Chan Cheng Wah Bernard and others *v* Koh Sin Chong Freddie
[2012] SGHC 193

Case Number : Suit No 33 of 2009

Decision Date : 25 September 2012

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Tan Chee Meng SC, Chang Man Phing and Yong Shu Hsien (WongPartnership LLP) for the plaintiffs; R.S. Bajwa (Bajwa & Co) for the defendant.

Parties : Chan Cheng Wah Bernard and others — Koh Sin Chong Freddie

Damages

25 September 2012

Judith Prakash J:

1 This judgment is ancillary to the Court of Appeal's decision on liability in this case (*Chan Cheng Wah Bernard and others v Koh Sin Chong Freddie and another appeal* [2012] 1 SLR 506) ("the CA decision") in which it decided that the defendant was liable for defamatory statements made in respect of the plaintiffs. The parties appeared before me for the assessment of the damages payable to the plaintiffs as I was the first instance judge. At the conclusion of the assessment, I awarded each of the plaintiffs the sum of $70,000 as general damages and an additional $35,000 as aggravated damages. Both sides have appealed.

Background

2 The full facts of the case can be found in the CA decision. I will only give a brief summary here. Between May 2007 and May 2008, the plaintiffs were members of the management committee ("the MC") of the Singapore Swimming Club ("the Club"). In the proceedings, the 2007/2008 MC on which the plaintiffs served was referred to as "the previous MC" which was also the term also used to describe it in the defamatory statements.

3 The defendant became the president of the Club and a member of the MC at an election held in May 2008. He was re-elected as the president for a further one year term in May 2009. During the defendant's first term as the president, the MC was investigating certain expenditure incurred during the term of the previous MC and which was authorised by, *inter alia*, the plaintiffs as members of the previous MC.

4 During the MC meetings held on 29 October 2008 and 26 November 2008, the treasurer of the Club reported on his investigations on what the Court of Appeal referred to as "the NWS dispute". In the course of the first meeting, the defendant made certain remarks that were later reported in the minutes of the meeting (these remarks were subsequently referred to as "the First Statement"). At the later meeting, the defendant gave a summary of the findings of the treasurer that was paraphrased in the minutes of the meeting, part of which constituted the Second Statement. Both sets of minutes were posted on the Club's notice board in accordance with the Club's usual practice.

5 In January 2009, the plaintiffs sued the defendant on the basis that the First and Second

Statements were defamatory of them. At the trial of the action, I found the Statements to be defamatory but that the defendant was entitled to the defence of justification. On appeal, the Court of Appeal agreed that the Statements were defamatory but disagreed that the defendant had been able to prove justification. The Court of Appeal went on to find that although the Statements had been made on an occasion of qualified privilege, that defence which would otherwise have been available to the defendant was defeated on account of malice. The Court of Appeal thus allowed the plaintiffs' appeal and gave judgment in their favour for damages to be assessed and costs.

The plaintiffs' submissions

6 The plaintiffs submitted that the net effect of the First and Second Statements was that they were labelled as "dishonest" and "liars". They cited the finding of the Court of Appeal at [42] and [45] of the CA decision which read as follows:

> [42] In the result, we find that the meaning which the First and Second Statements bear to a reasonably interested member of the Club, having regard to the wider context, is the higher of the two meanings pleaded by the Plaintiffs ... *ie*, suggested dishonesty and misconduct on the part of the plaintiff when they sought ratification of the expenditure at the AGM 2008. ...
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> [45] In the present case, the sting of the charge is essentially that the Previous MC had deliberately misrepresented the circumstances relating to the expenditure on the TWC Package with the aim of deceiving the Club members into ratifying the expenditure.

7 They further submitted that the court could infer that the defamatory statements had been widely published because:

> (a) As the CA decision had observed at [26], an ordinary, reasonable and reasonably interested Club member would have attended the Club's annual general meetings ("AGMs") or acquainted himself with the issues to be decided at the AGMs and would have been generally aware of the information it disseminated on the Club's notice boards, including minutes of MC meetings.
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> (b) Information about the NWS dispute was available from the 2008 AGM, the minutes of MC meetings and the Splash magazine distributed to all club members.
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> (c) The expenditure which formed the basis of the NWS dispute was widely publicised and hotly debated within the Club for at least half a year from the 2008 AGM to the two MC meetings where the First and Second Statements were made.
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> (d) The defendant included a motion connected to the NWS dispute in the agenda for the February 2009 Extraordinary General Meeting ("EOGM"), although such a request was against the Club rules.
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> (e) The defendant repeatedly attempted to formally censure the plaintiffs after the members voted at the 2009 AGM not to ratify the expenditure and he refused to nullify the censure motion although he was given legal advice that it was void. Thereafter, he worked to have the same censure motion re-tabled for the EOGM on 15 November 2009.

