Lee Kuan Yew v Chee Soon Juan
[2003] SGHC 78

Case Number : Suit 1459/2001

Decision Date : 04 April 2003

Tribunal/Court : High Court

Coram : MPH Rubin J

Counsel Name(s) : Davinder Singh SC, Hri Kumar and Nicolas Tang (Drew & Napier LLC) for the plaintiff/respondent; Defendant/appellant in person

Parties : Lee Kuan Yew — Chee Soon Juan

Civil Procedure – Pleadings – Defence – Particulars of defence of duress not pleaded – Effect on defendant's case

Civil Procedure – Summary judgment – Whether to set aside summary judgment and grant defendant leave to defend claim – Whether defendant had real or bona fide defence

Contract – Discharge – Breach – Whether intimidation a defence to breach of contract of compromise

Contract – Duress – Illegitimate pressure – Whether threat to enforce one's legal rights could amount to duress

Tort – Defamation – Defamatory statements – Republication – Words republished by mass media – Whether defendant liable for republication

Tort – Defamation – Defamatory statements – Whether defamatory in natural and ordinary meaning or by way of innuendo

1 This was an appeal by Dr Chee Soon Juan to judge-in-chambers from the decision of Senior Assistant Registrar Mr Toh Han Li ('the SAR') granting interlocutory judgment with damages (including aggravated damages) to be assessed in a defamation action brought by the respondent, Mr Lee Kuan Yew. Mr Lee is, and was at all material times, the Senior Minister in the Prime Minister's Office, a Cabinet Minister of the Government of Singapore and the former Prime Minister of Singapore. On 25 October 2001, Mr Lee, as a candidate of the People's Action Party ('PAP'), was returned unopposed as a Member of Parliament for Tanjong Pagar Group Representation Constituency ('GRC') in the 2001 General Elections. Dr Chee is, and was at all material times, the Secretary-General of the Singapore Democratic Party ('SDP'). Dr Chee was a candidate, along with four others, for Jurong GRC in the 2001 General Elections.

2 On 28 October 2001, in the course of campaigning for the 2001 General Elections, Dr Chee reportedly spoke and published certain words in public and in the presence of, *inter alia*, various members of the print and broadcast media at an election rally at Nee Soon Central ('the Words'), which Mr Lee alleged to be defamatory of him.

3 On 19 November 2001, the present suit was commenced by Mr Lee against Dr Chee. On 8 December 2001, Mr Lee filed an amended Statement of Claim seeking to enforce a contract of compromise arising from the publication of an apology by Dr Chee or alternatively, claiming against him for defamation. In Suit No 1460 of 2001, Mr Goh Chok Tong, the Prime Minister of the Republic of Singapore, commenced a similar suit against Dr Chee for allegedly defamatory words spoken by him at Hong Kah West hawker centre and at the election rally at Nee Soon on 28 October 2001.

4 In both cases, Mr Lee and Mr Goh took out a summons in chambers application praying for

interlocutory judgment with damages (including aggravated damages) to be assessed; and costs of the action, including the assessment of damages, to be taxed on an indemnity basis. Both applications were heard at the same time by the SAR, who granted the applications for interlocutory judgment.

The Facts

The Words

5 On 28 October 2001, at an election rally held at Nee Soon Central, Dr Chee spoke the following words in the presence of members of the public and the print and broadcast media:

> 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 anymore. 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.

6 The Words and/or their gist were prominently republished by the print and broadcast media.

The first apology

7 On 29 October 2001, the defendant wrote a letter addressed to Mr Goh as follows:

Dear Sir,

With reference to the incident at the Hawker Centre at Jurong East on the morning of 28 October 2001, I wish to reiterate my position that politics should not be conducted at the personal level.

As such I wish to let you know that if I have offended you in a personal manner during our meeting I would like to extend to you my sincerest apologies.

At the political level, however, I stand by the issues that I have been raising in this election.

Chee Soon Juan

8 On 30 October 2001, Dr Chee issued a Media Release as follows:

> The only reason why we brought up the issue about the $17b loan to Indonesia was to compare it with the $2.1b the SDP has proposed to help retrenched workers in Singapore. There was never any intention to cast any aspersion on anyone, least of all Mr Goh Chok Tong. I therefore withdraw my allegation that Mr Goh was dishonest and not fit to be the Prime Minister. I offer to him my apologies.

9 Before the SAR, Dr Chee took no issue with the first apology and confirmed that it was made voluntarily.

Mr Lee's letter of demand

10 On 30 October 2001, Mr Lee's solicitors, Drew & Napier LLC, wrote to Dr Chee as follows:

Dear Sir

Defamation

1. We act for Mr Lee Kuan Yew.

2. Since 1997, the question of Singapore's financial assistance to Indonesia has been discussed, *inter alia*, in Parliament. In particular, and in response to questions raised by Members of Parliament, including opposition MPs, the Prime Minister, and other Ministers on his behalf, have given detailed explanations, *inter alia*, on the form of the said financial assistance extended by Singapore to Indonesia.

