

HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
ACTION NO 1619 OF 2014

BETWEEN

KOO MING KOWN Plaintiff

and

YOUNG KWOK HUNG, CLEMENT 1st Defendant

YIP CHEE TIM 2nd Defendant

THE BAPTIST CONVENTION OF HONG KONG (In its capacity as the sponsoring body of Pui Ching Academy under the Education Ordinance (Cap 279)) 3rd Defendant

SHUM KAM HONG 4th Defendant

CHAN CHI MONG, HOPKINS 5th Defendant

LAW CHI KEUNG 6th Defendant

HO KANG WAI 7th Defendant

CHEUNG CHI KIM 8th Defendant

CHUNG HUNG KWAN, BARNABAS 9th Defendant

HO HIN HUNG 10th Defendant

LAM YIU WAH 11th Defendant

TSANG KAI MAN 12th Defendant

YIP WAI HONG 13th Defendant

Before: Deputy High Court Judge K Kwok, SC, in Chambers
(Open to public)

Date of Hearing: 31 July 2017 at 10.02 am

Present: Mr Johnny Mok, SC, leading Ms Amanda W M Li,
instructed by Lily Fenn & Partners, for the
plaintiff

A Mr K M Chong, Ms Emma Wong and Mr Darren Poon, A
B instructed by P T Yeung & Tang, for the 1st to 13th B
C defendants C

P R O C E E D I N G S

D MR CHONG: My Lord, before I proceed with my submission, may I D
E apologise for having submitted a wrong page on page 6 of my E
F reply, which was done in haste. We put in paragraph(page?) F
G 6 essentially in fact is to correct the paragraph 20, which G
H in fact prior to that has not properly in fact prepared. H
I Your Lordship would see that essentially we are relying on I
J the subparagraph -- paragraph 20. J

G My Lord, before I proceed with the application, your G
H Lordship will see today your Lordship essentially have two H
I major summonses for your Lordship to consider. The first I
J summons being our summons taken out on 29 November last year J
K seeking two relief. One in fact is a striking out of K
L certain paragraph of the existing pleading. Then the second L
M is essentially a restraining order to injunct the defendant M
N from doing certain acts set out in the schedule. N

J Your Lordship will see thereafter those instructing my J
K learned friend took out a summons to amend his existing K
L pleading which in fact was further superseded by another L
M summons. And your Lordship would see after we have filed M
N our skeleton the defendant put in a new summons and your N
O Lordship would -- may I invite your Lordship to look at O
P bundle A1, which is the -- a bundle prepared by the P
Q defendant that contained a summons with supporting Q
R affidavit. Your Lordship will see the summons was taken out R
S on 27 July, essentially last week. And your Lordship will S
T see the relief sought. It says in paragraph -- in page 2, T
U the first paragraph in fact is seeking leave to relieve from U
V the defendants -- sorry, the plaintiff implied undertaking V
not to use the document.

P Now, the document, subject matter of the application being P
Q our -- those disclosed by us in the supplemental list of Q
R documents dated 30 September. That was after the -- R
S Master A Ho has grant leave. And your Lordship will see S
T paragraph 3 being a new summons for further amendment, which T
U in fact supersede the subsequent -- the previous -- two U
V previous summonses. Your Lordship -- if your Lordship would V
look at page 28 of the bundle, your Lordship will see the
only material change being subparagraph (8). The others are
more or less the same as the previous application for
amendment.

U Paragraph 8 deals with the allegation of falsity. My Lord, U
V page 28, subparagraph deal with -- it's one of those V

A subparagraphs relied upon as a material fact to support the A
plaintiff's application of falsity of the content of the
B pamphlet. And your Lordship would see subparagraph (8) B
essentially assert that the content of pamphlet was false
C because when describing D5 as "Dr" - "doctor", the case of C
the defendant -- the plaintiff being it is an implication
D that he was the bona fide holder of a genuine doctorate D
degree and it was not in fact the case. And the reason
E being, firstly, the EUI - the European University of Ireland E
- is not -- is as bogus university. It has no degree
awarding authority. This is the first thing.

F Second, essentially the doctorate degree in fact the thesis F
was the subject matter of plagiarism. That is, the copy
from another order. That is the only material change.

G My Lord, apart from that the remaining part of the proposed G
amendment are essentially what the previous two proposed
H amendments. I think the only change is paragraph (8), the H
purple print.

I MR MOK: My Lord, also there was another change which was to I
streamline some of the pleading. After I have taken over
J this case I thought that -- some work that needs to be done. J
So within the limited time that I had, I had advised that
certain passages be deleted in order to streamline the...

K MR CHONG: Yes, my Lord, of course, we accept that. I'm drawing K
your Lordship's attention the substantial changes from the
L latest amendment comparing with the earliest amendment L
occasion.

M Therefore, my Lord, insofar as the proposed amendment is M
concerned, if your Lordship accept our striking out
N application and if we are home on that, no question would N
arise for the proposed amendment be allowed, whether the two
O previous amendment or the newest amendment. Therefore, I O
would not say anything at the moment, my Lord.

P I now then deal with the application for the striking out. P
Your Lordship, I believe you had the benefit of seeing the
papers and the submission.

Q COURT: This is my first day of my current appointment. Q

R MR CHONG: I see. I doubt if you had the benefit of seeing R
the...

S COURT: Twelve bundles. S

T MR CHONG: My Lord, the only -- yes. My Lord, the -- if you want T
me, of course I can assist, yes.

U COURT: Well, it's how you conduct your case, it's up to you. U

A MR CHONG: Yes, my Lord. A

B COURT: But why are there two additional bundles, one from each B
side?

C MR CHONG: My Lord, are you referring to the A1 and the C
supplemental bundle of the documents that...

D COURT: Why is there supplemental documents? D

E MR CHONG: My Lord, the supplemental bundle in fact is to deal E
with B6, what my learned friend -- sorry. B6 being the
F defendants' -- sorry, the plaintiff's bundle. They put the F
B6 in and then at our request we put in certain part which
G in fact is the relevant part, we say, relevant for G
determination of the issue.

H COURT: But why aren't these matters sorted out before the H
bundles are put before me?

I MR CHONG: My Lord, of course they put in the... I

J COURT: There -- I suppose there was an order regulating the J
filing of evidence.

K MR CHONG: Yes. My Lord, the... K

L COURT: Are they covered? L

M MR CHONG: My Lord, the problem in fact is they put in the M
summons on 27 July after we have put in our skeleton dealing
with the...

N COURT: Well, they may put in their summons, but have they been N
permitted under the management order as to filing of
evidence?

O MR CHONG: Well, this is a new application. Because they put in O
a new application which in fact is not a subject matter of
P the direction for the present hearing initially. My Lord, P
you remember that in the summons I draw attention they want
Q leave to relief from the undertaking. That in fact was a Q
new application for which we have not been given prior
R warning. And then they put in this bundle B4 -- B6, we have R
to respond to it.

S COURT: Well, you have so dealt -- deal with it. S

T MR CHONG: Well, they took out the summons on 27 July. We have T
not been given prior warning and nor have we been consulted.

U COURT: Are you assuming that I will deal with it? U

A MR CHONG: Well, they assume that your Lordship is going to deal A
with it. This is why in our reply submission I make myself
B very clear this would be -- should be a matter that were B
dealt with somewhere else before another judge, which before
C her there is already an existing application which similar C
to the present application of -- the newest application of
D the plaintiff. Perhaps I - I let my friend to address you
on that issue which we say should not be allowed to be heard
today. D

E COURT: So are you going to begin on your applications? E

F MR CHONG: I'm sorry, my Lord? F

G COURT: Are you going to begin on your summonses? G

H MR CHONG: Yes, I am. H

I COURT: Please do. I

J MR CHONG: Yes. J

K COURT: Before you do that, I have three authorities... K

L MR CHONG: Yes. L

M COURT: ...which I draw to counsel's attention which for them to M
consider whether they wish to address me at some stage on
N those authorities. N

O MR CHONG: I see. O

P COURT: The first is a passage in the White Book, paragraph P
29/1/39, the cases referred to. 29/1/39. The second
N authority is Article 27 of the Basic Law. The third one are N
two cases involving the same parties, Xcelom Limited v BGI-
O HongKong Co Ltd. That case, No 1, is reported in 2017,
1 HKLRD 421. No 2 is reported in the same volume of the
P HKLRD at 436. Thank you. P

Q MR CHONG: My Lord, I doubt if you want us to proceed in the Q
application in the meantime. And then in the meantime we
are going to... Q

R COURT: It's up to you whether you wish to deal with it now. R

S MR CHONG: In that case, my Lord, perhaps I would proceed with S
the application. In the meantime, those instructing me will
obtain copies from the - from the library. S

T My Lord, may I take your Lordship to the -- bundle A, 152. T
Your Lordship would see the summons and the relief we are
U seeking. U

A COURT: Page? A

B MR CHONG: 152. Your Lordship will see this summons was taken B
out on 29 November last year and your Lordship will see C
paragraph (a) deals with striking out of certain paragraphs. C
My Lord, maybe I would not ask your Lordship to look at each D
and every paragraph of the amended statement of claim. They D
all deal with the allegation of falsity of the doctor degree
of...

E COURT: Are they all covered by the order granting leave to E
amend? E

F MR CHONG: Yes. F

G COURT: Why should I hear you? G

H MR CHONG: Well, my Lord, that was - that was the subject matter H
of -- there has already a subject matter of appeal on that H
already.

I COURT: Well, the judgment hasn't been set aside. I

J MR CHONG: No, no. My Lord, there was an application for leave J
to amend. J

K COURT: Right. Which was granted. K

L MR CHONG: Yes. L

M COURT: Does it cover all the striking out applications? M

N MR CHONG: Yes, they are. N

O COURT: Then why should I deal with you? O

P MR CHONG: Well, my Lord, they are the subject matter of an P
appeal and the striking out rely on essentially conduct O
after the hearing of the summons.

Q COURT: Well, if the amendments are covered by the order granting P
leave to amend, that is the point. Why should I hear you? P

R MR CHONG: My Lord, then of course I would invite your Lordship Q
to look at our reply. Q

S COURT: Just tell me in 25 words why should I hear you when a R
master of this court has granted leave to amend? R

T MR CHONG: My Lord, the master granted leave to amend in respect S
of those paragraphs in fact took place on 29 September -- T
sorry, 29 June. And the conduct in fact complained of all T
essentially relied upon were after that day. U

A COURT: Plead.

