

*(Unofficial English Language Translation)*

(31)  
JUDGEMENT



For Court Usage

Undecided Case 1675/2

Decided Case No 591/2

**IN THE NAME OF THE KING**

Appeals Court

16<sup>th</sup> of January 2561 (2018)

Criminal Case

Between

Natural Fruit Company Ltd.

(Plaintiff)

Mr Andy Hall OR Mr Andrew Jonathan Hall

(Defendant)

Concerning: Defamation, violation of the Computer-Related Crimes Act

The plaintiff and the defendant both appealed the judgement of the Southern Bangkok Criminal Court dated 20 September 2559 (2016)

The Appeals Court accepted the appeals on 16 August 2560 (2017)

The plaintiff's prosecution and amended prosecution alleged that between 19th December 2012 until 23rd January 2013 both continually during the daytime

and night-time the accused (defendant) together with the organisation Finnwatch disseminated the result of research which was false on Finnwatch's website, in English language, as follows:

*CONFIDENTIAL COMMUNICATION 19 December 2012*

*From: Finnwatch*

*To: Ministry of Social Development and Human Security, Thailand,*

*Ministry of Foreign Affairs, Thailand*

*Delegation of the European Union to Thailand, Bangkok*

*Embassy of Finland, Thailand*

*Ministry for Foreign Affairs, Finland (departments for trade policy and the Americas and Asia)*

*Ministry of Employment and the Economy, Finland*

*Ministry of Labour, Myanmar*

*International Labour Organization ILO, Regional Office For Asia and the Pacific*

*International Organisation for Migration, Bangkok office*

*United Nation Office on Drugs on Crime, trafficking expert, Bangkok*

*Office of the United Nations High Commissioner for Human Rights, Bangkok*

*State Enterprises Workers' Relation Confederation SERC, Thailand*

*International Trade Union Confederation ITUC, Human and Trade Union Rights*

*International Union for Food, Farm and Hotel Workers,  
Regional Secretariat for Asia and the Pacific*

*Amnesty International, Thailand*

*Human Rights Watch, Thailand*

*Migrant Worker Rights Network, Thailand*

*Thai Labour Solidarity Committee*

*Friedrich Ebert Stiftung*

*American Center for International Labour Solidarity*

*Subject: Serious human rights violations at Natural Fruit plant in  
Thailand*

*Dear recipient,*

*Finnwatch, a Finnish non - profit organization focusing on global corporate responsibility issues, conducted field research in three locations in Thailand in October to November 2012 relating to the responsibility of Finnish retail companies' supply chain management. One part of the research concerned the production and employment conditions of Natural Fruit, a maker of pineapple products, in its processing facility at 172/12 Moo 11 T. Nhongtatam, A. Prانبuri, Prachuap Khiri Khan 77120.*

*Based on the documented and structured interviews of 12 workers, we have reason to suspect that serious violations of basic human and labour rights are commonplace at the said facility. We urge you to use all means at your disposal to address these violations and to protect the rights of the workers.*

*The research was conducted by a team managed by Mr. Andy Hall, migration expert at Mahidol University. Its key findings, which will be made public on 22 January 2013, include:*

- 1) *There were a significant number of undocumented labourers and an estimated 20 to 30 undocumented child labourers, some of whom were not older than 14 years of age. The employment of children under 15 is unlawful as is the employment of 15-18-year-old children under normal full-time conditions. It is also illegal to employ unregistered workers.*
- 2) *All of the workers interviewed said that their hourly, daily or monthly wages or overtime compensation were lower than those defined in Thai labour laws. No holiday benefits or bonuses were provided to workers as required by the legislation.*
- 3) *All Myanmar migrant workers interviewed reported that Natural Fruit unlawfully confiscated their original passports, even when they had paid back all debts relating to their employment. Generally, the workers did not have the right to access their passports, except in most exceptional circumstances, and never in instances where the worker still had debt remaining to the company. Similarly, neither original nor photocopied work permits were provided to workers by the factory. If the workers wished to leave Natural Fruit and/or change employer, they were forced to flee without these documents, thus losing all their investments in registration costs. This presents a significant psychological barrier to leaving. These practices are illegal. The confiscation of personal documents is one sign of the type of behaviour that can be categorized as trafficking in persons. Some newly arrived workers also reported being placed in situations of severe debt bondage with no documents and no ID cards so they could not leave. These workers may be trafficking victims.*
- 4) *There were a significant number of random and unexplained deductions from worker salaries for electricity and water, litter, transport (that was not used), uniform, registration and nationality verification processes, toilet breaks, sleepiness, ID cards, bank cards and other miscellaneous*

*items. In addition, the workers said that Natural Fruit deducted more than what was legally allowed for their registration costs unless they informed the company of excessive social security deductions. Unauthorized deductions from worker's salaries are unlawful.*

- 5) When work was not available or a full day's work was not provided, the workers were not paid at all. Thai law generally requires a 70 percent payment of daily wages if an employer does not provide work.*
- 6) All workers said that they were in practice forced to work overtime. Some workers also reported overtime work in excess of the legally allowed 36 hours per week. The workers said they were fined for falling asleep during late shifts and hit around the head or arms if they were sleepy. Most workers reported workers, particularly younger ones, sometimes fainting or crying as a result of excessive work.*
- 7) Many non-Thai workers reported that they had no social security card or health insurance as required by law, although some did have these benefits. Those who were in possession of SSO cards were not allowed to choose their hospital, as legally entitled, and their SSO costs were randomly deducted in different amounts, whatever their salary. Nor did the workers understand their social security rights. One female worker who was pregnant said she would have to pay her own delivery costs and that she would not get any maternity benefits. This suggests illegality on behalf of the factory in not complying with social security and health laws.*
- 8) There were not enough toilets for workers, particularly men, at the factory. If workers had to wait too long for the toilet or spend too long in the toilet, they were illegally deducted no minutes' worth of overtime compensation*
- 9) The workers reported that Natural Fruit did not provide work accident compensation as required by Thai law.*

## *Contacts*

*With regard to the findings of the field research conducted in Thailand, please contact:*

*Mr. Andy Hall*

*Migration expert, Mahidol University*

*Tel. +66 (0) 846119209 (Thailand)*

*[andy.hall@mahidol.ac.th](mailto:andy.hall@mahidol.ac.th)*

*For other aspects of the research, please contact:*

*Ms Sonja Vartiala*

*Executive Director, Finnwatch*

*Tel +358 (0) 44 568 7465 (Finland)*

*[Sonja.vartiala@finnwatch](mailto:Sonja.vartiala@finnwatch)*

*Finnwatch ry [info@finnwatch.org](mailto:info@finnwatch.org) Paaskylanrinne 8 [www.finnwatch.org](http://www.finnwatch.org)*

*00550 Helsinki*

The meaning of this English language document in Thai language is translated as follows: *(this Thai language is not translated as same as above)* ...