8 The plaintiffs submitted that all the aggravating factors set out in *Gatley on Libel and Slander* (Sweet and Maxwell, 9th Ed, 1998) at p 235, which was cited with approval by the Court of Appeal in *Arul Chandran v Chew Chin Aik Victor JP* [2001] 1 SLR(R) 86 ("*Arul Chandran*") were present in this

case and justified an award of aggravated damages. The relevant passage at [55] of the judgment reads:

> [t]he conduct of the defendant which may often be regarded as aggravating the injury to the plaintiff's feelings so as to support a claim for 'aggravated' damages includes a failure to make any or any sufficient apology and withdrawal, a repetition of the libel; conduct calculated to deter the plaintiff from proceeding, persistence by way of a prolonged or hostile cross-examination of the plaintiff ..., a plea of justification which is bound to fail; the general conduct either of the preliminaries or of the trial itself calculated to attract wide publicity; and persecution of the plaintiff by other means.

9 In support of the above submission, the plaintiffs emphasised that:

(a) The Court of Appeal had found as a fact that the defendant's conduct before and after the First and Second Statements was motivated by personal spite and malice against the plaintiffs.

(b) To date, there had been no apology by the defendant.

(c) The libel had been repeated in that the First and Second Statements were republished in the Press Publication on Club's Matters dated 8 February 2012.

(d) The defendant had taken certain steps to deter the plaintiffs from proceeding with the suit against him.

(e) There was prolonged and hostile cross-examination of the plaintiffs during the High Court hearing.

(f) The defendant's actions in the Club throughout the course of the proceedings made the issue of ratification of the expenditure a live issue for many months after the publication of the libel and his repeated attempts to censure the plaintiffs kept reminding members of their alleged deception.

(g) The defendant's plea of justification failed and even he did not believe that the First and Second Statements were made deliberately.

10 The plaintiffs emphasised that their position and standing had been injured by the libel. They had all been active in the previous MC. The first plaintiff, a former state swimmer, had been a member of the MC since 2004, had been in various sub-committees and headed the previous MC as President during the period from May 2007 to May 2008. The second plaintiff, a senior advocate and solicitor, had been a member of the MC from 2003 and was the vice president of the previous MC. The third plaintiff, a former banker, was treasurer of the previous MC and the fourth plaintiff, a businessman, was a member of the previous MC and chairman of the Facilities Sub-committee which was involved in the NWS dispute.

11 Coming to the authorities, the plaintiffs' position was that the damages (general and aggravated) should be no less than the award of $150,000 in *Arul Chandran* which had been decided some 11 years earlier. They argued that the damages in the present case should be commensurate with the award made in *Lim Eng Hock Peter v Lin Jian Wei and another and another appeal* [2010] 4 SLR 357 ("*Peter Lim*") where the plaintiff, a prominent businessman, who was defamed in an "Explanatory Statement" distributed to 17,000 members of a club, was awarded $140,000 as general

damages and $70,000 as aggravated damages. The plaintiffs also cited *Ei-Nets Ltd and another v Yeo Nai Meng* [2004] 1 SLR(R) 153 ("*Ei-Nets*") where the plaintiff was awarded $80,000 general damages in respect of a libel which suggested he was guilty of fraud, gross misconduct and had acted in breach of s 76 of the Companies Act (Cap 50, 2006 Rev Ed). The plaintiffs submitted that the award in their case for each of them should be between $100,000 and $140,000 for general damages and at least $80,000 for aggravated damages.

