

ATU and others v ATY
[2015] SGHC 184

Case Number : Suit No 779 of 2014
Decision Date : 16 July 2015
Tribunal/Court : High Court
Coram : Lee Seiu Kin J
Counsel Name(s) : Khwaja Imran Hamid, Tham Lijing and Lau Yudon (Tan Rajah & Cheah) for the plaintiffs.
Parties : ATU and others — ATY

Tort – Defamation – Damages

16 July 2015

Judgment reserved.

Lee Seiu Kin J:

Introduction

1 This is a defamation action arising out of the alleged sexual abuse of children by staff in an international school in Jakarta, Indonesia. The matter came before me for damages to be assessed after judgment in default of appearance was entered against the defendant.

Facts

The parties to the dispute

2 ATU, the first plaintiff, is a private, non-profit international school that serves, in the main, the expatriate community in Jakarta. The school has three campuses: two for elementary students, and another for junior high and high school students in Cilandak. ATV, the second plaintiff, is the principal of one of the campuses for elementary students ("the Campus"). ATW, the third plaintiff, was a school administrator while ATX, the fourth plaintiff, was a teacher's aide.

3 The defendant is the mother of B, who was a student of the Campus.

The background to the dispute

4 As the defendant did not participate in the suit, the facts set out below are all obtained from the affidavits of the plaintiffs. They disclose as follows.

5 Sometime in March 2014, the parents of C complained that their son was assaulted by people in blue uniforms. On 24 March 2014, C's parents lodged a police report. On 3 April 2014, the police arrested three cleaners employed by a cleaning company engaged by ATU.

6 On 14 April 2014, C's mother called for a press conference at which she alleged that C had been sexually assaulted by cleaners working at ATU. The press conference appeared on television and other media. At the same time, C's mother also called for a parents' meeting to be held on 15 April 2014. At that meeting, the defendant claimed that B, was the victim of an attempted assault

but had managed to get away in time. After the defendant's allegation at the parents' meeting of 15 April 2014, ATU engaged (on 16 April 2014) an expert in the area of clinical social work and child counselling, to interview B to find out what happened.

7 On 25 April 2014, the defendant and her husband met with representatives of ATU as well as a representative from the Spanish embassy. At that meeting, the defendant and her husband repeated their allegation that B was the victim of an attempted assault and further alleged that B had witnessed C being abused. They claimed that the attackers were the fourth plaintiff and a security guard.

8 Around this time, the defendant told at least one of her friends that B had not been sexually assaulted. In a statutory declaration made pursuant to the Oaths and Declarations Act (Cap 211, 2001 Rev Ed), the defendant's friend ("D") stated:

Sometime in late April, whilst [the defendant] and I were sitting and talking at the cafeteria at [the Campus] and we were discussing [B], [the defendant] said very clearly that her son [B] had not been sexually assaulted.

9 In an email dated 29 April 2014, B's father wrote:

We will like to share with you that we had to perform another deep "interrogation" session with our son today (we know this may not be the best manner, but we had to know!) about what happened. He did not add any new details, and he confirmed that he was physically assaulted 3 times and that he saw his best friend being raped by the cleaning staff, but he ran away in the four occasions. ***He sticks to his initial positioning that he always escaped and that no sexual assault ever happened to him ...***

[emphasis in original]

10 The above statements were corroborated by the results of a physical examination conducted on B at KK Women's and Children's Hospital. There was no sign of any trauma to B's anus – no fissures or evidence of healed fissures. The clinical notes concluded that either there was a previous injury that had healed or there was no significant injury to begin with.

11 After the physical examination at KK Women's and Children's Hospital, the defendant sent a text message to an ATU parent saying that everything was okay. The translation of the message is set out below:

May 9.. Thank God everything is okay.

Not sure what happened in the school but the doctor didn't find anything – not even wounds or scars, not sure whether it's because they are fully recovered or as per his confession that he has never been sodomized. It is weird that after the endoscopy he didn't feel anything although the doctor said it should be painful, either he is already immune or he endures it :(, but we're more than happy because at least we can close this chapter and start a new chapter in Singapore^_^.

12 Later in May 2014, the defendant continued to maintain that B had never been sexually assaulted. In her statutory declaration, D said:

I later heard reports about a second child being a victim of sexual abuse at [the Campus]. [The

defendant] told me that the child being referred to was [B]. However, this contradicted what [the defendant] had said earlier to me which was that [B] had not been sexually assaulted. [The defendant] explained this inconsistency in a WhatsApp message to me saying that "the news exaggerate[d] too much" and that she never said that her son had been raped.

13 Up to this point, it appeared that the defendant had taken the position that B had not been sexually assaulted.

14 However the defendant's story changed soon after. In a series of emails and WhatsApp messages to various parents of students at ATU, the defendant claimed that B was sexually assaulted.

15 On 28 May 2014, the defendant sent an email to three ATU parents ("the 28 May Email") alleging, *inter alia*, that B was raped more than 20 times and that the recipient's son was also a victim. These emails did not identify any of the plaintiffs save that the purported abuse had taken place at ATU. The emails were almost identical; only the addressees were changed. One of these emails read:

Dear [E],

Sorry to disturb you this night, [B] just wake me up with his weird dream again calling your son's name.

Sorry that I didn't reach you earlier as I should, it's just I don't want you to get panic only because 'the suspect' recognise your son as one of their victim too. But the truth, [B] is another victim of the sexual scandal at the school-he's been rape for over 20 times (recognising the perpetrator by picture!!!) and last friday he was questioned/interviewed by the police and yet again your son's name also come as 'one of another' victim (he named around 8 friends-5 of them from his class, one of the other three also already confess to his parents that it had happened to him too).

When I asked him how do you know about the other children-he told me that some of them share/talking the same topic during lunch, but in your son's case he said he saw him being attacked by 'those bad guys' and [F] also told [B] the story too.

