Lee Kuan Yew v Chee Soon Juan (No 2)
[2005] SGHC 2

Case Number : Suit 1459/2001

Decision Date : 06 January 2005

Tribunal/Court : High Court

Coram : Kan Ting Chiu J

Counsel Name(s) : Davinder Singh SC, Hri Kumar, Nicolas Tang (Drew and Napier LLC) for the plaintiff; The defendant in person

Parties : Lee Kuan Yew — Chee Soon Juan

Tort – Defamation – Damages – Assessment of damages – Defendant alleging plaintiff mishandling nation's funds – Principles of assessment – Quantification of damages

Civil Procedure – Reconvening hearing – Defendant not attending assessment of damages hearing – Defendant applying to reconvene such hearing – Defendant applying to cross-examine plaintiff and plaintiff's counsel in application to reconvene hearing – Factors to consider when deciding whether to grant defendant's applications to reconvene hearing and to cross-examine plaintiff and plaintiff's counsel at such reconvened hearing

6 January 2005 *Judgment reserved.*

Kan Ting Chiu J:

1 This matter came before me for damages to be assessed following a finding that the defendant had defamed the plaintiff.

2 The plaintiff, Mr Lee Kuan Yew, was the Senior Minister of Singapore before he assumed the office of Minister Mentor on 12 August 2004. The defendant, Dr Chee Soon Juan, was and is the Secretary-General of the Singapore Democratic Party.

3 This action arose out of words the defendant said in the course of campaigning in the 2001 Parliamentary General Elections.

The subject words

4 On 28 October 2001, the defendant spoke at an election rally at Nee Soon Central. He told his audience:

> Yesterday, Mr Lee Kuan Yew was at his best. When he's at his best, names, bad names have no problem rolling out of his tongue. He called me all sorts of names. How do I react? I say no problem. No problem. Because the more names you call me, I know the more it is that the PAP has to worry. I challenge the PAP to stop calling me names and talk about the issues. …
>
> And *so I challenged Mr Lee Kuan Yew yesterday to answer this one question, why is he not addressing this very important issue that the SDP is campaigning on this election.*
>
> …
>
> *… So when we met … when we met Goh Chok Tong this morning during our walkabout, he was there just about 3 or 4 feet away, I asked him, "Mr Goh, what happened to our money? What*

happened to this $17 billion?" He wouldn't answer. He just waved us on. I am very serious about this. My friends, it is your money, this is your money, no, not the Government's money, not Goh Chok Tong's money. It is your money. And when I asked him and he waved us on, it hit me, it hit me very clearly, that the Government will not answer you. The Government can say, "No, I am not interested in answering you, because you are not in Parliament … But if you get Mr Ling How Doong from the SDP into Parliament, this guarantee I give you, the first question that he will ask is what has happened to our $17 billion?

You must be very careful that you don't give the entire government this free rein to take your money and use it without any opposition keeping it in check. And this is that same question that I want to ask Mr Lee Kuan Yew today. Address this point. I want to ask the media to publish this point. And you see for yourselves tomorrow my friends, see for yourself whether the media is going to publish it or not.

Because this is one very important point in this election. If it will define this campaign for the SDP it is this issue. We want the media, whether it is your broadcast media or your press media to report on this what we've just said tonight. Because it makes all the difference. And if they report it, then I want to challenge Mr Lee Kuan Yew, please don't live in the past, my dear Senior Minister, this is not 1961. He has said that he wants to demolish me. You can't. Yes, can't. This is 2001, when we don't want to talk about demolishing any more. We want to talk about creativity. We want to talk about innovation. We want to talk about debate. That is very important. So Mr Lee Kuan Yew, I challenge you, tell us about this $17 billion you loaned to Suharto.

5 The plaintiff found the portions of that speech in italics ("the subject words") defamatory.

The retracted apology

6 The plaintiff instructed his solicitors, Drew & Napier LLC, to write to the defendant. On 31 October 2001, they informed the defendant that he had falsely accused the plaintiff of being dishonest and unfit for office because the plaintiff had concealed from or misled Parliament and the public about a $17bn loan made to Indonesia and had continued to evade the issue because he had something discreditable to hide about the transaction.

7 They demanded that he agree to:

(a) publish, at [his] expense, an apology and undertaking in terms of the draft now enclosed. The apology and undertaking is to be published with appropriate prominence in the 1st, 2nd or 3rd November edition of the Straits Times and the Today newspaper;

(b) read out the said apology at an SDP rally no later than 10 pm on 2nd November 2001;

(c) compensate [the plaintiff] by way of damages; and

(d) agree to indemnify [the plaintiff] in respect of the costs which he will have incurred in connection with this matter

no later than 10.00am on 2 November 2001 and warned him that if he did not comply, legal proceedings would be commenced against him.

