THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

CIVIL APPEAL No. 118 OF 2008
H.C.A. No. 3552 of 2003

BETWEEN

KAYAM MOHAMMED
DAVID LEWIS
RAFFIQUE SHAH
JUNIOR JOSEPH
LLOYD WALTERS
ETIENNE MENDEZ
CLARRY BENN
DORIS WONG
POINT LISAS INDUSTRIAL PORT DEVELOPMENT CORPORATION LIMITED

Appellants

AND

TRINIDAD PUBLISHING COMPANY LIMITED
AND
SITA BRIDGEMOHAN
AND
SASHA MOHAMMED

Respondents

APPEARANCES: **Mr. A. Fitzpatrick, S.C. and Mr. J. Mootoo for the Appellants and Mr. I. Benjamin for the Respondents**

PANEL: **A. Mendonça, J.A.**
P. Jamadar J.A.
C.V.H. Stollmeyer, J.A.

DATE OF DELIVERY: **December 19th, 2012**

I agree with the judgment of Mendonça J.A. and have nothing to add.

P. Jamadar,
Justice of Appeal

I too agree.

C.V.H. Stollmeyer,
Justice of Appeal

JUDGMENT

Delivered by A Mendonça, J.A.

1. This is an appeal from the trial Judge's (Rajkumar J.) dismissal of the Appellants' claim in libel against the Respondents. There is also a Respondents' notice seeking to vary certain aspects of the Judge's decision. I will refer to the Respondents' notice in more detail later in this judgment.

2. The first eight named Appellants were at all material times the members of the Board of Directors of Point Lisas Industrial Port Development Corporation Limited (the Company), which is the ninth Appellant. The first Appellant, Kayam Mohammed, was the Chairman of the Board. The Appellants complained of an article published on Sunday December 14th, 2003 by the first Respondent, the Trinidad Publishing Company Limited, in its newspaper, the Sunday Guardian and on its website on the internet. The article was written by the third Respondent, Sasha Mohammed. The second Respondent, Sita Bridgemohan, is the editor of the newspaper. The Appellants claimed that the article was defamatory of them and claimed damages for libel and other consequential relief.

3. The following is the full text of the article which was published as a "special investigation" under the headline "Foreign-used Crane at Plipdeco, Neil Rolingson resigns and senior managers quit":

> *"The recent decision of the Board of Point Lisas Industrial Port Development Company to purchase of (sic) a faulty US$4 Million crane is raising eyebrows among its senior managers, top officials at the company said.*

The costly Fantuzzi crane, which was ordered by the Plipdeco Board against the advice of its senior managers, has been malfunctioning on an almost weekly basis since it was first used in September, sources said.

Investigations by a local independent mechanical engineering firm has confirmed that the crane was a defective "foreign used" piece of equipment, even though management was assured that it was brand new, officials said.

And, since the used crane was bought at the price of a brand new one, top officials now want the Plipdeco Board to explain what really took place in the questionable buy, sources said.

Further, the controversial purchase, along with the board's refusal to pay top managers better salaries, is now being linked to an exodus of top managers for the year, including that of Plipdeco President, Neil Rolingson.

The Issue:

The crane controversy, top officials said, came about after the prestigious State-owned central port completed Berth V in November, 2002.

This cost the company US$25m, a major investment, but one which was deemed necessary in order to compete effectively with the Port Authority of T&T (PATT) for the growing container business, sources said.

Berth V's completion necessitated the purchase of some new, major equipment, identified by management as two gantry cranes, each capable of 45 "container moves" per hour.

The senior officials noted that these purchases were included in the original planning and justification to financiers of the Berth V project feasibility. In fact, Plipdeco's managers had ordered the equipment to coincide with the Berth V completion, sources noted.

Board delays purchase:

However, before they could order the gantry cranes, the new Plipdeco Board was appointed by the ruling PNM administration, following the party's victory in the October, 2002 general elections, officials noted.

This board is chaired by Kayam Mohammed, a former Coast Guard Commander, and the PNM's defeated St. Joseph candidate in the 2001 General Elections. He lost to former UNC Minister Carols John.

The officials said that this new board delayed the decision to purchase the much needed gantry cranes, forcing Plipdeco to rely on the ships' cranes in the interim.

The sources said the decision to delay the purchase caused Plipdeco to lose some $20M in revenue during that period, since without the new gantry cranes, Berth V had only 50 percent capacity.

In January this year, sources said, Chairman Mohammed and Rawle Badalloo, Plipdeco's vice-president of Harbour Management and Commercial Relations, attended a conference in Houston, Texas, where they met representatives of Fantuzzi.

Board overrides management:

In February, the board, which sources described as a 'one-man rule' by Mohammed, finally made a decision on the crane equipment.

It was, however, one that caused considerable concern and protest by senior managers -the board decided to order only one gantry crane, and one Fantuzzi mobile harbor crane.

Senior managers voiced strong objection on the basis that a mobile harbour crane was only capable of making 15 container moves per hour and the Plipdeco's experience has shown that Fantuzzi has proved to be inferior equipment, sources said.

A Plipdeco team, including the chairman and Raouf Ali, vice-president, operations, went to Italy, to assess the recommended Fantuzzi crane, sources said, adding that Ali's subsequent report recommended against buying the Fantuzzi crane, on the basis that it was unfit for the Port's operations.

Notwithstanding this renewed objection by the qualified technocrats, the chairman pushed through the decision and the Fantuzzi crane was ordered at a cost of US$4 million, officials said.

Parts corroded:

It was during the assembly of this crane in August at Plipdeco, sources said, that it was discovered that many of the parts were corroded and appeared to have been used. Plipdeco complained to Fantuzzi who then treated the parts to remove the rust and other minor defects, prior to installation.

Despite this treatment, in September, shortly after Plipdeco began officially using it, the Fantuzzi crane broke down because of a defective shaft, causing Plipdeco's management to hire a local mechanical engineering consultancy (name withheld) to investigate, sources noted.

Their report, which was submitted to management and then passed to the board, concluded that the wear and tear of the shaft was indicative of prior long-term use - that the US$4 million new crane was in fact, a defective "foreign-used" crane, sources said. The Sunday Guardian has requested a copy of this report under the Freedom of Information Act, since Plipdeco has refused to provide the newspaper with a copy.

Senior officials said they became suspicious when the board kept these findings "quiet" and made no attempt to seek redress from Fantuzzi.

Exodus of senior managers:
Rolingson resigns:

Sources said that as early as June, shortly after the decision to purchase the Fantuzzi crane was taken, Plipdeco's president Neil Rolingson tendered in his resignation to the board.

He announced this to his management staff last Monday, sources said.

This resignation is due to come into effect on July 31, 2004, but Rolingson is expected to go on some extended pre-retirement leave.

Officials speculated that this decision to leave came about mainly because the board had overridden his authority in the crane controversy.
Rolingson declined comment on the entire issue last Week, but said he did not tender his resignation. Instead, he wrote a letter to the Chairman in June indicating he was taking early retirement, he said.

Top officials said that Plipdeco's vice-president of harbour management and commercial relations, Rawle Badalloo is tipped to replace Rolingson. Badalloo was removed by the former board from a port operations portfolio to this current position where his responsibilities include hiring tugs when needed and handling the social obligations of customer relations.

Sources said Rolingson's impending departure could negatively impact on customer and shareholder confidence - Plipdeco's minority shares are held by private owners - resulting in lowered share price and possible loss of business.

Due to heavy debt burden, officials said, Plipdeco was highly geared and unable to withstand the loss of any one of its major customers.

The board has officially ascribed this high gearing to finance charges in association with the Berth V loan, but top officials insist this was really caused by the lack of capacity due to the delay by the current board to purchase the crane equipment last year which caused the major loss of revenues.

More Plipdeco managers go

In addition to Rolingson's impending departure, sources said, at least 10 crucial senior employees have left the company this year.

Sources said in addition to the crane controversy, these departures could have primarily been caused by the current board's blunt refusal to increase management's salaries for the past two years.

This, despite the last Plipdeco's Board's agreement to implement the much deserved salary hike for these non-unionized staff, as well as warnings of the loss of key personnel in this very competitive climate, officials said.