The police investigator came to our place with one class photo, in that photo your son's face was one of 5 faces that had been circled by pen a couple times. The police asked me to get in touch with the parents of all those kids (they ask the school already to help but refused). I didn't want to alarm any parents only because 'the suspects' recognise their children's faces, but in you son's case there are to many coincidences supporting it. Please talk to him about it and in case also check him medically to make sure about this. I'd like to share one other detail to you, in [C], [B] and one more boy testimony there are other persons implicated to this-not only the cleaner but also security personal and 'important' person in that team. I **beg** you for more discretion, since police and FBI (national police already ask FBI a help to investigate the possible involvement of the others-even foreigner in this).

If you don't know where to start the conversation with your kid, just tell him about [B] testimony (lunchtime story sharing too). False he recognise something, show him the year book (some of the perpetrator are in the last year yearbook) and also all the [ATU] personal from [ATU]NET.

[B] recognise all the perpetrator from 2 sources+ police picture too.

I hope all this about your son was just a bad dream, but it's better you now all by now if that is true or not so he can get professional help and not waiting until it was too late to get any help. After telling all the truth, [B] is much relieved than before, and now with outside psychological treatment he is recuperating pretty well and start to cope with this tragedy significantly.

I don't hate [ATU] and I'm not agree if the government need to close the school, **but I want all the 'perpetrator' to be caught and bring to justice and also to prevent of any further attack.**

If you need any more info please do not hesitate to email me (my phone doesn't work any longer).

[The defendant]

Sent from my iPhone

[emphasis in original]

16 On 5 June 2014, the defendant sent another email to the parents of six ATU students alleging that her son, together with their children, were victims of sexual assault ("the 5 June Email"). In the same email, the defendant also claimed that the incidents of sexual assaults had been filmed and recorded. The email included, *inter alia*, photos of the third and fourth plaintiffs. The text of the email reads:

These are the persons that hurting the children (so far 3 already confess and make a police report). All of the cleaners-actual suspects- confessing and circling

The picture of your children!! and the 3 victims (one of them is [B]) also confessing that they know, saw and hear about your boys too.

I'm so sorry to come to you this way but, the 3 boys confess after they saw this pictures.

The main perpetrator are the two first person!!!! Yes difficult to believe but they had been abusing our children badly and threatening all of them with I'm going to kill your mum or dad or ... If you tell them what happen here!!! That's why the children never speak out!! They are scared to death that their love one will be hurt by those guys!!

This is not an easy step!!!! My husband almost kill me because of this story!! He doesn't want to heard anything about this at the beginning. Now he regretted so much that he didn't want to do the step in questioning my boy.

As you all know [B] confess that he had been attack physically, but once I show all this picture, he started speaking all the real story. I started asking names of other children, and as I said yours children are in their list of victims too (either [B] saw it or even heard it from your own children on lunch time talk).

They recorded all the act by phone or even video camera. Every time the first guy do his job he always wear his skeleton t-shirt.

Do your self a big favour for the sake of your own children, show them this pictures, if they recognise (watch their face reaction!!!!) and confess then find some help asap. If they don't

recognise those picture (no changes in face expression) than you are the lucky one.

The person in the middle

He suicide.

[The defendant]

Sent from my iPhone

17 On 6 June 2014, the defendant sent a WhatsApp message ("the 6 June WhatsApp") to the parent of a ATU student, alleging that the third and fourth plaintiffs had brutally violated children. She further alleged that the second plaintiff participated in the abuse by taking the children to places where they were raped and filming the rapes. She also claimed that the school was aware of the abuse but wanted to wash "their hands off this" by claiming that the perpetrators had already been deported. The message which was originally written in Spanish was forwarded to the Deputy Head of School of ATU. The following translation was provided by the recipient of the message:

XXXX, Good Morning, how are you. I'm in jakarta again and now I'm on my way to the police. I do not need to tell you what's happened to us and I think you know very well who I'm talking about I send this message as your friend, mom of two children and victims also. [B], [D], [C] and probably a lot more children-which of they can be your boys also have been violated brutally at the hands of [ATW], [ATX], security and cleaning; it was more [ATX] [ATW]!! Worse, [ATV] is fully involved in these, taking the children to places where the children could be raped and then recording it with her camera! We know that school knows this too and that is why they want to their hands off this and clean the names by saying that hey are already deported! If this had happened to your children, would you leave it alone?? You who are a Catholic woman, would you hide all of these sins? Because knowing something and doing nothing or even worse, covering it, is a sin. They have 'killed' the future of our children, perhaps even creating other 'beasts' of them in the future! You allow this?? If they do leave ATU, they will start again elsewhere and will have more victim, just like [G].

[ATV] is sick! She has always told us that her sister was raped when she was 15 years in the hand of her driver! But what I know is that this was not her sister but she was the victim! My maternal instinct tells me that, and it was the same instinct that warned me about [B]. I believe in God Almighty! In the end they will have their punishment but please don't punish our children more by protecting [ATU]. If they are really innocent then they don;t have to go so fast. Protecting [ATU] now is not to your best interest, it is only going to destroy you. And God sees everything, XXXX! Help us. May the virgin enlighten you. Kisses...

18 On 6 June 2014, the defendant filed a police report alleging that the third and fourth plaintiffs, among others, had participated in the sexual abuse of B. She alleged that the third plaintiff had sexually abused B five times prior to Christmas 2013. She also claimed that the fourth plaintiff had been sexually assaulting B since August 2013. In her words, "[a]ll incidents started with abuse by hitting the abdomen and the back part of the body".