3. It has been explained in Parliament (and widely reported), as is the fact, that Singapore's rescue package to Indonesia was in two parts: a standby loan facility of US$5 billion to Indonesia and the purchase of the Rupiah in the foreign exchange markets to support the Indonesian currency.

4. In particular, the following facts have been explained in Parliament, and equally widely reported:-

(a) with regard to the standby loan facility, Singapore's offer of financial assistance to Indonesia was not made alone, but was part of a programme formulated with the assistance of the IMF, the World Bank and ADB. The programme included US$23 billion of financing from these agencies as well as Indonesia's own foreign exchange reserves. Singapore was one of a number of countries, including

Japan, the United States, Malaysia, Australia and Brunei, which agreed to provide supplementary financing to support the programme. Singapore's offer of a standby loan facility was intended only as a "second line of defence" to be drawn down if the said US$23 billion financing from the IMF, the World Bank and the ADB was found to be inadequate;

(b) on 31st March 1998, our client wrote to President Suharto informing him of Singapore's decision to establish a Singapore-Indonesia Bilateral Trade Finance Guarantee Scheme ("the BTFG Scheme"). The BTFG Scheme was intended to provide export credit insurance initially for Singapore's domestic exports to Indonesia, and later retained imports from Indonesia and eventually, exports to Indonesia through Singapore by Indonesia's trading partners who do not have their own bilateral export credit schemes;

(c) the BTFG Scheme was to have replaced the said standby loan facility of US$5 billion; and

(d) no funds were ever disbursed by Singapore under the US$5 billion standby loan facility.

5. As a candidate for election to Parliament, and as the leader of the Singapore Democratic Party, you must be taken to be fully aware of the above matters.

6. We are instructed that, in the course of campaigning on 28 October 2001, you spoke the following words, *inter alia*, in the presence of various members of the print and broadcast media:

Yesterday, Mr Lee Kuan Yew was at his best. When he's at his best, bad names have no problem rolling off his tongue. He calls me all sorts of names. How do I react? I say 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 start talking about the issues…

And so I challenged Mr Lee Kuan Yew yesterday, 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 your $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 the same question that I want to ask Mr Lee Kuan Yew. 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 the election. If it will define this campaign for the SDP it is this issue. We want the media, whether it is the broadcast media or your press media to report on this what we've just said tonight. Makes all the difference. And if they report it, I want to challenge Mr Lee Kuan Yew, please 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 anymore. We want to talk about creativity. So Mr Lee Kuan Yew, I challenge you, tell us about this $17 billion you loaned to Suharto.

7. The words in paragraph 6 above ("Words") were prominently published by the media on the same and the following day.

8. By the Words, even more so to those persons who are informed of the background (of whom there are many), you have falsely alleged, *inter alia*, that our client is dishonest and unfit for office because:

(1) he concealed from Parliament and the public, and/or deliberately misled Parliament in relation to, a $17 billion loan made to Indonesia; and

(2) that our client's continued evasion of the issue was because he had something discreditable to hide about the transaction.

9. The Words were published maliciously and constitute a very grave slander and libel against our client, who is the Senior of Singapore. The Words were calculated to gain political mileage, and to disparage our client, and impugn his character, credit and integrity.

10. In the premises, our client requires you to:

(a) publish, at your 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 31st October, 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 him by way of damages; and

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

11 Our client requires your written confirmation that you will comply with these conditions, along with your offer for damages, no later than 10 am on 2nd November 2001, failing which our instructions are to commence legal proceedings against you.

11 A draft apology was also attached to the letter.

The second apology

12 On 31 October 2001, Dr Chee read out an apology at an SDP rally at Jurong East ('the second apology'). Dr Chee also published the second apology in the 1 November 2001 editions of the *Straits Times* and the *Today* newspaper. The second apology was in the exact terms of the draft apology enclosed by Mr Lee's solicitors and read as follows:

APOLOGY

1. On Sunday 28 October 2001, at a rally at Nee Soon Central, I made certain statements which were understood to mean that Senior Minister 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 caused 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.

Chee Soon Juan

The decision below

13 Before the SAR, counsel for Mr Lee, Mr Davinder Singh SC, submitted that as a result of the publication of Dr Chee's second apology, there was a valid and binding contract of compromise between the parties, which Mr Lee was entitled to enforce, and to which Dr Chee had no arguable defence. In any event, Mr Lee was entitled to interlocutory judgment because Dr Chee had no arguable defence to his alternative claim for defamation.

14 In his Defence and Counterclaim filed on 22 December 2001, *Dr Chee denied speaking the Words*, denied that they referred to Mr Lee, denied that the Words even if spoken were defamatory, denied that he was liable for the republication of the words and pleaded the defences of justification, qualified privilege and fair comment (emphasis added). Dr Chee also pleaded that in any event, any apology or compromise achieved by Mr Lee was null and void, in that it was the product of duress and intimidation. He went so far as to say that the apology tendered and the resulting compromise were not sincere on his part (see para 15 of Dr Chee's affidavit filed on 26 July 2002).