In 2003, the employee losses include:

Ivan Salick - HSE officer *- went to EOG Resources*
Deonanan Jagdip HSE officer *- went to Atlas Methmol*
(These two officers above constituted the entire safety professional staff)
Asif Mohammed - auditor - *went to Atlantic LNG*
Andre Ow Bouland - senior auditor - *went into the banking sector*
Vera Ramsamooj - accounting manager - *went to Atlas Methanol*
Nadine Darmanie - finance manager - *starts at Desalcott next month*
(All the auditors and professional accountants resigned this year, leaving only Vice-president of Finance, Wendy Inniss Demas.)
Trevor Gangadeen - security manager - *went to NGC*
(He was the only person at management level in the Security Dept.)
Byron Biswah - project engineer*, reporting to the president.*
Deborah Deena - secretary/records manager, reporting to the president -
going to Phoenix Park Gas Processors
Leisa Kisto - legal manager/corporate secretary, reporting to the president -
went to Ernst & Young
(These constitute the whole of the president's office staff)

Top officials said Plipdeco could hardly afford to lose these competent and efficient personnel in such a competitive industry, noting the company was bound to feel the financial consequences in the next year.

Plipdeco's Board of Directors:

Kayam Mohammed (Chairman): *Former Coast Guard Commander, unsuccessful candidate for the PNM in general elections, 2001, St. Joseph seat.*

David Lewis: *Managing Director; Label House.*
Phillip Buxo: *Managing Director, Pt. Galeota Industrial Estate*
Raffique Shah: *Columnist, Caroni Board member*
Junior Joseph*: Contractor and PNM activist in San Fernando West constituency*
Lloyd Walters*: Caroni retiree (factory manager) and PNM activist from San Fernando West constituency*
Etienne Mendez*: PNM General Council member. And defeated candidate in the Montrose, Chaguanas seat in 2003 Local Governent elections.*
Clarry Benn*: Executive director, Unit Trust.*
Doris Wong*: Retired Banker."*

4. The Appellants in their statement of claim set out thirty-five meanings they alleged that the words in the article, in their natural and ordinary meaning, were understood to mean and which were defamatory of them. The trial Judge found that the article bore some of the meanings pleaded which were defamatory of the Appellants. In relation to other meanings the Judge found the article was not capable of bearing the alleged meanings or if it did that the alleged meanings were not defamatory or

that some of the alleged meanings, contrary to what was pleaded, although defamatory of some of the Appellants, were not defamatory of all of them.

5. The Judge, however, found that the article was protected by qualified privilege as established in the case of **Reynolds v Times Newspapers Ltd. and others** [2001] 2 A.C. 127. He therefore dismissed the Appellants' claim. In the event he was wrong to find the article protected by **Reynolds** privilege he went on to assess the damages he would have awarded.

6. The Appellants have appealed. They say that the trial Judge erred in finding that the article was protected by **Reynolds** privilege and ask that the appeal be allowed and that judgment be entered in their favour. In their grounds of appeal they challenge some of the Judge's findings as to the meaning of the article. They also say that some of the awards of damages are too low. The Respondents in the grounds outlined in their notice also challenge some of the meanings found by the trial Judge. Further, in the event that the appeal is allowed they contend that the awards of damages made by the trial Judge in favour of the first and third Appellants are too high and should be varied.

7. Aside the question of damages, which will become relevant in the event that the appeal is allowed, there are therefore two broad issues in this appeal; one relating to the meaning of the article, the other relating to the defence of qualified privilege. I will first consider the meaning of the article.

8. As is evident from the above not all the Judge's findings on the meaning of the article are complained of in this appeal. The following are the meanings found by the Judge to which there has been no challenge by either the Appellants or the Respondents:

1. The first Appellant is capable of and has in the past manipulated and/or wrongly influenced and/or misled the Board of Directors of the ninth Appellant.

2. The second to eighth Appellants and each of them were puppets and/or instruments and/or subject to the control of the first Appellant in relation to carrying out the business of the Board of Directors of the ninth Appellant.

3. The second to eighth Appellants inclusive and each of them lacked impartiality and independence in carry out their functions and/or duties as directors of the ninth Appellant.

4. The first to eighth Appellants and each of them were reckless and/or indifferent to the interest of the ninth Appellant and its shareholders.

5. The first to eighth Appellants and each of them were engaged in a common design to conceal and/or suppress unfavorable information with respect to the reliability and/or suitability and/or performance of the Fantuzzi crane.

6. The first to eighth Appellants were incompetent and failed to make a timely decision to purchase a crane to be used by the ninth Appellant.

7. The first to eighth Appellants caused the ninth Appellant to lose approximately $20,000,000 (twenty million dollars) in revenue as a consequence of the delay on their part in authorizing and/or directing and/or resolving that the ninth Appellant purchase a crane.

8. By reason of the inaction of the first to eighth Appellants Berth V of the shipping port under the control and management of the ninth Appellant operated at less than capacity resulting in a loss of revenue to the ninth Appellant.

9. The first to eighth Appellants and each of them are incompetent as directors of the ninth Appellant.

10. The first to eighth Appellants and each of them are unfit to hold office as directors of the ninth Appellant.

11. The first to eighth Appellants and each of them should be removed and dismissed as directors of the ninth Appellant.

12. The ninth Appellant is financially unstable and/or potentially financially unstable and/or unable to withstand the loss of business of any of its major customers.

9. The following are meanings that have been challenged by either the Appellants or the Respondents. With the exception of the third alleged meaning, which the Judge found the article bore, Judge either found that the article did not bear the alleged meaning or, if it did, the meaning was not defamatory of all of the Appellants as alleged. I will set out each of the alleged meanings and the findings of the Judge as expressed in the judgment:

1. Alleged meaning: the first to eight Appellants and each of them acted corruptly and/or dishonestly and/or engaged in acts of financial impropriety and/or are reasonably suspected of having so acted in relation to the purchase of the Fantuzzi crane by the company from an Italian supplier and/or a manufacturer trading as Fantuzzi.

   In relation to this alleged meaning the Judge found that the article does bear this meaning but only in relation to the first Appellant.

2. Alleged meaning: the first to eighth Appellants and each of them engaged in and/or are reasonably suspected of engaging in corrupt and/or secret and/or shady and/or suspicious dealings in relation to the purchase of the Fantuzzi crane.

The Judge found that the article bore this meaning, which he said was similar to the alleged meaning referred to above, but only in relation to the first Appellant.

3. Alleged meaning: the first Appellant corruptly negotiated with representatives of Fantuzzi with respect to the terms of the purchase of the Fantuzzi crane by the Company.

   In relation to this alleged meaning the Judge found that the article read as a whole could be so understood.

4. Alleged meaning: the first to eighth Appellants and each of them knew that the Fantuzzi crane was unsuitable and/or inadequate for the purpose for which it was intended but nonetheless recommended and/or approved and/or sanctioned its purchase by the Company.

   The Judge found that the article was capable of bearing this defamatory interpretation only in relation to the first Appellant

5. Alleged meaning: the first to eight Appellants and each of them in recommending and/or sanctioning and/or resolving that the Company purchase the Fantuzzi crane knowingly acted to the detriment of the Company and its shareholders.

   The Judge found that the article did not carry this implication in relation to any of the Appellants other than the first Appellant.

6. Alleged meaning: the first to eight Appellants and each of them failed and/or refused to authorize and/or sanction and/or approve the purchase of suitable cranes for use by the company at Berth's V of the shipping port under the control and management of the company.

   The Judge found that "even if the words are capable of bearing this meaning (and I find they are not) this would not be defamatory" of the Appellants.

7. Alleged meaning: the Company is operating and/or trading with less than competent and/or efficient and/or suitably qualified managers and/or management staff.

   The Judge found this "to be a meaning not properly ascribable to the words used."

8. Alleged meaning: the Company trades and/or operates its business in an unethical and/or unprofessional and/or non-businesslike manner.

   The Judge found that the words are not capable of bearing this meaning.