19 The defendant continued to repeat her allegations against the first, third and fourth plaintiffs even after they commenced the present action on 23 July 2014. In a Jakarta Post article of 2 September 2014 ("the Jakarta Post Article"), the defendant, together with the parents of two other students who were allegedly sexually assaulted, were reported to be jointly accusing ATU of "covering up systematic sexual abuse on its premises". The relevant parts of the article read:

The parents of the three kindergarten students who were allegedly sexually assaulted at the [ATU] have accused the school of covering up systematic child sexual abuse on its premises.

"We are grateful that two of the teachers have been arrested as suspects, but there are so many facts that point toward the involvement of more staff. Have you seen [ATU] security? It would have been impossible for our sons to be abused without anyone knowing about it," DR, the mother of one of the victims, told The Jakarta Post on Monday.

...

DR added that ATU staffers had also filed a lawsuit against her in Singapore for defamation, "I don't understand why they had to file the lawsuit in Singapore: Is it to stop me from testifying [in ATW and ATX's trial]? I am asking this because if the lawsuit against me is successful, the Singaporean authorities can confiscate my passport and I won't be able to travel to Indonesia to testify."

20 An article by The Independent dated 7 November 2014 ("the Independent (UK) Article") further reproduced allegations made by the defendant to Australia's Fairfax Media. The salient parts of the article are reproduced below:

A few weeks after the first claim, a second family came forward. "They were concerned their child had been physically, not sexually, abused," the head of school Tim Carr says.

The second mother later claimed her son was regularly raped during morning breaks over a seven month period of time. "They were anal rapes, plus physical abuse and hurting until he can't scream any more, then raping him," she told Australia's Fairfax Media. She believed he had been raped at least 20 times, sometimes by six people in a row. She also said he was threatened with death if he told anyone. Aside from the cleaners, she alleged teachers were also involved in the abuse.

British-Canadian school coordinator [ATW] and Indonesian teacher-assistant [ATX] had raped her son, as well as other children, she claimed. She believed the primary school principal [ATV], an American, was also involved in the abuse. Each of the allegations are vigorously denied by all three accused. ...

21 At this juncture, I pause to take stock of the defendant's allegations which may be classified as follows:

- (a) ATU attempted to cover-up the purported child abuse that allegedly occurred on its premises.
- (b) ATV actively participated in the sexual abuse of children by "taking [them] to places where [they] could be raped and then recording it with her camera".
- (c) ATW and ATX, who were all members of staff, sexually abused children under their care.

The present action

22 The defendant did not enter appearance in the present suit and on 9 September 2014, the plaintiffs obtained a judgment in default of appearance. Since the issue of liability has been settled, it leaves the determination of an appropriate quantum of damages that should be awarded. In this

regard, the plaintiffs seek the following reliefs:

- (a) ATU – S\$50,000 in general damages, S\$50,000 in aggravated damages and US\$2,985,400 in special damages.
- (b) ATV – S\$300,000 in general damages, S\$300,000 in aggravated damages and US\$944,240.60 in special damages.
- (c) ATW – S\$300,000 in general damages, S\$300,000 in aggravated damages and US\$515,020.85 in special damages.
- (d) ATX – S\$300,000 in general damages, S\$300,000 in aggravated damages and S\$41,400 in special damages.

General damages

23 The first plaintiff accepts that, as a corporate claimant, it may not claim significant damages for distress or a loss of reputation separate from economic loss. Thus, it submits that a sum of S\$50,000 would be appropriate.

24 According to the second to fourth plaintiffs, the defendant's accusations struck at the heart of their integrity and character. On this basis, they contend that the quantum of damages ought to reflect the gravity of the libel. They rely primarily on the English Court of Appeal decision of *Rantzen v Mirror Group Newspapers (1986) Ltd* [1994] 1 QB 670 ("*Rantzen*") in which £110,000 was awarded to the plaintiff, a successful television presenter, to compensate her for an allegation that she had helped to protect the identity of a purported child abuser. However, the plaintiffs submit that the award should be adjusted upwards because *Rantzen* was decided in 1993 and the allegations in that case had a lesser impact on the victim's career and reputation.

The applicable law

25 The functions of general damages were succinctly stated by the Court of Appeal in *Arul Chandran v Chew Chin Aik Victor* [2001] 1 SLR(R) 86 ("*Arul Chandran*") at [53]:

General damages serve three functions. Firstly, they act as a consolation to the plaintiff for the distress he suffered from the publication of the statement. Secondly, they repair the harm to his reputation. Thirdly, they serve to vindicate his reputation. ...

26 The above passage merits some elaboration. In a defamation suit, the award of damages seeks to repair the *injury to the victim's reputation*. Such damages have no "real connection with any pecuniary loss at all" (*per* Lord Greene in *Rook v Fairrie* [1941] 1 KB 507 at 515 to 516). This distinction is critical since the plaintiffs in the present case are also claiming pecuniary losses that they have allegedly suffered as a consequence of the defamatory statements. Such damages fall under the category of special damages which will be discussed later in this judgment.

27 Closely connected to the above is the vindicatory purpose of an award of damages. This purpose was explained by Lord Hoffmann in *The Gleaner Co Ltd and another v Abrahams* [2004] 1 AC 628 at [55]:

... the damages must be sufficient to demonstrate to the public that the plaintiff's reputation has been vindicated. Particularly if the defendant has not apologised and withdrawn the defamatory

allegations, the award must show that they have been publicly proclaimed to have inflicted a serious injury.

28 Lastly, there is the element of *injury to feelings* that is taken into account when determining the size of the award. This entails a consideration of the “natural injury to [the claimant’s] feelings—the natural grief and distress which he may have felt at having been spoken of in defamatory terms” (per Pearson LJ in *McCarey v Associated Newspapers Ltd* [1965] 2 QB 86 (at 104 to 105)). Therefore a corporate entity may only recover damages appropriate for vindication of its injured reputation; it may not recover for injury to its feelings. As was stated by Lord Reid in *Rubber Improvement Ltd and another v Daily Telegraph Ltd and another* [1964] AC 234 at 262, “[a] company cannot be injured in its feelings, it can only be injured in its pocket”.