The defendant's submissions

12 The defendant took issue with many of the plaintiffs' submissions. First, dealing with the sting of the defamation, counsel for the defendant pointed out that the operative word in the First and Second Statements was "misrepresentation" and not "dishonesty". In the CA decision, it had been acknowledged that the previous MC had at no time been accused of dishonesty or wrongdoing. Further, it had not been alleged that the previous MC had in any way received any illegal benefits. Counsel submitted that, therefore, the sting of the libel statements had been reduced. Further, as the plaintiffs had pointed out, the defendant had said on the stand that he was not aware of any facts which would show that the misrepresentations made at the 2008 AGM were deliberate. Additionally, whilst the Court of Appeal held that the defendant had been unable to justify the "misrepresentation" overall, it also found that there had been some minor misrepresentations made by the previous MC.

13 Moving on to the mode and extent of publication, counsel's submission was that this was limited. There was no dispute that publication was only by means of posting on the Club's notice board and this was the most passive form of publication possible. The plaintiffs did not lead evidence on the length of time the minutes remained posted on the board. The defendant's position was that the minutes were posted on the board for about two weeks because the evidence showed that when a new set of MC minutes was posted, the old set was taken down. In any case, the First and Second Statements were in the minutes and someone would have to read all of the minutes in order to come to the Statements. The danger of the Statements being reproduced was almost negligible given the static nature of the publication. There was also no evidence to suggest that the Club's notice board was widely read.

14 Counsel further submitted that the number of members who actually took an active approach and who would have read the minutes could be gauged by the number who eventually voted when the issue was canvassed at the AGM. Only 307 members voted on the issue of appointing an Audit Committee to investigate the facts behind the NWS dispute at the AGM. Counsel also suggested that this issue only became a live one when the matter was discussed at the May 2008 AGM.

15 The defendant referred to the case of *Ng Koo Kay Benedict and another v Zim Integrated Shipping Services Ltd* [2010] 2 SLR 860 ("*Ng Koo Kay*") where the court was concerned with the extent of publication of defamatory statements via the internet. The plaintiff in that case had argued that the press release complained of had been published on websites and was available to any user of the internet. The plaintiff argued that the publication had a far reaching and worldwide scope of exposure. The court had rejected that argument, noting that there was no direct evidence of substantial publication. Counsel submitted that in the present case, the minutes of meeting were posted on the notice board as a matter of course and in accordance with the Club's usual practice. There was nothing extraordinary in the publication to attract the attention of the members, the offending paragraphs were not stand alone but part of a longer document and there was nothing that directed the mind of the reader to those specific paragraphs.

16 Moving to the authorities, counsel submitted that *Peter Lim* should be distinguished on the

basis that there was widespread publication in that case unlike here. He relied on the case of *Lonzim Plc v Andrew Sprague* [2009] EWHC 2838 for the proposition that where there is minimal publication of the alleged defamatory statements, there is no prospect of an award of damages greater than a very modest sum.

17 Counsel also noted that it was pertinent that it was the plaintiffs' case that the Statements had damaged their standing in the eyes of their fellow members. There was no evidence, or allegation for that matter, that their standing in the eyes of persons who were not members of the Club had been damaged.

18 The defendant relied on a series of cases in which the damages awarded were much lower than those awarded in *Arul Chandran* and *Peter Lim*. I will refer here only to the ones that, in my opinion, were more relevant to the circumstances before me. In *Ng Koo Kay*, where the sting was more severe because the allegations made were regarding criminal conduct and the publication was by way of an online press release and an email to 1,776 recipients in the shipping industry, the plaintiff was awarded $25,000 in general damages and $10,000 in aggravated damages. In *Segar Ashok v Koh Fonn Lyn Veronica and another suit* [2010] SGHC 168 ("*Segar Ashok*"), where the plaintiff, a doctor, had been called a "con artist" and a "fraud" in three emails sent by the defendant to about 50 people in total, the plaintiff was awarded $10,000 in general damages.

19 In *Tu Dongning v Hua Yuan Association and Another Suit* [2004] SGDC 127 ("*Tu*'s case"), the sting of the libel was that the plaintiff was incompetent, had been deceptive and had an intention to cheat. The libel was published in a letter to a particular company and also in statements on the website of the Hua Yuan Association. The defendant pleaded justification and qualified privilege. Both failed. The judge found malice existed and that the statements went beyond what was necessary to protect the interest of the recipients of the statements. The plaintiff was awarded $25,000 by the District Court on the basis that since he was not a professional, the sting of incompetence was less, but this amount was sufficient to take into account the added sting of cheating and the wider publication of this case as compared to comparable cases that had been cited to the district judge.