B MR CHONG: We...

C COURT: We're talking about striking out. Striking out looks at
the pleadings, not the conduct.

D MR CHONG: Well, my Lord, in this present application, my Lord,
we are relying on the abuse of process ground for striking
out.

E COURT: Isn't it an abuse of process to try to strike out
something which leave to amend has been given?

F MR CHONG: Well, my Lord, maybe we are talking at cross-purposes,
my Lord. Perhaps I will deal with the basis of...

G COURT: Well, you have to convince why I should hear you when
there is up to the moment a valid order granting leave to
amend?

H MR CHONG: Yes. My Lord, the valid order granting leave to amend
was in relation to a summons taken out and heard on 29 June.

I COURT: Yes.

J MR CHONG: And then thereafter there were various -- a series of
conduct after that day.

K COURT: What are we talking about conduct? We are talking about
paragraphs in the pleading.

L MR CHONG: Yes.

M COURT: Let's look at the pleadings, are they covered by the
order? If they are, you are, as far as I'm concerned, you
have to persuade me why you are not dead.

N MR CHONG: Well, my Lord, the conduct after that day
demonstrate...

O COURT: Are you talking about conduct or talking about striking
out pleadings?

P MR CHONG: No, we are not referring to the striking out. There
has been no - there has been no striking out application for
hearing before (Master?) A Ho.

Q COURT: You haven't been answering my question as to why I should
hear you on subparagraph (a).

R MR CHONG: My Lord, the - the basis of our striking out
application being that the conduct complained of, the

A subject matter of striking out, all happened after that particular day. The day... A

B COURT: Well, that should be a point taken before the master. B

C MR CHONG: No, no, it had not happened by that time. It -- the... C

D COURT: Well, how can -- are you saying that they plead matters which have not happened? D

E MR CHONG: Well, they are not pleading fact. They are not pleading fact, not happened. They are pleading... E

F COURT: Well, why can't -- can you look at -- when you are striking out pleading, how can you look at other conduct? F

G MR CHONG: Well, my Lord... G

H COURT: Let's look at paragraph 31(a). H

I MR CHONG: Yes. Now, 31(a), your Lordship will look at the statement of claim. I

J COURT: Page? J

K MR CHONG: Page 178. K

L COURT: Do we have the summons for leave to amend? L

M MR CHONG: You -- are you referring to the latest one or the one before master? M

N COURT: Before the master. N

O MR CHONG: Before the master. My Lord, page 21 of the same bundle. Your Lordship would see the paragraph at subparagraph (8). Your Lordship would see that the summons before the master was only simplicity, the reference to the doctor "博士", that is all. And then your Lordship would see subsequently, upon discovery, that is after the master's order, when we disclosed in our supplemental list of documents... O

P

Q

R COURT: Well, they either have leave to amend, in which event your application is abuse. Or they don't, then in which you find a proper argument is to be addressed on the application to amend. But how can you strike out an order -- a paragraph which had already been granted? R

S

T MR CHONG: Well, my Lord... T

U COURT: You're striking -- trying to strike out the amended statement of claim, not the re-amended. U

A MR CHONG: We are striking out certain paragraph, yes. We ask A
him for striking out certain paragraph, my Lord. B

B COURT: Of the amended statement of claim. C

C MR CHONG: Of the amended statement of claim, yes. D

D COURT: That has been covered by the master's order. E

E MR CHONG: The master grant an order to amend on the ground that E
they are relevant to support a cause of action. F

F COURT: Well, the master may be right, may be wrong, I am not F
care -- I don't care. G

G MR CHONG: Yes. H

H COURT: It is up to now a valid order which has not been set H
aside. I

I MR CHONG: Yes. My Lord, the point is after the amendment, there I
were a series of conduct on the part of the... J

J COURT: But that is not pleaded in paragraph 31(8) of the amended J
statement of claim. K

K MR CHONG: No, it was not - it was not pleaded. Because we K
discovered - we discovered that after that they -- after the L
amendment being given there are a series of conduct L
demonstrating... M

M COURT: You are confusing an application for leave to further M
amend and leave already granted. As I see the wording of N
the paragraph -- first paragraph of your summons, that is an N
abuse. O

O MR CHONG: Well, my Lord, perhaps if you would look at our reply O
submission. P

P COURT: Well, I don't look at your submission. You have to P
convince me to start looking. My question is why should I Q
hear you? Q

MR CHONG: Well, my Lord, we ask your Lordship -- the answer in R
fact is to be found in our reply submission. S

S COURT: Well, you say it in 25 words. T

T MR CHONG: Well, my Lord, the -- our submission is this. The T
issue of res judicata has limited application and it does U
not apply to cases... V

A COURT: Well, you argued before the master. She granted order, A
leave.

B MR CHONG: By the time - by the time the hearing before the B
master, the act and conduct of the plaintiff had not yet...

C COURT: What matter on page 21 had not happened? C

D MR CHONG: Well, for -- and for that your Lordship would have to D
look at our...

E COURT: What matters in paragraph -- on page 21 had not happened? E

F MR CHONG: Well, my Lord, this is the plaintiff's submission -- F
sorry, the plaintiff's pleading, pleading of effect that the
G reference to 'doctor' is a false assertion. That is in fact G
H what was asserted. But if your Lordship would look at our H
complaint for striking out, your Lordship will look at
paragraph 4, page 4 of our grounding submission.

I COURT: I'm not going to look at it, just tell me what your point I
is.

J MR CHONG: Well, our point is after that day, since August J
onwards, the plaintiff...

K COURT: But they haven't allege anything like that in -- on page K
21.

L MR CHONG: No, they did not allege. L

M COURT: So what are you striking out? M

N MR CHONG: Well, we ask for strike out because the act and N
conduct after the obtaining the amendment demonstrate that
using the allegation of doctor degree, etc, was an abuse.

O COURT: They may be abused, but the master granted leave to O
amend, that's the end of it.

P MR CHONG: Well, my Lord, master grant... P

Q COURT: I'm not hearing an appeal for the master. Q

R MR CHONG: ...master grant leave to amend in respect of the R
allegation.

S COURT: I will give you until 10.30 to deal with this. If you S
don't get anywhere, I will dismiss paragraph (a).

T MR CHONG: Well, my Lord, perhaps may I invite your Lordship to T
look at paragraph 4, page 4 of our submission.

U COURT: Read it out. U

A MR CHONG: We say after the -- apart from the observation of
B Anthony Chan, that in fact was a matter before him on the
C same matter, but in fact was an application for -- citing
D for contempt. The plaintiff had made a series of offensive
E act after commencement of the present action and in fact
F after the granting of leave to amend. And the conduct we
G rely upon are after that day writing to D3's -- the person,
D3, accusing him of certain act of including covering up
D5's false academic qualification, and also making certain
abuses, exerting pressure on the defendants by forcing D5 to
step down as the school supervisor of primary school. And
also during a press conference held with the press revealed
to the public of D5's so-called false academic
qualification, and distributing the pamphlets, etc, and also
writing -- causing publication of the same in the local
newspaper.

H Now, and all these conduct happened after the - happened
I after the amendment application. My Lord, these conduct
J demonstrate the so-called allegation of the doctor degree,
etc, were used as an abuse of the excuse try to use the
legal proceeding as a means to pressurise D3 into conducting
a reform.

K COURT: Why can't they do that if what they say is true?

L MR CHONG: Well, my Lord, this is of course a subject matter of
M debate and to be dealt with later in...

N COURT: Have you ever said it is not true?

O MR CHONG: Well, my Lord, but...

P COURT: Is there evidence say that is not true that you are the
Q genuine holder of a genuine research doctorate?

R MR CHONG: My Lord, the plaintiff now change its case, initially
S by saying that the doctor degree.

T COURT: I'm not asking you about the plaintiff. I'm asking you
U to answer my question.

V MR CHONG: Well, if D5 is a holder of a doctor degree, on what
basis can he say that -- can he say this is a bogus degree
and then use...

COURT: There are many -- quite a few diploma mills in the world.
If what they say is true -- if what they say is true, why
can't they do that?

MR CHONG: Well, whether in fact there was a -- apart from that
there is also the issue of libel, they say. By putting the
doctor, "Dr" ahead of D5's name, does it constitute a libel?

A COURT: Are you digressing to other points? We are talking about A
strike out. B

B MR CHONG: Of course we are talking about striking out. For B
striking out the court will still have to consider whether C
all these conduct done was for the genuine determination of C
issue in the trial or rather it was used as a means to D
harass the -- all the defendants into yielding to its D
command for reform? E

E COURT: Yes. E

F MR CHONG: Well, my Lord, now if your Lordship accept our F
submission that apparent even if your Lordship would F
consider by looking at my learned friend's submission, my G
Lord remember in this present action, they are suing passing G
off, malicious falsehood and also libel in respect of the H
publication of the pamphlet. And my Lord, if you look at the H
pamphlet they are relying upon, can be seen at page 50 -- 49 I
to... I

I COURT: Why are we talking about pamphlet? We are talking about I
striking out. J

J MR CHONG: Of course, but striking out is relevant for J
consideration of the cause of action. K

K COURT: Your time is up. I dismiss paragraph (a) of your summons K
issued on 29 November 16 -- 2016. L

L MR CHONG: Yes, my Lord. My Lord, yes. M

M COURT: Costs. M

N MR CHONG: Well, my Lord, the cause of action. They are relying N
on... O

O COURT: Costs of the proceedings and the application. I have O
already made an order striking -- dismissing that paragraph. P
What about costs of that application? P

Q MR CHONG: My Lord, if you - if you decided to strike out, my Q
Lord, we have no - we have no submission to make because we R
have to concede that we should bear the cost for the R
striking out if that be the case. S

S COURT: On what basis? S

MR CHONG: On what basis? T

T COURT: Taxation basis. T
U
U
V

A MR CHONG: Well, my Lord, we say that unless there is particular A
reason why in fact then there is no reason why there should
B be any costs apart from party and party. B

C COURT: Yes. Mr Mok? C

D MR MOK: My Lord, first of all, my learned friend has not D
answered your Lordship's question as to why he is entitled
E to make this application notwithstanding the offer. E

F COURT: Well, I have dismissed it. F

G MR MOK: And our submission is that it is open to your Lordship G
to order a higher basis, something between indemnity cost
H and party to party. H

I COURT: Why is it somewhere between? This is a clear abuse of I
process. I

J MR MOK: Yes. My Lord, as I said it is open to your Lordship and J
if your Lordship views it as an abuse of process then of
K course indemnity cost would be appropriate. I have no K
I further submissions except to ask for your Lordship for I
certificate for two counsel. J

L COURT: Thank you. I will have to ask your junior to address me. L

M MR MOK: Yes. M

N COURT: It is quite straightforward as far as this application is N
concerned for the two counsel point. L

O MS LI: Yes, my Lord. Your Lordship, the way in which the case O
has been presented, argued, as shown in the skeleton
P submissions of the defendant rests on a number of cases and P
N there are two bundles of cases which they relied on. N

COURT: But it only turns on the order made by the master. O

MS LI: Yes. But they... P

COURT: It's quite straightforward. P

MS LI: Yes. But the defendants are trying to argue further by Q
relying on the... Q

COURT: I see. R

MS LI: Yes. S

COURT: I take that you oppose certificate for two counsel. T

MR CHONG: I do. U

A COURT: I dismiss it with costs on indemnity basis with A
certificate for one counsel.