29 In ascertaining the appropriate general damages to be awarded in a case of defamation, the following factors should be considered:

- (a) the nature and gravity of the defamatory statement itself;
- (b) the conduct, position and standing of the plaintiff and the defendant; and
- (c) the mode and extent of publication.

30 In *Lim Eng Hock Peter v Lin Jian Wei and another and another appeal* [2010] 4 SLR 357 (“*Peter Lim*”), the Court of Appeal also considered relevant the “intended deterrent effect” of the award, especially where the defendant “has not simply got its facts wrong but has behaved outrageously from start to finish” (at [9]).

31 That said, there is no fixed formula governing the assessment of damages. To ensure that such assessments proceed in a coherent and principled fashion, sufficient regard must be paid to past awards in comparable cases, see *Lee Hsien Loong v Singapore Democratic Party and others and another suit* [2009] 1 SLR(R) 642 at [73] per Belinda Ang J:

... This approach is especially useful in promoting a rationally sustainable and coherent regime for damages for libel, and, as a corollary, in avoiding “the grossly exorbitant awards so often made by juries in other jurisdictions”...

32 I now proceed to consider each factor in turn.

The nature and gravity of the defamation

33 In essence, the defendant has accused the plaintiffs of participating in the sexual abuse of young, elementary school children over a period of time. I agree with the plaintiffs’ submission that the defendant’s accusations were of a particularly grave nature. Not only did these accusations suggest sexual perversion on the part of the plaintiffs, they pointed to a systematic abuse of the trust reposed in educational institutions and individuals responsible for the learning and general well-being of the young children under their charge.

The standing of the plaintiffs

34 The first plaintiff was relatively well known within the international school community. I am also prepared to accept that the second and third plaintiffs were experienced educators who have had illustrious careers in the field. However, the evidence showed that the fourth plaintiff did not enjoy

the same standing as the second and third plaintiffs.

The mode and extent of publication

Emails and WhatsApp messages

35 The 28 May Email was circulated to the parents of three ATU students whilst the 5 June Email was circulated to parents of six ATU students. One other parent received the 6 June WhatsApp message. On 6 June 2014, the defendant filed a police report against *inter alia* the third and fourth defendants, accusing them of sexually assaulting B.

Press reports

36 In the Jakarta Post Article, the defendant was reported to have accused the school of covering up systematic child sexual abuse on its premises. Subsequently, in the Independent (UK) Article, the defendant was also reported to be repeating her allegations against the second to fourth plaintiffs (*ie* that they each played a role in sexually abusing children).

37 There is no direct proof that the defendant had communicated her allegations to the press. Nonetheless, in the absence of evidence to the contrary, I find that the content of the web articles were *prima facie* evidence that the defendant had done so.

38 The next question that arises is whether the defendant should be held liable for the damage that resulted from repetitions by the press. It is pertinent to note that the defendant is not automatically absolved of responsibility simply because the defamatory statements were voluntarily repeated by the Jakarta Post and the Independent. The publisher of a libel may be liable for re-publication by others if he had intended it, or it was a foreseeable consequence. In *Goh Chok Tong v Jeyaretnam Joshua Benjamin* [1997] 3 SLR(R) 46, S Rajendran J stated:

129 The general rule ... is simply that the original publisher is liable for his publication and the republisher for his republication. Separate acts constitute separate torts. However, applying the rules relating to remoteness of damage to the original tort, it is conceivable that the original publisher is liable for the republication where that republication was more likely than not the consequence of the original publication.

130 If the defendant authorised or intended the republication, it would almost certainly be the case that republication was a foreseeable consequence. Similarly, if the defendant published it to a person under some sort of duty to repeat it, the probability of repetition would be high. Where the defendant acted innocently but recklessly, how probable repetition would have been is still a question of degree to be answered on the facts of every case.

39 The same issue fell to be considered in *McManus and others v Beckham* [2002] 1 WLR 2982. After an extensive review of the authorities, the English Court of Appeal held (at [34]):

What the law is striving to achieve in this area is a just and reasonable result by reference to the position of a reasonable person in the position of the defendant. If a defendant is actually aware (1) that what she says or does is likely to be reported, and (2) that if she slanders someone that slander is likely to be repeated in whole or in part, there is no injustice in her being held responsible for the damage that the slander causes via that publication. I would suggest further that if a jury were to conclude that *a reasonable person in the position of the defendant should have appreciated that there was a significant risk that what she said would be repeated in whole*

or in part in the press and that that would increase the damage caused by the slander, it is not unjust that the defendant should be liable for it. ...

40 Bingham LJ eloquently explained the rationale for this in *Slipper v British Broadcasting Corporation* [1991] 1 QB 283 at 300:

... the law would part company with the realities of life if it held that the damage caused by publication of a libel began and ended with publication to the original publishee. Defamatory statements are objectionable not least because of their propensity to percolate through underground channels and contaminate hidden springs.

41 In the present case, it is clear that the web articles conveyed the sting of the defamatory statements made by the defendant. It would not be unreasonable to infer from the defendant's conduct that she had communicated her statements to the press with the full appreciation, and indeed intention, that what she said would be repeated in whole or in part. The defamatory statements centred on allegations of sexual abuse that were made against educators which the general public would have a great interest in knowing. The press was almost bound to repeat the statements. Therefore, I find the defendant liable for the damage that flowed from the repetition of her statements by the Jakarta Post and the Independent.