15 It would appear from Dr Chee's two affidavits as well as his submissions that the mainstay of his defence was that the second apology, and any contract of compromise that had arisen as a result of this apology, were all null and void due to duress and intimidation. Dr Chee's affidavits and submissions did not, however, touch on the other defences that he had earlier pleaded.

16 The SAR determined that there was a valid contract of compromise between the parties as a result of Dr Chee's agreement to apologise in terms of the draft apology enclosed in the letter of demand, following the principles in ***Shunmugam Jayakumar & Anor v Jeyaretnam JB & Anor*** [1997] 2 SLR 172. He further held that upon Dr Chee's failure to make an offer of damages as required under the contract of compromise, Mr Lee was entitled to enforce the contract of compromise by asking for interlocutory judgment with damages (including aggravated damages) to be assessed.

17 In dismissing Dr Chee's defence of duress, the SAR reasoned that:

(i) Dr Chee had failed to give sufficient particulars of his defence in his pleadings;

(ii) As a matter of causation, Dr Chee's case failed. If Dr Chee's position was that the alleged threat emanated from Mr Lee, the facts showed that the second apology was made before, not after, the alleged threat.

(iii) Dr Chee was not to be believed because his case on duress shifted several times.

(iv) Dr Chee's belief that his apology would 'lessen the consequences' for his party colleagues was entirely misconceived and self-induced.

(v) Dr Chee was not to be believed because he had failed to complain that the second apology was induced by duress until he filed his Defence and Counterclaim on 22 December 2001; and

(vi) In any case, a threat to enforce one's legal rights cannot amount to duress.

18 The SAR also dismissed Dr Chee's defence of intimidation on the ground that it was not a recognised vitiating factor but rather a cause of action in its own right. He held that in any case, a threat to enforce one's legal rights cannot amount to intimidation.

19 In the result, the SAR entered judgment for Mr Lee holding *inter alia* that the Words were defamatory either in their natural and ordinary meaning or by way of innuendo; that Dr Chee was liable for the republication of the words because he intended and in fact demanded that the journalists republish the words; and that although justification, qualified privilege and fair comment were pleaded, Dr Chee offered very little material in support of the defences or made any submissions on them.

20 The SAR also found that the fact that Dr Chee had brought a Counterclaim against Mr Lee for defamation was no reason to grant Dr Chee a stay of execution, much less leave to defend because the facts on which the Counterclaim was founded were separate and distinct from those which gave rise to the present action. On appeal, Dr Chee did not dwell on this aspect of the SAR's judgment.

The appeal

21 During the appeal hearing, Dr Chee endeavoured to impugn the SAR's findings of fact and of law on the ground of bias. It was clear, however, that an underlying grouse was that Dr Chee perceived himself to be at a disadvantage in these proceedings because he had not been granted leave to hire Queen's Counsel. Whilst it is true that Dr Chee appeared in person before the SAR and in this appeal, the records confirmed the fact that he had had ample time to seek legal advice and refine his presentation both before the SAR, as well as before me.

22 While the case was before the SAR, Dr Chee informed him that he had sought the assistance of Mr William Henric Nicholas QC, an expert in the law of defamation in Australia. Upon being informed that Dr Chee wished to defend the application for interlocutory judgment, the SAR took into account Dr Chee's need to consult his legal advisers in setting the timelines for the filing of his affidavit (even though the time for filing such an affidavit had already expired under the Rules of Court), the exchange of written submissions and the hearing itself. Upon Dr Chee's request, the SAR granted him an additional two weeks to file his affidavit, as he needed more time to consult his lawyers. In relation to the appeal before me also, Dr Chee confirmed that he had conferred with overseas counsel on the appeal. When the appeal was in train, I afforded Dr Chee a further opportunity to seek legal assistance if he so required at any stage during the appeal.

23 I now turn to examine the substantive merits of this appeal.

General principles

24 It is a settled principle of law that in an application for summary judgment, the defendant will not be given leave to defend based on mere assertions alone: ***Banque de Paris Et Des Pays-Bas (Suisse) SA v Costa de Naray and Christopher John Walters*** [1984] 1 Lloyd's LR 21 at 23. The court must be convinced that there is a reasonable probability that the defendant has a real or bona fide defence in relation to the issues. In this regard, the standard to be applied was well-articulated by Laddie J in ***Microsoft Corporation v Electro-Wide Limited*** [1997] FSR 580, where he said at p 593 that:

> it is not sufficient to look at each factual issue one by one and to consider whether it is possible that the defendant's story in relation to that issue is credible. The court must look at the complete account of events put forward by both the plaintiff and the defendant and … look at the whole situation. The mere fact that the defendants support their defence by sworn evidence does not mean that the court is obliged to suspend its critical faculties and accept that evidence as if it were probably accurate. If, having regard to inconsistency with contemporaneous documents, inherent implausibility and other compelling evidence, the defence is not credible, the court must say so. It should not let the filing of evidence which surpasses belief deprive a plaintiff of his entitlement to relief.

