the manner suggested by Mr. Wilkinson.

- [117] For those reasons, I am satisfied that the impugned remarks that gave rise to the defamatory sting at issue in this case were based on fact, and therefore that the Corus Defendants have satisfied that second branch of the test for the fair comment defence.
- [118] With respect to the remaining two branches of the test, I have already explained why those remarks were readily identifiable as comment, as opposed to statements of purported fact. I am also satisfied that they were, for the reasons just canvassed, ones that a person could honestly express based on those facts.
- [119] Mr. Zhao has not identified any basis on which to find that the defence is unavailable to the Corus Defendants on the grounds of malice. The conversation that took place after his interview on May 5, 2017 did not demonstrate the requisite kind of malice, even if it occurred as he described it. Indeed, the fact that he was invited to be interviewed on the show at all is compelling evidence that there was no such malice.
- [120] For those reasons, I have concluded that the defences of justification and fair comment have been established and, on that basis, that the Corus Defendants are entitled to judgment in their favour dismissing the action as against them.

C. The Application of Mr. Wilkinson

- [121] Mr. Wilkinson seeks to have Mr. Zhao's claim against him dismissed on the basis that the defences of justification, fair comment and qualified privilege apply.
- [122] I am not satisfied that Mr. Wilkinson's actual remarks conveyed the defamatory messages that are attributed to him in the amended notice of civil claim. In particular, he did not state that:
- a) Mr. Zhao "partners with a foreign buyer to purchase properties in Vancouver area using [his own] name";
 - b) Mr. Zhao "enables the foreign buyer to evade the foreign buyer tax by the fraudulent means of registering title of the house under [Mr. Zhao]'s name as a Canadian person";
 - c) Mr. Zhao's "takes 3% of the ownership of the property";
 - d) the foreign buyer "keeps only 97% of the ownership of the house";
 - e) Mr. Zhao "is the registered owner of the house";
 - f) "the foreign buyer who pays the full price has no claim whatsoever to the ownership of the house purchased with his or her own funds because his or her name does not appear on the title";
 - g) Mr. Zhao "will grab the entire interests of the house by denying any claim to the property in question from the foreign buyer";
 - h) Mr. Zhao "should be investigated by the Ministry of Finance and RCMP";

- i) "By investigation of the Ministry of Finance, [Mr. Zhao] is involved in tax evasion";
- j) "By RCMP investigation, the partnership is of criminal nature";
- k) Mr. Zhao "will be prosecuted for criminal offence [sic] with severe penalties"; or
- l) Mr. Zhao "will be disrespectful and scornful toward the foreign buyer while denying her property rights".

[123] The remarks that Mr. Wilkinson did make during the CKNW Broadcasts, and as reported in the Ming Pao Article, were directed not at Mr. Zhao or his proposal in particular, but rather to "anybody who tries to pull the trick that was described earlier by the man from HALT." He said little if anything that was referable to Mr. Zhao directly. In one exchange, quoted above, Ms. Steele asked Mr. Wilkinson about whether he thought the Mr. Zhao who had posted the advertisement on vansky.com might be a "fraudster". His response was as follows:

Well, at the end of the day, both that gentleman and Mr. 97 percent are going to be very unhappy because they'll probably end up with nothing and with the prosecution on their hands - both of them, not just one of them.

[124] To the extent Mr. Wilkinson's remarks did carry a defamatory sting that was referable to Mr. Zhao directly, I have already found that those remarks were covered by the defences of justification and fair comment, for the reasons set out above in relation to the claim against the Corus Defendants.

[125] In any event, I am satisfied that Mr. Wilkinson is also shielded from liability on the basis that his remarks were made on an occasion of qualified privilege. Mr. Zhao argues that Mr. Wilkinson cannot properly claim the protection of the privilege because he was not acting in an official government capacity when he opted to speak to CKNW. I disagree. The authorities canvassed above do not support that position. As a cabinet minister running for re-election, he had a "duty to keep the public informed on matters relating to the public interest," particularly when he believed, honestly and with good reason, that the public was being misinformed on the radio about a supposed loophole in the legislation that he knew to be no loophole at all.

[126] Finally, I am not persuaded by Mr. Zhao's unpleaded contention that Mr. Wilkinson was speaking maliciously at the time, so as to render that defence unavailable to him. Mr. Zhao argues that Mr. Wilkinson demonstrated malice because he "didn't care about the truth." Even if that were sufficient to overcome the defence, there is no basis in the evidence to support such a conclusion. On the contrary, I have no reason to question Mr. Wilkinson's own evidence on that point, which was to the effect that his sole purpose in making those remarks was to correct the misinformation he was hearing on the radio, and that he genuinely believed the views he expressed in doing so to be well-founded.

[127] For those reasons, I have concluded that Mr. Wilkinson is entitled to judgment in his favour dismissing the action as against him.

D. The Applications of the Remaining Defendants

[128] My review of the Ming Pao Article, the Sing Tao Article, the Coast Mountain Articles, the WESTCA Article and the KZG Article reveals that they added no new defamatory content of their own, but merely repeated some of the defamatory remarks made during the CKNW Broadcasts and in the CKNW Article.

[129] In light of my conclusion that the Corus Defendants have successfully raised the defences of justification and fair comment, it follows that the remaining defendants have the same defences available to them. The only possible distinction arises from the fact that one or more of those other articles might be read to suggest that Mr. Zhao had already acted on his proposal whereas I have found that the CKNW Broadcasts and the CKNW Article did not do so. To the extent those articles did convey that suggestion, I am not persuaded that it would lead to a different result. It would have added no additional defamatory sting. The articles would still have been "no more ignominious in the mind of the average listener than a true statement would have been," regardless of that additional detail.

[130] Mr. Zhao argues that some of the remaining defendants have engaged in conduct during this litigation that suggests malice on their part. Whatever may have occurred in that regard has no bearing on whether there was malice in the requisite sense at the time the impugned articles were published. There is no suggestion of anything of that kind in the evidence.

[131] It follows that the remaining defendants are also entitled to judgment in their favour dismissing the claim as against them.

VII. Summary and Conclusion

[132] The defendants' applications for judgment in their favour are allowed.

[133] The action is dismissed.

"Milman J."

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