8 The defendant complied with the demands. On 31 October 2001 he read out an apology at a

rally at Jurong East in the set form:

> 1. On Sunday 28 October 2001, during a walkabout at Jurong GRC and, later, at a rally at Nee Soon Central, I made certain statements which were understood to mean that Senior Minister Mr Lee Kuan Yew is dishonest and unfit for office because
>
> (a) Mr Lee Kuan Yew concealed from Parliament and the public, and/or deliberately misled Parliament in relation to, a $17 billion loan made to Indonesia; and
>
> (b) Mr Lee Kuan Yew's continued evasion of the issue was because he had something discreditable to hide about the transaction.
>
> 2. I admit and acknowledge that I had no basis for making these allegations, and that they are false and untrue.
>
> 3. I, Chee Soon Juan, do hereby unreservedly withdraw these allegations and apologise to Mr Lee Kuan Yew for the distress and embarrassment cause to him by my false and baseless allegations.
>
> 4. I hereby also undertake not to make any further allegations or statements to the same or similar effect. I also wish to state that I have agreed to pay Mr Lee Kuan Yew damages by way of compensation and to indemnify him for all costs and expenses incurred by him in connection with this matter.

and he also caused the apology to be published in *The Straits Times* and *Today* newspapers on 1 November 2001.

9 When the defendant went back on his promise to pay compensation and costs, the plaintiff brought these proceedings against him.

The action

10 The plaintiff's action was framed on two bases. The first was that the plaintiff and the defendant had entered into a binding compromise whereby the defendant was to perform the acts set out in the letter of 31 October 2001, and the plaintiff impliedly agreed not to ask for full damages that he would otherwise be entitled to.

11 The alternative claim was for defamation, that the subject words in their natural and ordinary meaning, or by innuendo were understood to mean that the plaintiff is dishonest and unfit for office because:

> (a) the Plaintiff concealed from Parliament and the public, and/or deliberately misled Parliament in relation to, a S$17 billion loan made to Indonesia; and
>
> (b) the Plaintiff's continued evasion of the issue was because he had something discreditable to hide about the transaction.

12 The defendant resisted the claim and filed a defence and counterclaim that the plaintiff had defamed him. He also commenced third party proceedings, but did not prosecute them. In his defence, he denied speaking the words the plaintiff complained of, that those words referred to the plaintiff, that they were defamatory, and that he was liable for the republication of the words, and he

pleaded the defences of justification, qualified privilege and fair comment. He also asserted that the compromise was invalid because it was the product of duress and intimidation.

13 The plaintiff applied for summary judgment against the defendant. When the application was argued before a senior assistant registrar ("SAR") the plaintiff produced clear and comprehensive evidence that no loan as alleged by the defendant was made, and that the full facts about loans to Indonesia had been made known to Parliament and the public, and the information was in the public domain.

14 On 19 August 2002 after hearing the parties, the SAR entered interlocutory judgment for the plaintiff on the compromise as well as for defamation with damages (including aggravated damages) to be assessed by a judge in open court and costs including the assessment of damages to be taxed on the indemnity basis if not agreed. The SAR noted in his grounds of decision that the only defence presented before him was that the compromise was null and void by the taint of duress and intimidation. The SAR found specifically that the subject words bore the meaning that the plaintiff contended.

15 The defendant appealed against that decision. The appeal was heard by MPH Rubin J. The judge dismissed the appeal and affirmed the SAR's decision. The defendant did not pursue the matter further.

The assessment hearing

16 The hearing was fixed for 6 to 8 September 2004. The defendant did not attend the assessment hearing.

17 The defendant was kept informed of the developments leading to the assessment hearing before me. After the order for summary judgment was affirmed, the plaintiff's solicitors applied for directions for the assessment of damages.

18 On 29 July 2003, counsel for the plaintiff, and the defendant himself, attended before an assistant registrar. The assistant registrar ordered that the parties file their lists of documents relating to damages by 19 September 2003, and for inspection of the documents within 21 days from that date. The assistant registrar also ordered the parties to file and serve their affidavits of evidence-in-chief by 16 January 2004. The defendant did not file his list of documents or affidavit of evidence-in-chief.

19 By a letter dated 31 January 2004, he informed the Registrar:

> I will be away on a fellowship in the United States (National Endowment for Democracy) from February until August 2004. As such I would be grateful if you could adjourn the above matter until my return.