And in the daytime of 21 January 2013, the accused (defendant) held a press conference to present the findings of the said research to the Thai and foreign media, business people and the public at Maneeya Center, located at 518/5 Pleonchit Road, Lumpini, in Bangkok's Pathumwan district. An English-language executive summary of the research findings was distributed to those attended the press conference. Item B on page 16 states that:

## EXECUTIVE SUMMARY

*IN TIMES OF ECONOMIC STRESS* consumers often turn to less expensive items. A key trend in retail chains' price competition is developing and introducing their own private label products. This refers to goods that are produced by an external supplier but sold under the retail company's own brand. Other motivations behind private label products may relate to strengthening customer relations, developing and differentiating the company brand, increasing profit margins on products and boosting the chain's market share. In Europe, private label items cost on average 30 percent less than similar brand products. Their share of private label goods is showing a steady increase globally. In Spain and Switzerland, for example, over 70 percent of all frozen and canned food items carry a private label. In Finland, the share is 40 percent.

From a corporate responsibility viewpoint, the production of private label items entails several challenges. As retail companies pool their resources and set up international joint procurement companies, their bargaining power vis-à-vis suppliers increases. One result of this is the weakening of the position of suppliers, especially those from developing countries. Constant search for the cheapest price may also mean that the responsibility and sustainability of production in the global South does not receive sufficient attention in the procurement process. Other problematic aspects relating to growing purchaser power include delaying payments, demanding absolute certainty of supply (if contractual obligations are not met in full, the contract ceases to apply), buy-back requirements, dumping, conditional purchase agreements and extremely high (cosmetic) quality standards.

This report by Finnwatch, an independent Finnish non-profit research NGO focusing on global corporate responsibility issues, analyses the responsibility of the procurement process of the biggest Finnish retail chains' private label products. The chains included in the analysis are Ruokakesko, SOK, Suomen Lähikauppa and the German-based Lidl. Except for Lidl, which to a

*large extent handles its international procurement through its German head unit in a centralised manner, all chains were members of large international joint procurement companies and heavily integrated into the global food market. Ruokakesko is a member of the pan-European AMS Sourcing. SOK co-owns Coop Trading through its procurement subsidiary Inex Partners together with its Nordic partners. Tuko Logistics, whose clients include Suomen Lähikauppa and Stockmann, is a part of the European EMD and United Nordic that brings together a number of Nordic retail chains. The responsibility challenges related to the supply chain management of private label goods are illustrated through three in-depth case studies. The data was assembled through fieldwork with workers, employers and NGOs in the provinces of Samut Sakorn and Prachuap Kiri Khan in Thailand between October and December 2012. The field research was carried out by a team managed by Andy Hall, migration expert at Mahidol University in Thailand in accordance with Finnwatch's research guidelines. Mr Hall has ten years of experience working on similar issues in Thailand.*

*The investigation covered two tuna companies, Unicord and Thai Union Manufacturing, as well as a pineapple processing company called Natural Fruit. Tuna and pineapple production for international export to global consumer markets are important sources of external revenue and providers of jobs in Thailand. However, the research confirmed, the success and prosperity of these labour-intensive export sectors, too often rests on the exploitation of a mainly non-Thai migrant workforce – mostly vulnerable workers from neighbouring Myanmar. Forced labour, human trafficking, child labour, low wages and other serious violations continue to characterise the operations of some pineapple and tuna companies in Thailand, despite growing national and international criticism of such practices. In the course of the research process it also became obvious that the responsibility practices of the Finnish retail chains included in the report, as well as those of the Netherlands-based Refresco (see below), were insufficient. The report was produced as part of Finnwatch's Decent Work programme.*



## *WIDE INTERNATIONAL IMPLICATIONS*

*As the factories investigated also produce for other international brands, the findings of the report are of a wider relevance. For example, Refresco, the company that supplies pineapple concentrate from the Natural Fruit factory where basic rights are grossly violated to Finland for further processing, is a leading global player in its field with notable customers in Europe. According to some estimates, Refresco controls 20 percent of the European private label soft drink and fruit juice market, for example. In 2010 the company recorded EUR 1.22 billion in revenues. After this it has acquired several smaller companies and presently has 26 production facilities in eight European countries.*

*In addition to the Finnish retail chains mentioned above, Refresco's clients include Lidl, Aldi, Carrefour, Dia, Morrisons, Edeka, Rewe, Superunie, Ahold and Système U. It has the exclusive right to produce PepsiCo, Coca-Cola, Schweppes and Unilever in a number of European countries.*

## *VIOLATIONS OF MIGRANTS RIGHTS ARE COMMON IN THAILAND*

*It is estimated that there are around 2.5 million migrant workers from Laos, Myanmar and Cambodia in Thailand, about 1–2 millions of whom are registered or in the process of registration in order to receive legal documentation. The flow of migrants to Thailand began in the late 1980s. Since then migrants from Thailand's neighbouring countries have been recruited to work in physically hard conditions on fishing boats and fish factories as well as agricultural, construction and domestic work. Over 80 percent of Thailand's migrant workers are from Myanmar. Migrant workers are treated as temporary workers who are granted a work permit for a few years. Irregular or undocumented migrants are punished with different penalties and sanctions. Thailand has signed various international human rights conventions that bind the state to protect people's wellbeing and rights. Thailand has ratified five ILO core*

*conventions. It has not ratified conventions 87 and 98 regarding freedom of association and the right to collective bargaining or convention 111 on discrimination at workplace. However, as a member of ILO Thailand is committed to the Fundamental Principles and Rights at Work. The provisions on minimum wage and working time in the Thailand Labour Protection Act 1998 do not, however, apply to agricultural or domestic workers. In addition, migrant workers do not have the right to form their own unions, and the employers and the state object their joining existing unions. Thailand has not ratified the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their families. The convention highlights the equal human rights of all migrant workers, including irregular migrants. Migrant workers have reportedly experienced violence and exploitation by the police, authorities and employers. Irregular migrants are particularly vulnerable and they are intimidated with threats to expose them to the authorities which would lead to deportation. Child labour is believed to be common, but there are no comprehensive statistics on the topic. Forced labour has also been reported to be commonplace. The wellbeing of migrant workers is threatened due to inadequate health care and housing. Many migrant workers do not, for example, have access to pure water. Registered migrant workers with work permits have better opportunities to protect their rights. They are, for example, entitled to social security and health care. Nevertheless, their working conditions are in general bad and they are paid less than the legal minimum wage. In addition, changing jobs has been made very difficult (the registration system requires the worker to identify the employer) and employers have reportedly confiscated workers' passports and work permits. In five provinces, migrants' freedom of movement and communication is limited by decrees prohibiting cell phone and vehicle use.*

## **B. FINDINGS RELATING TO NATURAL FRUIT**

*The field research was conducted in the province of Prachuap Kiri Khan in November 2011 in order to assess the production circumstances of private label juices sold in Finland. The Natural Fruit factory in question produces pineapple juice concentrate and a variety of canned pineapple products. The employees interviewed for this report worked in various departments. There were approximately 800 workers in the factory, of whom about 100 were Thai and 700 from Myanmar. According to the interviewed workers and NGO estimates, there were some 200 irregular migrants who had come to the country without proper documentation in the factory. The research revealed serious human rights offences and illegal activities. Finnwatch has reported the findings to the authorities of Finland, EU and Thailand, as well as several labour and human rights organisations in December 2012. The factory refused all collaboration with the research team during the field investigation and would not meet the researchers.*

