

**DALAM MAHKAMAH TINGGI MALAYA DI SHAH ALAM SELANGOR**  
**GUAMAN SIVIL NO. 22NCVC-1284-10/2012**

Antara

Gloco Malaysia Sdn Bhd  
(formerly known as Gloco Holdings Sdn Bhd)  
... Plaintiff

Dan

Lam Ming Yuet (f) ... Defendan

**ALASAN PENGHAKIMAN MAHKAMAH**

**Introduction**

[1] The plaintiff brings this action against the defendant for libel in connection with certain postings that the defendant had made against the plaintiff in an online social media network called "*forum.lowyat.net.*" The plaintiff seeks general, aggravated and exemplary damages against the defendant, interest and costs. The plaintiff also seeks an injunction restraining the defendant from publishing the defamatory statements, and for an order compelling the

defendant to remove the entire thread containing the defamatory statements from the "forum.lowyat.net."

### **Brief background of the facts**

[2] The plaintiff is a company incorporated in Malaysia under the Company Act 1965. The plaintiff's main business involves providing innovative IT healthcare systems for a broad range of fields and specialties. The plaintiff's business also covers medical imaging storage to complete clinic management systems.

[3] The defendant at the material time, was a marketing assistant with the plaintiff until her resignation on 30.11.2009.

### **Alleged defamatory statements**

[4] The plaintiff's action against the defendant is specifically based on the various statements that the defendant had made in the said online "*forum.lowyat.net.*" which is now reproduced as follows (collectively referred to as "the impugned statements"):

- (a) *Statement No.1 posted on 7 December 2009 at 4.12p.m.:*

*“If you work for the money - Dun go. Not as promise.*

*If you work for interest – Dun think. You will know why.*

*If you work for challenge – Welcome. You will definitely feel like war field everyday.”*

- (b) *Statement No. 2 posted on 23 February 2010 at 11.12 a.m.:*

*“Work environment Superb if minus one person out of the scene...the one who pay ur salary.”*

- (c) *Statement No. 3 posted on 24 February 2010 at 9.31 a.m.:*

*“nope they give a brochure and go sell their service..there’s very good senior though to teach you but the pay is not as promise.”*

[5] The plaintiff alleged that the impugned statements in their natural and ordinary meaning, read together and/or separately, are meant to refer to the plaintiff and were understood to mean that:

- (a) the plaintiff had lied or was dishonest to its employees or potential employees about the salary offered;
- (b) the plaintiff did not offer its employees or potential employees any opportunity to develop their careers, interest or talent;
- (c) the plaintiff's working environment was hostile and unbecoming of a company in the IT healthcare systems;
- (d) the plaintiff was not a good employer and that working with the plaintiff was stressful;
- (e) working with the plaintiff in terms of salary, working conditions and environment would not be

able to meet the expectation of its employees or potential employees.

[6] The plaintiff alleged that by reason of the publication of the defamatory statements, it has caused the plaintiff the following:

- (a) substantial loss and damage to its good name and reputation among its business partners, clients and potential clients;
- (b) loss and damage to its good name and reputation among employees and potential employees;
- (c) experiencing difficulties in retaining and hiring new and potential employees; and
- (d) loss of “goodwill” in particular in its field of business.

## **The trial**

[7] A total of 3 witnesses were called, that is one by the plaintiff and two by the defendant. The plaintiff called Chang Choon Yang (SP1) the managing director of the plaintiff in support of his case. The witnesses for the defendant are Lam Ming Yuet (SD1) the defendant, and Lee Kah Mun (SD2) former attachment student of the plaintiff.