20 On 4 February 2004, the plaintiff's solicitors wrote to the Registrar to seek an appointment to fix hearing dates for the assessment of damages. In response to the request, the parties were directed to attend before an assistant registrar on 10 February 2004.

21 On 10 February, the solicitors for the plaintiff attended before the assistant registrar, but the defendant was absent. The assistant registrar fixed the assessment of damages for hearing on 6 to 8 September 2004. The plaintiff's solicitors informed the defendant of the hearing dates by letter.

22 Nothing was heard from the defendant for months. Then he informed the Registrar by a letter dated 28 July 2004:

> With reference to the date of 6 September 2004 for the hearing of the assessment of damages for Suit Nos 1459 of 2001/F and 1460 of 2001/X, please be informed that due to unforeseen circumstances, I will return to Singapore only in September 2004.
>
> As I will require time to settle in after being away for half a year, I will not be able to prepare for the hearing immediately upon my return. I would like to be able to explore a mutually convenient date with the plaintiffs for the hearing.

23 In response to that letter, the Registry issued a notice to the parties to attend before me for directions on 2 September 2004, to which it received another letter from the defendant dated 20 August 2004 stating:

> I refer to your letter dated 12 August 2004 in which you indicated that the parties would appear before Justice Kan Ting Chiu for directions on Thurs 2 Sept 2004 at 10 am.
>
> I had faxed you a letter dated 10 August 2004, indicating that I would be back in Singapore only in September. Perhaps it wasn't clear in my letter but I will only be returning in mid-September, hence, my letter to indicate that I would not be able to attend the hearing originally set for 6 September 2004.
>
> This would mean that I would not be able to make it on 2 September 2004 for directions. I apologise for the misunderstanding and would like to request that another date be selected in early October for directions.

(The reference to the letter dated 10 August 2004 appears to be a mistake. The letter was dated 28 July 2004.)

24 On 24 August 2004, the Registry informed the defendant that the hearing for directions on 2 September 2004 would proceed, and that the assessment of damages would be heard on 6 to 8 September 2004.

25 The defendant did not respond to the letter and did not attend before me on 2 September 2004. Counsel for the plaintiff informed me that they were ready to proceed with the assessment. I directed the assessment of damages to proceed for this suit, to be followed by the assessment of damages in the related action in Suit No 1460 of 2001, *Goh Chok Tong v Chee Soon Juan.* The Registry informed the defendant of these directions.

26 When the defendant failed to attend the hearing on 6 September 2004, I proceeded with the assessment in his absence. The plaintiff's affidavit of evidence-in-chief was admitted in evidence with minor corrections. At the close of the hearing, I ordered the parties to make their written submissions by 13 September 2004 and their replies by 20 September 2004. The plaintiff's written submissions were filed in compliance with my order.

27 The defendant did not file his submissions. Instead, he wrote to the Chief Justice on 16 September 2004 to request for the hearing to be reconvened so that he could cross-examine the plaintiff.

28 The parties were informed to come before me on 30 September 2004. The defendant then

made the application to me. Mr Davinder Singh SC, who appeared for the plaintiff, did not object to the application, but asked that the defendant state the grounds of the application in an affidavit and that the defendant be subject to cross-examination on his affidavit.

29 I agreed that the defendant should state the full facts and basis on which he wanted to have the assessment hearing reconvened for him to cross-examine the plaintiff, and I directed him to file and serve his affidavit by 13 October 2004. I left the question whether he was to be cross-examined on his affidavit to be decided after the affidavit was made.

The defendant's application to cross-examine the plaintiff

30 The defendant's application would not have been necessary had he attended the hearing scheduled on 6 to 8 September 2004. At that hearing, he would have been entitled to cross-examine the plaintiff on the assessment of damages.

31 By being absent, he did not avail himself of the right. Nevertheless, I was prepared to consider his application that the proceedings be rolled back for him to cross-examine the plaintiff. Although the defendant filed the affidavit out of time on 15 October 2004, and failed to serve it on the plaintiff as directed, I heard the application on its merits.

32 In his affidavit, the defendant referred to his absence from Singapore in four paragraphs:

> 4. I left Singapore for Durban, South Africa to attend a conference of the World Movement for Democracy from 1-5 February 2004. I returned to Singapore from South Africa on 6 February 2004. I left Singapore on 11 February 2004 and returned on 14 September 2004.
>
> ...
>
> 12. I left the United States on 30 August 2004 and arrived in Taiwan on 31 August 2004.
>
> 13. I remained in Taiwan and attended a meeting of the Alliance for Reform and Democracy in Asia on 9 to 10 September 2004.
>
> 14. I left Taiwan on 14 September 2004 and arrived in Singapore the same day.