B MR CHONG: My Lord, may I proceed with my second application, B
paragraph (b), my Lord?

C COURT: Yes, please. C

D MR CHONG: I would take your Lordship to the summons and perhaps D
it would be necessary for your Lordship to look at the
E nature of the relief we try to plead. And if you look at E
page 155 -- sorry, 153.

F COURT: That is, you are now talking about the application, the F
gagging order.

G MR CHONG: Yes. My friend use that term but we say this is not a G
gagging order. I take your Lordship to look at 153. Your
H Lordship will see paragraph 5, we are seeking your H
I Lordship's discretion to restrain doing of the act I
J complained of in paragraph 1, my Lord. Your Lordship will J
K see paragraph 1 deal with promising and disclosing or making K
L copies to any person not a party to the action the pleading L
M and the documents served by us to them. Pause here for a M
N while. My Lord, there is already an existing application by N
O the plaintiff. They are seeking leave of this court to O
K relieve them from the implied undertaking of using the K
L documents for a purpose other than in this action. L

L Now, the implication of this is they are trying to use this L
M document, without leave would constitute breach of the M
N implied undertaking. My Lord, we... N

M COURT: If they are doing that, why should they issue a summons? M

N MR CHONG: Well, they have - they have already in breach in our N
O humble submission. My Lord, you will see that in the O
P action... P

P COURT: But if they have already been in breach, it doesn't -- P
Q it's not covered by your application. Q

Q MR CHONG: No, no, it would not. Q

R COURT: No. R

R MR CHONG: But the - the intention of that in fact essentially R
S demonstrate that they want to make use of the document for a S
T purpose otherwise than in this action. My Lord, remember T
U that in A2237, in that action, they have already relied upon U
V the document disclosed by us in the supplemental list of V
documents in this action to use for a purpose otherwise than
in this action.

A MR MOK: My Lord, I stop my learned friend. Because he is A
mischaracterising what we did in 2337. In 2337, we B
specifically said we are not going to use these documents or B
the information derived from them unless and until we have C
obtained leave of the court in this action. My Lord, may I C
ask your Lordship to look at the affirmation that we have D
filed which makes this clear. I don't want my learned D
friend to say that we are in contempt just because we are E
trying to do the right thing. My Lord, this is in bundle E
B6, if I may ask your Lordship just to very quickly look at
that bundle. There is an affirmation we have included at
page 57.

F COURT: Page 50-? F

G MR MOK: 58, rather, in that action. On page 59, paragraph 7, we G
have said:

H "Lastly for the purposes of this application, I also H
rely on the content of my third affirmation with the I
following exception ... (reads) being that I do not at I
the present stage rely on paragraph 5 of my third
affirmation, the report exhibited thereto."

J My Lord, the exhibit is the report that my client obtained J
to show that the thesis submitted or indeed produced by the
5th defendant is a plagiarism. K

L "The reason is that before deploying the same in the L
present proceedings, I intend to apply in the present
case, 1619, for this court's direction ... (reads)
thesis by the 3rd defendant, that is the 5th defendant
in the present case..." M

N And so on. And so on. And subsequent to that, after N
obtaining Master A Ho's order we have filed a re-amended
statement of claim in that case starting at page 65 whereby
we have removed the parts that we say we will not rely on O
unless and until we obtain the leave of this court. O

P So it is very clear that we did not intend to and did not P
rely on any part of the information for which leave is being
sought in this court, and my learned friend is really Q
stretching it to say the least to say that that was a
contempt of court when we made clear our intention we are R
not using it. R

S MR CHONG: I will wait until my learned friend submit -- finishes S
submission, I'm -- I was in the process of making submission
because if your Lordship will bear with me to deal with why T
we can justify there was already the contempt of court. T

U My Lord, remember that on 29 June there was a hearing before U
Master A Ho and then the leave was granted in the morning of

A the 30th. And then on the very same day we put in a A
supplemental list of documents disclosing - and also in our
B defence - disclosing the sources of -- upon which we B
obtained D5's degree, including the fact that in effect it
C was grant by the EUI. And then thereafter -- that of course C
was in 1619, in the present action. Thereafter, those
D materials were used by the plaintiff to plead his own case D
in another action, 2337. And my Lord, may I take your
E Lordship to bundle B6, which in effect is the plaintiff E
bundle. If you look at B6, your Lordship will see the
F pleading -- there will be amended statement of claim filed F
by the plaintiff in that action, they used the material
obtained in this action to feather its own nest by pleading
the facts in that action. Your Lordship would see -- may I
invite your Lordship to...

G COURT: Carry on. G

H MR CHONG: Yes. In paragraph 11 of -- that, of course, the H
amendment was in October. They relied on the application
I for the purpose -- making an application for amend already I
and they pleaded that in that paragraph, your Lordship, in
J paragraph 11, in paragraph 14, paragraph 16. And your J
Lordship would see we have dealt with it in our grounding
K submission at page 30 of our grounding submission. All I K
need your Lord -- draw your Lordship's attention is to ask
L your Lordship to look at paragraph 51 of our grounding L
submission. The grounding submission we recite why we say
M there was a breach of implied undertaking was because the M
document and the information obtained in our supplemental
N list of documents in 1619 was used to support an application N
for the purpose of amendment in 2237. Your Lordship, we
O recite that part in paragraph 50 already and I am not going O
to repeat that, your Lordship. All your Lordship would look
P at that is in fact is look at these three paragraphs. P

Q My Lord, where did they obtain those information, apart from Q
O 1619? And those information, including the list of O
documents, those things were pleaded in A2237. On what
P basis can my friend say there is no breach of the entire P
undertaking, my Lord? They have been used without leave.
Q And this is why in the latest application your Lordship, you Q
will see in the latest application of my learned friend, the
R plaintiff wish to obtain leave of this court to make use of R
documents disclosed in this action to be used in A2237. It
S may well be that they want to make an undertaking, etc, but S
how does the undertaking affect the fact that there has
already been a breach? They have already used the material.

T My Lord, this is relevant for your Lordship to consider T
exercising a discretion to prevent further abuse, especially
U they consider it necessary to seek leave. My Lord, this is U
-- may I ask your Lordship to turn back to the summons at
page 153 of bundle A. I dealt with paragraph 1 already. My

A Lord, paragraphs 1 and 2 should be read together and your Lordship, because we have already find out those documents in fact used in the supplemental list of documents that we disclosed, including pleading, has been used for the purpose otherwise than in this action. B

C And your Lordship would see paragraph 3 why we have to seek injunctive relief for -- to prevent them from using the materials for purpose otherwise than the litigation because we have demonstrate an undisputed fact. My Lord, the undisputed fact being those documents were used to distribute among -- in the school among the -- outside the school building to the parents, to the students with a view to harass D1 to D13. Holding press conferences and distributing those documents to the press resulting in publication of adverse comment on the school, including the -- a proper charity, D3. And sending various messages -- text messages, etc, and email to the defendants harassing them and abusing them, using the term, and forcing them, including D5, to step down as the school supervisor. H

I My Lord, what are those acts relevant for consideration of the constitutional right of free speech, my Lord? They had nothing to do. And your Lordship would see -- my Lord, to give a simple example, your Lordship. If your Lordship would look at bundle B1. May I take your Lordship to bundle B1. K

L COURT: Yes.

M MR CHONG: Yes. If your Lordship look at bundle B1, I just ask your Lordship to look at a few documents. At bundle B1, page 218. 2-1-8. Have you got, my Lord, 218? M

N COURT: What is the purpose? N

O MR CHONG: 218, your Lordship will see this is an email from the plaintiff sending to the president of D3. And then your Lordship will turn over with CC to virtually anyone in the world accusing the conduct of D3 and also D5. And your Lordship, then at 221, we send a letter warning them you should not do this because you are harassing the witnesses(defendants?) and also the possibility of fair trial. 221 and 222. Q

R And then in reply, at 223, your Lordship will see they refuse. And then your Lordship will see 226, despite the warning, they continue. Your Lordship will see the recipient in fact virtually cover any person disinterest in the matter were giving notice. And your Lordship will see "主旨有關指責妨礙司法公正的來函". And your Lordship will see -- and then at page 228, 229, this is utterly abuse and forcing. And your Lordship will see, "陳校監" essentially is U

A D5, asking 陳校監 and your Lordship will see in the middle, " A
然後正視是否應該手擲地(?)馬上把所有職務全部辭退下台" etc. A

B And then, my Lord, all these happened after the leave having B
been granted for the amendment. Your Lordship would see the C
abuse continued, all these pages. Your Lordship would see C
at page 234, the plaintiff even published in the full page
in the newspaper congratulating the award of -- D
congratulating D5's appointment being renewed and your D
Lordship will see the bracket, "陳添旺(譯音)博士2007年愛爾蘭".
European University of Ireland, "管理學博士" etc, referring E
to that. And there are uncontroversial evidence. In the E
course of the press conference documents were released to F
the press admitting that the purpose of the press conference F
was the abuse and harass, and genuinely in fact
congratulating D5 for having at(sic) his office renewed. G

H Your Lordship can see the admission at page 240. Your H
Lordship will see 240, this is the speech, in writing, H
distributed to the press during the press conference by the
plaintiff. And your Lordship will see the second paragraph, I
the last line, "其實我只是想向公眾反映現今社會表裡不一醜惡的一面". I
This is not a congratulations. And your Lordship would then J
see the press release at page 243 onward. And your Lordship J
would also see at 246 onward, my Lord, the plaintiff at the
same time, after obtaining those information, took out legal K
proceeding to sue number of people, including - these are K
the relevant one - and your Lordship would see Carrie Lam
was sued, also at 249. Your Lordship will look at 249, the L
plaintiff sued Carrie Lam on the ground that she shouldn't L
have in fact allowed the appointment of a person holding a
bogus doctor degree to act as a supervisor. And then your M
Lordship would also see the head of the Department of M
Education, at page 247, Eddie Ng Hak-kim was sued for N
exactly allowing a person holding a doctorate degree said to N
be bogus to act as school supervisor.