## **The plaintiff's case**

[8] SP1 who is also known as "Mr. Alex Chang" is a shareholder and managing director of the plaintiff. He is also the founder and director of the plaintiff. The plaintiff is involved in the business providing innovative IT healthcare systems for a broad range of fields and specialties. SP1 testified that plaintiff's business is based on the sales of its software on clinic management systems to clinic and hospital. According to him, the defendant was employed by the plaintiff on 1st June 2009 as Marketing Assistant and was working under one of the plaintiff's subsidiary companies known as Medishape Sdn Bhd. The defendant

was initially employed at RM1,800.00 as her monthly salary subject to three months probation. She holds a Degree in Marketing. Although the defendant worked with the plaintiff's subsidiary Medishape Sdn Bhd, the defendant worked at the plaintiff's business premise at A-G-13A & A-01-13A, Block A, Merchant Square, No.1, Jalan Tropicana Selatan 1, PJU 3, Petaling Jaya. On 1.9.2009 the defendant was confirmed in her employment with revised salary of RM2,000.00. However on 30.11.2009 the defendant has tendered her three months notice of resignation. SP1 testified that sometime in July 2010 it came to the plaintiff's knowledge that the defendant had published the impugned statements in an online forum "*forum.lowyat.net.*" under the username of "xf86". SP1 further testified that the first statements was published on 7.12.2009. The second statement was published on 23.2.2010 and the third statement was published on 24.2.2010. The three postings had received various comments from readers as shown in pages 17 to 25 of Bundle 'B'. SP1 further testified that as the managing director of the plaintiff, he was shocked, upset and angry with the impugned statements which were untrue and lowered the estimation of the plaintiff in the eyes of the public in general, customers, clients and potentials entities or

individuals that would have dealings with the plaintiff. SP1 further testified that there is no basis for the defendant to publish the impugned statements as the plaintiff has so far delivered what it has promised to its employees in terms of salary and personal development. SP1 further testified that after the publication of the impugned statements the plaintiff has encountered difficulties when trying to employ new and good sales staff. The plaintiff denies that the defendant was promised the salary of RM2,500.00 per month.

### **The defendant's defence**

[9] The defendant (SD1) admits that she participated in an online social media network called "*forum.lowyat.net.*" However, the defendant contends that the impugned statements are not defamatory to of the plaintiff. SD1 further testified that her postings in the public forum were based on her own personal experience working with the plaintiff and was truthful and accordingly the defense of justification and/or fair comment is available to her, and the defendant will also rely on section 8 and section 9 of the Defamation Act 1957. The defendant denies that the statements were made with malice to tarnish the reputation of the plaintiff.

The defendant further testified that sometime in December 2009 she came across a thread on the forum which was started by an anonymous "Sycubezz" on 15.4.2009 with a title "*Gloco Holdings Sdn Bhd, any information regarding this company?*". The said participant also posted the following statement: "*...anyone working in this company?...Mind to share the working experience?*". On 7.12.2009 the defendant shared her own personal experience in the said forum.

[10] The defendant further explained the following particulars of justification and/or fair comment and as pleaded in her statement of defence supports her contention:

*(1) Non payment of promised salary*

During the job interview at the plaintiff's premises the defendant informed the plaintiff that she expected a salary of RM2,500/-. Mr Alex Chang (SP1) on behalf of the plaintiff negotiated for the defendant to accept RM1,800/- during her probation period and verbally indicated that the defendant would be entitled to RM2,500/- at the expiry of probation and/or upon confirmation.

However upon confirmation and/or expiry of the probation period, Mr Alex Chang (SP1) on behalf of the plaintiff, proposed that the defendant be paid RM2,200/- and that the defendant would be paid RM2,500/- once the defendant helped the sales team achieve RM100.000/- sales volume. That 2 months into the period of employment the plaintiff introduced another brand of product which the defendant had to market and reach another specified sales target. The expanded responsibility was imposed on the defendant and no discussion was made regarding the defendant's salary at the time.

*(2) Salary issue*

The defendant explained that throughout the defendant's period of employment the defendant never received the salary of RM2,500/- which the defendant felt was impliedly promised upon confirmation, during the time she accepted the appointment.

### *(3) Challenging work environment*

The defendant explained that throughout the period of employment she had encountered several instances of unexpected shouting and abuse by one Mr Alex Chang (SP1). The defendant further stated that many resignations of the defendant's co-workers at the plaintiff had caused to a very disruptive working environment while she was with the plaintiff. She further stated that the plaintiff had organized various marketing incentives with promises of monetary rewards which were never fulfilled even though the conditions set by the plaintiff and/or Mr Alex Chang (SP1) were met by the defendant. The defendant noticed that the turnover rate of employees was high and the senior staff who were initially appointed to guide her resigned and were not replaced.