25 The courts are bound to scrutinise with care any attempt by a disputant to renege a contract of compromise on the ground that it is unenforceable for some reason. As the editors of ***Chitty on Contracts*** (Vol 1, 28th Ed) state at para 17-013, '[t]here is a manifestly obvious public policy in favour of encouragement and enforcement of compromises of disputes which the parties themselves have agreed to.' The editors further comment at para 23-013 that:

> Once a valid compromise has been reached, it is not open to the party against whom the claim is made to avoid the compromise on the ground that the claim was in fact invalid, provided that the claim was made in good faith and was reasonably believed to be valid by the person asserting it.

Duress

26 On appeal, the thrust of Dr Chee's defence was once again duress. I will deal with the issue of intimidation later.

Failure to particularise the defence

27 Dr Chee submitted that the SAR should not have entered summary judgment on the ground that he had failed to particularise his defence of duress because counsel for Mr Lee had never asked for further particulars. He argued that it was not for the SAR to take this point when counsel had not even raised this as an issue. This, Dr Chee, submitted demonstrated the SAR's bias and that he was 'acting as the plaintiff's advocates and solicitors'.

28 There was no merit to this argument. Without sufficient particulars, the court would be unable to assess if the defendant has a real or bona fide defence. The law requires a defence of

duress to be specifically and carefully pleaded, regardless of whether the plaintiff makes a demand for particulars. Order 18 r 8 of the Rules of Court 1997 states expressly states that:

> *A party must in any pleading subsequent to a statement of claim plead specifically any matter*, for example, performance, release, any relevant statute of limitation, fraud or any fact showing illegality -
>
> (a) which he alleges makes any claim or defence of the opposite party not maintainable;
>
> (b) which, if not specifically pleaded, might take the opposite party by surprise; or
>
> (c) which raises issues of fact not arising out of the preceding pleading [Emphasis added].

The commentary on this provision is set out in paragraph 18/8/12 of Supreme Court Practice 1999 as follows:

> Duress- A claim or defence raising duress must be specifically and carefully pleaded. It should contain full particulars of the facts and circumstances relied upon as to where, when, by whom and over whom and in what way such duress was exercised.

29 Further, it was completely incorrect to say that the SAR had taken the point on Mr Lee's behalf without any prompting from counsel. Mr Davinder Singh had expressly made the pleading point an issue in the written submissions before the SAR.

Issues of causation and the credibility of Dr Chee's defence

30 Dr Chee's case before the SAR was that the second apology was prompted by reports from his party colleagues that they had learned from 'mass media reports' that 'Mr Lee Kuan Yew had said something to the effect that what action he took against the other SDP candidates he had identified depended on how [Dr Chee] responded to his demands', as well as an article in the *Straits Times* entitled '5 SDP members may face legal action too' on 1 November 2001 wherein Mr Lee was quoted as saying that five other SDP candidates who repeated Dr Chee's allegations 'may yet receive letters demanding apologies and later on maybe writs of summons'. Insofar as the former was concerned, the SAR found that Dr Chee had given insufficient particulars in support of his defence. Insofar as the alleged threat in the newspaper article was concerned, the SAR found that it could not have been the *causa causans* of the second apology because Dr Chee had made his apology on the night of 31 October, before the publication of the article.

31 Dr Chee accused the SAR of intentionally misrepresenting his position because of bias. On appeal, Dr Chee strenuously sought to explain that he had referred to the newspaper article on 1 November 2001 not for the purpose of demonstrating the time sequence, but for the purpose of referring to the information that was contained therein. He argued that causation was not an issue in this case because Mr Lee must have made his threat on 31 October in order for the *Straits Times* to report it the next day.

32 I am of the opinion that Dr Chee has failed to demonstrate before me as well as before the SAR that he had a real or bona fide defence. The manner in which Dr Chee has conducted the case before the SAR and on appeal revealed that his defence was contrived for the sake of creating some sort of a triable issue. In his Defence and Counterclaim filed in December 2001, Dr Chee's defences of duress and intimidation were but bare allegations. It was only some seven months later, in his first affidavit of 26 July 2002 that he gave some inkling of the specifics of his defence. By the time of this appeal, his case on duress had undergone at least four permutations.

33 In his first affidavit, Dr Chee referred to the *Straits Times* article of 1 November 2001 and stated:

> Upon learning about the newspaper report and what Mr Lee said, my fellow candidates and/or their family members became very anxious and concerned. Some of them urged me to apologise to the plaintiff. I took what Mr Lee Kuan Yew said to be a threat that if I didn't apologise in terms both he and Mr Goh Chok Tong demanded, they would both initiate proceedings against each of my fellow candidates mentioned above.
>
> After lengthy discussions with my fellow candidates, I felt that I had no choice but to issue the apology demanded by the plaintiffs as I did not want to risk jeopardising their future.

It was clear from these passages, therefore, that Dr Chee's position was that his apology of 31 October was prompted by the newspaper report of 1 November. This was the basis of the SAR's finding that Dr Chee had failed to establish causation.