33 The affidavit did not set out the case for re-calling the plaintiff for cross-examination. As the defendant had failed to attend the hearing on 6 September 2004, there must be grounds to justify the reconvening of the hearing; he must show that he had acted responsibly and in good faith in respect of the assessment of damages and had a genuine and sound reason for being absent.

34 For this reason, the background to the assessment hearing was reviewed. On 29 July 2003, when the parties appeared before an assistant registrar, directions were made, *inter alia*, that:

> 1. The Plaintiff by 19 September 2003 serve the Defendant with a list of documents limited to the documents relating to the damages and file an affidavit verifying such list.
>
> 2. The Defendant by 19 September 2003 serve the Plaintiff with a list of documents limited to the documents relating to the damages and file an affidavit verifying such list.
>
> 3. Inspection of documents in the List of Documents be completed within 21 days from 19 September 2003.

4. The Plaintiff and the Defendant do file and serve on each other affidavits of the evidence in chief of all witnesses by 16 January 2004 and objections to the contents of the affidavit evidence shall be taken within fourteen (14) days after the exchange of the affidavit evidence.

35 The defendant did not serve his list of documents, affidavit or notice of objection on the plaintiff. On 31 January 2004, the defendant wrote to the Registrar and the plaintiff's solicitors the letter set out in [19] above.

36 The Registrar issued a notice dated 5 February 2004 for parties to appear before an assistant registrar on 10 August 2004 to take directions. The defendant did not attend before the assistant registrar although he was in Singapore. His explanation was that he did not receive the notice. The assessment was fixed for 6 to 8 September 2004 in his absence.

37 A notice of appointment for the hearing dated 12 February 2004 was issued to him, but he did not respond till 28 July 2004, when he wrote to the Registrar the letter set out at [22] above.

38 He explained that he had not written earlier because he only became aware of the dates when his sister brought to him the plaintiff's solicitors' letter informing him of the hearing dates when she visited him in the United States in July 2004.

39 The hearing dates were not changed. Instead, the Registrar informed the parties on 12 August 2004 to appear before me on 2 September 2004 to take directions.

40 The defendant's response was to write to the Registrar again on 20 August 2004 the letter set out at [23] above.

41 The affidavit the defendant filed was lacking in particulars of his fellowship and of his inability to return to Singapore for the assessment hearing. There was no specific information about the duration of the fellowship or of his movements after its completion.

42 Mr Singh applied to cross-examine the defendant on the affidavit. He argued that the affidavit was insufficient to support the defendant's application and that he should be cross-examined on it to show that the application was without merit. The defendant rose to the challenge and agreed to be cross-examined.

43 With the benefit of cross-examination, a fuller picture emerged of the circumstances of the defendant's absence from Singapore. When the defendant was out of Singapore from February to September 2004, besides attending the fellowship, he made other trips:

(i) 1–5 February From Singapore to South Africa and back;

(ii) 11–19 February From Singapore to Taiwan and on to the United States;

(iii) 1–3 August From the United States to Hong Kong and back;

(iv) 30 August From the United States to Taiwan;

(v) 14 September From Taiwan to Singapore.

44 In his letter of 31 January 2004, he had disclosed his attendance of the fellowship "from February until August 2004". In his affidavit, he further disclosed his trip to South Africa and his

second trip to Taiwan.

45 The defendant omitted to state in his letter of 31 January 2004 that he was intending to go to South Africa and return to Singapore first before leaving again for a stay over in Taiwan on his way to the United States for the fellowship.

46 Even when he wrote on 28 July 2004 to vacate the hearing, he did not reveal that the fellowship was to end in three days on 31 July and that he was going to make visits to Hong Kong and Taiwan before returning to Singapore.

47 In his affidavit, he still did not disclose the Hong Kong visit, and did not explain why he went to Taiwan on 31 August when his meeting was scheduled for 9 to 10 September 2004.

48 It was only on cross-examination that he revealed that he was in Taiwan before and after attending the fellowship so that he, his wife and children could spend time with his Taiwanese parents-in-law.

49 When he was questioned about the meeting in Taiwan of 9 to 10 September, he said that he was the chairman of the Alliance for Reform and Democracy in Asia and that the meeting dates were fixed before he learnt of the assessment dates in July. However, he did not produce any records relating to the fixing of the meeting dates, and claimed that the records were stored in the computer he used in the United States, and were no longer accessible to him.

50 It is clear that the defendant had not been open and forthright about his inability to attend the assessment hearing. If he had stated that the fellowship started on 1 March and that he did not intend to go to the United States before 19 February, it was possible for the assessment to be fixed for hearing before he left.