10. There was no dispute as to the proper approach of the Court in determining the meaning of words alleged to be defamatory. The principles were recounted by Lord Nicholls in **Bonnick v Morris** [2003] 1 A.C. 300 (at para 9):

"Before their Lordships' Board the issues were reduced to two: meaning and qualified privilege. As to meaning, the approach to be adopted by a court is not in doubt. The principles were conveniently summarized by Sir Thomas Bingham MR in ***Skuse v Granada Television Ltd.*** *[1966] EMLR 278, 285-287. In short, the court should give the article the natural and ordinary meaning it would have conveyed to the ordinary reasonable reader of the "Sunday Gleaner" reading the article once. The ordinary reasonable reader is not naïve; he can read between the lines but he is not unduly suspicious. He is not avid for scandal. He would not select one bad meaning where other, non-defamatory meanings are available. The court must read the article as a whole, and eschew over-elaborate analysis and, also too literal an approach. The intention of the publisher is not relevant. An appellate court should not disturb the trial Judge's conclusion unless satisfied he was wrong."*

11. The Court should therefore give the article the natural and ordinary meaning the words complained of would have conveyed to the notional ordinary reasonable reader, possessing the traits as mentioned by Lord Nicholls, and reading the article once. The natural and ordinary meaning refers not only to the literal meaning of the words but also to any implication or inference that the ordinary reasonable reader would draw from the words. Thus in **Lewis v Daily Telegraph Ltd.** [1964] AC 234, 258 Lord Reid stated:

"What the ordinary man would infer without special knowledge is generally called the natural and ordinary meaning of the words. But that expression is rather misleading in that it conceals the fact that there are two elements in it. Sometimes it is not necessary to go beyond the words themselves, as where the plaintiff has been called a thief or a murderer. But more often the sting is not so much in the words themselves as in what the ordinary man will infer from them and that is also regarded as part of the natural and ordinary meaning."

12. And Lord Morris in **Jones v Skelton** [1963] 1 W.L.R 1363, 1370-1371 stated:

"The ordinary and natural meaning of words may be either the literal meaning or it may be implied or inferred or an indirect meaning: any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be a part of the ordinary and natural meaning of words... The ordinary and natural meaning may therefore include any implication or inference which a reasonable reader guided not by any special but only by general knowledge and not filtered by any strict legal rules of construction would draw from the words."

13. It is also relevant to note that the words have only one correct natural and ordinary meaning. So that for example in **Charleston v News Group Newspapers Ltd.** [1995] 2 AC 65 Lord Bridge, after referring to the fact that the natural and ordinary meaning of words may include any implication or inference stated (at p.71):

> *"The second principle, which is perhaps a corollary of the first, is that, although a combination of words may in fact convey different meanings to the minds of different readers, the jury in a libel action, applying the criterion which the first principle dictates, is required to determine the single meaning which the publication conveyed to the notional reasonable reader and to base its verdict and any award of damages on the assumption that this was the one sense in which all readers would have understood it."*

14. Where, as in this jurisdiction, the Judge sits without a jury, it is his function to find the one correct meaning of the words. Although when considering the defence of **Reynolds** privilege the Court must have regard to the range of meanings the words are capable of bearing as I will mention below, it is still the function of the Judge as regards the meaning of the words complained of to find the single meaning that they do convey. That does not mean that where an article levels a number of allegations as is the case here, that it has only one meaning. What it does mean is that where there are possible contradictory meanings of the words, the Court cannot recognize, what may be the reality, that some reasonable readers will construe the words one way and others another way. The Court must determine the one correct meaning out of all the possible conflicting or contradictory interpretations.

15. What meaning the words convey to the ordinary reasonable reader is a question of fact to be found by the Judge. An appellate court, in cases where the trial judge enjoys an advantage over it, is ordinarily slow to interfere with the Judge's finding of fact and will not do so simply because the court would have come to a different conclusion. That of course has relevance in a case where the Judge's finding of fact turns on the credibility of the witnesses. In such cases he has the advantage of seeing and hearing the witnesses which is not enjoyed by the appellate court. That, however, is not relevant here. The Judge in a case such as this enjoys no advantage over an appellate court and this Court is in as good a position as the Judge to determine the natural and ordinary meaning of the words complained of.

16. There are, however, other reasons why I do not feel constrained to depart from the Judge's conclusion on the meaning words where I differ from him as to the meaning.

17. First the Judge's findings on the meanings of the article, save in respect of only the fifth alleged meaning, which I will refer to below, are expressed as bare conclusions. He does not indulge in any analysis of the article and this Court, as a consequence, is uncertain that he has applied the appropriate principles. Secondly, there are clear indications that the Judge did not fully appreciate the task that was required of him. For one thing, he did not appear to appreciate that it was incumbent on him to find the single meaning of the words complained of, and not a range of meanings, and moreover the single

right meaning. So, for example, with respect to the first of the disputed meaning referred to above, he was of the view that the article bore the alleged meanings in relation to the first Appellant. Some of the alleged meanings however are not consistent with each other, in that it alleges that the first eight Appellants acted corruptly or are reasonably suspected of having so acted. An allegation of a suspicion of wrong doing and an allegation of actual wrong doing are not the same thing.

18. The first three disputed meanings may be taken together. The Appellant contends that the Judge was wrong to say that the article alleged corruption only on the part of the first Appellant. They say that the article, properly construed, implicates all the Appellants. The Respondents, on the other hand, submitted that the article made no allegation of corruption at all.

19. The first meaning alleges that the article meant that the Appellants, and each of them, acted corruptly and/or dishonestly and/or engaged in acts of financial impropriety and/or are reasonably suspected of having so acted in relation to the purchase of the crane by the Company. Although the Appellants alleged that the article meant all of these things, as the task of the Court is to find the single right meaning, as I have mentioned earlier, the Court cannot find that the article meant that the Appellants acted corruptly or dishonestly, or engaged in acts of financial impropriety and also are reasonably suspected of having so acted. The article would either convey that they acted corruptly or are reasonable suspected of having so acted.

20. The second alleged meaning, insofar as it alleges that the article meant that the first to the eighth Appellants engaged in corrupt dealings in relation to the purchase of the crane or are reasonably suspected of having so acted, adds nothing to the first meaning. It does, however, add that the said Appellants engaged in secret, shady or suspicious dealings in relation to the purchase of the crane or are reasonably suspected of having so acted.

21. The third alleged meaning is that the first to the eighth Appellants corruptly negotiated with representatives of Fantuzzi with respect to the terms of the purchase of the crane. This adds nothing of substance to the first and second alleged meanings.

22. I should mention that it takes the matter no further to set out a variety of meanings that have no meaningful difference. What should be pleaded are distinct meanings (see **Lewis v Daily Telegraph** supra).

23. By the first three alleged meanings the Appellants essentially claimed that the article meant that each of them in relation to the purchase of the crane acted corruptly or dishonestly, or engaged in acts of financial impropriety, or engaged in shady, secret or suspicious dealings or are reasonably suspected of having so conducted themselves.

24. In the article there is no explicit allegation that the Appellants or any of them acted corruptly or dishonestly. Nor is there any explicit statement that any of the Appellants engaged in acts of financial impropriety or secret, shady or suspicious dealings or are reasonably suspected of so doing. If the article in its natural and ordinary meaning conveys to the ordinary reasonable reader any of those meanings it arises by reason of the implication or inference that the ordinary reasonable reader would draw from the words of the article.

25. In my judgment, in the context of the first three alleged meanings the crucial words appear at the end of that part of the article with the sub-heading "*Parts corroded*" and these are:

> "*Senior officials said they became suspicious when the board kept these findings "quiet" and made no attempt to seek redress from Fantuzzi."*

26. On reading this the ordinary reasonable reader would no doubt ask why the findings regarding the crane would be kept quiet and a claim not made against Fantuzzi, if it were defective. Counsel for the Respondents submitted that the reader would infer that the reason for that was that the Board was embarrassed by the poor decision it had made and wished to keep things quiet and cover up the whole episode.

27. As I have indicated the ordinary reasonable reader is not naïve and can read between the lines but he is not unduly suspicious nor is he avid for scandal. I think the explanation advanced by the Respondents leans too much towards the naïve.

28. According to the article, the Board decided to purchase the crane despite objections from senior managers. Further a team from the Company, which included Mr. Ali - vice president - operations, went to Italy to assess the crane and this resulted in a report prepared by Mr. Ali which recommended that the Fantuzzi crane was unfit for the Company's operations. However the finding that the Board chose to keep quiet was not with respect to the choice of the type of crane but rather relating to the crane supplied. The report, which the Board kept quiet, revealed that the shaft of the crane showed wear and tear, which was indicative of prior long term use. The crane was in effect "a defective

foreign-used" machine. Not only were these findings kept quiet, no claim was made against the supplier of the crane.

29. The Board, although advised that the crane was a used one but, which according to the article, was purchased at a price of a new one made no attempt to seek redress from Fantuzzi. This is against the back ground of the Chairman of the Board and another employee allegedly going abroad to meet with the representatives of Fantuzzi. That other employee was tipped to replace the president of the company whose decision to leave the company, it was said, came about mainly because the Board had overridden his authority on the crane issue.

30. I think that on reading the article the ordinary reasonable reader would form the suspicion that the relationship with Fantuzzi was not entirely above board and there could be something amiss.