O And my Lord, I do not propose to read -- and then your O
Lordship, one alarming document disclosed and distributed to
the press is 255. My Lord, 255 is a personal information P
filed by the D5 with the -- D3. And this document contained P
personal information of D5 and filed with the -- at the time Q
when it was appointed as a school supervisor and the Q
information, particulars was supplied to the school. This
document was among those documents disclosed in the R
supplemental list of documents. This document was R
distributed to the press as one of the means to harass D3
and D5. On what basis? Sorry, my Lord. I'm sorry, my S
fault, this is in the supplemental list of documents. S
Sorry, my fault. Yes, sorry, this is the election -- this T
is election document. When -- because he is a candidate -- T
D5 is a candidate for the functional constituency and this U
in fact was the document, not with D3 but filed with the U

A functional constituency for the purpose supporting his A
entitlement to vote(run?). But that was -- this document
B was disclosed and distribute to the press. B

COURT: It's a public document.

C MR CHONG: No, this is not public document. C

D MR MOK: Why is it not? D

E MR CHONG: This is not a public document. E

F COURT: Why? F

G MR CHONG: Well... G

H COURT: If you want to stand for election and you publish H
information about yourself, why is it not a public document? G

I MR CHONG: ...well, this document was used for the purpose of the H
functional constituency for his entitlement to vote. But --
I now, let us assume this is a public document. On what basis
can it be used for the purpose of harassing D5? I

J COURT: Well, the question is on what - on what ground is it not J
usable? J

K MR CHONG: Well... K

L COURT: You published materials about yourself to contest an L
election. L

M MR CHONG: Yes. M

N COURT: And you say that nobody can use it, why do you publish N
it? N

O MR CHONG: Well, the use must be for the purpose - bona fide for O
the purpose of this litigation, but it is not. O

P COURT: No. It is election material, not litigation. P

Q MR CHONG: Yes. This is... Q

R COURT: You are trying to confuse me. R

S MR CHONG: ...this is an election document, of course, but it was S
used by the plaintiff for the purpose of harassing him. The
whole purpose of the press conference was to reveal... S

T COURT: How can information disclosed by you be used to harass T
you? T

U MR CHONG: But there must be... U

A COURT: You don't just make the allegation without making it
B good.

C MR CHONG: No, my Lord, maybe for instance if I filed a document
D about...

E COURT: Well, you look at that document, what did he say and how
F was it used to harass him?

G MR CHONG: Well, this...

H COURT: You don't make a lot of accusations by just making blank
I allegations.

J MR CHONG: No...

K COURT: ...without supporting them. Make good the statement.

L MR CHONG: Now, this document was filed by him...

M COURT: How was it used to harass him?

N MR CHONG: Well, it was used by the plaintiff relying upon the
O content.

P COURT: Which content was used to harass him?

Q MR CHONG: Your Lordship would look at 255.

R COURT: 255.

S MR CHONG: You see somewhere in the middle candidate No 18 and
T your Lordship will see...

U COURT: 255 of which bundle?

V MR CHONG: 255, bundle B1.

COURT: Yes.

MR CHONG: Your Lordship would see -- you will see candidate
No 18 somewhere halfway in the middle. Your Lordship will
see, apart from the name, can you see education? And you
will see -- your Lordship will see "PhD, MBA".

COURT: Which paragraph are you talking about?

MR CHONG: No, this is a one-page document without paragraphing.

COURT: Page 255 of which bundle?

MR CHONG: B1.

A COURT: 155 of B1? A
B MR CHONG: 255. B
C COURT: Is it election material? C
D MR CHONG: Yes, my Lord. This is the -- you will see the D
E heading, "參考資料陳添旺見"... E
F COURT: Bundle B1, page? F
G MR CHONG: Page 255. G
H COURT: Yes. H
I MR CHONG: Your Lordship will see -- somewhere in the middle can I
J you see against candidate No 18 and then your Lordship will J
K see name, sex and then education. Can you see education, my K
L Lord? L
M COURT: Yes. M
N MR CHONG: Your Lordship will see education is "PhD, MBA," etc. N
O My Lord, the purpose of circulating and distributing... O
P COURT: Why is it harassment? You say you're a doctor, you refer P
Q to you as a doctor, what's wrong with that? Q
R MR CHONG: Yes, by itself - by itself it is not. But this R
S document was distribute along with his own speech. His S
T speech is firstly the doctorate degree was bogus and so T
U claiming PhD in fact... U
V COURT: Well, this is not what is said in this document. V
N MR CHONG: No, no, it's not said in this document. N
O COURT: This document claims that it's a genuine document. O
P MR CHONG: But, my Lord, we are restraining the distribution of a P
Q document disclosed in our list of documents to be used... Q
R COURT: But what has it got to do with the election material? R
S MR MOK: Sorry, I cannot really countenance my learned friend S
T trying to mix up the issues. None of these documents which T
U my learned friend referred to was disclosed in the list of U
V documents. He is referring to information concerning the V
Irish university -- the European University of Ireland which
he, himself, voluntarily disclosed in his defence. And in
my learned friend's list of cases one of the cases says that
if information is voluntarily disclosed, it is not subject
to the implied undertaking. My learned friend keeps mixing
up all these points. What he is referring to by way of the

A supplemental list of documents only relates to plagiarism. A
None of the documents which my learned friend asks you to
B look at has anything to do with plagiarism. B

C MR CHONG: My Lord, we should concentrate ourselves on the basis
of -- upon which we obtained -- we try to seek an injunctive
D relief. D

E COURT: Well, I am still puzzled why - why it is all election
material was used to harass him? And I said you mustn't try
F and make blank allegations without particulars in support. F
You are trying to shift the other ground. How was it used
G to harass him? G

H MR CHONG: Well, this document was used -- of course, this
document was in fact used for the purpose of supporting the
I press conference by alleging that the assertion of the PhD,
J including MBA, were bogus. That was in fact... J

K COURT: It didn't say it was bogus. K

L MR CHONG: It was not stated in, my Lord. L

M COURT: It only shows that the assertion was made by him. M

N MR CHONG: Well, my Lord... N

O COURT: So you don't - you don't just blend all matters together
and make a damaging allegation against the other side. O

P MR CHONG: My Lord, the conduct we complain of... P

Q COURT: You are trying to prevent others by making unfounded
allegations. I'm trying to stop you from using this forum
R for making unfounded allegations. R

S MR CHONG: Well, my Lord, look at it in another angle. Can... S

T COURT: You -- if you have -- have you finished on the harassment
by the election material? If you have no basis, withdraw
U the allegation. U

V MR CHONG: No, I haven't finished, my Lord. May I continue with
the... V

COURT: Harassment by the election material.

MR CHONG: ...by the...

COURT: Election material.

MR CHONG: No, I have finished that part. I have finished that
part.

A COURT: You haven't made good. Withdraw your allegation. A

B MR CHONG: Well, my Lord, if you consider that the... B

C COURT: I am telling you you haven't made good the allegation of C harassment, then withdraw your allegation. C

D MR CHONG: Well, insofar as this document itself we accept there D was not -- nothing in that document by itself contained... D

E COURT: Withdraw your allegation then. E

F MR CHONG: In that case, I withdraw insofar as page 255 is F concerned. But I -- may I continue with the rest of my F submission. Your Lordship will see 256. Now, this is the F propagation made by the plaintiff. And your Lordship, as a G result of the press conference and the propagation, your G Lordship would see the adverse press at page 257. G

H COURT: What has that got to do with your application to stop it? H

I MR CHONG: I'm sorry, my Lord? I

J COURT: Why can't he say that? J

K MR CHONG: Why can he say? K

L COURT: What information does it obtain from this case? L

M MR CHONG: Well, my Lord, your Lordship would see the whole M purpose of the press release, including the distribution of M this document, is to assist the press, making good his M allegation. M

N COURT: I'm not asking you about motive, I'm asking you why this N is relevant to your application to get him? N

O MR CHONG: Well, my Lord, this document was used part and parcel O as the oral speech made during the press conference, O precipitating in page 257. 257 onward... O

P COURT: Who had the CEO's information obtained in this case? P

Q MR CHONG: Well, those information, including the source where he Q obtained his doctorate degree, you... Q

R COURT: Page 256, where does he disclose information obtained in R this action? R

S MR CHONG: My Lord, as I have already submitted, this, by itself, S was not sufficient. Because he also deal with the... S

T COURT: Well, you're putting matters which are not sufficient and T together they become sufficient. T

A MR CHONG: Well, my Lord, we have to look at what has been distributed and together with what was said. A

B COURT: Well, if he distribute matters which are libellous, you B
C can sue him for libel. C

D MR CHONG: Yes. D

E COURT: If he -- you are trying to stop him because he is using E
F information obtained in this action... F

G MR CHONG: Yes. G

H COURT: ...you have to make good your allegation. H

I MR CHONG: My Lord, but the point is -- our point is this. Can a I
J litigant, after obtaining... J

K COURT: What, does he abuse the information? K

L MR CHONG: Well, after obtaining list of documents, including the L
M pleading, make use of their document and the document
N disclosed in discovery process which is the compulsory
O process for use purpose like this. O

P COURT: How does he make use of information obtained in this P
Q action? Q

R MR CHONG: Well, you can only use the information obtained in the R
S litigation. S

T COURT: Well, how does he -- where is the evidence of misuse? T

U MR CHONG: Well, he himself even admitted in the affidavit U
V evidence that those information, including those he
obtained, they were used in the press conferences. That was
not disputed. V

COURT: You ask me to look at page 256.

MR CHONG: And 257.

COURT: Where does he misuse information?

MR CHONG: And your Lordship will see...

COURT: Where does he use -- misuse information? You don't just
give me 12 bundles and make blank assertion.

MR CHONG: No, of course, no.

COURT: Where?