*“No one wants to work here”*

*The working conditions in the factory producing pineapple juice concentrate differed significantly from the tuna factories. For example, when the researchers asked about the factory’s practices with recruitment fees, the employees said that the factory did not collect such fees as no one wanted to work there in the first place. The investigated factory has various ways of keeping workers in the factory. The employer had confiscated passports and work permits from most of the migrant workers interviewed. The factory does not give back the workers’ identity papers even when specifically asked. Some of the workers get their passports back temporarily, for example, in order to visit their home country during the holidays with the condition that they leave a substantial sum (1,000 baht, 33 dollars) as a deposit to the employer. The majority of the workers were irregular migrants who had come to Thailand with the help of a smuggler and were completely dependent on the factory and its illegal collaboration with the*

*local police. When starting work the workers are not offered any work equipment on behalf of the employer. The workers must buy shoes for 125 baht (4.2 dollars), gloves for 35 baht (1.2 dollars), a hat for 75 baht (2.5 dollars), a t-shirt for 158 baht (5.3 dollars), an apron for 45 baht (1.5 dollars) and a hairnet for 25 baht (0.9 dollars). Some of the equipment wears out quickly and after that they have to be replaced with new ones by the workers at their own expense. In addition, the factory requires that all workers have a factory ID-card, which the workers have to buy for 20 baht (0.7 dollars).*

### *Illegally low wages and excessive overtime work*

*All the interviewed workers were paid less than the local minimum wage (240 baht per day). The minimum wage varied from 200- 230 baht. The wages differed, for example, in relation to the status of the employee: the irregular migrants were paid less than the regular migrants. The workers did not have written work contracts and no right to annual leave. The majority of workers worked six day-weeks but sometimes they were made to work also on Sundays. Depending on the season, overtime hours could increase a lot. The interviewed workers told that they worked up to 5-10 hours overtime per day and that working overtime was compulsory. According to the workers it is usual that overtired workers cry, fall asleep or faint in the middle of their work. The workers cannot leave in the middle of their overtime due to illness, for example, unless they get a signed note from their boss. Otherwise they lose the whole day's pay. On the other hand, the wage was so small that many workers wanted to do overtime work in order to survive. The overtime compensation was 30–35 baht per hour. The legal overtime compensation in the region is 45 baht per hour. The factory did not pay any bonuses. The workers said that various unclear deductions were made from their wages. They did not get payslips and did not understand all the deductions. A few of the interviewees told that the factory deducted work permit fees endlessly if the worker did not pay attention and notify the factory when the*

*whole work permit had been paid for. The factory also fined workers. For example, if a migrant worker spent more than 10 minutes in the toilet, half an hour's wage was deducted from the salary. The workers were paid twice a month to a bank account opened by the company for each worker. For this the employer charged an opening fee of 200 baht (7 dollars). When the factory does not have enough production orders it is closed and the workers are sent home in the middle of the day. The workers are not paid anything when the factory is closed. It is regularly closed from July to September during which the workers do not have any sources of income. There is no trade union in the factory.*

#### *Migrant workers face discrimination and violence*

*The migrant workers interviewed said that their superiors often treat migrant workers in a more uncivilized manner than Thai workers. They also face violence from guards and their superiors. The interviewed workers said that sometimes the workers were hit due to language barriers or disagreements. The interviewed workers also said that all members of the work safety committee were Thai.*

#### *Dangerous working conditions*

*The interviewed workers told that the temperature inside the factory was very high but there was no air conditioning. Heatstroke and fainting were common among the workers. The factory had only two water fountains that did not have enough cold water for all. The workers performed monotonous tasks for long hours in one position without any breaks. Strong cleaning chemicals were used in the production lines and some workers had allergic reactions from the chlorine. According to the workers some of the factory's machines are dangerous. Three interviewees reported a case in which a worker had died from an electric shock from a machine. The family of the deceased worker had been compensated with 20-30,000 baht (670-1000 dollars), although according to the*

*law the compensation should have been 300,000 baht (10,000 dollars). One worker told that his fellow worker had lost a finger to a machine in the factory but had not been given any compensation. The factory did not have enough toilets for men. There were only six lavatories for hundreds of male workers.*

## **CONCLUSIONS**

*It is the responsibility of Thai officials and companies to guarantee that no laws or labour right standards are violated in the production process and that working conditions are appropriate. The customers of the Thai companies analysed in this report, as well as their other international customers, must ensure that their responsibility practices are adhered to throughout their supply chain. This calls for more rigorous monitoring and auditing, but also cooperation with the suppliers and relevant authorities. Refresco, for example, states that it has audited the Natural Fruit factory covered in this report in 2010, 2011 and 2012, which is proof enough of inadequate monitoring standards. The findings of the report are alarming and must be addressed without delay.*

The meaning of this English language document translated into Thai language is: *(this section in Thai language is not translated as same as above) ...*

The prosecution alleges such statement is false. The plaintiff alleges they have not committed any offenses as reported in the research findings of the defendant. The joint effort of the defendant and Finnwatch to disseminate such false research findings to a computer system, on a website and through organisation of a press conference, accompanied by distributing a press release of the executive summary of such research findings, imputes the plaintiff before a third person by publication of a false document in a manner likely to impair the plaintiff's reputation or expose the plaintiff to be scorned or hated by internal and

international public, it was alleged. Such act it was alleged is the offense of defamation that took place in every sub-district, district of Bangkok and every sub-district, district, and province of Thailand as well as in various countries all over the world. The prosecution requested to punish the defendant according to the Criminal Code Sections 90, 91, 326, 328, 332 and Computer-related Crime Act B.E. 2550 (2007) Section 14 and make the defendant publish the court's judgement in both Thai and English languages on the internet via these websites: [www.finnwatch.org](http://www.finnwatch.org), [www.ipshr.mahidol.ac.th](http://www.ipshr.mahidol.ac.th), [www.prachatai.com](http://www.prachatai.com), [www.thairath.co.th](http://www.thairath.co.th), and [www.nationamultimedia.com](http://www.nationamultimedia.com) for 30 days from the date of the issue of the judgement at the expense of the defendant. Also the defendant shall have to publish the judgement in an advertisement space of four inches wide and five inches long on the following pages of these newspapers: page 27 of Thai Rath, page 14 of Daily News, page 5 of Matichon, business news page of Thansettakij, business news pages of The Nation and Krungtheptharakij, and page B2 of Bangkok Post for seven days consecutively, as well as in a local newspaper in Prachuap Khiri Khan for 30 days consecutively. If the required pages are not available, any available pages will do. The defendant was also requested to publish the judgement within seven days from the date of the issue of the judgement at the expense of the defendant.

The trial court conducted a preliminary examination and found the prosecution to be a prima facie case. The charge was accepted. The defendant denied all the charges filed against him.