31. It was submitted by the Appellants that the reader would infer that there is some corruption on the part of the Appellants. However, although the ordinary reasonable reader can read between the lines he is not unduly suspicious, nor avid for scandal. He would not necessarily select the most scandalous meaning possible. In my judgment he would not infer guilt or in other words that there was corruption. I am of the view that the ordinary reasonable reader, having read the article once, would form a reasonable suspicion that were suspicious dealings in relation to the purchase of the Fantuzzi crane. The question that next arises is whether the article conveys that meaning in relation to all the Appellants.

32. The article does mention that it was the decision of the Board to purchase the crane and it made that decision despite recommendations to the contrary. It was also a decision of the Board to keep the findings of engineer's report quiet and not to seek redress from Fantuzzi. However the article must be read as a whole and it describes the Board as a "one man rule", with the Chairman of the Board, the first Appellant, being the ruler. Further, the decision to buy the crane was "pushed through" by the Chairman and the decision was made shortly after the Chairman met with representatives of Fantuzzi abroad. In the circumstances I do not believe that the article would convey to the ordinary reasonable reader any suspicion that members of the Board other than its Chairman, the first Appellant, engaged in suspicious dealings. In my judgment, therefore, the article would convey to the ordinary reasonable reader a reasonable suspicion of the first Appellant having engaged in suspicious dealings in relation to the purchase of the Fantuzzi crane.

33. The fourth and fifth alleged meanings can be considered together. They both alleged that essentially the Appellants knew of the unsuitability of the crane but nevertheless proceeded to recommend, sanction or resolve that the crane be purchased to the detriment of the Company and its shareholders.

34. The Judge's findings are set out earlier in this judgment and I think it is clear that he found that the article conveyed those meanings in relation to the first Appellant. The Appellants contends that the Judge was wrong to find that the article did not bear the meanings in relation to the other Appellants. The Respondents contend that the article did not carry the alleged meanings in relation to any of the Appellants.

35. The question therefore is whether the article bore the meaning that the Appellants or any of them knew the crane to be unsuitable or inadequate for the purpose for which it was intended but nonetheless proceeded to purchase it and as a consequence knowingly acted to the detriment of the Company and its shareholders.

36. The article refers to a decision made by the previous Board of the Company to purchase two gantry cranes. They are said to be capable of 45 "container moves" per hour. The purchase of the gantry cranes was included in the original planning and justification to financiers of the Berth V project. The new Board comprising the Appellants delayed the purchase of the gantry cranes and eventually purchased one gantry crane and one Fantuzzi crane after meeting with the representatives of Fantuzzi.

37. The decision to purchase the Fantuzzi crane was in face of senior management objections and in the face of Mr. Ali's report recommending against the purchase of the crane on the basis that it was unfit for the Port's operations.

38. The crane proved to be unfit. This was because, as appears from the engineer's report, the shaft was defective. According to the article the engineer's report concluded that the crane was not new but in fact a defective foreign-used crane. The reason, therefore, that it was unfit seems to be unconnected to the number of container moves of which it was capable, or the inferiority of the Fantuzzi brand. There is nothing in the article that would convey to the ordinary reasonable reader that the Appellants or any of them knew the crane to be unfit for the reasons stated in the report. As I mentioned earlier the article infers that there was suspicious dealings by the first Appellant in relation to the purchase of the

crane. In that context the ordinary reasonable reader might infer that it would not matter to the first Appellant whether the crane was inadequate or unsuitable. That however is not the same thing as saying that he knew the crane he purchased was unfit or unsuitable.

39. In dealing with the fifth alleged meaning the Judge stated that the meaning suggested:

> *"that the motivation behind the purchase of the crane was not to secure a piece of equipment that was suitable for purpose but rather to favour a particular company regardless of whether that company could supply the type of crane that was appropriate for the[Company's]business and in the best interest of the [Company] and shareholders."*

This however does not suggest knowledge that the crane was unsuitable or unfit for the purpose intended but rather indifference.

40. In my judgment the article does not bear the fourth and fifth alleged meanings in relation to any of the Appellants.

41. With respect to the sixth alleged meaning the Judge did not think that the article bore that meaning. Further, the Judge was of the opinion that even if the article bore the meaning it would not be defamatory of the Appellants.

42. The Appellants say that the Judge erred in coming to those conclusions. In contending that the meaning is defamatory of the first to eighth Appellants, the Appellants submitted that the meaning suggested that they failed in the discharge of their duty as directors to act in the Company's best interest and to properly discharge their duties as directors. I agree that such meaning would be defamatory as it would tend to lower the Appellants in the estimation of right thinking members of society or would affect them adversely in the estimation of reasonable people generally. (See **Skuse v Granada Television Ltd**, supra).

43. I do not think it entirely clear that the alleged meaning conveys what the Appellants say it does. However, I do not see the need dwell on this since there are meanings found by the Judge (see the meanings at 3, 4, 6, 9 and 10 at para. 8 of this judgment), which have not been challenged. These meanings convey essentially the same thing as the Appellants contend this alleged meaning does. It will therefore take the matter no further to determine whether this alleged meaning as framed conveys what the Appellants say it does.

44. The other disputed meanings concern the Company. A trading company, as is the Company in this case, may maintain an action in libel where the defamatory matter can be seen as having a tendency to damage it in the way of its business. In **Derbyshire C.C v Times Newspapers Ltd.** [1993] 1 ALL ER 1011, 1017 Lord Keith said:

> *"The authorities cited above clearly establish that a trading corporation is entitled to sue in respect of defamatory matters which can be seen as having a tendency to damage it in the way of its business. Examples are those that go to credit such as might deter banks from lending to it, or to the conditions experienced by its employees, which might impede the recruitment of the best qualified workers, or make people reluctant to deal with it."*

45. With respect to the seventh alleged meaning it is not disputed that if the article did convey this meaning that it is defamatory of the Company as it would tend to damage it in the way of its business. People would be reluctant to deal with a company that does not possess suitably qualified or efficient managers and staff.

46. The Appellants argue that the Judge erred in concluding that the words did not convey this alleged meaning. The Respondents on the other hand submit that the article did not suggest that the departure of members of staff, some of whom were managers, had in fact adversely affected the operations of the port. Further the article did not mean that those members of staff who remained were not competent or efficient or suitable.

47. The article refers to an exodus of top managers including its president, Neil Rolingson. Towards the end of the article a list of employee losses for 2003 is given. Included among the list are four persons who carried the title of managers such as, for example, accounting manager and finance manager. The article then goes on to say that:

> *"Top officials said Plipdeco could hardly afford to lose these competent and efficient personnel in such a competitive industry, noting that the company was bound to feel the financial consequences in the next year."*

48. While it can be said that the article does not suggest that the company is without any managerial competence, it does suggest, in my judgment that those who have not left the employment of the Company do not possess the required competence or expertise necessary to fill the vacant position. That is why the Company will feel the financial consequences in the next year. The article, therefore, in my opinion would convey to the ordinary reasonable reader that the Company is operating

with less than competent, efficient and qualified managers or management staff. In my judgment therefore the Judge was wrong to conclude that the article does not bear this meaning.

49. With respect to the eighth alleged meaning the Judge held that the article was not capable of bearing this meaning. The Appellants submit that the Judge was wrong to so find. They submitted that given the several undisputed defamatory meanings and their imputations found by the Judge which include, but are not limited to, statements that such directors are incompetent, unfit to hold office, reckless and/or indifferent to the interests of the company, engaged in a common design to conceal and/or suppress unfavourable information with respect to the reliability and/or suitability of the Fantuzzi crane and caused the company to lose $20M, that the article must also logically convey the meaning to the ordinary reasonable reader that the Company trades and/or operates its business in an unethical and/or unprofessional and/or non-businesslike manner. The reader is to be treated as knowing that the board of directors of a company set the policy as to the manner in which the company trades or operates.

50. I agree that the reasonable reader should be treated as knowing that the board of directors of a company must be responsible for its policy. Where the Board is made up of directors who are subject to the control of the first Appellant in relation to carrying out the business of the Board or are unfit to hold office that can negatively impact on the way it does business generally. However the article speaks essentially of the purchase of the Fantuzzi crane and does not suggest that the business of the company has been affected in the general manner conveyed by this meaning. I therefore agree with the Judge.

51. There are other alleged meanings complained of by the Appellants. These are meanings identified in the Judge's judgment as alleged meanings 8, 16, 18, 19, 23, 24, 25 and 28. In relation to each of the alleged meanings the Judge found that the article was capable of bearing the meaning as alleged but he did not find the meaning defamatory. The Appellants say that the Judge was wrong to come to that conclusion.