(4) *Cctv*

There was a Cctv monitoring the movement of the employees throughout the working hours and the defendant felt that she was constantly being monitored.

(5) *Undercurrent fear*

There was an undercurrent of fear among the employees that made her feel threatened and anxious.

(6) *Compulsory garlic pills and multi-vitamins*

The defendant felt not happy with an intrusive request of Mr Alex Chang (SP1) that all employees including the defendant to consume garlic pills and multi-vitamins on a daily basis in an attempt to boost high performance at work failing which a monetary penalty was threatened (will be denied of RM100 allowance).

(7) *Prohibition from communal lunches*

The defendant was also unhappy that her fellow co-workers were prohibited from having communal lunches with her for no apparent reason.

**Agreed issue to be tried**

[11] The issues to be tried as from the pleadings and statement of issues to be tried (“D”) are:

- (a) whether the defendant published the impugned statements against the plaintiff on the online forum called “forum.loyat.net.”;
- (b) whether the impugned statements referred in the statement of claim were published by the defendant with a malicious intent;
- (c) whether the defamatory statements referred in the statement of claim which were made by the defendant were justified and/or true;

- (d) whether an employee in the course of her employment and in the matter of public interest may share her current and/or past working environment conditions when it is not a private and confidential issue;
- (e) whether defamatory statements referred in the statement of claim tarnished the plaintiff's reputation and caused irreparable loss and damage to the plaintiff;
- (f) whether the defendant completely removed statements referred in the statement of claim and/or any related thread from the online forum;
- (g) whether the plaintiff is entitled to damages in this matter and in specific aggravated, exemplary and general damages as prayed for;
- (h) whether the statement made by the defendant referred to the plaintiff's business;

- (i) whether the statements made by the defendant caused actual pecuniary damage to the plaintiff.

## **The Law**

[12] The law relating to defamation has been comprehensively expounded in a number of cases, notably by Hamid Sultan Abu Backer JC (now JCA) in *Chew Cheng v Anthony Teo Tiao Gin* [2008] 5 MLJ 577; [2008] 8 CLJ 418, and by Ramly Ali J (now FCJ) in *Soh Chun Seng v CTOS-emr Sdn Bhd* [2003] 4 MLJ 180; [2004] 5 CLJ 45. In an action for defamation, the burden of proof lies on the plaintiff to show – (a) the words are defamatory; (b) the statements or words referred to the plaintiff; and (c) the statements or words which formed the subject matter of the action has been published (*Ayob Saud v TS Sambathanmurthi* [1989] 1 MLJ 315; [1989] 1 CLJ (Rep) 321). These three essential ingredients must be proved by the plaintiff, failing which the action is bound to fail (*Chong Swee Huat & Anor v Lim Shian Ghee* [2009] 4 CLJ 113 CA).

[13] Whether the words are capable of a defamatory meaning is a question of law which the trial judge must decide. In *Chok Foo Choo v The China Press Bhd* [1999] 1 CLJ 461, Gopal Sri Ram JCA (as he then was) at pp 374 and 375, held as follows:

“It cannot, I think, be doubted that the first task of a court, in action for defamation, is to determine whether the words complained of are capable of bearing a defamatory meaning. And it is beyond argument that this is in essence a question of law that turns upon the construction of the words published.

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

....Having decided whether the words complained of are capable of being a defamatory meaning, the next step in the enquiry is for a court to ascertain whether the words complained of are in fact defamatory. This is a question of fact dependent upon the circumstances of a particular case.”

[14] The plaintiff here is a company. It is trite that a company may sue in libel to protect its reputation. In *Borneo Post Sdn Bhd v Sarawak Press sdn Bhd* [1999] 1 AMR 1030, it was held that a company may sue in libel where the libel injures its reputation in the way of its business (*Thornton v Telegraph Media Group Ltd* [2010] EWHC 1414 QB). In *Doree Industries (M) Sdn Bhd v Sri Ram* [2001] 4 CLJ 446; [2001] 3 AMR 3529 it was held that in action for libel or slander where the plaintiff is a private limited company, the imputation must reflect upon the company itself and not upon its members or officials only.