34 When confronted by this material inconsistency at the hearing before the SAR, Dr Chee changed tack and attributed the threat to Mr Goh by referring to another *Straits Times* article also dated 1 November 2001 entitled 'SDP man admits 'no basis' for loan allegations' wherein Mr Goh was reported as saying on 30 October that 'apart from Dr Chee, several other candidates should be taking stock of the allegations they had made'. On appeal, Dr Chee, in an attempt that smacked of *ex post facto* reasoning, tried to rationalise this aspect of his case by saying that he had meant that Mr Goh had made a threat *in addition* to Mr Lee (Emphasis added).

35 During his submissions before me, Dr Chee sought to overcome the problem in chronology by maintaining that Mr Lee was the perpetrator of the alleged threat but advancing the new argument that Mr Lee had made the threat on the same day as his apology instead of the day after. As alluded to above, his case was that Mr Lee must have made the threat on 31 October for it to be reported the next day.

36 Surprisingly, Dr Chee had yet one more theory to offer in his reply to Mr Davinder Singh, where he equated the threat with the letter of demand itself.

37 Dr Chee's story of duress appears to me to be an afterthought given the fact that he did not raise the argument that the second apology was induced by duress until he filed his Defence and Counterclaim on 22 December 2001. Dr Chee complained that it was 'grossly unfair and improper' for the SAR to use this fact against him because the proper place for the defence to be raised was in the pleadings themselves. He argued that the SAR's remarks amounted to 'improper and non-judicial remarks, again highlighting the bias of the Courts.'

38 Dr Chee was, of course, not a lawyer and one would not expect him to express his objections in the form of legal niceties. However, in my view, it was surely not too difficult for someone who had been subject to duress (or for that matter, intimidation) to express in strong terms that he had been forced to make an apology: ***Wellcherry Limited v Gentleteem Limited*** [1999] 1529 HKCU 1. The failure to protest is a legitimate factor to take into account when assessing the credibility of the defendant's defence. In ***Third World Development Ltd & Anor v Atang Latief &***

Anor [1990] 1 MLJ 385, the defendant had alleged that an undertaking that the plaintiff was seeking to enforce against him had been procured under duress. The Court of Appeal, in dismissing this purported defence, observed at page 388:

It is significant that, even at this stage, confronted with a demand for payment of the amount under the undertaking, not a word was uttered by the appellant that the undertaking was forced on him or that the respondents in any way pressurised him to execute the undertaking. It was only after this action was started that the appellant complained that he was coerced into signing the undertaking.

39 In the present case, Dr Chee failed to make any complaint even after the present suit was commenced. When asked by the *Straits Times* on or about 20 November 2001 as to why he had not made an offer of damages and costs, Dr Chee claimed that 'he did not make any offer of compensation because he had been advised to let Mr Goh and Mr Lee make the first move to claim damages and legal costs.' Although he had been advised (legally, I presume) by then, he made absolutely no mention of duress or intimidation until he filed his Defence and Counterclaim on 22 December 2001. Even then, the allegation of duress and intimidation was but a bare statement with some particulars given in his first affidavit of 26 July 2002 and with more particulars added in his second affidavit of 12 August 2002.

40 In any case, it should be remembered presently that the second apology was issued by Dr Chee upon the request and persuasion of his party colleagues and not by any improper pressure brought to bear on him by Mr Lee and/or Mr Goh. In his submissions before me, Dr Chee emphasised repeatedly that he apologised only after his party colleagues exerted pressure upon him. Insofar as his party colleagues were of the impression that an apology from Dr Chee would 'lessen the consequences' for the others, that impression was entirely misconceived. All the media reports adduced before me show that both Mr Goh and Mr Lee were of the opinion that each of the SDP candidates should take individual responsibility for their behaviour. Mr Goh was quoted in 'SDP man admits 'no basis' for loan allegations' as saying that each of the SDP candidates should take stock of the allegations they had made and each consider some act to mitigate the harm they had done. No mention was made of Dr Chee apologising on their behalf. The same applies to Mr Lee who was quoted in entitled '5 SDP members may face legal action too' as saying that even if Dr Chee apologised, that would not solve the matter completely. As the SAR put it, the second apology was 'self-induced, rather than threat-induced' in that it was an attempt on the part of Dr Chee to appease his party colleagues and stay in the election race.

The status of threats to enforce legal rights as duress

41 Even if I were to assume in Dr Chee's favour that Mr Lee and/or Mr Goh had indeed threatened to commence legal actions against Dr Chee's party colleagues, I find, as did the SAR, that such a threat did not amount in law to duress. On appeal, Dr Chee attacked the SAR's finding as 'disingenuous and question begging' and argued that the SAR was 'inappropriately biased' to 'blankly assert that the Plaintiff in issuing legal threats was merely threatening to enforce his legal rights. The Plaintiff had no right to sue the other candidates but then the Court glosse[d] over this undeniable fact as if it did not exist.'