51 I also did not accept his explanation for not producing evidence on the time the Taiwan meeting dates were fixed. Even if he did not have access to the computer he used in the United States, he could have obtained the records from the other parties involved in the arrangements, or to get them to confirm that the dates were in fact taken before 28 July 2004 when he wrote the letter at [22] above. If the meeting was fixed before 28 July, why did he not mention the meeting in the letter? He must have known that it could strengthen his application to vacate the assessment dates.

52 Even if the meeting was fixed before 28 July, that would not necessarily justify his absence from the assessment hearing. A litigant must arrange his affairs so that he can attend court when he has to. If the meeting dates were fixed before the hearing dates, the defendant would only be excused from not attending court if the court was satisfied that the meeting dates could not be changed and that the meeting was so important that the defendant had to be present. The defendant did not do anything to show either.

53 The defendant was not really interested in moving on with the assessment. As Mr Singh had pointed out, he did not leave instructions with his family members or others to forward letters or court documents to him when they were received at his Singapore addresses, nor did he notify the court or the plaintiff's solicitors of his address when he was in the United States to enable them to communicate with him there.

54 In the course of hearing the plaintiff's application to cross-examine him on his affidavit, the defendant applied to cross-examine the plaintiff and Mr Singh. That was an unusual application. The defendant was seeking to cross-examine them as a part of his application to cross-examine the

plaintiff in the assessment hearings.

55 He explained that he wanted to cross-examine the plaintiff and Mr Singh because:

> ... I intend to show to the Court that Mr Singh and/or his client had lied before and during the course of the cross-examination that took place yesterday and today before, in an attempt to mislead the Court into believing that I had not intended to attend the hearing of 6th September when it was actually they who had schemed and to make it difficult for me to attend ...[1]

56 Mr Singh opposed the application. He argued that there was no basis to order cross-examination of the plaintiff and him when neither of them had filed any affidavit in response to the application to cross-examine the plaintiff on the assessment of damages. If the defendant had made allegations against them in support of his application, they might have found it necessary to respond to the allegations by affidavit rather than to leave them unanswered. Had they filed affidavits to respond to the allegations, the defendant might apply to cross-examine them. But as they did not file any affidavits, they should not be cross-examined by the defendant.

57 The fact is that the defendant had never made the allegation earlier, and was bringing up a new issue at this late stage of his application to roll back the proceedings to cross-examine the plaintiff in the assessment of damages. He had not alleged in his affidavit in support of the main application that the plaintiff and Mr Singh had schemed to make it difficult for him to attend the assessment hearings. His case, as deposed in his affidavit of 15 October 2004, was that he could not attend because he had to remain in Taiwan to attend the meeting on 9 to 10 September. There was not a word in his affidavit alleging a scheme to prevent his attendance in court on 6 to 8 September.

58 The truth is that his attendance at the meeting in Taiwan had nothing to do with the plaintiff or Mr Singh. He was involved in convening the meeting. The alleged scheme appeared not only to be an afterthought, but was also inconsistent with his own case. There was no merit in his application based on this unfounded allegation, and I dismissed it.

59 The defendant then asked for an adjournment to prepare his submissions on the application to cross-examine the plaintiff in the assessment hearing. I stood down the hearing for an hour for that purpose. He had wanted a longer adjournment, but I felt that it was sufficient because he must have identified the grounds for his application when he made his application. The adjournment was given to allow him to organise the grounds. Having observed his performance in court, I had no doubt that he had the ability to do that in an hour.

60 When the hearing resumed, the defendant protested that he was being treated unfairly and unjustly, complained that he was unable to make his closing submissions, and made no substantive submissions on his application.

61 As I have stated earlier, the onus is on the defendant to persuade me to roll the proceedings back so that he can cross-examine the plaintiff despite his absence at the previous hearing. This is an uncommon application, different from an application for an adjournment (because the hearing had taken place on 6 September 2004) or to set aside a judgment or order (as none was made on 6 September 2004). There were no set principles cited to me which should be applied or followed in such a situation. In my view, in such applications:

(a) the applicant's general conduct of the case;

(b) the reasons for the absence;

(c) the purpose of the intended cross-examination; and

(d) any prejudice that may be caused to either party

must be considered together with any other relevant matter.

62 When the defendant's conduct of the case is reviewed, he can be seen to have been withholding information about his travelling plans when he wrote to the Registrar on the fixing and adjournment of the hearing dates, and he was intentionally hindering the progress of the case by not disclosing his address in the United States to enable the court or the plaintiff's solicitors to communicate directly with him, and not arranging with his associates and family members to forward to him communications addressed to him at his Singapore addresses. He had also not complied with the directions to file his affidavit of evidence-in-chief, and to give discovery of his documents.