[15] In a plea of justification, in the case of *Chew Peng Cheng v Anthony Teo Tiao* [2008] 5 MLJ 577; [2008] AMEJ 0011, Hamid Sultan JC (as he then was) held as follows:

“In a plea of justification, it is essential for the defendant to prove that (i) the defamatory imputation is true; (ii) justify the precise imputation complained of; and (iii) prove the truth all the material statements in libel. There must be substantial justification of the whole libel. However, it is not necessary to prove the truth of every word of the libel (see *Workers Party v Tay Boon Too* [1975] 1 MLJ 47). Further it is not necessary to prove the truth of every charge if the words not proved to be true do not materially injure the plaintiff’s reputation, having regard to the truth of the remaining charges.”

[16] In interpreting section 8 of the Defamation Act 1957, in the case of *Chong Swee Huat & Anor v Lim Shian Ghee (t/a L & G Consultants & Education Services)* [2009] 3 MLJ 665; [2009] 4 AMR 1, Zainun Ali JCA (now FCJ) stated as follows:

“...In other words, a purposive approach is taken in interpreting section 8 – when for a defence of justification to be upheld, it is not necessary to prove the truth of every word in the statement said to be defamatory. What is relevant is actually the truth of the imputation of the overall statement.”

[17] For the defence of fair comment, in the case of *Tun Datuk Haji Abdul-Rahman Ya'kub v Bre Sdn Bhd & Ors* [1996] 1 MLJ 393, Richard Malanjum J (as His Lordship then was) at p 408 held as follows:

“For the defence of fair comment, in order to succeed the following basic elements must be established by the defendants, namely:

- i. that the words complained of are comments, though they may consist of or include inference of facts;
- ii. that the comments are on a matter of public interest; and

- iii. that the comments are based on facts, truly stated. They must also be fair and which a fair-minded person can honestly make on the facts proved (see *JB Jeyaretnam*).

On element (i), it is settled law that a comment is a statement of opinion on facts truly stated. A libelous statement of fact is not a comment or criticism on anything (see *Lee Kuan Yew v JB Jeyaretnam* [1979] 1 MLJ 281). In order to decide whether a statement is capable of being a comment or a statement of fact, should be gathered from the document wherein the words complained of are found. There is no necessity to look at other documents, though relevant, to come to such determination (see *Telnikoff v Matusevith* [1991] 4 All ER 817)."

### **Findings and decision of the court**

[18] For convenience, it is reproduced hereto the said impugned statement (exhibit "Ex. P4A, P4B and P4C"):

- (a) Statement No.1 posted on 7 December 2009 at 4.12 pm:

*“If you work for the money - Dun go. Not as promise.*

*If you work for interest – Dun think. You will know why.*

*If you work for challenge – Welcome. You will definitely feel like war field everyday.”*

- (b) Statement No. 2 posted on 23 February 2010 at 11.12 am:

*“Work environment Superb if minus one person out of the scene...the one who pay ur salary.”*

- (c) Statement No. 3 posted on 24 February 2010 at 9.31 am:

*“nope they give a brochure and go sell their service..there’s very good senior though to teach you but the pay is not as promise.”*

[19] The plaintiff submits that the words and the publication of the impugned statements by the defendant was an attempt by the defendant to seek revenge on the plaintiff as the defendant was upset for the plaintiff's refusal to allow the defendant to leave the company earlier or to backdate her resignation. The plaintiff further submitted that the words in the three postings were calculated to disparage the plaintiff in a manner that the plaintiff did not honest to its employees or potential employees about the salary offered, working environment was hostile and unbecoming of a company in the IT healthcare systems and that the plaintiff was not a good employer and that working with the plaintiff was stressful. The plaintiff also submitted that defamatory words had tarnished its goodwill and reputation.

[20] Learned counsel for the defendant on the other hand submitted that the proper approach in determining whether the impugned statements are of defamatory in its nature against the plaintiff is to consider whether the words complained of in the context of the whole statements and not based on an isolated passage or parts of the statement (see:

*Keluarga Communication Sdn Bhd v Normala Samsudin & Another Appeal* [2006] 2 CLJ 46).