The trial court found that the defendant was guilty of the offense according to the Criminal Code's Section 328, and Section 14 (1) of the Computer-related Crime Act B.E. 2550 (modified by Section 83 of the Criminal Code). The defendant's act constituted several distinct and different offenses, each of which should be punished differently on all counts: offense of defamation by means of publication and the import of false computer data to the computer system in a

manner that is likely to damage the other person or the public. The offense was one and the same act that violated several provisions of the law. The offender should be subject to the imprisonment of two years and a fine of 100,000 baht according to Section 14 (1) of the Act B.E. 2550, which is the severest punishment according to Section 90 of the Criminal Code. The offense of defamation by means of publication should be subject to two-year imprisonment and a fine of 100,000 baht, totalling four-year imprisonment and a fine of 200,000 baht. The testimony of the defendant was somehow useful to the trial. Thus, according to Section 78 of the Criminal Code, the reduction of punishment could be imposed. So, a quarter of the punishment was decreased, resulting in a three-year imprisonment and a fine of 150,000 baht. The imprisonment was suspended for two years, according to Section 56 of the Criminal Code. If the defendant did not pay the fine, Sections 29 and 30 of the Criminal Code should be imposed to make the defendant publish a summary of the judgement on these websites: [www.finnwatch.org](http://www.finnwatch.org), [www.ipsr.mahidol.ac.th](http://www.ipsr.mahidol.ac.th), and [www.prachatai.com](http://www.prachatai.com) for 30 days from the date of the issue of the judgement and also publish a summary of the judgement in an advertisement space of four inches wide and five inches long in three newspapers: Thai Rath, Bangkok Post and a local newspaper in Prachuap Khiri Khan for seven days from the date of the issue of the judgement, all the expense of the publication on the websites and newspapers were to be paid by the defendant. Other requests should be dismissed.

The plaintiff and the defendant appealed the judgement.

The Appeals Court examined and deliberated the file. The primary facts in the appeal stage established that the plaintiff is a producer of canned pineapple and pineapple juice concentrate for foreign export. Its headquarters is located at 179/12 Nong Ta Taem sub district, Pranburi district of Prachuap Khiri Khan, according to a certificate document No Jor 1. Finnwatch is an organization registered in Finland, according to a certificate document No Lo 61, issued by



Finland's Patent and Registration Office. The organization is responsible for human rights examination outside of Finland. The defendant is a specialist in migrant labour and used to work at Mahidol University, according to his personal information document No Lor 14. He is now Myanmar government's adviser on migrant worker issues. On 10 October 2012, the defendant was contracted by Finnwatch to coordinate a research on migrant workers working in the plaintiff's factory and two other factories. Regarding the plaintiff's factory, which produces canned pineapple for foreign export, the defendant interviewed migrant workers from Myanmar between September and November 2012 on migrant worker recruitment, wage payment, social welfare provision for workers and working conditions of the plaintiff's factory. Then a report was made and sent to Finnwatch, according to document No Lor 27. Documents No Jor 2 and Jor 3 were the conclusions drawn from the report, according to document No Lor 27 of the defendant. The article of document No Jor 2 can be translated into Thai as:

*The Issue of Severe Human Rights Violation at Thailand's Natural Fruit factory ... Based on the interview of 12 workers, we found that the violation of human rights and labour rights was prevalent in the said factory ... The research was done by a team managed by the defendant (Andy Hall) ... Key findings to be presented to the public on 20 January 2013 will include:*

- 1) A number of workers were undocumented and there were about 20-30 undocumented child workers, some of whom were under 14 years*
- 2) All the workers interviewed said that their hourly, daily wages or overtime pay were lower than those set by Thai labour law*
- 3) All interviewed workers from Myanmar stated that Natural Fruit confiscated their passports illegally... likewise, the factory did not give either the original or copies of the work permits to the workers. If the workers wanted to resign from Natural Fruit or change their employers, they would be forced to leave without any documents. Therefore, they*

*would waste their registration fees. Such act was an imprisonment of the mind. It was illegal. Confiscating personal documents could be deemed as an act of human trafficking*

- 4) The workers' salaries were deducted randomly and without any explanation. This was claimed to be for the costs of electricity, water, garbage, transport (nobody ever used), uniforms, toilets' damage, fines for dozing off, ID cards, Bank cards, and a lot of other miscellaneous costs. In addition, Natural Fruit deducted the registration fee more than the law required, except when they told the company that the social security deduction was excessive.*
- 5) When there was no work, the workers would not be paid*
- 6) All workers said the company forced them to work overtime. Some said they had to work longer than the legal limit, which was 36 hours per week. They also stated that they would be fined if they had dozed off during the change of the late-night shift and would be hit in the head and hands if they did so. Some child workers even fainted or cried because of the hard work*
- 7) Many non-Thai workers said they were not entitled to any social security or health insurance as required by law. Only some workers were entitled to these benefits. Those that had social security cards could not have the hospital of their choice and the cost of the card would be deducted from their salaries randomly at different amounts regardless of the salaries. And the workers themselves did not understand their rights to social security either.*
- 8) There were not enough toilets for the workers, particularly for men. If the workers went to the toilet longer than 10 minutes, their wages would be deducted at the amount equivalent to a 30-minute overtime pay*
- 9) The workers informed that Natural Fruit did not pay compensation for work-related accidents as required by Thai law.*

The content of document No Jor 3, Executive Summary, related to the plaintiff's company can be translated into Thai as:

*The Findings of the Research on Natural Fruit.*

*The factory had about 800 workers, about 100 of them were Thai and 700 were from Myanmar. According to the interview of the workers and NGOs' assessment, about 200 migrant workers, who had entered into the country illegally, were working at the factory... The factory flatly refused to cooperate with the research team during the field check and declined to meet with the researchers... Nobody wanted to work here... The employer had confiscated the passports and work permits of the migrant workers, who were interviewed... Most migrant workers were illegally entered Thailand through brokers that connived with the factory and conspired with the local police... the wages were lower than those set by the law and overtime work was excessive... Illegal migrant workers would be paid lower than their legal counterparts. The workers would not receive written work contracts and would neither entitled to official holidays. The factory did not pay any bonus... There was no trade union at the factory. Migrant workers had to meet with unequal and violent treatment. The interviewed workers said that their supervisors would treat them loutishly, unlike their treatment of the Thai workers. They had to meet with the violence from security guards and the supervisors. The workers said sometimes they were hit because the language barrier made them unable to understand or because of contradictory opinions... The working conditions were dangerous... The workers had to work repeatedly for several hours without any break... Three interviewed workers said there was a case that a worker was killed when a machine had an electrical short circuit. The family of that deceased worker got only 20,000-30,000 baht (670-1,000 US dollars) as compensation despite the compensation set by the law was 300,000 baht (10,000 US dollars). A worker said his fellow worker got his finger cut by a machine but he did not get any compensation at all... The factory had not*