20 The defendant submitted that the cases relied on by the plaintiffs could be distinguished and that the authorities he had cited were more appropriate guides to the quantum of damages in this case. In the defendant's submissions, the damages to be awarded should be a nominal amount and in any event should not exceed $15,000 per plaintiff.

My decision

21 In *Peter Lim*, the Court of Appeal laid down the guidelines to be followed by an assessing court in determining the appropriate quantum of general damages to be awarded in any given case of defamation. It stated that the circumstances that were relevant and should be taken into account included:

(a) The nature and gravity of the defamation;

(b) The conduct, position and standing of the plaintiff and the defendant;

(c) The mode and extent of publication;

(d) The natural indignation of the court at the injury caused to the plaintiff;

(e) The conduct of the defendant from the time the defamatory statement is published to the

very moment of the verdict;

(f) The failure to apologise and retract the defamatory statement;

(g) The presence of malice; and

(h) The intended deterrent effect of the quantum awarded.

22 I considered these factors in coming to my decision on the quantum of general damages. First, as far as the nature and gravity of the defamation was concerned, I think it useful at this point to repeat the defamatory statements. The First Statement reads:

> President suggested that MC should correct the *misrepresentation of facts made by the previous MC to influence the ratification of the expenditure at the last AGM*.
>
> [emphasis added]

The Second Statement reads:

> From the foregoing, President summarized the Treasurer's findings as follows:
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> · That the Club did not need a new water system to rectify the breakdown of the then existing filtration system which led to the shutdown of the competition pool.
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> · After the installation of the new water system it was found that the filtration pumps needed to be replaced as the backwash water was still dirty. When the filtration pumps were changed, they worked perfectly and the water was clear.
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> · The Club had purchased the new water system without budget approval.
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> · Therefore it appeared that the justifiable emergency spending was to replace the filtration pumps at $42K and that would rectify the pool water in the 2 pools and Jacuzzis. The new water system at $168K was a 'nice to have' feature and the capital expenditure spent to install the system without budget approval was unwarranted.
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> · *It could be a case of misrepresentation of facts to the AGM to get ratification for a capital expenditure for a water system that could not be justified under the urgent/emergency reason*. The new water system was only an add-on system as the current filtration was still the same as before and there was still a need to replace the pumps.
>
> [emphasis added]

23 The Court of Appeal found that the two Statements suggested dishonesty and misconduct on the part of the plaintiffs when they sought ratification of the material expenditure at the 2008 AGM. Since the defamatory statements had been found to impute dishonesty to the plaintiffs, they were grave statements and the fact that the Court of Appeal also observed that there had been some minor misrepresentations on the part of the previous MC, did not lessen the gravity of the defamation, contrary to the defendant's submission. I also recognised, however, that the dishonesty was not imputed to the plaintiffs individually but to the previous MC as a group and that the suggested dishonesty did not relate to the taking of funds or any other criminal offence (which would be a more serious level of dishonesty), but was connected with persuading members to ratify expenditure which had been incurred on behalf of the Club rather than for the benefit of the previous MC or any of its

members. In this respect, the sting of the defamation was less serious than that in *Ei-Nets* (an allegation of conspiracy to misappropriate funds which amounted to an allegation of dishonesty and fraud). The sting of the defamatory statements in *Peter Lim* was that the appellant had caused the club's financial losses through mismanagement for his own benefit. There too, the sting was more serious as it imputed a direct financial benefit to the person who was defamed. In *Arul Chandran*, the defamatory statements not only accused the plaintiff of dishonesty but also injured his professional reputation by implying that he was a lawyer who had been sent to jail for fraudulent breach of trust.

24 The next factor was the standing and position of the plaintiffs and the defendant. The plaintiffs here did not ask to be differentiated on the basis of their individual professions but asked the court to take into account their position as members of the Club and their status there. In this respect, the fact that they were members of the previous MC and three of them had been holding leadership positions in the previous MC was highly relevant. It was also relevant that at the time that the defendant made his defamatory remarks, he was the president of the MC and was conducting an investigation into the actions of the previous MC. The courts have drawn a distinction between defamed persons who are in public life and those who are in private life for the purposes of assessment of damages. In general, the quantum of damages awarded to plaintiffs in the latter category is lower than that awarded to plaintiffs in the former category. In the present case, the plaintiffs are not public figures but the fact that they were defamed as members of the Club, to other members of the Club, by a person holding a position of authority in the Club, is an important fact which would tend to increase the quantum of damages beyond the amounts awarded in cases like *Segar Ashok* and *Tu's* case.