[21] I now turn to consider the evidence:

- (i) In December 2009 the defendant came across a thread on the forum which was started by an anonymous “Sycubezz” dated 15.4.2009 with a title “*Gloco Holdings Sdn Bhd, Any information regarding this company?*”. The reader “Sycubezz” posted the following statements:

*“anyone working in this company?  
Mind to share the working experience?”  
(page 11 Ikatan Dokumen Bersama ‘B’).*

- (ii) On 7.12.2009 the defendant under her username “xf86” participated and replied to the query as follows:

*“If you work for the money – Dun go. Not as promise.*

*If you work for interest - Dun think. You will know why.*

*If you work for challenges – Welcome. You will definitely feel like war field everyday” (“P4A” – Page 12 Ikatan Dokumen Bersama ‘B’).*

- (iii) On 16.12.2009 at 12:54 am., one participant under username “*sherlykhoo*” participated with posting as follows:

“Quote (xf86 @ Dec 7 2009, 04.12pm)

*If you work for the money – Dun go. Not as promise - Agree*

*If you work for interest - Dun think. You will know why. – U will not think of it after interview.*

*If you work for challenges – Welcome. You will definitely feel like war field everyday – Can feel the force..*

*Xf86, how long have u been working in Gloco?” (page 19 Ikatan Dokumen Bersama ‘B’)*

- (iv) On 16.12.2009 at 02:09 pm., participant under username “*tonywp*” participated with posting as follows:

*“Is it true?*

*That mean this company is very bad?*

*Can we say so?”* (page 20 Ikatan Dokumen Bersama ‘B’).

- (v) On 23.12.2009, at 08:44 am., one participant under username “*unf0rg3ttable*” participated with posting as follows:

*“I saw the job ad in jobstreet and I applied for it.*

*They called me up for interview but I decided then I’d rather not take the risk and trouble to attend it.*

*They hardly have any info about them over the internet and I’ve learnt not to be attracted to the salary published because it is likely not to be as promised. Or even if it is, there*

*probably other terms and conditions that are nor as attractive.*

*But anyway, would love to hear about the real situation. Anyone care to share?"* (page 20 Ikatan Dokumen Bersama 'B').

- (vi) On 14.1.2010 at 09:59 pm., participant "sherlykhoo" replied with her posting as follows:

*"Lolx, I think better ask xf86 personally for opinion..."* (page 20 Ikatan Dokumen Bersama 'B').

- (v) On 23.2.2009 at 11pm., the defendant replied as follows:

*"hi sherlykhoo you have been there as well..i have been there for quite some time...endurance challenge..haha Work environment Superb if minus one person out of the scene...the one who pay ur salary..."* ("P4B" - page 21 Ikatan Dokumen Bersama 'B').

- (vi) On 23.2.2010 at 12:55pm, one participant under username “*JehutyX*” participated with posting as follows:

*“feels like those, company give u product, u go around n sell them?”* (page 21 Ikatan Dokumen Bersama ‘B’).

- (vii) On 24.2.2010 at 09:31 am., the defendant replied with her posting as follows:

*“nope they give u brochure and go sell their service...there’s very good senior though to teach you but the pay is not as promise..”*  
(page 22 Ikatan Dokumen Bersama ‘B’).

- (viii) On 14.4.2010 at 04:45 pm., one participant under username “*cutejams2004*” participated with the posting as follows:

*“oooh.o.o.*

*I have an interview with them tomorrow o.o*

*They don't pay as in late or?"* (page 22 Ikatan Dokumen Bersama 'B').

- (ix) On 15.4.2010 at 01:32 pm., one participant under username "xenoc" participated and wrote as follows:

*"Hi, my friend work for about 1.5 month and he left.*

*Because bigboss too ganas lol!"* (page 23 Ikatan Dokumen Bersama 'B').

- (x) On 26.4.2010 at 04:24 pm., one participant under username "stanyseong" participated and wrote as follows:

*"Is it that bad. I am also having interview there tmr."* (page "D4" – page 23 Ikatan Dokumen Bersama 'B').

- (xi) On 27.4.2010 at 08:59 pm., one participant under username "bomberkenny" participated and wrote as follows:

*“saw the 7.5k salary and got attracted?  
 Good luck, I went interview and felt cheated.  
 Let me know if you felt differently.”* (“D15” –  
 page 24 Ikatan Dokume Bersama ‘B’).