42 It was difficult to determine the basis for Dr Chee's assertion that Mr Lee and/or Mr

Goh had no right to commence legal proceedings against those who had allegedly defamed them. It is clear that a threat to enforce one's legal rights does not amount to duress, at least where the threat is made bona fide, and is not manifestly frivolous or vexatious. In ***Chitty on Contracts*** (Vol 1, 28th Ed) at para 7-006 the editors state that in order to establish the defence of duress, the defendant must not only demonstrate that the pressure or threats were made but that they were illegitimate:

Pressure and threats. Once it is accepted that the basis of duress does not depend upon the absence of consent, but on the combination of pressure and absence of practical choice, it follows that it is the nature of the pressure or the threats which becomes all-important. Clearly, not all pressure is illegitimate, nor even are all threats illegitimate. In ordinary commercial activity, pressure and even threats are both commonplace and often perfectly proper. Indeed, in one sense, all contracts are made under pressure: every offeror "threatens" that unless the offeree accepts the terms offered, he will not get the benefit of whatever goods or services are on offer. Nor can it even be said that the force or weight of the pressure or the threats is the decisive factor, "for in life, including the life of commerce and finance, many acts are done under pressure, sometimes overwhelming pressure, so that one can say that the actor had no choice but to act." It therefore becomes essential to distinguish between legitimate and illegitimate forms of pressure.

At para 7-035, the editors of Chitty go on to state:

> Since recourse to law is the remedy for redress provided by the law itself, it is obvious that prima facie a threat to enforce one's legal rights by instituting civil proceedings cannot be an unlawful or wrongful threat. Consequently a contract which is obtained by means of such a threat must *prima facie* be valid, and cannot be impeached on grounds of duress. So an ordinary bona fide compromise is clearly a valid contract even though exacted under threats to bring (or defend) legal proceedings… Even a threat to bring proceedings where there is no ground of action in law is prima facie not an unlawful threat, at least where the threat is made bona fide, and is not manifestly frivolous or vexatious.

The above principles were endorsed by Selvam J *in* ***Shunmugam Jayakumar & Anor v Jeyaretnam JB & Anor*** [1997] 2 SLR 172 at 190.

43 On appeal, Dr Chee expressed difficulty in tackling this point because it required some knowledge of the law. I therefore granted him permission to adduce further submissions on this point after the conclusion of the hearing. In further submissions filed on 26 February 2003, Dr Chee submitted that '[a] threat of legal proceedings (including a threat to commence proceedings against third parties) which is mala fides amounts to duress or undue influence.' The alleged threat in the present case, Dr Chee asserted, was 'not made bona fide, in that it was made for the purpose of intimidating and silencing political opposition to the plaintiff.' This was the first time that such an allegation had ever been raised and Dr Chee failed to give any particulars in support of it. Just as it is with the case with duress, bad faith must be properly pleaded:

An allegation that a party has been guilty of bad faith or breach of good faith is the equivalent of dishonesty, though not necessarily for a financial motive, and proper particulars of such an allegation must be pleaded, otherwise the allegation will be struck out: para 18/12/14 of the Supreme Court Practice 1999.

44 Dr Chee failed to raise the issue of mala fides in his pleadings, or even subsequently in his affidavits or his oral arguments. It was only after I granted him the opportunity to adduce

further submissions after the conclusion of the hearing that Dr Chee saw fit to introduce the point. This was over a year after Mr Lee first initiated the action, and only after the matter had already gone on appeal. In the circumstances, I found that the allegation of mala fides was but an afterthought, contrived for the purpose of creating a colourable defence and therefore not worthy of serious consideration.

45 In his response to Dr Chee's submissions of 26 February, Mr Davinder Singh argued that the issue of mala fides was in any case irrelevant because a threat to enforce one's legal rights by instituting legal proceedings could not amount to duress unless it was used as an instrument to extort money from others. Although recent authority seems to indicate that the state of mind of the parties is a relevant consideration in determining whether duress exists (see eg ***CTN Cash and Carry Ltd v Gallaher*** [1994] 4 All ER 714; ***Huyton SA v Peter Cremer GmbH & Co*** [1999] 1 Lloyd's Rep 620; ***DSND Subsea Limited v Petroleum Geo Services ASA*** [2000] Build LR 530 and ***Sharon Global Solutions Pte Ltd v LG International (Singapore) Pte Ltd*** [2001] 3 SLR 368), I find that on the factual matrix of the present case, Dr Chee's belated submission was wholly tendentious and appeared to have been introduced in vain to overcome the deficiencies in his purported defence.

46 It would not be out of place if I mentioned at this stage that it is indeed ironical that Dr Chee, who claims that the letter of apology was not genuine and was not given in a sincere vein, now expects the court to hold that what he presently says is true and genuine. Another irony is that having by his own admission extended the said apology to gain a perceived or misperceived advantage to advance his electoral ambitions, Dr Chee now wants the courts to set the clock back and validate his attempts to renege on the compromise agreement so reached. In my evaluation, to say the least, Dr Chee's current endeavour is seemingly an exercise in expediency and his purported defence conclusively unmeritorious.

Intimidation

47 On appeal, the SAR's findings on intimidation were not the subject of separate scrutiny by Dr Chee. Nevertheless, I deal with it here for the sake of completeness.