A MR CHONG: My Lord, can you look at 256, the top, you will see A
the bracket.

B COURT: If it's legible. B

C MR CHONG: "2007年愛爾蘭, European University Ireland, 管理學博士". C
The only source for -- to enable the plaintiff to publish
D that statement is from the document disclosed in 1619 in the D
present action. No other source.

E MR MOK: My learned friend again is trying to mislead. The so- E
called disclosure document...

F MR CHONG: In the - in the defence, sorry. F

G MR MOK: ...is in the defence, which is a voluntary document. As G
I said, my learned friend can point to his own authority to
H say that that is not covered by the - by the undertaking. H

I MR CHONG: We say this, of course, disclosed in our defence and I
also the supplemental list of document. Your Lordship will
see the supplemental list of document was...

J COURT: Where in the supplemental -- your list of documents. J

K MR CHONG: The list of document in fact was filed on 30 June. K

L COURT: What does it say? L

M MR CHONG: No, sorry, I check the list of document for your -- M
yes.

N COURT: Well, you say if it use information obtained in the list N
of documents, where is the list, what does it say?

O MR CHONG: May I continue, in the meantime I'm going to... O

P COURT: No, I'm not going to allow making bold and timeless P
allegations.

Q MR CHONG: Yes, my Lord. Perhaps... Q

R COURT: And then shifting to other matters. R

S MR CHONG: In that case I would find out the supplemental list S
for your Lordship's sight.

T MR MOK: For my learned friend's information, the supplemental T
list was filed after this document.

U MR CHONG: My Lord, the reference to the European University U
Ireland...

A MR CHONG: ...was disclosed in the defence as well as in fact in A
the supplemental list of document. B

B COURT: Where is the supplemental list? C

C MR CHONG: And your Lordship would see the supplemental list at C
page 155, bundle B3. D

D COURT: 155? E

E MR CHONG: And the -- yes. And the schedule 1, part 1 is 156. E

F COURT: Sorry, one page at a time. F

G MR CHONG: And 156, yes. G

G COURT: 155. Item number? H

H MR CHONG: 26 onward, up to 32, they all relate to the -- EUI's - H
- the process through which in fact the degree was obtained. I

I COURT: What is the date of this document? I

J MR CHONG: 30 September. J

K COURT: And the advertisement? K

L MR CHONG: My Lord, on 30 June we filed a defence. The defence L
by -- we have made reference to the degree. M

M COURT: What is the date of the advertisement? M

N MR CHONG: The advertisement is the September -- no, the N
advertisement, let's see. O

O MR MOK: 9 September. Page 256. O

P MR CHONG: Yes, my Lord, 256. Before that, we have already in P
our defence referred to the degree. Q

Q COURT: What is your -- you are saying that they are misusing Q
information... R

R MR CHONG: Yes. R

S COURT: ...obtained in -- from the supplemental list. S

T MR CHONG: Yes. T

U COURT: Are you -- is that a correct statement which you wish to U
withdraw? V

V MR CHONG: Well, no, my Lord, we disclosed that in the defence. V

A COURT: That was not what you said. A

B MR CHONG: No, my Lord, this is... B

C COURT: You said it was... C

D MR CHONG: ...this is the... D

E COURT: ...it was they obtained information, misused information E
disclosed in, something like that.

F MR CHONG: My Lord, I have to admit I made a mistake of the day. F
But prior to that, the degree -- in fact, information
G relating to the degree has been disclosed in our defence and G
then it was made use of for that purpose, my Lord.

H COURT: But is it -- is there -- it that misuse? H

I MR CHONG: Is that? I

J COURT: Misuse of information? J

K MR CHONG: Well, my Lord, you will see from the document that I K
draw your Lordship's attention, since obtained that
L information he made use of that to... L

M COURT: You are trying to dodge the issue. If they used M
information obtained in the defence, is that misuse of
N information? Is that abuse? N

O MR CHONG: In my humble submission, it has been used for the O
purpose -- we say misused. M

P COURT: Why can't it be used? P

Q MR CHONG: Well... Q

R COURT: There is no undertaking, is there? R

S MR CHONG: Now, there must be an implied undertaking. S

T COURT: Authority? I thought Mr Mok said - you can disagree with T
him - that even on your list of documents information put
U forward in a defence is not subject to the undertaking. U

V MR CHONG: My Lord, my friend's submission in fact does not V
appear to be supported by authority. And my Lord...

MR MOK: Item 13.

COURT: Where is your - where is your authority?

MR CHONG: May I finish my submission first, my Lord.

A COURT: Yes.

B MR CHONG: My Lord, if your Lordship would look at the implied
undertaking issue at page 28 of my submission...

C COURT: Now, I'm not going to flip around 12 bundles. You make
D your point and then make it good by looking at the
documents.

E MR CHONG: Yes. My Lord, if you look at the Sun Hung Kai -- Shun
F Kai (Finance?) Co Ltd v Japan Leasing. But before that we
have cite the paragraph 47, the legal principle on the
implied undertaking and the judgment of Le Pichon JA. And
then I would also ask your Lordship to look...

G COURT: Which authority are you asking me to look at?

H MR CHONG: Shun Kai...

I COURT: You are mumbling about a number of authorities.

J MR CHONG: Shun Kai Finance. Item...

K COURT: Which bundle?

L MR CHONG: ...item No 13.

M COURT: In whose bundle?

N MR CHONG: In our - in our list of authorities, my Lord, item No
13.

O COURT: Item No 13 in the defendants' list of authorities, right?

P MR CHONG: Yes. Yes, my Lord.

Q COURT: Yes.

R MR CHONG: And...

S MR MOK: And the relevant principle is in the footnote at page
539 at J.

T COURT: 5-?

U MR CHONG: My Lord, that...

V MR MOK: 539 J, "where a party voluntarily chose to refer to".

MR CHONG: ...my friend would have his turn, but may I permitted
to complete my submission first?

COURT: So what do you want me to look at?

A MR CHONG: Your Lordship, I would ask your Lordship to look at
B the citation of the judgment of Lord Hoffman in Taylor v
C Serious Fraud Crime(Office?) and your Lordship can see...

C COURT: Are you not -- you don't want to look at Shun Kai
D Finance.

D MR CHONG: No, I want you to look at Shun Kai Finance.

E COURT: Which passage?

F MR CHONG: May I have a short indulgence. I lost track of that.
G My Lord, you can start at page 551 under the heading, "The
H relevant principles" and then your Lordship would see...

G COURT: Read out the relevant passage to me.

H MR CHONG: Yes.

I "The rationale underlying discovery in civil cases is
J that "...compulsory procedure are needed to ensure that
K the parties are able ...(reads) and other information
L from others, and thus to find evidence supporting their
M own case and undermine that of the opponents"."

K And then his Lordship then deal with the distinction
L between...

L COURT: Whose judgment was it?

M MR CHONG: I'm sorry?

N COURT: Whose judgment are we talking about?

O MR CHONG: Judgment of -- this is judgment of Keith JA. And your
P Lordship would see the part that we try to rely upon in the
Q Le Pichon JA judgment at page 544.

P COURT: 544?

Q MR CHONG: Yes. Against the letter B onward. Her Ladyship deal
R with the compulsory principle. Even it is voluntary
S discovery, it is still subject to compulsory principle. The
T reason being people -- litigants are forced by legal process
U to disclose.

S COURT: 544, against?

T MR CHONG: 544, against the letter B onward to H. And then your
U Lordship would see against...

U COURT: Is -- are we talking about pleadings?

A MR CHONG: Pleading. A

B COURT: It's talking about witness statements and expert reports. B

C MR CHONG: Yes, my Lord. C

D COURT: Where does it talk about pleading? D

E MR CHONG: But insofar as pleadings are concerned, we have to E
rely upon the judgment in an Australian decision...

F COURT: So there is nothing in this case to support... F

G MR CHONG: No, because I - I was asked to deal with the G
compulsory principle first and then I will ask you...

H COURT: I did ask you to deal with the compulsory principle, you H
wanted to talk about it. Where does it deal with pleadings?

I MR CHONG: Pleadings. My Lord, and your Lordship would -- sorry. I
My Lord, at page 558, the same case, my Lord, Keith JA's
dissenting judgment but not in fact on the issue. But on
that issue the -- Keith JA deal with the issue of pleading.

J COURT: 558? J

K MR CHONG: 558. K

L COURT: Yes. L

M MR CHONG: The letter B onward. M

N COURT: Yes. N

O MR CHONG: And your Lordship would see against letter B, his O
Lordship said:

P "In my view, it is a fiction to describe a litigant's P
decision to waive the privacy in a particular document
by referring to it in a pleading as voluntary."

Q And then, your Lordship, up to the letter H. Q

R COURT: Why should I be looking at dissenting judgment? R

S MR CHONG: Well, the principle of law - the principle of law in S
fact...

T COURT: What does the majority say about this? T

U MR CHONG: The decision in fact can be seen as the... U

A COURT: I will take the midmorning adjournment. You better A
organise yourself and tell me what you want to make of this
B case.

B MR CHONG: Yes. B

C Hearing adjourns - 11.20 am C

D Hearing resumes - 11.36 am D
Appearances as before.

E MR CHONG: My Lord, maybe to clarify my -- the basis of our E
F submission on the injunctive relief, my Lord. We firstly F
G humbly submit that the implied undertaking, general -- would G
H apply on the deed(?). And if your Lordship would not -- H
I first, on that point, we submit that the inherent power of I
J the court to control use of this document for the purpose J
K otherwise than for the purpose of advancement of the K
L litigation, would also be sufficient to cover that aspect. L
M And I would assist you by making a short submission on that M
N by reference to the authority. N

I Your Lordship would look at the Shun Kai Finance, tab No 13 I
J at page 558. I drew your Lordship's attention that in that J
K case Keith JA dissented judgment that essentially was on the K
L issue of whether a document referred to a pleading, would L
M cover within the compulsory rule. The Court of Appeal by a M
N majority say it is not. And then the -- since the -- then N
O there has been further development on the aspect of law O
P by... P

M COURT: Do you have Eagle Star? M

N MR CHONG: I'm sorry, I was about to address your Lordship on the N
O - on the Australian... O

O COURT: You asked me to look at 558. I ask you if you have a O
P copy of Eagle Star, the third line from the top. P

P MR CHONG: I'm afraid we don't have, my Lord. P

Q COURT: You don't have, thank you. Q

R MR CHONG: And may I take your Lordship to then tab No 20. R

S COURT: Tab No 20 will be the other bundle. S

T MR CHONG: Tab No 20 is... T

U COURT: Volume 2. U

V MR CHONG: ...Hearne v Street. Your Lordship, the case also... V

COURT: Sorry, tab number?