Relevant awards made in Singapore

42 I tabulate below damages that have been awarded in comparable cases in Singapore:

Case	Facts	Award
<i>A Balakrishnan and others v Nirumalan K Pillay and others</i> [1999] 2 SLR(R) 462	There were a number of plaintiffs from the legal industry, computer industry or education industry. A defamatory article was released in a Tamil magazine, and an estimated 8,000 copies were sold. The article was found to impute insincerity of purpose and ulterior motive for personal gain on the part of the respondents in organising the Tamil Language Week (at [36]).	\$30,000 to the first, third and fourth plaintiffs in view of their public status as advocates and solicitors \$25,000 to the rest of the plaintiffs
<i>Arul Chandran v Chew Chin Aik Victor</i> [2001] 1 SLR(R) 86	The plaintiff was an advocate and solicitor of more than 30 years and then vice-president of the Tanglin Club. He was portrayed to be an extremely vicious and dangerous fraud and that he was incapable of discharging his duties as chairman of the Membership and Rules Sub-Committee of the club in a fair and honest manner. These statements were published in three letters, the first and second to the president and committee of the club and the third to the president of the club.	\$100,000 as general damages and \$50,000 as aggravated damages.

<i>Ei-Nets Ltd and another v Yeo Nai Meng</i> [2004] 1 SLR(R) 153 ("Ei-Nets")	The respondent was a director in charge of certain financial decisions of a company. After an audit of these decisions, three reports were released, accusing the plaintiff of fraud and dishonesty. These reports were distributed to a limited number of other directors and staff.	\$80,000 to the plaintiff. Although the plaintiff was not a minister or public leading figure, he was a businessman holding positions of responsibility in public and private organisations.
<i>TJ System (S) Pte Ltd and others v Ngow Kheong Shen</i> (No 2) [2003] SGHC 217	The defendant wrote to his fellow colleagues, 15 Cisco officers, suggesting that the plaintiff company was suspected of having bribed staff from the Police Technology Department to procure projects. The plaintiff company and a number of its directors then sued the defendant for defamation.	Between \$20,000 to \$30,000 to the various plaintiffs.
<i>Oei Hong Leong v Ban Song Long David and others</i> [2005] 3 SLR(R) 608	The appellant was a prominent businessman. The first respondent ccused the plaintiff of being unreasonable and unfair in his opposition to resolutions that were proposed at the extraordinary general meeting.	Defences applied. However, the judge below opined that a sum of \$60,000 might be fair compensation.
<i>Peter Lim</i>	The defamatory statements suggested that the appellant had caused the company's financial losses through mismanagement for his own benefit, as a result of which the company was unable to meet its liabilities. These statements were published in an Explanatory Statement by the company to its 17,000 members.	\$140,000 as general damages and \$70,000 as aggravated damages as the plaintiff was a prominent businessman and investor whose competence, integrity and business acumen had been called into question.
<i>Koh Sin Chong Freddie v Chan Cheng Wah Bernard and others and another appeal</i> [2013] 4 SLR 629 ("Freddie Koh 2013")	The appellant alleged that the respondents misrepresented facts made by the previous management committee to influence the ratification of the expenditure at the last annual general meeting. These statements were reflected in the minutes of meetings which were posted on the notice board of the club.	\$50,000 to each plaintiff (with \$35,000 as general damages and \$15,000 as aggravated damages)
<i>Golden Season Pte Ltd and others v Kairos Singapore Holdings Pte Ltd and another</i> [2015] 2 SLR 751 ("Golden Season")	The defendants suggested in a Facebook post and in a chain of emails to various individuals in an non-governmental organisations that, the plaintiffs engaged in malpractices that caused donor monies to be used unwisely and suggested an incident of copyright infringement.	\$15,000 in general damages to the first plaintiff \$30,000 as general damages and \$20,000 as aggravated damages to the third plaintiff

43 From the table above, past awards range from \$15,000 to \$140,000 depending on the severity of the allegations, the extent of publication and the standing of the plaintiff in question. The table excludes awards in respect of public leaders (both political and non-political leaders who serve in the State and the public) to whom higher awards are generally awarded (see *Peter Lim* at [12]).

44 The awards in the table at the higher end of the spectrum were justified on the basis that the plaintiffs were prominent businessmen. In *Peter Lim*, the plaintiff was a prominent businessman and investor who had built up a formidable reputation in the stock broking industry and was frequently cited by Forbes Asia as one of the richest men in Singapore and Asia (at [26]). The libel had called into question his competence, integrity and business acumen. Likewise, in *Ei-Nets*, the plaintiff was a businessman holding positions of responsibility in public and private organisations.

My decision

The first plaintiff

45 Bearing in mind the discussion above at [28], the first plaintiff may not recover damages for injury to feelings. According to George Wei JC in *Golden Season* at [134], much will depend on whether the defamation has injured the business goodwill of the company such that the business reputation of the company can only be vindicated by a “really substantial award”.

46 In the present action, it is likely that the gravity and the extent of circulation of the defamatory statements had a substantial impact on the business reputation of the school. This was borne out in the evidence adduced by the first plaintiff. Therefore, I consider it fair and appropriate to award the first plaintiff S\$30,000 in general damages.

The second to fourth plaintiffs

47 Although the sexual abuse allegations were undoubtedly serious attacks on the plaintiffs’ character and integrity, such severity does not justify an award of S\$300,000 which belongs to the scale of awards to public leaders in Singapore (see for example *Goh Chok Tong v Chee Soon Juan* [2005] 1 SLR(R) 573). Furthermore, I note that none of the plaintiffs in the present suit enjoy a reputation as formidable as that enjoyed by the plaintiffs in *Peter Lim* or *Ei-Nets*.