[22] In the light of the aforesaid statements or thread, this court is satisfied that the impugned statements referred to the plaintiff (see: *Ayub Saud v T.S. Sambanthanmurthi* [1989] 1 CLJ (Rep) 321, *Institute of Commercial Management, United Kingdom v New Straits Times Press (Malaysia) Bhd* [1992] 3 MLRH 724; [1993] 1 MLJ 408; [1993] 2 CLJ 365). There is also no dispute that the impugned statements have been published (see: *S. Pakanathan v Jenni Ibrahim* [1988] 1 CLJ (Rep) 233, *Henry Ong Sem v Patrick Ong King Kok* [2008] 1 MLRH 576; [2008] 7 MLJ 569; [2008] 4 CLJ 276, *Ismail Shamsudin v Abdul Aziz Abdan* [2007] 2 MLRH 446; [2007] 3 MLJ 512; [2007] 8 CLJ 65). The plaintiff in the statement of claim and through the evidence of SP1 complained that the three postings of the defendant dated on 27.12.2009; 23.2.2010 and 24.2.2010 (the words complaint of) respectively, meant and were understood to mean in their natural and ordinary

meaning in the context of the statements “that the plaintiff had lied or was dishonest to its employees or potential employees about the salary offered and that the plaintiff was not a good employer and that working with plaintiff was stressful.”

[23] The defendant denies that the statements bore such meaning or any meanings defamatory of the plaintiff. On the issue of salary offered to the defendant, the defendant testified that the representation was made by the plaintiff's director, that is SP1 who interviewed her that she would be paid RM2,500.00 upon confirmation and proving herself. SP1 however denied that such representation was made. Since, SP1 denied interviewing the defendant, it is only a logical inference that someone from the plaintiff would have interviewed the defendant and have given that representation. On the other hand, it was established by the defendant that the increment of RM400.00 on 1.9.2009 (“P2”) resulted from the verbal assurance given by SP1 on behalf of the plaintiff. It is the plaintiff's pleaded case that the defendant was unable to perform well on her previous tasks and a new task was implemented in order to help her to achieve her sales and performance (para 23 p 80 - Reply of

the plaintiff). However contrary to what was pleaded by the plaintiff, on 1.9.2009 SP1 himself praised the defendant for her good performance (“Ex. P2” – Ikatan Bersama ‘B’). In addition, SP1 admitted during cross-examination that the defendant “*did a good job, an excellent job*”. The defendant maintained that she was promised a RM2,500.00 salary and there was a verbal assurance by SP1 during the interview. The plaintiff failed to put or suggest that anyone else apart from SP1 interviewed the defendant. I had no hesitation in accepting SD1 (the defendant) as a witness of truth. I find the defendant testimony in this aspect of ‘promised salary’ corroborated by the independent experience of the following commentators on the forum, namely “*bomberkenny*” (“Ex. D15”) and “*sherlykhoo*” (“Ex. D2”). Based on the evidence as a whole, it is my considered opinion that the defendant had discharged the burden on the balance of probabilities that the plaintiff does not pay the salary as advertised or promised and the defendant is qualified in telling her own personal experience with the plaintiff based on basic facts (see: *Abdul Rahman Talib v Seenivasagam & Anor* [1965] 2 MLJ 66).

[24] On the defendant's usage of the phrase "*war field*", the defendant testified that the expression used by her was based on the high turnover in staff, cctv monitoring movements of employees in the office premises and, rude and humiliating remarks of SP1. The defendant explained on what she has experienced during her tenure with the plaintiff. SP1 admitted that there was a high turnover rate in staff with over 50% to 70%. The defendant further testified on various practices of SP1 which includes to having demerit book called 'Purple Book' in which salary of employee would be deducted for wrongdoing; an employee by the name of Andrew Suresh being called "dog" and a directive of SP1 on employee to take garlic pills and multi-vitamins in order to get the RM100 allowance. The defendant further testified that she had witnessed SP1 ran down the stairs with his face bleeding. On this SP1 explained that his bleeding face was due to an accident happened to him in his office. SD2 (Ms Lee Kah Mun) an ex-intern of the plaintiff gave evidence regarding the harsh treatments by SP1 and unusual surveillance on employees. SD2 holds a Bachelor of Communications in Advertising and now working as Online Marketing Executive. SD2 testified that with the cctv