48 As the SAR correctly found, intimidation is not a recognised vitiating factor but rather a cause of action as a tort in its own right. The factors necessary to establish the tort of intimidation were summarised by Lord Denning MR in ***Morgan v Fry*** [1968] 2 QB 710, at 724:

> According to the decision in *Rookes v Barnard* the tort of intimidation exists, not only in threats of violence, but also in threats to commit a tort or a breach of contract. The essential ingredients are these: there must be a threat by one person to use unlawful means (such as violence or a tort or a breach of contract) so as to compel another to obey his wishes: and the person so threatened must comply with the demand rather than risk the threat being carried into execution. In such circumstance the person damnified by the compliance can sue for intimidation.

49 A 'threat' to do what one has a legal right to do cannot amount to intimidation. This approach was confirmed by the House of Lords in ***Rookes v Barnard*** [1964] AC 1129 where Lord Reid held, at page 1168:

So long as the defendant only threatens to do what he has a legal right to do he is on safe ground. At least if there is no conspiracy he would not be liable to anyone for doing the act, whatever his motive might be, and it would be absurd to make him liable for threatening to do it but not for doing it.

Defamation

50 In the alternative, the SAR entered judgment for Mr Lee on the ground that Dr Chee had no arguable defence to a claim in defamation. Dr Chee attacked the SAR's findings on the ground that he had no jurisdiction to enter summary judgment in a defamation action. In so doing, the SAR had 'overstepped his boundaries and acted like a trial judge when he clearly had no authority to do so'. Again, this demonstrated that the SAR's judgment was 'fraught with bias'.

51 Dr Chee's submission was entirely misconceived. The courts have summarily determined the question of defamation by striking out defences which disclosed no real defence and entered interlocutory judgment for damages to be assessed. In ***Bank of China v Asiaweek*** [1991] 2 MLJ 505, the defendant had pleaded, *inter alia*, a bare denial that the words complained were defamatory of the plaintiff or were understood to bear the meanings as alleged by the plaintiff or any other meaning defamatory of the plaintiff. Thean J examined that defence in the light of the pleadings and the affidavits filed by the parties and concluded that it was 'manifestly unsustainable, frivolous and a sham'. He accordingly struck out the defence and gave the plaintiff leave to enter interlocutory judgment.

52 Mr Davinder Singh submitted that the second apology clinched the case in Mr Lee's favour because they contained material admissions by Dr Chee that he had defamed Mr Lee. In my determination, the Words were indisputably defamatory of Mr Lee independently of the impugned second apology and that Dr Chee had failed to establish that he had a real or bona fide defence.

53 At the risk of repetition, Dr Chee in his Defence denied speaking the Words, denied that they referred to Mr Lee, denied that the words even if spoken were defamatory, denied that he was liable for the republication of the words and pleaded the defences of justification, qualified privilege and fair comment.

54 On appeal, Dr Chee declined to respond to my repeated invitations to confirm whether he maintained the position that he had not uttered either the Words for fear of compromising his defence. The Words were therefore played before me and I found that there was no doubt that Dr Chee had indeed pronounced the Words and that they referred to Mr Lee. Despite this replay, Dr Chee still would not commit himself to an answer. At the close of the appeal, however, I granted Dr Chee permission to adduce written submissions on whether his position remained that he did not speak the Words. In further submissions filed on 26 February 2003, Dr Chee finally admitted that he did utter the Words. His hesitation in answering an uncomplicated question until 26 February 2003 clearly evinced to the court that he was improvising his defences as he went along.

55 Insofar as the substantive merits of the alternative claim in defamation were concerned, I can do no better than to express my complete agreement with the following findings of the SAR in paras 50 to 61 of his judgment:

The natural and ordinary meaning of the Words

[50] The test as to what is the natural and ordinary meaning of the Words has been set out in *Rubber Improvement Ltd & Anor v Daily Telegraph Ltd* [1964] AC 234 where Lord Reid said at page 258:

There is no doubt that in actions for libel the question is what the words would convey to the ordinary man: it is not one of construction in the legal sense. The ordinary man does not live in an ivory tower and he is not inhibited by a knowledge of the rules of construction. So he can and does read between the lines in the light of his general knowledge and experience of world affairs ...What the ordinary man would infer without special knowledge has generally been called the natural and ordinary meaning of the words. But that expression is rather misleading in that it conceals the fact that there are two elements in it. Sometimes it is not necessary to go beyond the words themselves, as where the plaintiff has been called a thief or a murderer. But more often the sting is not so much in the words themselves as in what the ordinary man will infer from them, and that is also regarded as part of their natural and ordinary meaning.

[51] The Words in the present case were spoken in the midst of the defendant's campaign trial with the print and broadcast media in attendance. The defendant's intended audience was the public at large. In determining the natural and ordinary meaning of the Words, the sense or meaning intended by the defendant is irrelevant. Nor for such purpose is the sense or meaning in which the Words were understood by the defendant relevant. The meaning must be gathered from the Words themselves and in the context of the entire speech made by the defendant on that occasion. It is the natural and ordinary meaning as understood by reasonable members of the audience using their general knowledge and common sense.