48 Counsel for the plaintiffs has referred me to the decision in *Rantzen* where £110,000 was awarded by the jury for allegations of child sexual abuse. However, I am mindful of the caution issued by the Court of Appeal in *Tang Liang Hong v Lee Kuan Yew and another and other appeals* [1997] 3 SLR(R) 576. L P Thean JA, delivering the judgment of the Court of Appeal, said:

124 ... First, in England, defamation actions are tried by a judge with a jury, and assessment of damages is the exclusive preserve of the jury with the benefit of direction from the trial judge. Until the decision in this case, the trial judge in giving direction to the jury on the damages was precluded from referring, among other things, to scales of damages in personal injury cases or giving some guidance as to the appropriate brackets for the damages. Nor was counsel permitted to submit to the jury the appropriate award to be made. The absence of guidelines to the jury had sometimes led to awards being made which were grossly excessive and divorced from reality. Such wildly disproportionate awards had attracted serious and justified criticisms of the procedure involved resulting in such awards. Juries were likened, in the words of Sir Thomas Bingham MR, to “sheep loosed on an unfenced common, with no shepherd”.

125 The position in Singapore is different. We do not have a jury system, and like any other

actions, defamation actions are heard by judges sitting alone and damages are normally assessed by the judges themselves (in other cases, such as personal injury cases damages are often assessed by [an] assistant registrar) - with the result that a "coherent framework of awards" has emerged from a body of cases developed over the years which enables the courts to pitch their awards on an informed and coherent basis. This is an advantage which the other jurisdictions, eg England, do not enjoy. ...

49 I therefore find greater guidance in the awards given by our courts than the English courts. Taking into account the awards that have been given in those cases, the standing of the plaintiffs, the gravity of the libel, the extent of the publication and other relevant factors, I consider it fair and appropriate to award general damages of S\$50,000 to the second and third plaintiffs and S\$40,000 to the fourth plaintiff.

Aggravated damages

50 The plaintiffs' claims in aggravated damages were premised on the following. *First*, the plaintiffs submitted that the defendant acted with malice because she either knew that the defamatory statements were false or was reckless as to their truth. *Second*, the plaintiffs contend that their injury has been aggravated by the way the defendant had conducted these proceedings. According to the plaintiffs, the defendant and her husband had actively sought to evade service, and at the same time, giving the impression that (a) they were in the dark about the action; and (b) the action was an attempt by ATU to pervert the course of justice of proceedings in Indonesia. *Third*, the plaintiffs argued that the defendant's failure to retract her statements or apologise had similarly increased the plaintiffs' injury.

The applicable law

51 It is well established that aggravated damages may be awarded where the motive or the conduct of the defendant has increased the injury to the plaintiff. The nature of such damages has been summarised by the following passage in Gary Chan KY, *The Law of Torts in Singapore* (Academy Publishing, 2011) at paras 13.128 – 13.129:

Aggravated damages, which are compensatory in nature, may be awarded in respect of the additional injury caused by the defendant's conduct or bad motives. As stated by Pearson J in *McCarey v Associated Newspapers Ltd (No 2)*, the claim for aggravated damages is based on the behaviour and conduct of the defendant which aggravates the hurt, pain or suffering of the plaintiff. Where the defendant's conduct causes injury to the plaintiff's feelings, aggravated damages may be awarded. This applies to natural persons who have been defamed. Whether a company can recover aggravated damages has not been judicially settled. It is submitted that as a corporation cannot be injured in feelings, it should not, as a matter of logic, be entitled to any aggravated damages in so far as they reflect additional injuries or hurt to feelings.

52 In *Arul Chandran*, the Court of Appeal endorsed the following passage from *Gatley on Libel and Slander* (Patrick Milmo & W V H Rogers eds) (Sweet & Maxwell, 9th Ed, 1998) where some factors warranting the award of aggravated damages are set out:

... The conduct of a defendant which may often be regarded as aggravating the injury to the plaintiff's feelings so as to support a claim for 'aggravated' damages, includes a failure to make any or any sufficient apology and withdrawal; a repetition of the libel; conduct calculated to deter the plaintiff from proceeding; persistence, by way of a prolonged or hostile cross-examination of the plaintiff ... a plea of justification which is bound to fail; the general conduct

either of the preliminaries or of the trial itself in a manner calculated to attract wide publicity; and persecution of the plaintiff by other means.

53 The presence of malice is another factor that goes towards aggravating the damage caused, and hence increasing the size of the award (see *Halsbury's Laws of Singapore* vol 18 (LexisNexis, 2012 Reissue) ("*Halsbury*") at para 240.201). As the Court of Appeal held in *Chan Cheng Wah Bernard and others v Koh Sin Chong Freddie and another appeal* [2012] 1 SLR 506 at [90]:

In *Lim Eng Hock Peter v Lin Jian Wei* [2010] 4 SLR 331, this Court further clarified that malice may be proven in two ways – (a) the defendant's knowledge of falsity, recklessness, or lack of belief in the defamatory statement; and (b) where the defendant has a genuine or honest belief in the truth of the defamatory statement, but his dominant motive is to injure the defendant or some other improper motive. ...

54 Lastly, the principle of proportionality applies to the award of aggravated damages. Caution has to be exercised in the award of aggravated damages to avoid double counting for the distress and humiliation caused to the plaintiff (see *Freddie Koh* 2013 at [75]).

The first plaintiff

55 An important question that arises from the preceding discussion is whether the first plaintiff, as a corporate entity, is entitled to its claim for aggravated damages. It has been noted by the Court of Appeal in *Basil Anthony Herman v Premier Security Co-operative Ltd and others* [2010] 3 SLR 110 that the ability of a corporate plaintiff to recover aggravated damages for defamation has not been authoritatively settled (at [65]).