A MR CHONG: Tab No 20. A

B COURT: That would be in volume 2, right? B

C MR CHONG: Yes. Volume 2, yes, my Lord. And your Lordship would C
look at the judgment of Hayne JA at page 632. His Lordship
D deal with the extent... D

D COURT: Page? D

E MR CHONG: Page 632. Paragraph 95, 98 and -- sorry, 95, 96 and E
F 98 being the one that I wish your Lordship to look at. 95
F deal with the extent of the implied undertaking. And then
96 says this: F

G "Where one party to litigation is compelled, either by G
H reason of a rule of court, or by reason of a specific
H order of the court ...(reads) use it for any purpose
I other than for which it was given unless it is received
I into evidence..." etc. I

I And then your Lordship would see page 98 -- paragraph 98, I
J page 633: J

J "It may be noted that the general law protection is J
K often frustrated by the protection from rules of
K court." K

L And then relying, and until that particular day of: L

M "...the New South Wales Supreme Court Rules ... M
N prevented strangers to litigation from having access to
N documents or things on the court file without the leave
of the court." N

O We have the same principle in Hong Kong, my Lord. O

O Then, my Lord, the case that we recite in our... O

P COURT: What did you say about Hong Kong? P

Q MR CHONG: I'm sorry, my Lord? Q

R COURT: Sorry, I didn't hear you on what you said about R
Hong Kong. R

S MR CHONG: Well, we say we have the same principle in Hong Kong, S
my Lord. S

T COURT: Which same principle? T

U MR CHONG: The same principle as unless with leave of the court, U
a third party to a litigation cannot obtain document. U

A COURT: Yes. A

B MR CHONG: And my Lord, then I take your Lordship to tab 21, the B
C case we cite in our submission, Esa Limited v Demonbray(?). C
D And I would ask your Lordship to look at the judgment at D
E paragraph 20 and 21. Paragraph 20, dealing with the -- what E
F prejudice as a result of the document going into the hand of F
G a third party. And your Lordship, paragraph 21, all I need G
H your Lordship to look at is, after citing the Home Office v H
I Harman, and your Lordship would see the last fourth line I
J from the end of that paragraph: J

F "The principle applies at its call to the pre-trial F
G discovery, answers to interlocutory, witness G
H statements, affidavits or any admission of acts, but H
I may be taken to include pleadings." I

H And then compare with Wilcox judgment, etc. H

I And then, my Lord, in Hong Kong the case of Secretary for I
J Justice v FTCW will assist you as the general legal J
K principle in Hong Kong to control the use of documents in K
L the control of the Hong Kong Rules of Procedure. I take L
M your Lordship to the judgment of Lam VP at paragraph 12, 13 M
N and 16. All I need is to read paragraph 16: N

K "In our judgment, it is clear beyond peradventure that K
L the court inherent jurisdiction to control access to L
M the documents placed in its custody ...(reads) implied M
N effect of abrogating any common law power of the court N
O in granting or restricting access to documents." O

M And I take your Lordship then to look at paragraph 22: M

N "In light of the above observations as to the nature of N
O the judicial process and the power of the court in the O
P custody and possession of documents ...(reads) well P
Q established that the court has inherent jurisdiction to Q
R prevent any abuse of its process..." R

Q Citing Ng Yat Chi. And my Lord, this, in our humble Q
R submission, support our contention that even if your R
S Lordship were not with us on the use of the pleading under S
T the implied undertaking compulsory process concept, the T
U court still has an inherent jurisdiction to control the use U
V of its document otherwise not for general determination or V
W dispute between the parties. And in this present case, my W
X Lord, it has been demonstrated they had been -- those X
Y documents have been used for the purpose otherwise on Y
Z adjudication of the dispute. And they were used for what Z
AA purpose? Distribution to the press, creating a public AA
AB trial. Distributing to school students, parents, etc, in AB
AC the street, and the whole purpose of which, what for, apart AC

A from exerting pressure to pressurise D3 into a reform, which A
in fact was admitted.

B My Lord, would it be sufficient for your Lordship, B
exercising the discretion, to prevent the abuse? My Lord,
C bear in mind that those conduct are not at issue. And the C
intention of using that document, otherwise than for the
D resolution of dispute is also not an issue. D

E My Lord, that is our submission on the injunction aspect of E
our submission, paragraph (b), my Lord. I dealt with the
F matter that you need me to assist, we shall come back to F
deal with my learned friend's submission for the -- my
G learned friend's summons, two aspects, the leave to amend - G
if your Lordship dismiss our application to strike out,
H naturally, my Lord, in fact we have no submission to make H
insofar as the - the amendment application. But insofar as
I in prior undertaking is concerned, my Lord, we've raised the I
issue that today is not for determination on that matter. I
shall come back to deal with that issue because this is not
my application. That - that is our submission.

I COURT: Thank you. I

J MR MOK: I have a few brief reply. First of all, it is not right J
for my learned friend simply to refer your Lordship to the
K dissenting in Shun Kai Finance because this court is bound K
by the majority judgment and not the minority judgment. The
L majority judgment, the effect of it is summarised in the L
holding at page 539. This is item No 13 of my learned
friend's first bundle of authorities.

M COURT: Just a moment. M

N MR MOK: Yes. N

O COURT: Yes. O

P MR MOK: Item No 13, Shun Kai Finance Co Ltd v Japanese Leasing P
(Hong Kong) Limited No 2. At the headnote, subparagraph (i)
of the majority judgment states at five lines from the
bottom of the page:

Q "This principle is directly relevant to the present Q
R case where a party voluntarily chose to refer to a R
document in his pleading ... (reads) was no compulsion
S even though the consequence of the choice to refer to a S
document was that it had to be disclosed."

T Subparagraph (ii): T

U "If it was the common law of Hong Kong that undertaking U
applied to documents produced pursuant to Order 24,
rule 10 and 11 ... (reads) have the effect of

A retrospectively exposing the party to contempt A
proceedings which was plainly not desirable."

B Your Lordship knows that Order 24, rule 10 is where a person B
applies or requests the other party to produce a document
C referred to in a pleading or an affirmation. And then rule C
11 talks about an application to order that person to make
D production if he refuses to do so. And the ratio of this D
case is that even though it had to do with a court
E application to seek the document, it would not be under the E
compulsion principle such as would fall within the implied
F undertaking principle. Your Lordship will see at page 543 F
the relevant provision at between B and C which refers to
Order 24, rule 10.

G And then your Lordship will see that the ratio is at page G
545 at between F and G where Madam Le Pichon JA refers to
Hobhouse J's judgment. And the judgment says that:

H "After reviewing the decision of other authorities, H
I Hobhouse J reached the conclusion that there was no I
blanket restriction on the use ...(reads) there is no
J compulsion even though a consequence of such choice is J
that he will have to disclose material to the other
party."

K And then her Ladyship refers to Prudential Assurance. And K
then at page 546 between A and B she says:

L "It follows that although a party who is in breach of L
any order made pursuant to rule 11 may face committal
M under rule 16 ...(reads) how the document was M
introduced and that is the point at which the
N voluntariness or otherwise of the closure is to be N
determined."

O And then her Ladyship then reached a conclusion that it O
doesn't apply to documents which are referred to in a
pleading.

P My Lord, the only information which my learned friend has P
been going on about is a point of fact contained in his own
Q client's defence. My Lord, may I ask your Lordship to look Q
at bundle A, at page 12, paragraph 30A. My Lord, I'm sorry
R it's not 12, it's 72. The letter -- the number is not very R
clear, 72, the bundle(page?). Now, your Lordship recalls
S paragraph 31(8) where we complain about the degree as being S
a bogus one. And then the defendants answered that
allegation in paragraph 30A.

T "Paragraph 31(8) of the re-amended statement of claim T
is denied. The 5th defendant was awarded a doctoral
U degree by European University of Ireland in 2007." U

A And the first point that I note is that this is a point of A
fact. In other words, the so-called doctorate degree was
B awarded by a university called European University of B
Ireland in 2007. Nothing confidential about that. If a
C person says that he has been awarded a doctoral degree, why C
should he hide the fact of the source from which this degree
D was awarded? It would ludicrous to say that this piece of D
information can be kept confidential and cannot be used or
revealed.

E The second point I note is that just because a party has E
chosen to reveal such information or such fact by way of E
pleading, doesn't mean that it cannot be used for any F
purpose for which the fact is normally used subject to the F
principles of freedom of expression and speech and
G communication. It would be ludicrous to suggest just G
because he has pleaded it here that nobody can use it, let
H alone the -- or that the plaintiff alone cannot use this H
piece of information. Because your Lordship knows the
I plaintiff has been asking him and asking the Baptist I
Convention to justify the degree and there was complete
J silence. And the only place where this information was J
revealed is in this pleading. And this pleading alone does
not cover this piece of information with confidentiality.

K The third point that I refer to is that in the majority K
judgment of Shun Kai Finance, which your Lordship has just K
read, this piece of information is not subject to any
L implied undertaking.

L And then, finally, I come to the authorities that your L
Lordship refers to and since your Lordship is familiar with M
it I don't ask your Lordship to look at it save to read one M
sentence from the White Book at Order -- 29/1/39. That is a N
situation by analogy to the present case where a person is N
complaining that another person makes statements that is
O defamatory of him and seeks an injunction from the court. O
And the principle in that scenario is that normally, neither
P the motive of the defendant in making the libel threat nor P
the threatened manner of publication or the potential damage
Q to plaintiff provides an exception to this rule. The rule Q
is the rule which is set out in the case where that the
R defamation -- in defamation proceedings, interlocutory R
relief to restrain defamation is not ordinarily granted
where there is a defence of claim of justification unless
the plaintiff can show that it is plainly untrue.