*enough toilets, only six of them were available for many male workers...*

The case has questions to adjudicate, according to the appeal of the defendant, if the defendant collaborated with Finnwatch to commit an offense of defamation imputing to the plaintiff. It is advisable to first decide whether the statement contained in documents No Jor 2 and Jor 3 represented imputations defaming the plaintiff. It was deemed that the statement in the article contained in document No Jor 2 stating to the effect that the plaintiff's company committed the offenses of human trafficking; employing child workers; confiscating the workers' passports; paying wages and overtime pay lower than what are prescribed by law; deducting the workers' salaries randomly without giving any explanation; making the workers work excessive hours, inflicting bodily harm on the workers; providing insufficient toilets for the workers; failing to provide social security for the workers while those entitled to social security could not go to the hospital of their choice; and failing to pay compensation to the workers that had work-related accidents, as prescribed by law. While the executive summary in document No Jor 3, which contained the statement accusing the plaintiffs of human trafficking and violation of human rights and the law, represented imputations defaming the plaintiff in the same way the article in document No Jor 2 did. What the plaintiff deemed as defamatory imputations were all the facts stating to the effect that there were human trafficking and violations of human rights and labour protection law. The actions related to human trafficking and human rights violation are the infringements of people's fundamental rights, which were protected by Thailand's constitution at the time of the offense and the current constitution also recognizes such rights. In addition, the violation of workers' rights, which is an offense against the labour protection law, could be an action involving human trafficking that the public or a concerned person that witnesses such offense has the right to inform the public of the fact about it. Though on this matter, the plaintiff had its witnesses, Mr Kachin Kongneeyawanich and Mrs Pornpen Chaoraipaan, the company's accountants

testified to the effect that the plaintiff had not conducted in such manner as the defendant had mentioned. But, taking into account the fact that the plaintiff carried on business as a company limited, it should produce their documents or a name list of all its employees, including each employee's evidence of identification in detail. For example, their application forms or employment contracts and other supporting documents that came with their application forms, such as the workers' ID cards, passports or work permits if the employees were foreigners. Relevant evidence included the registered application for employing foreign workers, wage payslips, bonus pay, payment for the employees' welfare benefits, and the social security contribution payment for each employee. The plaintiff should have produced such documents as additional evidence to support the testimonies of Mr Kachin and Mrs Pornpen to show that the plaintiff had no such conduct as stated in documents No Jor 2 and Jor 3 at all. The evidence of the plaintiff was thus in the nature of only Kachin and Pornpen's unsupported testimony. Mr. Sukij Krutkong, professional level technical officer, who was previously stationed in Prachuap Khirikhan Provincial Labour Protection and Welfare office, testified as plaintiff's witness that in the beginning of 2013 (B.E.2561), he has been assigned by Central Labour Protection and Welfare office, according to the information received, to investigate labour abuse. Prachuap Khirikhan Office had assigned officers to conduct investigation at the plaintiffs site four times. He participated in the 2<sup>nd</sup> investigation, on 4<sup>th</sup> February 2013, and in the 4<sup>th</sup> investigation, on 17<sup>th</sup> July 2013. The officers reported no cause of wrongful conviction in the 1<sup>st</sup> investigation. In the 4<sup>th</sup> investigation, three Burmese workers were randomly picked for interview. The interview memorandum, document Lor 4, sheet 11, showed no allegation of plaintiff's illegal activity. Further, Mr. Krutkong also mentioned that, to his knowledge, the plaintiff's site has been inspected earlier than 2013, and that no illegal recruitment was found. Mrs. Panun Panutat, who was in social security officer position in Prachuap Khirikhan office, testified that during her service as social security

officer in Prachuap Khirikhan office, the plaintiff has never reported or been defendant of wrongdoing regarding social security. In this connection, Mr. Aung Nyang (witness), a worker in plaintiff's site who was earlier interviewed by defendant, testified that around 1-2 years ago the defendant had invited him and four other workers from plaintiff's site on a trip in Hua Hin, Prachuap Khirikhan. He was questioned if there was anyone under 18-year-old working in plaintiff's site. The witness denied. Defendant further questioned about wage, social security, healthcare, physical abuse in work place and recruitment of immigrant worker, such that the witness explained he was paid the wage of 240 baht per day, workers bear the cost of social security contribution, plaintiff gives illness support, and there was no physical abuse at work. Migrant worker without legal entry and work permit will be denied the employment. After questioning, the witness claimed he was asked to sign in the paper. The workers, including witness, were given 300 baht each by the defendant. **It can be inferred from his testimony that even though defendant's reports on his interview was allegedly false, the government office's inspection was an official visit, rather than an investigation. The plaintiff, when inspected, is unlikely to provide evidence or information that could jeopardize their position to a government officer. Accordingly, access to evidence or fact of the plaintiff's treatment to migrant worker is hardly feasible. There is discrepancy in testimonies also, from Sukij, Panun and Aung Nyang, and evidential documents prepared by the prosecution's site inspecting officer:** document Lor 1, the memorandum of representative data report, Mr. Sukij Koaywanich, plaintiff's site manager, given before the labour inspecting officer, on 18<sup>th</sup> January 2013 that, as of this date, 854 workers were employed by plaintiff, including 611 migrant workers. The document indicated that all workers were legal work permit holder and are registered in social security scheme. However, document Lor 41, plaintiff's social security contribution document from September 2012 wage, suggested contribution from only 407 insured workers, 426 persons in October 2012 and only 489 persons in November

2012, which can be inferred that there was social security contribution from less than half of workers in plaintiff's site, of 854 persons total. When considering this data with the remark at the end of document Lor 1, employees have paid entire passport processing fee to plaintiff and the rest are in process for MOU at their own expense, with the part "around 200 employees" has been crossed out, the missing amount matches the number of plaintiff's workers without social security contribution. This refers that there are around 200 migrant workers without passport, work permit or have not been legally registered to work (has not been in MOU procedure) under employment at plaintiff's site. Their recruitment is illegal migrant employment. Further, it refers that a number of plaintiff's workers have not actually been given social security card or health insurance card. In addition, in testimony memorandum, document Lor 1 point 20, is indicated that in case workers are not required to perform task, workers are allowed to leave earlier. The prosecution admitted that no wage is paid to employee for the period, only by actual working hours. This compensation is illegal according to Labour Protection Act, which requires an employer to pay wage rate of one working day. In point six of the same memorandum, it is indicated that there is no holiday working for employee. However, there has been cases where plaintiff postponed holiday, employees were required to work on this holiday and take leave at a later date. Such arrangement is considered that plaintiff avoided to comply with Labour Protection law that an Employer shall not require Employee to work on a Holiday, without any exception by law. Following this arrangement, employee are not given fixed holiday and/or given longer than six days interval between weekly holidays, which is against Labor Protection Act minimum requirement for weekly holiday interval. Mr. Sukij Koaywanich's testimony, document Lor 4 point 9, also mention that "currently, the company does not retain employee's passport, each employee keeps the document with themselves." Regardless of this testimony, document Lor 33 and Lor 34, inspection report by Labor Department of Thailand on Labour abuse, indicates that the prosecution admitted to passport

confiscation for part of the employees, as requested for convenience with immigration office's inspection which takes place every 3 months. The signature is required to accompany the said request; however employees are allowed to keep passport by themselves as preferred. In December 2012, plaintiff had returned their passport and work permit, with employee's signature of receipt. This information confirms that there has been confiscation of employee's passport. As prosecution mentioned also to have returned employee's passport in 2012, which is after the defendant's interview. To the prosecution's claim of employee request to keep their passport with their signature as authorization, but the prosecution has failed to present this mentioned document against the claim, document Jor 2 and Jor 3. Further, Mr. Sukij Koaywanich's testimony mentions that the prosecution made deduction from wage for expense, upon the first day of work, employee is required to bear the cost of 158 baht for a shirt, 75 baht for a cap and 22 baht for hair net. Mouth mask, gloves, arm protection sleeves, overalls, ear plugs and face shield are arranged by prosecution where employee agree that the cost is deducted from their wage. However, the evident document of employee consent has never been presented. In Mr. Sukij Koaywanich's testimony, document Lor 1, mentions the working hours of exceeding 36 hours per week at the prosecution's work site. He claimed the case was when the employee, assistant mechanic, had to wait for production team to finish working until he was able to perform machine check-up and overtime pay has been compensated to the employee for his waiting time. This arrangement of working hour of exceeding 36 hours per week is against the maximum hours indicated in the Labour Protection Act. Further, it is also mentioned that some employees have not been provided with social security card, in Mr. Sukij Koaywanich's testimony, document Lor 1, that in case of employee having accident at work, they are compensated equivalent to wage of three working days, despite the social security cash benefit. In case of a non-insured employee, they are compensated according to leave days of not exceeding three days without accrual from sick