56 In *Messenger Newspapers Group Ltd (plaintiffs) v National Graphical Association (1982) (defendants)* [1984] 1 All ER 293 ("*Messenger Newspapers*"), it was held that, although a company cannot suffer injury to feelings, it could nonetheless be awarded aggravated damages. In *Golden Season*, George Wei JC was of the view that the decision in *Messenger Newspapers* was explicable on the basis that the court was really awarding exemplary damages rather than aggravated damages:

136 I am not persuaded that a corporate entity can or should be awarded aggravated damages. It is common understanding that aggravated damages are awarded for injury to feelings and pride in circumstances where the Defendant's conduct has aggravated the injury. Aggravated damages in this sense remain compensatory in nature, albeit in the nature of a more generous compensatory award. Even though the conduct of the defendant (exceptional or contumelious behaviour or motive) is an important consideration, the purpose of aggravated damages remains compensation and not punishment. Punishment falls within the domain of exemplary damages (see the English Law Commission's Report on *Aggravated, Exemplary and Restitutionary Damages* (Law Com No 247, 1997)).

137 It is hard to see how, on this basis, aggravated damages are applicable to a corporate entity. Whilst the English High Court in *Messenger Newspapers Group Ltd v National Graphical Association* [1984] 1 All ER 293 ("*Messenger Newspapers*") case awarded aggravated damages to a corporate plaintiff, the court there was more concerned with the need to punish the defendant for his deliberate wrong doing (see also *Gatley* 2013 at para 9.20). On this basis, *Messenger Newspapers* is really a decision on *exemplary* damages rather than *aggravated* damages. Indeed, the court in *Messenger Newspapers* made clear that the award was not in respect of injury to feelings.

57 In any event, the decision in *Messenger Newspapers* has not been followed in a number of first instance cases, in particular, in *Collins Stewart Ltd v The Financial Times Ltd* [2006] EMLR 5 ("*Collins Stewart*") where it was held (at 114, line 30):

It appears to me from those authorities that Mr Browne is right when he says that the defining characteristic of an award of aggravated damages is that its function is to provide a claimant with compensation ("*solatium*") for injury to his or her feelings caused by some conduct on the part of the defendant or for which the defendant is responsible. The concept of injury to feelings runs through the cases, whether caused by the high-handed or insulting behaviour of the defendant either before or after publication or by repetition of the libel or by persistence in a plea of justification or by a failure to apologise. It seems to me that the essence of an award of aggravated damages in libel is not making good damage to the claimant's reputation as such but rather compensating the claimant for the extra injury to his or her feelings.

If that be the correct analysis of the proper function of aggravated damages, it seems to me to follow that aggravated damages are in principle not available to a corporate claimant. The reason is that, as Mr Spearman rightly concedes, a company has no feelings to injure and cannot suffer distress: see *Lewis v Daily Telegraph* [1964] A.C. 234, per Lord Reid at 262.

58 The decision in *Collins Stewart* has been affirmed by the Court of Final Appeal (Hong Kong) in (1) *Oriental Daily Publisher Ltd*; (2) *MA Ching Kwan v (1) Ming Pao Holdings Ltd; (2) Ming Pao Newspaper Ltd; and (3) Cheung Kin Bor* [2013] EMLR 7. The court noted at the outset (at [112]) that the object of an award of aggravated damages is to "compensate for additional injury caused to the plaintiff's feelings by the defendant's conduct of the action, as when he persists in an unfounded assertion that the publication was true, or refuses to apologise, or cross-examines the plaintiff in a wounding or insulting way". Consequently, the court held:

124 ... A company without a soul, whose reputation is merely a commercial asset, is hardly likely to be regarded as having feelings capable of being injured, whether borrowed from its officers or employees or otherwise.

125 It is accordingly my view that the law as stated by Gray J. in *Collins Stewart Ltd v Financial Times Ltd* represents the law applicable in Hong Kong. I note that Deputy High Court Judge Peter Ng SC reached the same conclusion in *Oriental Press Group Ltd v Inmediahk.net Ltd*. It follows that ODP, being a company, was not entitled to claim aggravated damages and its appeal on that issue must be dismissed.

59 More recently, the ghost of *Messenger Newspapers* has been finally laid to rest by the English Court of Appeal in *Eaton Mansions (Westminster) Ltd v Stinger Compania de Inversion SA* [2014] H.L.R. 4 where Patten LJ stated:

30 The decision in *Messenger* on aggravated damages has not been followed by other judges at first instance; most notably by Gray J in *Collins Stewart Ltd v The Financial Times Ltd (No 2)* [2006] EMLR 100 at paras 30–32 and by Tugendhat J in *Hays plc v Hartley* [2010] EWHC 1068 (QB) at para 24 and *Metropolitan International Schools Ltd v Designtecnica Corporation* [2010] EWHC 2411 at para 14. We should, in my view, take the opportunity to hold that it was wrongly decided. Aggravated damages are not recoverable by a limited company for the reasons I have stated.

60 Thus, I consider it settled law that a corporate plaintiff may not recover aggravated damages. It naturally follows that the first plaintiff is not entitled to its claim for aggravated damages.

The second to fourth plaintiffs

61 I was of the view that an award of aggravated damages would be appropriate to repair the increased injury caused by the defendant's conduct. In the absence of evidence to the contrary, it appears that the defendant had acted maliciously by being reckless as to the truth of her allegations.

62 First, there was no reasonable basis for the defendant to claim that the first plaintiff was covering up sexual abuse at the school. The school had volunteered resources to investigate the matter. These resources included an expert in clinical social work and child counselling to interview B, and a former agent with the FBI to uncover the truth.

63 Second, the objective evidence suggested that B was never sexually abused. The defendant and her husband were repeatedly asking B whether he had been sexually assaulted and B had maintained that he had not. This was confirmed by the physical examination at KK Women's and Children's Hospital which did not find any injury or scarring in B's rectal region. After the medical examination, the defendant sent a text message to a friend saying "Thank God everything is okay" and "we're more than happy because at least we can close this chapter and start a new chapter in Singapore". Later in May 2014, the defendant sent a WhatsApp message to D saying that the news was exaggerating and that she had never said B had been raped. It was only on 28 May 2014 that the defendant started alleging that B had been raped more than 20 times.