63 With regard to his absence from court on 6 September 2004, he did not do anything to show that the meeting dates were fixed before he knew of the hearing dates, that he was unable to change the meeting dates, or that his presence at the meeting was indispensable.

64 As for the purpose of cross-examining the plaintiff, the defendant had not filed any affidavit for the assessment of damages as directed by the Order of Court of 29 July 2004. Even when he filed his affidavit of 15 October 2004 in support of his application to cross-examine the plaintiff, after the plaintiff had filed his affidavit on damages, he did not state what he proposed to cross-examine the plaintiff on. This left me uninformed as to why he needed to cross-examine the plaintiff.

65 On the question of prejudice, the defendant had not shown that he had suffered any prejudice by not being able to cross-examine the plaintiff or Mr Singh because he had given no real reason for cross-examining them. On the evidence before me, the plaintiff would not suffer any prejudice if he and Mr Singh were cross-examined, but this only assists the defendant by not weakening his application further.

66 In the circumstances, the defendant had not discharged the onus that was on him, and I dismissed the application. I gave him the opportunity to make written submissions on the damages payable to the plaintiff and to reply to the plaintiff's submissions on damages, but he did not file any submissions or reply.

Quantification of damages

67 In assessing the appropriate damages to be awarded on a case of defamation, the following factors should be taken into consideration:

(a) the nature of the defamation;

(b) the standing of the parties;

(c) the mode and extent of publication of the defamatory statements;

(d) the conduct of the parties; and

(e) the effect of the defamation on the plaintiff.

The nature of the defamation

68 The slander was serious. It accused the plaintiff, as the Senior Minister, of concealing from Parliament and the public, information on a $17bn loan made to Indonesia and of continuing to evade disclosure of the loan because he had something to hide. This was a severe indictment against a senior member of the government for the disposal of a large sum of the nation's funds.

The standing of the parties

69 The plaintiff was at the material time the Senior Minister in the Cabinet. He is a founder member of the People's Action Party and was the Secretary-General of the party between 1954 and 1992 except for a short period in 1957. He was the Prime Minister of Singapore from 1959 to 1990 when he became the Senior Minister. Since 12 August 2004, he is the Minister Mentor in the Cabinet.

70 The defendant was at the material time the Secretary-General of the Singapore Democratic Party and a candidate in the 2001 parliamentary elections.

71 They are prominent public figures. The public perception of their integrity will affect their effectiveness and standing, and they have the capacity to damage the reputations of those they speak ill of.

The publication of the defamatory statements

72 The statements were made at an election rally attended by members of the public and the news media. The defendant must have expected that his words would be published, and had expressly asked the news media to publish what he said. The words were broadcast over television by Channel News Asia on 28 October 2001. *The Business Times* also carried an account of the statements on 29 October 2001.

The conduct of the parties

73 The conduct of the defendant was extraordinary. Initially, he agreed to withdraw the allegations he had made, and read out and published the retraction and apology. When he failed to pay damages and costs promised in the apology, and was sued by the plaintiff, he alleged that the apology or compromise was null and void, being the product of duress and intimidation. He also pleaded justification, qualified privilege and fair comment in his defence, but led no evidence and made no submissions to support these defences.

74 As Mr Singh had pointed out, the defendant had delayed the progress of the action. When the plaintiff applied for summary judgment, the hearing was adjourned to allow the defendant to apply for the admission of Stuart Littlemore QC to represent him. After that application was dismissed, the defendant obtained a further adjournment of the hearing of the plaintiff's application on the ground that he intended to appeal against the dismissal. However, he did not file an appeal, nor did he inform the court or the plaintiff that he had decided not to appeal.

75 When the plaintiff sought to reinstate his application for hearing, the defendant informed the court that he intended to apply for William Henric Nicholas QC and Martin Lee QC to represent him. He was given three weeks to file the applications, but he failed to do that and filed the applications three weeks late, causing the hearing of the plaintiff's application to be adjourned again. When the applications were heard and dismissed, he again informed the court that he intended to appeal against the dismissals. The hearing of the plaintiff's application was adjourned again pending the appeals, but once again the defendant did not file them or inform the court or the plaintiff of his change of intention.

76 The defendant's conduct of his defence is also noteworthy. He claimed that the apology was the result of threat and intimidation. This allegation was found to be so lacking in substance and merit as to raise no triable issue. On his other pleaded defences of justification, qualified privilege and fair comment, he did nothing to make good any of them.