leave. This is against sick leave compliance required by Labour Protection Act that employee is entitled to paid sick leave of 30 days per year; for sick leave of over three days, employer may require the Employee to produce a certificate from a first-class physician or an official medical establishment. The prosecution's arrangement does not comply with the Labour Protection Act. The same document further mentions that during maternity leave, an employee is entitled to paid leave equivalent to 45 days wage. There has been no pregnancy in migrant employee, however, they would be entitled the same as Thai employee for maternity leave. The testimony included employee restroom arrangement, and according to Mr. Sukij Koaywanich, prosecution work site provides facility of eight male bathrooms, 15 female bathrooms and six urinals to employee. The prosecution insisted to arrange more employee restroom facility up to the legal requirement within one month. This information confirms inadequate facility of employee drinking water and restroom, employees must wait longer to use restroom and prolonged break caused the prosecution to deduct their pay. The given fact and information refers that, regardless of defendant's employee interview around September to November 2012 and several inspections from government officers after, the prosecution worksite still failed to comply with the Labour Protection Act in some points. Regarding the fact mentioned, Mr. Sukij Koaywanich testified against defendant's lawyer admitting that working hour of exceeding 36 hours, wage deduction for prolonged restroom break, and wage deduction for expense for equipment required to carry out task for employer. Wage deduction including for transportation, without employee's consent, are illegal wrongdoings against Labour Regulations. Hence, the actual case did not match earlier testimony that the prosecution has no wrongdoings. Further, regarding the earlier mentioned interview conducted by randomly picking migrant employees, the interview was recorded at the prosecution's worksite, such that it is likely that the given information was monitored by the employer. It is not feasible for an interviewee to give any information which is unfavorable

to their employer, as this will risk their employment. Therefore, interviews records in such situations are less reliable as evidence. Regarding Mrs. Panun's testimony suggesting that the prosecution has never been reported for any social security issue, it cannot be inferred that the prosecution has always been in compliance with social security regulations however. According to the information in the document attached to Mr. Sukij Koaywanich's testimony on 17<sup>th</sup> July 2013, according to document Lor 4, Burmese employee wages between 16<sup>th</sup> to 30<sup>th</sup> June 2013 show no social security contribution for several employees. Additionally, the prosecution's witness, Mr. Aung Nyang, was still under the prosecution's employment at the time his testimony was given. In this situation, Mr. Aung Nyang cannot be considered as an independent witness, as he was still dependent on the prosecution and it was not possible to produce testimony to jeopardize the prosecution's position. Hence, his testimony requires cautious attention. Further, his testimony mentioning there were no workers under 18-year-old employed by the prosecution, and that migrant workers without legal entry or work permit were not accepted for employment, does not match Mr. Sukij Koaywanich's testimony in document Lor 1 and Lor 4. For this reason, Mr. Aung Nyang's testimony is inadmissible to court. Regarding the prosecution's counterplea against the defendant's failure to present document Lor 1 to Lor 4 , Lor 29, Lor 30 and Lor 33, Lor 34 and Lor 41 to question the prosecution's witness and request the said document to be inadmissible, according to the Code of Civil Procedure section 89 read together with the Criminal Procedure Code section 15 this considers that in criminal cases, a defendant can present a witness to prove his innocence without cross-examining the plaintiff's witness on the facts when the defendants will examine the witness in the future. This provision is not under the Civil Procedure Code Section 89 to cross-examine a plaintiff's witness before whatsoever. When the plaintiff led witness examination, claiming that the plaintiff did not have the behavior as mentioned in Exhibit Jor.2 and Jor.3, it is not admissible. In this matter, the defendant was hired to work on research about

migrant workers in the plaintiff's company. Finnwatch determined the topics in the interview. The defendant coordinated with a team of three Burmese, namely Mr. Sein Htay, Mr. Aung Kyaw and Mr. Ko Zaw to interview workers on the 11<sup>th</sup> and 12<sup>th</sup> November 2012. The defendant interviewed a total of 14 workers but had audio-recorded interviews of 12 workers to a CD and written note, then the workers signed as a proof of identity of the workers, owing to the fact that some workers did not want to show their identities or did not bring an ID card due to miscommunication. The defendant had photographed employee IDs and salary slips according to the documents referred in Lor.20 and Lor.21. Workers who did not bring the employee IDs were requested by the defendant to identify the plaintiff's factory in the plaintiff's advertisement flyers, as per Exhibit Lor.22. Some photos of the interviews were in photos in Exhibit Lor.23. The defendant learned from interviews indications that all of the interviewed workers entered Thailand illegally, either through smuggling or probably human trafficking to work with the plaintiff. Some workers had not known earlier that they have to work with the plaintiff's company because they had been recruited by brokers. Two to three workers interviewed had passports with them, however four to five workers had valid passports, but they were confiscated by the plaintiff's company. The rest of the workers interviewed did not have documents, namely, work permits or some workers said they did not know whether or not they have the documents. The defendant noticed that a worker he interviewed "had a child-like appearance and such workers said he is 15 years old and has been working with the plaintiff for 2 years without any identification paper." From the interviews with the workers, the defendant knew that the plaintiff has 500 workers, 500 were from Myanmar, of whom about 200 workers from Myanmar did not have any identification documents. For wages, workers informed that their wages varied depending on the status of each worker, including whether they have the identification. Workers had never been paid the minimum statutory wage prescribed at 240 Baht, such as supervisory workers were paid at 230 Baht per

day. Workers with complete identification and other relevant documents received 220 Baht per day. Workers without any document were paid 200 Baht per day. The statutory hourly overtime pay according to the law was stipulated at 45 Baht, but the rates the workers were paid at a rate of between 30 to 35 Baht. Workers who worked on Sunday did not get two times holiday pays from the normal wage. Workers did not have annual leaves and holidays as well as bonuses. When workers apply for a passport, they had to pay 5,000 to 6,000 Baht to the plaintiff's company for the advance money the company had paid and then the company will deduct the money from the workers. An actual transaction for a passport costs only 400 to 700 Baht. Since the plaintiff advanced the money for the passport, the plaintiff must seize passports, even the workers' pay all the amount required to the plaintiff, the plaintiff did not return their passports. Hence, workers could not change jobs. If a worker used the restroom for more than 10 minutes, if a worker is sleepy, or if a supervisor did not like a worker, wages would be deducted. Wage deduction is applied to costs of passport fees, work permit fee, uniforms, glove, and aprons. If there is a purchase in the store, rents, water, electricity, garbage fees, and transportation fares, the expenses will be deducted from the wages without any explanation supplied to workers. Salary slips are in Thai only. If a worker could not work full time or the work was considered incomplete, a worker may not receive the complete amount for the work they did. Workers who left overtime early due to sickness with a permission from a supervisor may be paid. The leave during overtime depends on a supervisor. If workers have worked for 8 hours and refuses to work overtime, when a supervisor does not sign a permission for a leave, they will not be paid for the entire day of the work. Workers are often forced to work overtime until they will finish the products, as late as 2 AM of the next day. If a worker falls asleep, his supervisor will beat him or deduct his wage. For social security, some workers have no social security. The plaintiff deducted different rates for social security contributions from the wages every two weeks, and the amount is not the same for every