monitoring movement of the employees, there is “*uncomfortable feeling of being watched*” by SP1. SD2 also testified that throughout her period of employment with the plaintiff, she found that SP1 was often rude, hostile and harsh to her and most of his staff. On the working environment of the plaintiff, SD2 stated as follows : “ *Difficult and the way he (SP1) treat his staff in very humiliating*” ( Q & A. No. 14 – Lampiran ‘H’). Learned counsel for the plaintiff submitted that the evidence of SD2 must be evaluated with caution by this court since SD2 had admitted that she is the defendant’s friend and felt sympathy for the defendant. However, I did not regard DW2 as bias witness or as a witness who is not fit to testify in such position. She had previously with the plaintiff and used to work under SP1. SD2 testified that she came to court because she wanted to tell the truth on what happened at Gloco (plaintiff) at that material time. She also testified that she did not wish to join the plaintiff after she finished her education because she did not see her future there. I cannot see what possible reason of SD2 could have had for coming to court and committing deliberate lies to assist the defendant. I saw nothing improbable of her testimony. Accordingly, I had no hesitation in accepting SD2 as a witness of truth. It is my finding that

the defendant evidence on this aspect of “*war field*” was corroborated by the evidence of SD2 and also by the independent evidence of commentators of the same forum, namely “*Osho*” (“Ex.D5”), “*xenoc*” (“Ex. D4”) and “*jameslee*” (“Ex. D5”). It my considered opinion that the defendant’s expression on the “*war field*’ is qualified to be comments based on basic facts and her own true experience with the plaintiff’s company and in respond to an enquiry by a member of the forum.

[25] I am mindful of the plaintiff’s pleaded case that the impugned statements had caused the plaintiff to “substantial loss and damage, and also loss of goodwill in its field of business”. However, contrary to the plaintiff’s pleaded case, the plaintiff’s own evidence vide “Ex. P10E – Income Statement 2008 : net profit RM103,432.90”, “P10B – Income Statement 2009 : net profit RM438,111.52”, “P10C – Income Statement 2010 : net profit RM1,807,400.51”, “P10D – Income Statement 2011 : net profit RM1,557,424.94” and “P10E – Income Statement 2012 : net profit RM2,187,969.43” showed that the plaintiff has been making profits in ascending scale.

## **Conclusion**

[26] Having read and considered the evidence in this case in its entirety, the submission by both learned counsels for the plaintiff and the defendant, and viewed objectively, I am of the opinion that the words complained of were not capable of being defamatory of the plaintiff. It is my considered opinion that the impugned statements are merely respond of the defendant to certain queries made by some members in the forum when she was asked on her working experience with the plaintiff. I am of the considered opinion that the impugned statements cannot be said as have been false and are defamatory of the plaintiff and published maliciously.

[27] In the event that this court is wrong in holding the complained statement are not defamatory of the plaintiff, and that the plaintiff has shown that the impugned statements bear defamatory imputation, this court also accept that the complaints words are of fair comment of the defendant on the plaintiff and with no malice. I find on the balance of probabilities that the defendant's defence of fair comment and justification succeeded. With this findings, I am of the

view it is not necessary for me to discuss any further whether the plaintiff is entitled to the damages sought herein.

[28] In conclusion, this court holds that the plaintiff has failed to prove its claim on a balance of probabilities against the defendant. In the circumstances, I dismiss the plaintiff's claim with cost of RM15,000.00.

Dated 18 November 2013

**t.t.**  
**(DATUK YAACOB BIN HAJI MD.SAM)**  
Hakim  
Mahkamah Tinggi Malaya  
Shah Alam, Selangor

*Peguamcara bagi pihak plaintiff:*

H.R. Dipendra

K.P. Yarp

(Tetuan Arianti Dipendra Jeremiah)

*Peguamcara bagi pihak defendan:*

Sharon Palani

Lim Wi Zhei

(Tetuan Puthucheary)