77 His conduct leads inexorably to the inference that he acted in bad faith throughout. He knew the allegations he made were false, but he refused to admit that, and tried instead to delay the progress of the legal proceedings against him.

78 After the hearing of the application for summary judgment, and the appeal from the SAR's judgment, the hearing of the assessment of damages was delayed again by the defendant. This has been recounted already in this judgment. It suffices for me to state here that he was withholding information about his travel commitments and had made communication with him difficult by not disclosing his address in the United States.

79 The plaintiff's conduct, on the other hand, cannot be faulted. He had done nothing to provoke or encourage the defendant to make the statements complained of, and had offered him the opportunity to retract them and avoid litigation.

The effect of the defamation on the plaintiff

80 The defamatory statements had brought annoyance to the plaintiff, and had obliged him to spend time and effort in seeking the aborted compromise, and then to prosecute this action to protect and preserve his reputation. That aside, there was nothing which suggested that his standing in and outside Singapore was affected in any way.

The appropriate damages

81 The plaintiff tendered written submissions on damages, setting out most, if not all, of the awards made to the plaintiff as the Prime Minister and the Senior Minister and to Mr Goh as the Prime Minister. Counsel specifically drew attention to the advice given by the Court of Appeal in *Tang Liang Hong v Lee Kuan Yew* [1998] 1 SLR 97 where L P Thean JA, in delivering the judgment of the court, noted at [158]:

> [T]here appears to be a trend of such damages rising steadily and significantly over the past few years, and in a few recent cases, each successive award appeared to overtop the preceding one. Such a trend should be discouraged; otherwise, damages for defamation would mount and eventually become extremely high, ranking almost with the grossly exorbitant awards so often made by juries in other jurisdictions.

82 Subsequently, the Court of Appeal delivered another judgment in *Goh Chok Tong v Jeyaretnam Joshua Benjamin* [1998] 3 SLR 337 (the decision of the High Court from which some facts stated herein are taken is reported in [1998] 1 SLR 547), which is particularly relevant for consideration. I shall refer to this case as *Goh v Jeyaretnam*.

83 In that case, the plaintiff was then the Prime Minister. The defendant, Mr Jeyaretnam, was standing as an opposition candidate in parliamentary elections together with Mr Tang Liang Hong ("Mr Tang"). In the course of the campaign, Mr Goh declared that Mr Tang was unsuited to be a Member of Parliament as he was anti-Christian and was a Chinese chauvinist. Mr Tang was indignant at these remarks and he made two police reports.

84 In one of the reports he complained that the plaintiff and ten members of the plaintiff's party had falsely accused him of being an anti-Christian Chinese chauvinist and of being anti-English-educated, and that they were making statements that might cause social and racial disharmony in Singapore. He requested the police to investigate into his complaint on an urgent basis.

85 At an election rally, Mr Tang interrupted Mr Jeyaretnam while he was speaking, and handed him some papers. After taking a glance at them, he said:

> And finally, Mr Tang Liang Hong has just placed before me two reports he has made to the police against, you know, Mr Goh Chok Tong and his people. But just remember. Have one thing on your mind, one purpose, one will, that it is not for Mr Tang Liang Hong or for me or for the Workers' Party that you are voting. You are voting for yourself. And the PAP have been trying desperately to win this battle. They've been trying to stop you from voting for your rights. Well, show them tomorrow and I will then be very, very proud of you people of Cheng San.[2]

Those words were republished in *The Straits Times* and referred to by *The Business Times*.

86 Mr Goh sued Mr Jeyaretnam for defamation on those words. The trial judge found in his favour and awarded him $20,000 damages. Both parties appealed against the judgment, and the matter came before the Court of Appeal.

87 In the judgment delivered by Yong Pung How CJ, the court considered the inferences the ordinary man would draw from Mr Jeyaretnam's words, and held at [27]:

> We agree with the trial judge that to the ordinary man the words would not imply that Mr Goh was guilty of criminal defamation and criminal conspiracy or a serious criminal offence; they would not impute guilt. But the ordinary man, having heard the statement that Mr Tang had made police reports against Mr Goh and his colleagues, would understand that Mr Tang, being a lawyer and politician, 'having avowed to protect his reputation and integrity' had taken a serious step and made police reports against Mr Goh, and that it would be likely that the police would investigate into some wrong doings alleged in the reports on the part of Mr Goh. In our opinion, that was the natural and ordinary meaning conveyed to the ordinary man, and the words bearing such meaning were defamatory of Mr Goh.

The court went on to consider the innuendo meaning of those words, and held at [30] that:

> [T]he words suggested more than that an investigation was possible: they suggested that Mr Goh would be likely to be investigated for the offence or offences alleged in the reports.