S And it goes on to say that a plaintiff seeking interlocutory S
relief in defamation must satisfy special consideration S
applicable to defamation cases and general principles set
T out in the American Cyanamid case. T

U My Lord, this is not a case where there is any doubt as to U
this source of information. The only question that arise

A from this -- such information is whether or not (1) this A
B university was a genuine university, which means whether or B
C not the degree awarded to (by?) it was an authentic degree. C
D And the second question which does not arise from this piece D
E of information but arise subsequently is, through the E
F investigation of the plaintiff it is discovered that the F
G so-called thesis which was relied upon and produced by the G
H defendants was a complete plagiarism. The two matters go H
I hand-in-hand because it goes to show that a person who I
J purports to hold a doctoral degree in fact is not a J
K bona fide holder of a genuine degree. K
L

F So in those circumstances, unless the plaintiff -- unless F
G the defendant can show or at least adduce some information G
H where the court can see that this information is false or H
I wrong, then the court would not, as a general rule, injunct I
J such information from being used. Because, my Lord, as I J
K have -- and we have emphasised, a person who holds or claims K
L to hold a degree but in fact is a bogus degree, is not a fit L
M and proper person to be a supervisor of a primary school. M
N This, therefore, is a matter of immense public interest. N
O

I In a case of immense public interest the court would be very I
J slow in granting any injunction from such information from J
K being used and your Lordship can see how it was being used. K
L Mainly, it's really to use to confront the defendants and to L
M ask them to produce proof and also ask them to rectify if M
N the allegation was correct. And of course neither was N
O forthcoming. In other words, (1) there was no explanation O
P or proof, and (2) no action was being taken to rectify the P
Q matter if it was true. Q

M And so far as the relevant authority is concerned, the only M
N relevant authority is the Court of Appeal judgment which is N
O cited in our list of authority, my Lord, just - the only O
P authority that we need to cite - it is in the plaintiff's P
Q big bundle of authorities, second bundle, tab 13. My Lord, Q
R this is - although they call the First Instance, it was the R
S judgment of Deputy Judge Lam in the case of Kabushiki v S
T Yakudo Group Holdings Limited, tab 13. And the relevant T
U principles as to when a court would issue injunctive relief U
V to stop a party from - from making statements is at page V
400, paragraph 21. His Lordship says:

R "Given the stance adopted by Mr Ho, I shall assume that R
S the court does have the power to grant injunctive and S
T ancillary relief to a party ... (reads) which prejudiced T
U the fair trial of a pending action or was likely to U
V cause public prejudgment of the issue."

T So, my Lord, that is the test. The defendants have to T
U establish just as in the case of contempt of court that the U
V publication of the material would prejudice the fair trial V
of an impending action. Over the next paragraph, and this

A has to do with the -- also the authorities and the -- that A
your Lordship has referred to us, including Basic Law
B Article 27. In paragraph 22, his Lordship says: B

C "A balance has to be struck between freedom of C
expression and the law of contempt in this regard. The
D crucial consideration ...(reads) there is no question D
of the tribunal being affected by these conducts of the
defendants since there would not be any trial by jury."

E And then I don't need to read the citation. In paragraph E
25:

F "Mr Liao's principal ground of attack was based on the F
effect of those publications on potential witnesses. I
G accept that the plaintiffs ... (reads) tell the truth G
as to his personal knowledge, not what he was told or
the impression he gathered from other sources."

H And then over, the next paragraph: H

I "Further, Mr Ho informed this court that the defendants I
would not be calling any members of the public from
J Taiwan to give evidence ...(reads) no question of the J
defendants obtaining unfair advantage by these
K publications in terms of securing more sympathetic K
witnesses to give evidence for them."

L And then over the page at paragraph 29: L

M "Moreover, even if I were wrong in that conclusion, I M
do not think it is appropriate to grant the injunction
N sought by the plaintiffs ...(reads) proper remedy is to N
give leave for the general publication of my reasons
for ruling and this decision."

O So, my Lord, you can see based on the principles cited in O
this case how it cannot possibly be applied to the facts of
P the present case. On the facts of the present case all the P
defendants disclosed was where the degrees allegedly came
Q from. And this cannot be a matter of confidence or secrecy Q
because a doctoral degree by definition must be openly --
open to public scrutiny and knowledge.

R So if a person says that "I have pleaded this and you R
derived the information from the pleading instead of from me
S outside the court." The court can injunct it. This would S
be a very serious intrusion on the use of information,
T freedom of speech and communication which it is the Basic T
Law as well as the Hong Kong Bill of right to protect. As
U against this right there is really no countervailing factor. U
In other words, how can the due disposal of this case
possibly be prejudiced by whatever disclosure of this piece
of information that he obtained a doctoral degree in -- from

A this so-called university. And how, if the plaintiff were A
to say this is a bogus - bogus claim, you come and prove it
B or you rectify it, how can that, as a matter of fact, B
prejudice the due administration of justice?

C My learned friend says that this may be a case for a jury. C
D First of all, we do not intend to make any application for D
E the trial to be by jury, and the plaintiff -- and the E
F defendants have not applied for it. And if they do dare to F
G apply for a jury trial, which they cannot simply bluff their G
H way through but have to follow up by action, then it is only H
I there and then which the court may consider whether or not I
J the information that was disclosed would or might amount to J
K such prejudice of the jury or potential jury that it should K
L be injunct. L

G So far as witnesses is concerned, I can't possibly see any G
H factual witness which can really be effected. This is a H
I matter of public knowledge and the question is whether or I
J not it is bogus is a question to be determined from other J
K sources, for example from the Ministry of Education and K
L Labour in Ireland, and so on and so forth. Those witnesses, L
M or people who might have knowledge of the bogus nature or M
N the genuine nature of the claim cannot possibly be affected N
O by what was being disclosed. O

K And then, finally, my learned friend also refers to the so- K
L called breach of implied undertaking because we have L
M referred to one piece of information that was derived from M
N the supplemental list. The supplemental list your Lordship N
O have seen disclosed the so-called thesis which was submitted O
P by the 5th defendant. And upon the investigation, which was P
Q diligently performed by the plaintiff, it was discovered Q
R that it in fact was a complete plagiarism. If I may ask R
S your Lordship please to look at bundle B5. Bundle B5, and S
T just at one page of bundle B5 which summarises the T
U finding... U

O COURT: That's the over 80 per cent. O

P MR MOK: Over 80 per cent of copy. So, my Lord, in the case of P
Q 2337, the question of whether or not he was a bona fide Q
R holder of a degree was the only issue in the case. And the R
S issue was whether or not he is a fit and proper person to S
T still continue to serve as the supervisor of the very famous T
U Pui Ching Primary School. U

S Now, there can only be one right answer. Either he is -- S
T the degree is a bogus one and plagiarism is made out, in T
U which event he is not fit and proper, or the claim is U
V properly -- or it was improperly and wrongly made in which V
no third possibility between these two. And if -- and in --

A and your Lordship therefore will see that the plagiarism A
claim is very central to that other case of 2337.

B Now, that was the original intention of trying to introduce B
C the claim of plagiarism into those pleadings. But after C
D I've had a look at the background of the case I came to the D
E view that in order to be cautious that information should E
not be introduced by way of the amendment of the pleadings
nor should it be introduced by way of evidence, by way of
even using the report that we, ourselves, obtained unless
and until we got the dispensation of this court that we can
use that information in that other case, although they are
very much linked.

F Therefore, before the hearing before Master A Ho, we filed F
G the affirmation, the fourth affirmation of Mr Koo, which I G
H read to your Lordship paragraph 7, to say that we are not H
I going to rely on that information and we are asking the I
J court to excise that information from the previous J
K affirmation and we are not seeking leave to introduce the K
L amendment which referred to the plagiarism claim. So the L
whole purpose of doing all that is so that there would be no
use of such information even if it was secondary or
derivative information derived from the thesis that was
disclosed. So that -- my learned friend simply -- in his
submission simply referred to our summons, when we refer in
our summons to our application to introduce that claim. But
my learned friend had completely ignored that that summons
had already been amended by the time that the matter was
being argued before Master A Ho by excising the information.

M COURT: When did you come into the case? M

N MR MOK: Sorry, my Lord? N

O COURT: When did you come into the case? O

P MR MOK: I came into the case fairly shortly before the hearing P
before Master A Ho. That hearing took place on 18 July
2017. So my involvement in this case -- these two cases at
least was quite a short time before that. And after I came
into the case I have asked the...

Q COURT: Sorry, can I have the month again? Q

R MR MOK: Sorry, my Lord? R

S COURT: The year and the month? S

T MR MOK: Of the case? T

U COURT: Of your coming into the case. U

A MR MOK: Can I work backward from that. My Lord, first of all, A
if I may just work backward from the original summons. Let
B me see. Yes. My Lord, can I ask your Lordship to look at B
bundle B6, that may help your Lordship to orient ourselves
C as to the dates. Your Lordship will see on page 2 a summons C
to amend the inter partes summons to amend the pleadings.
D That was dated 11 July 2017. I came into the case shortly, D
maybe a few weeks, so it would either be June or July of
E 2017. It was before this summons. And your Lordship will E
note this summons was a summons which asked to seek leave to
F amend the pleading which included the plagiarism matter. F
But having looked at the matter further, I took the view, my
G Lord, that it would not be correct to proceed with this G
summons as it is. And therefore, we, on 13 July, two days
H after this summons, we filed the fourth affirmation which H
your Lordship had looked at in paragraph 7 to say that we
I want to delete the references to plagiarism in that summons. I
And when the matter was heard before the Master on the 18th, I
we certainly did not proceed to rely on any information H
which had anything to do either with the thesis or with the
J plagiarism. Si I think even though the original summons J
which is dated 11 July 2017, that only remained to be an
K application, but that application had in fact been amended, K
effectively, by the time the matter was heard before the
L master. So in fact there was no use of the information and L
in fact the master dealt with that application on that
M basis. And indeed, master's order, as your Lordship may see M
at page 63, is to ask for the draft re-amended statement of
N claim to be submitted to him for consideration. So we have N
duly done that and in that formulation all the references to
O the thesis or the plagiarism were not included. So that, I O
think, is still awaiting for the master's approval. So your
P Lordship has the whole history of this. But in any event, P
this has no relevance to the injunction application
Q whatsoever because, as your Lordship has seen from my Q
learned friend's submission, all the matters which he is
R seeking or which he is submitting had been prejudicial to R
his client have been information relating to the university.
S There has been no document which my learned friend has S
referred to -- which referred to plagiarism, except in
T relation to the summons which I explained to your Lordship T
had been amended.

Q So this matter is a complete red herring and is not a matter Q
R which is of any relevance to the injunction application R
S whatsoever. Those are my submissions on the injunction S
part.

S COURT: What about your summons? S

T MR MOK: Yes. My Lord, may I just very quickly explain why it is T
U necessary for us to deal...