52. The first four alleged meanings are said to be defamatory of the first to eighth Appellants in that they suggested that the Appellants did not properly discharge their functions or responsibilities as directors of the company. Certainly if that is what the alleged meanings suggest they are meanings that would be defamatory of the first to eighth Appellants. However in relation to other pleaded meanings, the Judge found that the directors were reckless and indifferent to the interest of the company and its

shareholders, that they were incompetent, unfit to hold office and should be removed. These findings of the Judge, to which there has been no challenge by the Respondents, convey, at the very least, that the first to eighth Appellants as directors of the Company did not properly discharge their functions and responsibilities as directors. It would therefore take the matter no further, to embark on an analysis to determine whether the alleged meanings do convey what the Appellants say they do.

53. The other meanings relate to the Company, more specifically the treatment by the Company of its staff and the adequacy and suitability of the Company's staff.

54. The first two meanings will be taken together and they are:

> alleged meaning 23: the Company treated and or treats its managers and/or management staff in an unfavourable manner;
>
> alleged meaning 24: the salaries offered by the Company to its managers and/or management staff are justifiably low and/or unfavourable and/or uncompetitive; and

The Judge found that the article conveyed those meanings but did not think them defamatory. I agree.

55. The only words in the article that convey those meanings are the references to the Company's refusal to pay higher salaries. A refusal to pay higher salaries is not without more defamatory of a trading company and in the context of this article is not defamatory of the Company.

56. In relation to the third alleged meaning (alleged meaning 25), the Judge found that the article bore this meaning but did not think it defamatory. I do not agree. If the Company is not perceived as or is not a favourable employer, this can be seen as having a tendency to damage it in the way of its business, since that can impact on the Company's ability to attract quality staff. People would be less inclined to have business dealings with such a company.

57. With respect to the fourth alleged meaning, which is that the Company is not adequately and/or suitably staffed, the Judge found that the article meant that the Company was not adequately and/or suitably staffed but did not think the meaning defamatory. The Respondents have not argued that the article is not capable of bearing this meaning. They however support the Judge's conclusion that the meaning is not defamatory. I however disagree. I think to say of a trading company that it is not adequately and/or suitably staffed would tend to damage it in the way of its business as persons would be reluctant to deal with such a company.

58. I turn now to the second aspect of this appeal namely, the defence of **Reynolds** privilege, which the Judge found had been established by the Respondents.

59. **Reynolds** privilege derives its name from the well known case of **Reynolds v Times Newspapers Ltd,** sup [2002] 2 A.C. 127. It is built on the traditional foundation of qualified privilege which requires a mutual duty and interest between the publisher and recipient of the information. It is accepted that in a modern democracy the journalist has a professional duty to impart information on matters of public interest and the public has an interest to receive such information. The defence therefore applies in the case of a publication by the press, which is the case here, but it can also apply to other publications (see **Seaga v Harper** [2008] 3WLR 478).

60. The defence of **Reynolds** privilege is a complete defence and if established denies any remedy to the claimant. It only arises as a live issue where the statement in question is defamatory and untrue. **Reynolds** privilege therefore protects the publication of untrue and defamatory matter. It does so for two reasons that impact on freedom of expression and freedom of the press; first so as not to deter the publication in question, which might have been true and secondly, so as not to deter future publication of truthful information (see **Loutchansky v Times Newspapers Ltd. (No. 2)** [2002] 1ALL E.R. 652,68 (at para 41)). It protects such matter where the publication is to the public at large or a section of it and where (1) it was in the public interest that the information should be published and (2) where the publisher has acted responsibly - a test usually referred to as "responsible journalism".

61. In explaining the rationale of the test of responsible journalism Lord Bingham in **Jameel and others v Wall Street Journal Europe Sprl** [2006] UKHL 44 stated (at para 32):

> "*The rationale of this test is, as I understand, that there is no duty to publish and the public have no interest to read material which the publisher has not taken reasonable steps to verify. As Lord Hobhouse observed with characteristic pungency [in the Reynold's case at p. 238], no public interest is served by publishing or communicating misinformation. But the publisher is protected if he has taken such steps as a responsible journalist would take to try and ensure that what is published is accurate and fit for publication."*

The privilege therefore will only be earned where the journalist has taken such steps as a responsible journalist should to try and ensure that what is published is fit for publication.

62. In **Reynolds** Lord Nicholls provided a non exhaustive list of certain considerations which may be of relevance in deciding whether the test of responsible journalism is satisfied. These are as follows:

"*1) The seriousness of the allegation. The more serious the charge, the more the public is misinformed and the individual harmed, if the allegation is not true. 2) The nature of the information, and the extent to which the subject matter is a matter of public concern. 3) The source of the information. Some journalists have no direct knowledge of the event. Some have their own axes to grind, or are being paid for their stories. 4) The steps taken to rectify the information. 5) The status of the information. The allegation may have been the subject of an investigation which commands respect. 6) The urgency of the matter. News is often a perishable commodity. 7) Whether comment was sought from the plaintiff. He may have information others do not possess or have not disclosed. An approach to the plaintiff will not always be necessary. 8) Whether the article contained the gist of the plaintiff's side of the story. 9) The tone of the article. A newspaper can raise queries or call for an investigation. It need not adopt allegations as statements of fact. 10) The circumstances of the communication, including the timing."*

63. These are not intended to be tests that the journalist must past or huddles that he must overcome before he can successfully rely on the defence. There are intended to be broad based pointers that may be of relevance and should in suitable cases be taken into account in assessing whether the journalist has met the standard of responsible journalism. This standard of conduct must be applied in a practical and flexible manner. It must have regard to practical realities (see **Bonnick**, supra, para 24 and **Jameel** at para 56).

64. This approach to the standard of responsible journalism has manifested itself in the following which are relevant to this appeal. First, in assessing the responsibility of the article weight must be given to the professional judgment of the journalist or editor. In **Jameel,** Lord Bingham said (at para.33;

*"Lord Nicholls recognized (in **Reynolds** at pp. 202-203, inevitably as I think, that it had to be a body other than the publisher, namely the court, which decided whether a publication was protected by qualified privilege. But this does not mean that the editorial decisions and judgments made at the time, without the knowledge of falsity which is the benefit of hindsight, are irrelevant. Weight should ordinarily be given to the professional judgment of an editor or journalist in the absence of some indication that it was made in a casual, cavalier, slipshod or careless manner."*

65. Second, the newspaper in making the decision whether to publish will need to have regard to the full range of meanings that a reasonable reader might attribute to the article. So that in this case the allegation of corruption is not relevant as I have held that that is not a meaning that the ordinary reasonable reader would attribute to the article. It should however be noted that in **Bonnick v Morris,** supra, it was held that in assessing whether the defence of **Reynolds** privilege is available, the Court should not penalize the journalist for "*making a wrong decision on a question of meaning on which different people might reasonably take different views*" (see paras 24-27). In **Flood** v **Times**

Newspapers Ltd. [2012] UKSC 11 Lord Mance stated (at para 129) that the principle endorsed by the Privy Council in **Bonnick**:

> *"appears to be, therefore, that a responsible journalist would have had in mind the less damaging of the possible meanings that reasonable persons might attach to the article, and would have been entitled to focus in that direction when checking and reporting the relevant subject-matter."*

In this case even if, contrary to what I have found, that the words are capable of the corruption meaning found by the Judge, that meaning is not so obvious as to judge the conduct of the journalist by reference to it.

66. Thirdly, even though the journalist's conduct may be open to the legitimate criticism it does not necessarily follow that he has acted irresponsibly. This is an aspect of **Bonnick** that was highlighted in the judgment of Lord Mance in **Flood** (at para 130). He stated:

> *"The second, presently relevant, aspect of **Bonick v Morris** is that, in forming its overall judgment as to the availability of the defence of public interest on the facts, the Privy Council was prepared to overlook some respects in which the journalist's conduct legitimately be criticised. The activities of the company and the competence of its management were matters of considerable public interest. The journalist had fallen short of the standards to be expected of a responsible journalists by not making further inquiries of the anonymous source about the reasons for Mr. Bonick's dismissal and not including his explanation (so that the case was "near the borderline"). But despite this, the publication was held overall to be covered by public interest privilege..."*

67. Among the 10 considerations mentioned by Lord Nicholls in **Reynolds** referred earlier in this judgment, is the consideration of **"***the steps taken to verify the information'*. This would be, in many cases involving **Reynolds** privilege, of critical importance and it is of great importance in this appeal. The Appellants submitted that the test is not whether steps were taken to verify the information but whether steps to verify the information were taken, which in fact verified the information the journalist received. Counsel argued that the fact that you take a variety of steps to verify and no information is received verifying the publication then you cannot publish it.