[52] The test as to whether the Words are defamatory of the plaintiff has been set our by the Court of Appeal in *Aaron v Cheong Yip Seng* [1996] 2 SLR 623 at page at 641 as an objective test, being whether "the words tend to lower the plaintiff in the estimation of right-thinking members of society generally."

[53] Applying the above principles, the words "so I challenged Mr Lee Kuan Yew yesterday to answer this one question", "I asked him "Mr Goh, what happened to our money? What happened to this $17 billion?", "this is that same question that I want to ask Mr Lee Kuan Yew today" and "So Mr Lee Kuan Yew, I challenge you, tell us about this $17 billion you loaned to Suharto", when read together meant that the plaintiff made a $17 billion loan to Indonesia and/or former Indonesian President Suharto and that the plaintiff concealed the fact of the loan from Parliament and/or the public, and/or deliberately misled Parliament and/or the public in relation to the loan. This is an imputation of dishonesty against the plaintiff.

[54] The words "so I challenged Mr Lee Kuan Yew yesterday to answer this one question, why is he not addressing this very important issue" and "this is that same question that I want to ask Mr Lee Kuan Yew today. Address this point", when read together with the words above, meant that the plaintiff was evading the issue because he has something discreditable to hide about the transaction. This is an imputation of dishonesty against the plaintiff.

[55] I therefore find that the natural and ordinary meaning of the Words was that the plaintiff is dishonest and unfit for office because:

(a) he concealed from Parliament and the public, and/or deliberately misled Parliament in relation to, a $17 billion loan made to Indonesia; and

(b) his continued evasion of the issue was because he had something discreditable to hide about the transaction.

[56] In my view, the Words were clearly defamatory of the plaintiff as they contain a clear imputation of dishonesty attributed to the plaintiff in his office as the Senior Minister of Singapore.

Innuendo

[57] As regards the plaintiff's alternative claim based on innuendo, I find that as the facts relating to the financial assistance package to Indonesia were extensively discussed and published in the local media as exhibited at LKY-7 [copies of minutes of the relevant proceedings in the Singapore Parliament] and LKY-8 [newspaper articles on the financial assistance package, the Stand-by Facility and the BTFG Scheme], a person who heard the Words would have understood them to bear the meaning I have set out at paragraph 55 by way of innuendo.

Liability for republication

[58] In Gatley on Libel and Slander (9th Ed, 1998) the editors state at page 151 as follows:

Cases of defamation are subject to no peculiar rule but are governed by the general principles of tort with regard to causation and remoteness of damage. Hence, if repetition is the natural and probable consequence of the original publication the defendant is liable for the damage caused by it.

[59] In *Goh Chok Tong v Jeyaretnam Joshua Benjamin* [1998] 1 SLR 547 Rajendran J held at pages 584-586:

…There are only two causes of action – the one cause against the original publisher and the second cause against the republisher. The damages to be assessed for the original publication must extend to include foreseeable loss, including loss arising out of foreseeable republication. …

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.

If the defendant authorised or intended the republication, it would almost certainly be the case that republication was a foreseeable consequence… [Emphasis his]

…

If republication is not too remotely foreseeable a consequence, then the damage resulting from republication is damage not too remote, and the defendant is liable for the whole damage arising out of this original publication…

[60] In my judgment, it was a virtual certainty that the Words would be republished by the media for the following reasons:

(a) the Words were spoken in the course of campaigning for Parliamentary General Elections;

(b) the plaintiff is the Senior Minister, and the defendant is the Secretary-General of the SDP. Both

parties were therefore high-profile candidates, and extensive media coverage of their speeches and campaign activities was a certainty;

(c) the defendant had announced to the media that the alleged loan to Indonesia, which was the subject of the Words, was the most important issue on the SDP's campaign agenda. On the morning of 28 October 2001, the defendant had said the following to members of the media:

we kept saying Suharto, Suharto, Suharto find me one word, just that one word in Suharto in today's *Straits Times* did anybody say it? But that's the most important thing in our campaign right now, alright?

(d) the defendant spoke the Words in the presence of a large number of representatives from the print and broadcast media;

(e) the defendant spoke the Words in a sensational and aggressive manner; and

(f) in the same speech in which the defendant spoke the Words, he said:

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.

[61] In the circumstances, I find that the defendant intended and in fact demanded that the journalists republish his Words and I accordingly find him liable for the republication of the Words.

56 Dr Chee's defences of justification, qualified privilege and fair comment can be dealt with together summarily. The three defences were but bare allegations in his Defence. Dr Chee failed to proffer any evidence in support of these defences in his affidavits and did not make them the subject of submissions either before me or the SAR. As mentioned by me earlier, it is settled law that the defendant will not be given leave to defend based on mere assertions alone: ***Banque de Paris Et Des Pays-Bas (Suisse) SA v Costa de Naray and Christopher John Walters*** [1984] 1 Lloyd's LR 21 at 23. I therefore found that Dr Chee had failed to raise any triable defence to the action for defamation.

Conclusion

57 Having considered all the facts and arguments, I found that that Dr Chee had failed to establish that he had a real or bona fide defence to Mr Lee's claim and consequently his appeal stands dismissed with costs.

Order accordingly.