U COURT: Are these two actions capable of being consolidated? U

A MR MOK: My Lord, I take your Lordship's point, I think that is A
B in fact a very good idea. Maybe not technically B
C consolidated in the sense of filing one common set of C
D pleadings, but maybe for the two matters to be dealt with D
E together so that there will only be one set of witness E
F statements and one trial. F

D COURT: Some parties are different, but the issues -- the main D
E issues are the same, I think. E

E MR MOK: The main issue, yes, overlaps to a very considerable E
F degree. And I would - if your Lordship were to grant us the F
G leave to use the information also in the other action so G
H that we can properly amend our pleading by introducing that H
I point, we also would undertake to apply for the two matters I
J to be dealt with together. And also, not only that, my J
K Lord, I would also say on behalf of the client that although K
L there is a pending application for the use of the document L
M in relation to a police complaint, my client will withdraw M
N the police complaint at... N
O

I COURT: Well, that matter is not before me. I

J MR MOK: No, my Lord, so I don't need to deal with it. Yes. J

K COURT: But the difficulty with your summons is that I have very K
L little knowledge about the other action. L

L MR MOK: Yes. L

M COURT: And wouldn't like to deal with it in haste. M

M MR MOK: No. Yes, my Lord, can I deal with it in this way. M

N COURT: If you wish to take out an application for consolidation N
O I can adjourn your summons to be heard at the same time as O
P your application which you undertake to make to consolidate. P

P MR MOK: Yes. Yes. My Lord, I think that would be a very good P
Q suggestion. So we will simply not proceed with it on that Q
R basis and we will certainly take out an application as R
S suggested by your Lordship. S

R COURT: On the injunction thing, one of the reasons why I refer R
S to Xcelom is how long had the matter complained of been S
T happening in this case? T

S MR MOK: Yes. S

T COURT: A year or more? T

A MR MOK: It had happened quite some time ago because your A
Lordship will remember it took place in September of last
B year.

B COURT: Some of them in the year before.

C MR MOK: Yes, some in the year before. But certainly what my C
learned friend referred to when he read through the various
D documents it was around September of 2016. So it's a long D
time ago and the matter now being joined before the court, I
E think my client is perfectly happy for the matter to E
continue to be dealt with in the court proceedings since the
F defendants have refused actually to - to do anything about F
the repeated request of my client.

COURT: How far has this action progressed beyond pleadings?

G MR MOK: Discovery. Not yet in terms of the witness statements. G
H So we have dealt with discovery, that's it. H

COURT: Three years.

I MR MOK: I am told that there will be some - some documents to be I
discovered on our part. Yes. J

J COURT: Anything else? J

K MR MOK: No, my Lord. K

L COURT: No. L

M MR CHONG: My Lord, I - I will reply on the injunction M
application. My Lord, my learned friend's reference to our
N complaint of the implied undertaking appears to be at N
variance with the subject matter of our application. My
O Lord, we are not only complaining of the conduct relating to O
the breach of implied undertaking, my Lord, if your Lordship
P would look at bundle A, page 153. In the schedule, we set P
out the four types of conduct that we are complaining and
Q asking your Lordship to grant injunctive relief. In Q
substance, what we are asking your Lordship to grant
R injunctive relief is to prevent continuous harassment of the R
defendant and their servant or agent, which would have the
S effect of affecting the future fair trial. S

My Lord, I give a simple example. Your Lordship would have
seen the - the document that we rely upon, sending letters
and email, abusing Reverend Mok. Mr Mok is the president of
D3 and he is also...

T COURT: Why didn't you open this? T

U MR CHONG: I'm sorry, my Lord? U

A COURT: Why didn't you open on this? A

B MR CHONG: Why? B

C COURT: Your application you dealt, these are all new. C

D MR CHONG: Well, my Lord, in our summons we list out in a
E schedule the subject matter of our complaint. In our
F affidavit... D

G COURT: Is it an answer to say that it's somewhere in the trial
H bundles? You have to open your case. E

I MR CHONG: Well, my Lord, in our affidavit, we raised the issue.
J And also in our skeleton we raised the issue of whether,
K given the contentious conduct there could be a fair trial
L and especially there is a possibility of trial of the matter
M by jury. F

N COURT: Are you going to apply for trial by jury? G

O MR CHONG: We haven't got to the stage of exchange of witness
P statement, so it is premature for us to consider. Because
Q if it is a matter which in fact is better to be dealt with
R by a jury trial, of course by that time we have -- will have
S it considered. My Lord, we haven't gone through the stage
T of close of pleadings yet. The pleading was re-opened by my
U learned friend's new application for amendment. And
V discovery has not been completed. H

My Lord, the potential witnesses, including Reverend Mok and
the other defendants, including also D5, has been
continuously harassed by these kind of conferences, emails
and threats, and continuous letters of abuse. My Lord,
therefore this is not purely a question of breach of implied
undertaking. Breach of implied undertaking was one of the
grounds that we rely upon, but remember one of our
submission being the document in the possession of the court
-- or filed with the court has been used for the purpose of
abuse. So this give in fact us -- sorry, it give the court
the power to control the abuse of use this document for the
purpose otherwise than for genuine dispute of the issue
between litigants. I

My Lord, my learned friend rely upon Kabushiki, which effect
it is neutral on the point. Because Kabushiki does not
support my learned friend's contention that document may be
used for the purpose of harassing a litigant. My Lord, you
would remember that although defamation was one of the
causes of action, my learned friend's main cause of action
in fact can be categorise into three heads. First, passing
off. In the sense that Mr Koo, the plaintiff, was
complaining that the -- using his name in the pamphlet would
have the effect of pass off his business in Kodan(?) or J

A seeking donation. Secondly, malicious falsehood and A
defamation can be put into the same category in a sense that
B reference by the word "doctor" in fact was false in the B
sense that the -- not because of the propagation against
C him, but he say -- the plaintiff say the reference to the C
"doctor" carried in defamatory meaning in the sense that
D people will think of Mr Koo endorsing the bogus degree,
therefore to support a cross-action of libel, my Lord. Now,
leaving aside the adverse comment by your learned brother,
Anthony Chan (J?).

E COURT: Why is that relevant? E

F MR CHONG: Well, this is -- of course, this is not strictly on F
the same issue, but...

G COURT: Well, why is it relevant? G

H MR CHONG: Well, we submit that -- we support that observation by H
saying that this is...

I COURT: Why is his opinion -- it's either relevant or irrelevant, I
with respect.

J MR CHONG: Well, my Lord, we - we submit that this -- his cause J
of action is, we say, flimsy. And my Lord, how could any
K person, even Mr Koo, himself, did not discover the falsity K
according to him of the degree until a series of
L investigation has been in fact made. My Lord, by looking at L
the document itself, it would carry a meaning(?) defamatory
M of the plaintiff, not somebody else, my Lord. Therefore, my M
Lord, those conduct which in fact are not controversial, we
N have conduct this not for the purpose of a general -- N
resolution of general dispute. Neither would it be
O contended that this is an expression -- this is exercising O
of freedom of speech, my Lord. Freedom of speech cannot be,
I would say, contended in the circumstances of this present
case.

P COURT: What sort of undertaking as to damages are you giving? P

Q MR CHONG: Well, my Lord, the convention, D3 has been a -- has Q
been holding land and a number -- 12 schools.

R COURT: Any evidence of that? R

S MR CHONG: We have already in the affidavit deal with that. S

T COURT: Page? T

U MR CHONG: And also undertaking. My Lord, at page 243, bundle A, U
paragraph 46. The fact that the 1st to the 13th defendants
are financially capable of making good any damages has not
been challenged.

A COURT: This is a statement of opinion, not a statement of fact. A

B MR CHONG: Well, my Lord, this is a mixed -- in my humble B
C submission a mixed question because he is a person C
capable...

D COURT: Well, I asked you what sort of undertaking are you D
offering?

E MR CHONG: Well, my Lord, we are offering... E

F COURT: You talk about the convention, bill-holder of property, F
G the paragraph here says that it is unlikely to be any G
substantial damages. That is why I ask you what sort of
damages -- undertaking to pay damages are you offering?

H MR CHONG: Well, my Lord, the undertaking would be that in the H
unlikely event...

I COURT: What sort of amount are you talking about? I

J MR CHONG: Well, my Lord, we cannot - we cannot, we say, quantify J
the amount. That is, my Lord...

K COURT: I can quantify it by requiring a fortification. K

L MR CHONG: If, my Lord, you require... L

M COURT: Well, you have to tell me what you are offering... M

N MR CHONG: Well, my Lord, depends on what your Lordship has in N
mind, I will take instruction on that.

O COURT: It's not me. You come to ask for undertaking, O
injunction.

P MR CHONG: Yes, my Lord, had this... P

Q COURT: You make the application. Q

R MR CHONG: Yes. Had this been - been the matter -- subject R
S matter of issue, I would have in fact deal with that already S
by rebuttal(?) affidavit.

T COURT: It is not whether it is a matter of issue, this is your T
grounding affidavit and all you said is that it is unlikely
to be substantial damages. That's why I'm giving you an
opportunity to deal with it. S

U MR CHONG: Yes, may I have a short indulgence, I check. My Lord, U
I'm instructed that the 1st to the 13th defendants are
willing to set aside 1 million, deposit into the solicitor's
U

A client's account and not to be disposed of until the end of A
the trial or further order.

B COURT: Why is it solicitor's account? B

C MR CHONG: My Lord, unless there are particular reason to the C
contrary why in fact.

D COURT: If they are to be out of control of the defendants, why D
can't it be paid into court?

E MR CHONG: May I take instruction. It is acceptable, my Lord. E
If, in the event your Lordship granting an order the sum be
F paid into court in an interest-bearing account within F
28 days, my Lord. Some arrangement need to be made.

G COURT: Anything else? G

H MR CHONG: No, unless your Lordship want me to address on the H
issue of the summons or undertaking which we humbly submit
should be dealt with by...

I COURT: Well, I've already suggested to Mr Mok and he agrees with I
it. You have nothing to say to that?

J MR CHONG: No, no, save and except for costs which in fact we J
have to deal with later.

K COURT: Well, I will think on the matter and hand down my K
L judgment in writing. L

M Hearing adjourns - 12.37 pm M
31 July 2017

N I/we certify that to the best of my/our ability and N
skill, the foregoing is a true transcript of the
O audio recording of the above proceedings O



..... P
Oylunn Wong P
Date: 30 August 2017 Q