68. There is no duty to verify in every case. That, however, is not the case here. But what is required in that regard?

69. I do not believe the authorities support the proposition advanced by the Appellants that the publisher must obtain verification of the information provided by his source before he can publish it.

In **Bonnick** for example the newspaper relied on information provided to it by one anonymous source. What is required is that the publisher take reasonable steps to satisfy himself that the allegation is true before he publishes it. This was so stated in **Flood** (at para 78) and although somewhat different language is used in **Jameel** (see paras 138 and 149) I do not think anything different is intended.

70. In **Flood** Lord Phillips stated that there is both a subjective and an objective element to verification. He said (at para 79):

> *"Thus verification involves both a subjective and an objective element. The responsible journalist must satisfy himself that the allegation that he publishes is true. And his belief in its truth must be the result of a reasonable investigation and must be a reasonable belief to hold."*

71. In **Jameel** Baroness Hale expressed the responsibility in this way: (at para 149):

> *"... The publisher must have taken the care that a responsible publisher would take to verify the information published. The actual steps taken will vary with the nature and sources of the information. But one would normally expect that the source or sources were ones which the publisher had good reason to think reliable, that the publisher himself believed the information to be true, and that he had done what he could to check it."*

The journalist therefore should believe in the truth of the allegation, such belief must be a reasonable one to hold and must be the result of a reasonable investigation. The actual steps that the journalist may take to discharge that onus will turn on the facts of each case and will be influenced by the nature and sources of the information.

72. It is also relevant to note that a journalist is entitled to rely on an anonymous source, so the fact that he does is not to be weighed against him. The journalist also need not produce primary evidence of the information given by his sources. Further, it is useful to bear in mind the caution of Lord Nicholls in **Reynolds**:

> *"Above all, the court should have particular regard to the importance of freedom of expression. The press discharges vital functions as a blood hound as well as a watch dog. The court should be slow to conclude that the publication was not in the public interest and therefore the public have no right to know, especially where the information is in the field of political discussion. Any lingering doubts should be resolved in favour of publication."*

73. There is an obvious tension between freedom of expression and freedom of the press on the one hand and the right of the individual to his good reputation and the other. The way the tension is resolved in the application of the defence of **Reynolds** privilege is to give priority to freedom of the

press and freedom of expression where the publication is a matter of public interest and the publisher has satisfied the test of responsible journalism. In those circumstances the right to freedom of expression and freedom of the press trump the individual's right to his good reputation. The test of responsible journalism is therefore the point at which the balance is held between the competing rights. As Lord Nicholls observed in **Bonnick (**at para. 23**)** supra:

> *"Responsible journalism is the point at which a fair balance is held between freedom of expression on matters of public concern and the reputation of individuals. Maintenance of this standard is in the public interest and in the interest of those whose reputations are involved. It can be regarded as the price journalist pay in return for the privilege. If they are to have the benefit of the privilege journalists must exercise due professional skill and care."*

74. **Reynolds** privilege reflected a recognition in England that the existing law of defamation did not cater adequately for the article 10 right of freedom of expression contained in the European Convention which was about to be introduced in that country (see **Flood** at para 46). The defence is therefore intended to have a liberalizing effect. The defence is said to provide a fair balance between the right to freedom of expression and the right to the individual to his good reputation which is another convention right.

75. In this jurisdiction our Constitution recognizes and protects the right to freedom of expression and freedom of the press. It also protects the right to one's good reputation. No issue has arisen in this case as to whether the **Reynolds** privilege strikes a fair balance in our constitutional context and is appropriate in this jurisdiction. The point was not raised, as it was not raised in Civil Appeal 54 of 2004, **Ramdhan and others v Lee Assang and others**, where this Court treated the defence as applicable in this jurisdiction. I shall therefore proceed on this that the defence is appropriate in this jurisdiction and apply the principles as outlined above.

76. The Judge found that the article was a matter of public interest and that it was a product, but only just, of responsible journalism. In this appeal no challenge has been made to the Judge's finding that the article is a matter of public interest. The Appellants were obviously correct not to challenge that finding. The article dealt with a public company in which the Government of Trinidad and Tobago is a major shareholder. It concerned the affairs of the Company, such as the conduct of the Board, the circumstances surrounding the purchase of the crane and its fall out. These are matters of significant public interest. The public were entitled to be informed of this and the Respondents to publish it

provided they did so in a responsible manner. As the article has met the public interest criterion, the focus of this aspect of the appeal is on the test of professional journalism.

77. The evidence of the conduct of the newspapers came primarily from the third Respondent. The Judge summarized her evidence as follows:

(1) That she obtained the information concerning the crane from a source at the company.

(2) She considered that source to be reliable based upon her knowledge and previous interactions with that source.

(3) She attempted to verify the existence of the reports referred to in that article and requested a copy from her source.

(4) She was not provided with a copy of the reports but the source read excerpts of the report of Mr. Ali out to her. The production of the reports, the source feared, would allow him/her to be traced as the provider of that information.

(5) The source was a senior person at the company and was one of those persons whom the article recognized as being affected by management's decision not to raise salaries. Accordingly, it could have been inferred that the source may have had an axe to grind.

(6) The third Respondent did not believe this to be the case however, based upon her previous knowledge of the source and previous interactions with that source. Those previous interactions had not been in relation to confidential information.

(7) The third Respondent attempted to verify the composition of the Board but did so via communication with the Ministry of Finance. That information turned out to be wrong in that one Mr. Buxo was identified in the article as a member of the Board when in fact he was not. She accepted that a search of the Companies Registry would have been productive and was a more accurate means of verifying the composition of the Board of Directors.

(8) The article referred to a request under the Freedom for Information Act. The third Respondent testified that the only requests under the Freedom of Information Act that were made were those attached to her witness statement. However, in cross-examination when it was pointed out to her that those requests were made after the publication of the article (even though the article made reference to requests under the Freedom for Information Act having already been made), she opined that she herself had made requests and that these were different from her Editor's requests and that she did not retain copies of her own requests when she changed jobs.

(9) She also testified that in any event her experience was that requests for this type of information under the Freedom of Information Act were not likely to be productive and that she did not expect any result from that request being made.

She testified as to her attempts to provide an opportunity to be heard and to respond as follows:

(1) She contacted Mr. Rolingson. Mr. Rolingson declined to comment. She gave him the opportunity to speak on the record but he declined to comment. She testified that as far as she was concerned Mr. Rolingson was the subject of the article and that her modus operandi was to write the article first and then call the person affected and give them an opportunity to respond. Their response would have been carried and they would have received a "block" of text. The clear implication, however, was that the article remained unchanged but that the response would also be carried if the subject of the article chose to comment.

(2) She made no attempt to contact members of the Board save for one attempt to contact the first Appellant Upon being told that he was not available, she did not pursue her attempts to contact him. Her attempts to contact the first Appellant and to contact Mr. Rolingson for final comment were on Friday, which was likely to be the same day or a short time away from her deadline for publication in the Sunday Guardian. She accepted that the story would not have lost its newsworthiness if it were to be delayed by one further week to allow checks to take place.

(3) A letter was received from Attorneys at Law for the Appellants seeking an undertaking that the article would not allege corruption and threatening an injunction if such an undertaking was not received. That letter was issued before publication of the article and dated 11th December 2003.

(4) She made no attempts to contact any other members of the Board for their comment.

(5) She attempted to contact Mr. Ali, the Deputy Vice President of the company and he declined to comment.

(6) In her allegations of $20M in losses, she attempted to corroborate from sources including sources at the Ministry of Finance [to verify whether this figure was a reasonable figure for estimated losses].

78. Counsel for the Appellants considered the Reynold's criteria. He criticized the sources of the information contending that they were way below the standard required to meet the standard of responsible journalism. He also criticized the status of the information and submitted that the steps taken to verify the accuracy of the information were wholly insufficient and did not accord with the standard of conduct required of a responsible journalist. Counsel further submitted that there was no urgency and the publication of the article could have waited without losing its newsworthiness. He described the tone of the article as sensational. Counsel also submitted that there were additional factors which are relevant in assessing whether the article was the product of responsible journalism. Reference will be is made below to the additional factors.

79. I will consider the conduct of the Respondents under five main headings namely:

a) the status and source of the information;
b) steps taken to verify the information;
c) the urgency of the publication;
d) the tone of the article; and
e) the additional factors.