64 Furthermore, the defendant did not care to enter appearance in the present suit even though she was fully aware of the proceedings. This knowledge was evident from the Jakarta Post Article in which she was reported to be suggesting that the motive behind the suit in Singapore was to prevent her from testifying in the criminal trial in Indonesia. I further note that the defendant has also failed to apologise or retract her defamatory statements.

65 Considering the defendant's conduct and the manner in which the events unfolded, I award aggravated damages of S\$20,000 to each of the second, third and fourth plaintiffs.

Special damages

66 The first plaintiff claims US\$2,985,400 in special damages for the shortfall in enrolment for certain grades at the Campus. The second to fourth plaintiffs claim US\$944,240.60, US\$515,020.85 and S\$41,400 respectively for the wreckage of their careers.

67 The first plaintiff seeks to recover losses representing the shortfall in enrolment at ATU. B was enrolled in Kindergarten in academic year 2013/2014. In academic year 2014/2015, there was a marked shortfall in the actual intake for the grade directly below (*ie* junior to) Kindergarten, Kindergarten and the grade directly above (*ie* senior to) Kindergarten. The shortfall in enrolment translated to a loss of US\$1,492,700 for that academic year. The first plaintiff expects this shortfall in enrolment to persist for the next few years. Thus, the first plaintiff seeks to have a multiplier of two years applied to the loss incurred in academic year 2014/2015.

68 The second to fourth plaintiffs seek special damages for their alleged loss of employability. Although they concede that they remain on the payroll of ATU, they claim that they would be unable to find alternative employment elsewhere.

The applicable law

69 I accept that, as a general proposition, the tort of defamation allows the recovery of economic

loss as special damages if such loss is referable to the harm to the plaintiff's reputation. To recover special damages, the plaintiff has to prove 'actual temporal loss'; the loss of some 'material' or 'temporal advantage' which is 'pecuniary' or 'capable of being estimated in money' (*Halsbury* at para 240.186). In *Ratcliffe v Evans* [1892] 2 QB 524 at 528, Bowen LJ explained that the term "special damage" is used to denote the particular damage which a claimant suffers beyond general damage:

At times (both in the law of tort and of contract) it is employed to denote that damage arising out of the special circumstances of the case which, if properly pleaded, may be superadded to the general damage which the law implies in every breach of contract and every infringement of an absolute right: see *Ashby v. White*. In all such cases the law presumes that *some* damage will flow in the ordinary course of things from the mere invasion of the plaintiff's rights, and calls it general damage. ***Special damage in such a context means the particular damage (beyond the general damage), which results from the particular circumstances of the case, and of the plaintiff's claim to be compensated, for which he ought to give warning in his pleadings in order that there may be no surprise at the trial***

[emphasis in italics in original, emphasis in bold italics added]

70 Actual pecuniary loss must be pleaded and proved. It is insufficient to plead the broad conventional allegation that by reason of the pleaded facts, damage has been suffered (see for example *Lonrho plc and others v Fayed and others (No 5)* [1993] 1 WLR 1489 at 1494). The level of particularity required is illustrated by the observation in Harvey McGregor, *McGregor on Damages* (Sweet & Maxwell, 18th Ed, 2009) ("*McGregor on Damages*") at para 39-034:

... [M]ore specific losses, as of particular contracts, particular employments, particular hospitality may also be allowed if properly pleaded and proved. ...

71 It must also be borne in mind that not all manner of pecuniary losses fall within the scope of special damage. In *Low Tuck Kwong v Sukanto Sia* [2014] 1 SLR 639, the Court of Appeal clarified that the scope of special damage in the context of defamation suits had to be loss referable to the damage to reputation. The Court stated at [98]:

... The tort of defamation primarily protects a person's reputation (see *Gatley* ([44] *supra*) at para 1.1) and so grants relief for damage to a plaintiff's reputation, the injury to his feelings and also provides a vindictory effect. Where therefore the loss resulting from the publication of the words complained of is not referable to such protected interests, such loss is not claimable even if the publication was factually causative of it; it therefore does not include *all* consequential pecuniary loss. [emphasis in original]

The first plaintiff

72 I am of the view that the first plaintiff has failed to prove its claim for special damages. Although evidence was adduced to prove the shortfall in enrolment, the question is whether such shortfall was wholly caused by the defendant in publishing the libel. The scandal started in March 2014, approximately two months before the defendant claimed that B was sexually assaulted. It may very well be that the defendant had contributed to the damage caused to the school's reputation. However, the first plaintiff had endeavoured to pin the entire blame on her and as a consequence, did not prove the extent of the defendant's contribution. Therefore, the first plaintiff's claim for special damages must fail.

The second to fourth plaintiffs

73 In my judgment, the second to fourth plaintiffs' claim for special damages is misconceived. As was discussed above at [70], actual pecuniary loss must be pleaded and proven. The second to fourth plaintiffs have not done so. At the time of this hearing, they remained on the payroll of the first plaintiff and had not suffered any financial loss. That their teaching careers have been wrecked by the defamation is but a bare assertion that is unsupported by proof of the loss of any particular employments or contracts. Thus, without proof of actual loss, the general harm caused to their teaching careers should fall within the scope of general damages, not special damages.

Conclusion

74 For the reasons set out above, I make the following awards:

- (a) ATU – S\$30,000 in general damages;
- (b) ATV – S\$50,000 in general damages and S\$20,000 in aggravated damages;
- (c) ATW – S\$50,000 in general damages and S\$20,000 in aggravated damages; and
- (d) ATX – S\$40,000 in general damages and S\$20,000 in aggravated damages.

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