88 The court found that the trial judge erred in finding that there was no malice and found that there was malice on the authority of *Horrocks v Lowe* [1975] AC 135, as Mr Jeyaretnam had made the statement recklessly, without considering or caring whether it be true or not.

89 The court also found that the trial judge had failed to give sufficient weight to the aggravation caused by defence counsel's accusations against the plaintiff during cross-examination which the court found "amounted to an attack on his integrity, character and suitability for his position as Prime Minister"[3] and (at [57]) that:

> [I]nsufficient regard was paid to the precedents established in case law. A broad framework of awards has emerged from past cases and these cases serve as a guide in determining the appropriate amount of damages to be awarded. In this respect, the awards made in cases

> preceding this appeal must be treated with care: they are not necessarily accurate indications of appropriate awards of damages. Even so, given our findings on the issue of malice and the gravity of the aggravating factors, together with the extent of republication and the high standing of Mr Goh, the global award of $20,000 appears to us totally disconsonant with those awards, including those which might now be considered excessive.

and raised the award to $100,000.

90 The judgment offers a useful guide on the assessment of damages in the present case. However, in drawing guidance from that judgment, the similarities and differences between the present case and that case must be taken into account.

91 In *Goh v Jeyaretnam*, the plaintiff, Mr Goh, was the Prime Minister, the holder of the highest office in the government, and he was accused of having done something which might cause the police to investigate him for criminal defamation.

92 The defamatory statements in *Goh v Jeyaretnam* were republished by two newspapers, *The Straits Times* and *The Business Times*. The defendant's defamatory statements were republished only in *The Business Times*. The statements would have reached a smaller readership.

93 The statements in both cases attacked the integrity of the respective plaintiffs, both of whom are persons of unblemished integrity whose ability to discharge the burdens of their high offices would be affected if their reputations were tarnished by false accusations. However, a distinction can be made between a statement that "B has reported to the police that A has committed an offence, and the police are likely to investigate into it", which is the nature of the defamation in *Goh v Jeyaretnam,* and a statement that "I tell you that A has done something wrong and is suppressing the truth about his actions", which is the essence of the defendant's charge against the plaintiff. The first statement is a less severe indictment in that it refers to the complaint of another person, and did not go beyond stating that the police are likely to investigate into the complaint. The second statement is more damning in that the maker is speaking from his own knowledge and has declared the actions to be wrongful.

94 I also find that aggravated damages should also be awarded in the present case. In this regard I find the malice and aggravation in the present case to be greater than in *Goh v Jeyaretnam*. The defendant made unfounded allegations about the alleged loan when he would have known that there was no loan if he had made a check before making those statements. Then he refused to retract them, and claimed justification without adducing any evidence in support of that defence. Then he treated the court proceedings as a continuation of his confrontation with the plaintiff, delaying the proceedings, and complaining that he was denied the right to legal representation when he chose not to appoint local counsel to act for him.

95 Of the factors mentioned, the specific charge of wrongdoing in relation to the alleged loan and the baseless defence of justification most clearly distinguish this case from *Goh v Jeyaretnam*, and higher damages than the $100,000 awarded in that case are called for.

96 In my view an award of $200,000 is appropriate in this case.

97 Some of the SAR's orders relating to the assessment of damages need to be examined.

98 When he entered interlocutory judgment for the plaintiff, he ordered that the defendant was to pay the plaintiff "damages (including aggravated damages) to be assessed by a Judge in Open

Court".

99 It is not entirely clear what was intended by "damages (including aggravated damages)". If it meant that the damages assessed may include aggravated damages, the words are superfluous as the assessment process must necessarily include the determination whether aggravated damages are to be awarded.

100 An alternative and more likely intended meaning is that there shall be an assessment of aggravated damages. If this was the intention, the order was inappropriate. Inasmuch as the assessment process must necessarily include the determination whether aggravated damages are to be ordered, that decision should be left to the person who assesses the damages.

101 If it were open to me, I would vary the order by deleting the reference to aggravated damages. However, the SAR's order was affirmed on appeal by Rubin J, when this point was not taken up, and I cannot vary the order of my brother judge.

102 In principle, the liability for the costs of the assessment hearing and the basis for the taxation of the costs should also be reserved to the person who makes the assessment. However, in this case, the defendant had agreed under the compromise to indemnify the plaintiff for all costs and expenses incurred by him. This converted the plaintiff's claim for costs into a contractual right the court will recognise and enforce, and the order made was correct.

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[1]Notes of Evidence page 378

[2]para 19 of the High Court decision

[3]para 56