80. First the status and source of the information. The information in the article relating to the affairs of the Company, such as information relating to the Board, the purchase of the crane and its fallout was provided by a senior employee of the Company. Sources at the Ministry of Finance and in the port industry provided information concerning the alleged loss of $20M by the company.

81. Counsel for the Appellants submitted that the third Respondent failed to meet the standard of professional journalism when she placed reliance on those sources. In so far as the information relating to the affairs of the Company, it was submitted that the source was a single source and not a person who is a board member. The third Respondent must therefore have known that the information concerning the board of the Company was not first-hand information and could not have considered that information from the source to be good or reliable. Further, it was submitted that the source could have had an axe to grind. Similarly with respect to the reasons for people leaving the employment of the company no information was obtained from those persons as to the reasons they left. With respect to the alleged loss of $20M it was submitted that such loss could only be ascertained by persons who were privy to the internal workings of the Company and not by persons in the Ministry who could not reasonably be expected to have data to carry out the necessary computation.

82. It is not necessarily irresponsible to rely on one source. Reliance may be placed on one anonymous source. With respect to the information concerning the affairs of the Company the source was a senior person in the employ of the Company. It might reasonably be expected that such a person would be knowledgeable about the affairs of the Company. Further it is not unusual that confidences, even at Board level, are not maintained. The fact is that people, particularly in this jurisdiction, do talk. So the fact that people outside the Board may know what transpired at Board meetings in itself should not be a red flag that the information provided by that person is necessarily unreliable.

83. According to the evidence, this source on prior occasions had provided the third Respondent with information that proved to be reliable. While it is possible that the source may have had an axe to

grind, the third Respondent did not believe that to be so in this case and I see no basis for the third Respondent to have discounted the information for that reason.

84. Up to the time of the publication of the article there is nothing to suggest that the source had provided information that could not be relied upon. There were indeed indicators that would have instilled the confidence in the information.

85. Some of the information provided by the source concerned Mr. Ali and Mr. Rolingson.

86. According to the evidence a source stated that Mr. Ali had been to Italy and subsequently prepared a report advising against the purchase of the Fantuzzi crane but this was not accepted by the board of the Company. The third Respondent contacted Mr. Ali. She did so at a telephone number provided by the source. She asked Mr. Ali about the report, whether he had advised against the purchase of the crane and whether it had broken down, as the source also stated. The third Respondent wanted Mr. Ali to corroborate the statements provided by the source. He did not deny anything but indicated that he needed time to think about whether he would speak to the third Respondent. He was contacted again three days later but had not yet made up his mind. Mr. Ali's reaction would not suggest to the third Respondent that the source had provided unreliable information.

87. Mr. Rolingson had been contacted by the third Respondent on December 9th, 2003 to comment on the information the source had provided. The source had provided the third Respondent with Mr. Rolingson's mobile number. He refused then to speak to the third Respondent and indicated that he would call her back by December 12th, 2003. But before that date arrived the source told the third Respondent that Mr. Rolingson had alerted the first Appellant to the publication of the article stating that the first Appellant had planned a rebuttal of the story. That information was confirmed to be correct as in a letter written on December 11th, 2003 by Attorneys on behalf of the first Appellant and other members of the Board, reference is made to the proposed article and the telephone conversation with Mr. Rolingson and the third Respondent. The rebuttal to the article was published a short time after the publication of the article.

88. The letter of December 11th, 2003 is not only relevant for what it expressly says but also for what it makes no express reference to. According to the evidence the third Respondent had spoken to Mr. Rolingson about the crane issue. No details are given by the third Respondent of what is meant by the "crane issue". The letter of December 11th, 2003 however refers to instructions the Attorneys

received from Mr. Rolingson to the effect that the third Respondent informed him that the intended article made reference to the purchase of a certain crane by the Company and alleged corrupt activities associated with such purchase. It seems to me therefore that a reasonable inference is that the third Respondent told Mr. Rolingson of the information she had concerning the crane. The letter does not deny the existence of the report of Mr. Ali or the engineer's report or any other particulars provided by the source.

89. In a later conversation between the third Respondent and Mr. Rolingson he confirmed he was leaving the employ of the Company. He however did not admit to resigning but said he was taking early retirement. That was carried in the article but Mr. Rolingson did not state his reasons for taking early retirement and so did not deny the source's information as to the reasons for him leaving the company. The timing of his departure is consistent with the reasons for it provided by the source.

90. In view of the above it cannot in my judgment be reasonably contended that the conduct of the journalist in relying on the source at the Company for the information contained in the article was irresponsible. The third Respondent believed the source to be reliable and that belief was a reasonable one to hold.

91. With respect to the information concerning the departure of senior members of staff of the company and the reasons therefore, the source at the Company was a senior employee of the Company as well and would reasonably be expected to have information that senior employees had left the employment of the company and the reasons for it.

92. So far as the loss of $20M is concerned the evidence of the third Respondent is that she spoke to several Ministry of Finance officials as well as persons in the port industry in an attempt to corroborate the information as to the alleged loss. The third Respondent believed that information. It was reasonable to do so particularly as the Government of Trinidad and Tobago is a major shareholder of the Company and the Ministry could reasonably be expected it to provide information as to the estimated loss as a result of the delay in the purchase of the crane.

93. In the circumstances I do not agree with the submission of Counsel for the Appellants regarding the status and source of the information. I do not think that they fell below the standard required to meet the threshold of responsible journalism.

94. Verification. As I mentioned verification involves a subjective and an objective element. The journalist must satisfy herself that the allegation she publishes is true, her belief in the truth must be the result of reasonable investigation and must be a reasonable belief to hold.

95. In this case, as I have mentioned, I do not believe that there is any doubt that the third Respondent believed in the truth of the allegations that were published. According to the third Respondent, "she knew she could rely" on the source at the Company and believed that her other inquires provided reliable information. The information obtained also supported the allegations made in the article and on the basis of the information obtained the belief of the third Respondent in the truth of the allegations was a reasonable one to hold. The question that arises is whether the belief is as a result of reasonable investigation.

96. The third Respondent attempted to obtain corroboration of the information she obtained from the source of the company. She contacted Mr. Ali on two occasions. On the first he needed time to consider whether he would speak to her. On the second occasion he said he had not yet made up his mind. He did not deny anything that was put to him.

97. The third Respondent also contacted Mr. Rolingson on December 9, 2003 for comment. She asked him if he would make an anonymous comment or whether she could use his name in the article. He refused to speak to her in either capacity. Mr. Rolingson however did speak to the third Respondent three days later, Mr. Rolingson indicated to the third Respondent that he had not really resigned but had taken early retirement. He declined however to gave reasons as why he decided to take early retirement. What he told the third Respondent was carried in the article.

98. The third Respondent attempted to contact the first Appellant. She was told that he was unavailable at that time. She did not pursue her attempts to contact him after that nor did she attempt to contact other members the other members of the Board most of whom, the Judge found, were not aware that an article was going to be published. However the failure to contact members of the Board and must be viewed against other circumstances.

99. The first Appellant knew of the intended publication. According to the finding of the Judge he appears not to have communicated to other members of the Board the fact that an article was going to be published. He however retained Attorneys-at-law who wrote the letter of December 11th, on behalf of the first Appellant and the other members of the Board. The letter expressed concern that the

intended article would make reference to the "purchase of a certain crane by Plipdeco and alleges corrupt activities associated with such purchase". The letter did not attempt to set out the Board's version of events and threatened an injunction if an undertaking was not given that no allegations or suggestions of dishonesty, corruption and impropriety would be made against the members of the Board including the first Appellant. The letter therefore communicated the entire Board's position including the first Appellant. The Judge found that it was therefore "unlikely that further comment would have been provided by members of the Board even if they had been contacted. In any event it would have been reasonable for the [Respondents] to so assume". I think that is a fair inference and one with which I agree.

100. The third Respondent also requested from the source copies of the Ali report and the Inn Cor Tech report but failed to obtain copies of them. It was unlikely that she would obtain copies of the reports. As the Judge noted, the reports were confidential ones and not in the public domain. Excerpts of the reports were however read to the third Respondent by the source and to that extent there was verification.

101. The third Respondent also contacted some of the senior members of staff who left the employ of the Company but they refused to comment.

102. As regards the alleged loss of $20M the evidence is that the third Respondent took steps to verify the information as to the delay in purchasing the gantry crane from sources at the Ministry of Finance and in the port industry. I think it was reasonable for the third Respondent to rely upon those sources particularly, the Ministry of Finance. The Government being a major shareholder of the company it is not unreasonable to expect that the Ministry of Finance would be able to provide financial data that would assist in the estimation of the loss as a result of the delay in purchasing the crane.