worker. Pregnant women are forced to work. The women workers that do not have social security have to pay their own delivery fees. The restrooms in the factory are inadequate, thus workers have to wait more than 10 minutes, which resulted in wage deduction. A worker who was injured by electric shock were paid only 20,000 Baht which is not the rate in compliance with the law. Details of interviews with Burmese migrant workers are included in the research report, in Exhibit Lor.37. The defendant believes that the workers interviewed spoke the truth. The fact about making an appointment for Burmese workers who used to work in the plaintiff's factory was testified by Mr. Aung Kyaw, who works with the Migrant Workers' Right Network in Samut Sakhon province. The defendant's witness testified that during the month of October 2012, the defendant asked the witness to contact the workers working in the plaintiff's factory for interviews and to find out information about the workers who came to work in Thailand. The witness contacted Mr. Phu Chit or Mian Soe, who worked in the plaintiff's factory to talk. Mr. Phu Chit later agreed to bring 12 migrant workers on 10 November 2012. Mr. Ko Saw picked up five Burmese to meet the defendant. The next day Mr. Phu Chit brought 10 men and two women to meet the defendant. The first woman appeared to be around the age of fifteen, the other woman is about twenty. Mr. Phu Chit and Aung Nai were interpreters. The witness prepared a list of workers who met the defendant, according to the Exhibit Lor.26 and workers signed their names. The employee's ID cards from the plaintiff's company were photographed along with salary slips and the proof of wage payment in Exhibit Lor.20 and Lor. 21. The evidence established the fact in coherence with the witness's testimony from the defendant, who has confirmed that the 12 Burmese workers were interviewed. The plaintiff's witness, Mr. Aung Niang also testified. Concerning the facts that the Burmese migrant workers had told in the interview, although the defendant could not bring the workers he had interviewed to testify because some of these workers had returned to Myanmar, or gone to work somewhere else, or because of fear that workers might break an oath they had

sworn, the defendant had Mr. Petch, No surname, Mr. Htun Ye, and Mr. Aung Kyi to testify the same fact that can be concluded to be in the same manner as the interviews that the Burmese workers had told the defendant in the interview. In conclusion, the workers do not have a passport, a work permit, social security. The plaintiff employed 20 to 30 unregistered children. Aung Kyi's three siblings-in-law worked in the plaintiff's factory, were only 14, 15 and 17 years old respectively. If there are government officials to inspect the factory, the plaintiff orders child laborers and undocumented migrant workers with no passports to hide behind the factory as there is someone who will give an advance notice on an inspection. Also, migrant workers are paid less than the rate the law has prescribed. The cost of obtaining a passport is higher than the actual cost. The employees' passports are confiscated without their consent. If a worker wants a passport, he must place a deposit for 500 Baht. The employees' salaries were deducted without consent. If any day the work is not available, workers are not paid or paid at hourly rates according to the hours they worked. It is mandatory to work overtime until the product is finished. Some employees work overtime for up to 40 hours per week, while they only receive an overtime pay of 36 Baht per hour, which is lower than the rate prescribed by the Labour Protection Law. Some workers do not have social security. Social security fees are deducted from their salaries, albeit in inconsistent amounts. Workers are injured from chemicals used in the factory. Workers injured or killed did not receive compensation stipulated in the relevant law. Workers were not informed about their social security rights. Burmese supervisors and Thais or Thai workers were treated differently. The plaintiff did not provide sufficient restrooms for the number of workers. If workers used the restroom longer than the required time, they will be deducted 30 minutes of the overtime pay. The testimony of three defendant's witnesses testified the facts about their employment with the plaintiff and the working conditions of the plaintiff's pineapple factory are difficult to fabricate. The fact is in coherence with the interview of Burmese migrant workers

interviewed by the plaintiff in the research report exhibit Lor.27 and some fact is supported according to the record of the testimony of Mr. Sukit Goyavanich in Exhibit Lor.1 and Lor.4. The plaintiff's attorney did not cross-examine or introduce any evidence to argue that the three witnesses had never been the plaintiff's employees. The fact also appears in the copy of Mr. Petch's health insurance card in Exhibit Lor.78., passport and work permit of Mr. Htun Ye, in Exhibit Lor.41 and in Exhibit Lor.42, and Mr. Aung Kyi's employee's card in Exhibit Lor.43 states that the three persons were the plaintiff's employees. The plaintiff did not dispute the accuracy and authenticity of the said documents. In addition, the fact remains that Mr. Petch, Mr. Htun Ye and Mr. Aung Kyi did not work for the plaintiff or have a stake in the work with the defendant/defendant. Therefore Mr Petch, Mr Tun Hye and Mr Aung Kyi could be deemed as having no special interest at stake in the case and thus were neutral witnesses. So, their testimonies were admissible. Though at the trial stage, the defendant did not produce the recording of the 12 interviewed workers from Myanmar, the evidence adduced by the defendant was reasonably well-grounded enough to establish that the plaintiff had really mistreated the migrant workers, as described in the research findings document No Lor. 27. And the fact, according to the testimony of the defendant, further established that subsequently, the defendant had produced and presented a report to Finnwatch. The first part of the report was about Thailand's legal context. The second part was the research study on 32 workers from three factories: two tuna factories and the plaintiff's factory. The third part was the conclusions and responses from the factories. The two tuna factories invited the defendant to visit their factories and the defendant and Finnwatch had been in conversation with the two factories for a month. Whereas the plaintiff, with whom the defendant had attempted to get in touch via emails, telephone calls and faxes, according to the copies of email documents No Lor. 5 to Lor. 8, did not reply. Subsequently, the defendant submitted the said research report to Finnwatch, according to document No Lor 27. The defendant also

presented Ms. Sonja Vartiala, who was Finnwatch's executive director when the crime took place, as witness to testify that when Finnwatch had received the research study document No Lor 27, the said report had been reread and analysed again and a summary had been made, according to document No Lor 28. After that, the plaintiff was contacted again by email, faxes, and telephone calls so as to let the plaintiff clarify the said fact. But the plaintiff neither replied nor clarified. So, Mr Henri Purje, a staff member of Finnwatch, made document No Jor 2 and sent it via email to various agencies, whose names appeared in the said document. **Those agencies to which Finnwatch sent document No Lor 2 were organizations or agencies directly responsible for the examination, protection and promotion of labour rights.** Subsequently, Mr Henri posted the said document on Finnwatch's website in January 2013. In Thailand, a press conference was held on 21 January 2013, whereby a summary document No Jor 3 was distributed to those attended the conference. The defendant was assigned to participate in the conference to present the data given to him.