103. In the light of the above circumstances I do not think the third Respondent can reasonably be criticized as acting irresponsibly in the steps taken to verify the information. She did what she reasonably could to verify the information and in my judgment the belief in the truth of the allegations, which I have held to be a reasonable belief to hold, was the result of a reasonable investigation.

104. The urgency of the article. The Appellants submitted that the article was not urgent and its publication could have waited. The third Respondent in fact stated in evidence that the article could

have been published the following week without losing its newsworthiness. But was it irresponsible to publish the article when it was published?

105. In my judgment it was not. It is unlikely that any further information would have been obtained. It can be assumed that the Board members would have had relevant information. The third Respondent had not contacted them up to December 11th. She completed the article on December 12th, 2003 but the letter of December 11th had communicated the Board's position. The Judge found that it was unlikely that further comment would have been provided by members of the Board even if they had been contacted and in any event it would have been reasonable for the Respondents to so assume. As I have mentioned, I agree with that view. The third Respondent had been unable to obtain the Ali report and the Inn Cor Tech report but it was unlikely that she would have obtained the reports.

106. As I have noted the Court must have regard to practical realities. The standard of conduct must be applied in a practical and flexible manner and weight given to editorial judgment. If there is no reasonable prospect to obtain any further information, the newspaper cannot be criticized for not waiting to publish it. Further as the Judge noted with reference to the December 11th letter:

> *"The [Appellants'] Attorney's letter threatened to restrain the publication unless an undertaking was given. While the [Respondents'] deadline for publication of the article may be considered to be an internal deadline, the tone of the Attorney's letter suggested that attempts would be made to quash the publication of the article. Those circumstances, therefore, may have led a responsible journalist to consider that delay in publication of the article, especially in circumstances where there was no further useful information to be derived would be counter-productive and could well result in non publication of the article. While the article may not have lost it newsworthiness by delaying publication the letter added urgency to its publication and confirmed that no comment would be available from the [Appellants']."*

I agree with these observations. In my judgment the Respondents did not fail to act responsibly by not delaying the publication of the article.

107. Tone. The Appellants described the tone of the article as condemnatory, provocative and accusatory and as having a sensational tone or flavor. Counsel for the Respondents submitted that the tone of the article is exaggerated by the Appellants and I agree. The Judge described the article as unkind. I think that is closer to the correct description of the tone of the article. It is however unlikely that information of the kind disclosed in the article would be regarded as kind and a newspaper is entitled to publish such material in the public interest.. The article did not adopt any of the allegations

stated in it but ascribed the information to its sources. Mr. Rolingson spoke to the third Respondent and his comment was carried in the article. In the circumstances I would not say that the tone of the article weighs against the Respondents.

108. The additional factors. Counsel submitted that there were additional factors that are relevant in assessing the article as a product of responsible journalism and which would show that the article was not the product of responsible journalism.

109. First, Counsel submitted that according to the evidence, even if the Appellants had provided the third Respondent with a response to the allegations made in the article, it would nonetheless remain unchanged, save and except for the fact that such response would have been carried. I, however, do not think that this demonstrates irresponsible conduct. What Counsel may have had in mind is that even if the Appellants had provided information that contradicted the sources of the Respondents that it would not have changed the article but that information would have been published. I however think it is quite legitimate for a newspaper to publish divergent versions of events. It might be irresponsible if the newspaper associated itself with one version as opposed to the other, but the publication of the two diversion versions would not of itself be irresponsible. In so far as responsible journalism may require that the newspaper obtain comment from others and publish the gist of that comment, it is to be expected that an article will contain divergent versions.

110. Second, Counsel submitted that notwithstanding the fact that the article stated that the Sunday Guardian had, under the Freedom of Information Act, requested a copy of the report allegedly prepared by a local mechanical engineering consultancy firm in which it was stated that the crane was foreign-used, the Judge found that it was unlikely that such a request had been made. This evidence, it was submitted, demonstrates that the third Respondent was prepared to fabricate material for the purposes of the article to give credibility to certain allegations in the article.

111. It is relevant to note that the request that the Judge found unlikely to have been made are alleged personal requests by the third Respondent. The article makes no mention of any such requests. The article refers to the request made by the Sunday Guardian. There is no doubt that such a request was made. However the article stated that the request had been made whereas the evidence showed that the request was in fact made about two weeks after the publication of the article. The explanation of the third Respondent was that she had asked her editor before the publication of the article to make the request under the Freedom of Information Act. Her evidence is that they took the decision to make

the request before the publication "then it had been done." The third Respondent was mistaken that it had been made and seemed to assume that as the decision was taken to request the document that that had been done. I would not say that it was a deliberate attempt to mislead the public. I would also not say that it added to the credibility of the allegations in the article that the Company was intent to keep things quiet. The article had made mention of the fact that the third Respondent's attempts to obtain the report from the Company was unsuccessful. That a request was made under the Freedom of Information Act would not add anything. As it turned out when the request was made it was denied. I do not think in the context of this case that anything turns on this.

112. Third, Counsel submitted that in addressing the issue of the purchase of the crane throughout the article, the third Respondent repeatedly refers to information obtained in relation thereto coming from "sources" or "officials" or "top officials", whereas there was only one source. This it was submitted was a device used by the third Respondent to make the allegations appear more credible to the readers of the article. The article does suggest information coming from sources or officials or top officials and is a fact that needs to be evaluated in the context of responsible journalism. In my judgment, however, that would not be sufficient to conclude that the conduct of the Respondents did not meet the standard of responsible journalism. There is no suggestion that the information attributed to sources or officials, top officials was not in fact representative of the information provided by the source. In any event, I do not subscribe to the view that the article would be any more believable as it refers to sources as opposed to one source who was appropriately described as an insider whistle blower. The ordinary reasonable reader would treat such a source as equally if not more credible.

113. Lastly Counsel submitted that the third Respondent wrongly listed one Mr. Buxo as a director of the Company whereas in truth and in fact he never was. This it was submitted shows that the third Respondent was lax in her approach to preparing the article as she did not even bother to check with the Companies Registry as to who the directors of the company were prior to publication.

114. According to the evidence the third Respondent attempted to verify the composition of the Board with the Ministry of Finance. The Judge noted that while a search of the Companies Registry might be best practice, it is not guaranteed to produce a more accurate result than that produced by the third Respondent's inquiry of the Ministry of Finance, as the accuracy of the records in the Registry depend upon up-to-date filings. As has previously been noted, the Government is a major shareholder of the Company and it is reasonable to assume that the Ministry of Finance would have up-to-date records of the members of the board appointed to a company in which the Government is a major

shareholder. The Judge found that it was not unreasonable or negligent to rely upon information provided by the Ministry of Finance as to the directors of the company and I agree with him.

115. In light of the above the Judge was entitled to conclude the article was a product of professional journalism. Critical to this case is the status and source of the information and steps taken to verify it. The source is one that was believed to be reliable and this was a belief that the third Respondent was justified in holding. The third Respondent had done what she could to verify the information. The information was a matter of public interest. It concerned a public company and one in respect of which the Government was a major shareholder. The matters contained in the article were matters of public interest. The Respondents had a duty to publish such information and the public to read it.

116. In the circumstances the appeal is dismissed.

117. The Respondents in their notice sought a variation of the awards of damages in the event the appeal was allowed. If the appeal was dismissed the Respondents sought a variation of the order as to costs of the action made by the trial Judge. The first mentioned relief is not relevant as the appeal has not succeeded. With respect to the second relief sought by the notice, the Judge made no order as to costs. No argument was really advanced on this issue. I am however not prepared to interfere with that order as it was an order that was within his discretion to make and I cannot say that he was plainly wrong to do so. Although the Respondents succeeded on the issue of the corruption meaning specifically mentioned as a ground in their notice, as the relief claimed in the notice fails, it seems to me that the Respondents' notice should be dismissed and I so order. I make no order as to costs on the notice.

118. With respect to the costs of the appeal, it is relevant to note that in respect of a number of issues raised on the meanings found by the Judge, the Appellants were successful but failed on others. In those circumstances the fact that the Appellants achieved some success on issues as to the meaning of the article is not sufficient, in my judgment, to deprive the Respondents of any of their costs of the appeal. I therefore order that the Appellants pay to the Respondents the costs of the appeal.

Dated the 19th day of December, 2012.

A. Mendonça,
Justice of Appeal