Regarding the fact that the defendant and Finnwatch tried to contact with the plaintiff to ask for a visit to the factory or conversation with the factory's executive, the plaintiff claimed that no contact from either the defendant or Finnwatch, according to documents No Lor 5 to Lor 8, had been made with them. But in Mr Kachin's testimony given at the preliminary examination stage, he admitted to the counsel for the defence that the email addressing to [marketing@naturalfruit.co.th](mailto:marketing@naturalfruit.co.th), as appeared in the copies of documents No Lor 5 to Lor 8, was the address of the plaintiff's marketing office. As for the email that had been addressed to [kachin.k@naturalfruit.co.th](mailto:kachin.k@naturalfruit.co.th), according to document No Lor 6, Mr Kachin evasively said that it was not his email address. But he admitted



to the cross-examination of the counsel of the defence that he had received the said email. Likewise, Mr Alongkot Wanothayaroj also answered the cross-examination of the counsel of the defence, at the preliminary examination stage, that the address of [kachin.k@naturalfruit.co.th](mailto:kachin.k@naturalfruit.co.th) , stated in document No Lor 6, was Mr Kachin's. Taking into account the fact that apart from the plaintiff's company, the defendant had also sent email messages about the research to the other two factories, which received them as well and even agreed to have the defendant visited the factories and talked with the executives of the said factories. It was thus believed that the plaintiff had also been contacted by the defendant, who would like to visit the factory and talk with the executive of the plaintiff as well. But the plaintiff preferred to be uninterested in working with the defendant to examine the fact and address the problems that had been informed to the defendant by migrant workers working at the plaintiff's factory. And the said fact also showed that the defendant and Finnwatch had been interested in listening to the plaintiff's fact and explanation, which was a well-rounded and fair approach to hearing all sides information. The fact was further established, based on Ms Sonja's testimony, that the reason the defendant had been commissioned to do the research resulted from the information about the plaintiff's factory, given to Finnwatch by SOK, Finland's major distributor of consumer goods. SOK bought goods from VIP Company, which received the goods from a domestic company in the Netherlands. This domestic company in the Netherlands received its goods from a company in Israel that had bought the goods from the plaintiff's agent in

Thailand. Finnwatch's purpose was to have the defendant conducted a research to find out if there had been any human rights violation in the plaintiff's factory because Finland focused on the safety of consumer goods. It was necessary for the consumers to know where the goods came from and if there was any human rights violation involved, which was to comply with the standards of the International Labour Organization in association with the Business Social Compliance Initiative (BSCI) system. BSCI was an organization jointly set up by many companies to oversee the supply chain standards, which was the work similar to Finnwatch's auditing system. Therefore, Finnwatch could be regarded as a representative of the consumers to engage in examining the fact about the said issue. When Finnwatch received the research report, according to document No Lor 27 from the defendant, the organization then read and analysed the said information. A summary, according to document No Lor 28, was made and a contact with the plaintiff was made again through email, faxes and telephone calls. The defendant was asked to contact with the plaintiff to clarify the said fact, but the plaintiff did neither answer nor clarify. In such case, it should be deemed as basic information showing that the plaintiff mistreated migrant workers, who were the plaintiff's employees. Such mistreatment could imply that the workers' rights and human rights might have been violated, such incident was deemed as a serious issue, and the plaintiff refused to be examined or make any clarification on the said fact. Therefore, when Finnwatch was aware of the information about the plaintiff's mistreatment of its migrant workers and refusal to cooperate in

finding the fact and ways to address the said problem, the organization then disseminated, via email, the said information in the form of document No Jor 2, which was a summary of the fact based on an analysis of the information derived from the defendant's research report, to various agencies whose names were listed in document No Jor 2. Those agencies, to which Finnwatch sent its email messages according to document No Jor 2, were organizations or agencies directly responsible for the examination, protection and promotion of workers' rights. Apart from the dissemination of the said information, the press conference organized by Finnwatch to inform those attended the conference was in the public interest. And it was something that the public as well as concerned people had the right to disclose the said information so that the problems could be solved in the future. The act of Finnwatch was thus deemed as an expression of opinion or statement in good faith, by way of self-justification or defence or for the protection of legitimate interest and by way of fair comment on any person or thing subjected to public criticism, as provided by Section 329 (1) and (3) of the Criminal Code. Such act of Finnwatch was therefore not deemed as an offense. This appeal of the defendant was admissible and there was no need to further adjudicate if the defendant cooperated with Finnwatch in the said act, as the outcome of the case would not change.

The next question to be adjudicated was whether the defendant, in cooperation with Finnwatch, committed an offense under the Computer-related Crime Act. In this case, the defendant appealed that his act had not been an

offense as prosecuted under the amended Section 14 (1) of the Computer-related Crime Act B.E. 2550 and that during the course of hearing of the Appeals Court, the Computer-related Crime Act (No. 2) B.E. 2560 had been promulgated on 24 May 2017. The provisions of Section 8 of the said Act repealed the provisions of Section 14 of the Computer-related Crime Act B.E. 2550 and replaced them with the new provisions. The amended Section 14 of the Computer-related Crime Act B.E. 2550 provided that “*Whoever commits the following offences shall be liable to an imprisonment for a term not exceeding five years, or a fine not exceeding one hundred thousand baht or both: 1) Dishonestly or by deception, entering wholly or partially distorted or false computer data into a computer system in a manner likely to cause damage to the general public; which is not a defamation under the Criminal Code...*”. Based on the provisions of the said amendments of the law, the person entering wholly or partially distorted or false computer data into a computer system must have specific intent that is dishonest and deceptive. And such act does not include the use of a computer or a computer system as a means of committing an offense of defamation as well. The plaintiff’s averment stated in item 2.1 that “*Between 19 December 2012 and 21 January 2013, during daytime and night-time consecutively, the defendant in cooperation with Finnwatch posted false statement on Finnwatch’s website to disseminate to the third person and mass media. The said statement was a defamation to the plaintiff and the website post brought damage to the plaintiff. The defendant was thus guilty of co-offending with Finnwatch.*” The said averment of the plaintiff only

stated that the defendant in cooperation with Finnwatch had entered false information into a computer system that was likely to cause damage to the plaintiff by way of publication. So, this case conformed to the provisions of the law that was subsequently enacted and prescribed that the act, impleaded by the plaintiff, was no longer an offense, according to Section 2 (2) of the Criminal Code. The Appeals Court disagrees with the judgement of the trial court to also punish the defendant for this charge. The appeal of the defendant on this was also admissible and there was no need to further adjudicate the appeal of the defendant on other matters because the outcome of the case would not change.

Regarding the appeal of the plaintiff not to have the imprisonment of the defendant suspended, it was deemed that as the Appeals Court found the defendant not guilty of the offense as impleaded by the plaintiff then there was no need for further adjudication on the plaintiff's appeal.

The decision is reversed. The case is dismissed.

Mr Witthaya Phromprasit

Ms Worajit Saengsook

Mr Natthaphong Thapananetiphong

31 May 2018

The Southern Bangkok Criminal Court set today for the issuing of the judgement.

The counsel/appointee and counsel for defence/appointee are to appear in court.

The court has issued the warrant of arrest for the defendant for over a month, still the defendant could not be made to appear in court. The judgement of the Appeals Court was thus read to the prosecution and defence counsels, as required by law.

Report the reading quickly/already read

Mr Kullaphong SriSowanna, Mr Akom Nittayakorn—noting-reading

..... Counsel

..... Appointee of the plaintiff

..... Counsel for defence

The Defendant