25 The third factor, which was one on which I placed some emphasis, was the extent of publication. It was this factor that most distinguished the present case from *Peter Lim*. In that case, the publication was to all 17,000 members of the club. In this case, the difficulty was that it is impossible to know exactly how many members of the Club saw the minutes. The form of publication was passive in that the minutes were simply put up on the Club's notice board for interested members to read. No attention was drawn to them and, therefore, generally only members who were interested in the Club's affairs would have spent time at the board leafing through the minutes. The length of time the minutes were on the board was not established exactly but generally, minutes posted on the board would be removed when the next set of minutes was ready. Since MC meetings took place once a month, it is likely that the minutes did not remain on the board for more than a month. In view of the ongoing NWS dispute, it is possible as the plaintiffs argued, that quite a number of members read the minutes but the plaintiffs were not able to give any estimated number based on observation or records.

26 The defendant's submission was that there was no evidence of wide-spread or substantial publication and no evidence to suggest that the Club's notice board was widely read. However, as the plaintiffs had submitted, the NWS dispute had been in existence for a number of months before the minutes were produced and the issue was a live one. It is therefore probable that a number of concerned members would have read the minutes to ascertain what the defendant and his team were doing in respect of the NWS dispute. Those who read the minutes of the October 2008 meeting which contained the First Statement would likely have read the minutes of the November 2008 meeting containing the Second Statement as well because they would have wanted to know what findings the treasurer had arrived at in his investigation of the NWS dispute. It is also likely that some of such persons would have attended the February 2009 EOGM which involved the NWS dispute. There were some 300 attendees at this meeting and it is not improbable that as persons who had an interest in the Club's affairs generally and had a particular interest in the NWS dispute, a number of them would have read the minutes. On the assumption that some of those who attended the meeting would have read the minutes and some of those persons may have informed others of the contents of the

minutes it is possible that the Statements were published to quite a number of people but this does not translate to widespread dissemination. Bearing in mind that it was the plaintiffs' burden to prove the extent of publication, I found that the plaintiffs were not able to satisfy me that there was more than a moderate dissemination of the defamatory statements. Overall, the only conclusion I could come to was that whilst publication was wider in this case than in *Arul Chandran* where it was limited to the committee of the club concerned, it was definitely far below the 17,000 figure in *Peter Lim*.

27 The other factors in this case were the failure on the part of the defendant to apologise, the presence of malice which had been noted by the Court of Appeal, and the way that the trial was conducted which included prolonged and somewhat aggressive cross-examination of the plaintiffs.

28 In relation to the authorities, I considered that the award given in *Peter Lim* had to be assessed in the light of the very substantial publication of the libel whilst in the *Arul Chandran* case, the determining factors were the gravity of the libel and the way in which the defendant conducted the trial. Also, as the plaintiffs themselves conceded, the plaintiff in *Peter Lim* is a much more prominent person than they are. I also considered the *Ei-Nets* case. I noted that publication in that case was to a very few people but the allegation was a graver one in that it imputed fraud. The award of $80,000 to the plaintiff in *Ei-Nets* was, further, noted by the Court of Appeal to be on the high side though they did not interfere with the trial judge's decision.

29 I also considered the authorities cited by the defendant. In *Ng Koo Kay*, the award for general damages was $25,000 for each of the two plaintiffs which seemed rather low in view of the fact that the sting of the defamation was that the plaintiffs had bribed a third party in order to corruptly gain favours from him. The court, however, was strongly influenced by the plaintiffs' inability to prove wide dissemination of the defamatory statements. The defendant also relied on *Segar Ashok* where the sting of the defamation was that the plaintiff was dishonest, a con artist, a cheat, and that he had committed forgery. Despite the seriousness of the charge, the damages awarded were only $10,000 partly because of the acrimonious relationship between the parties and the provocative behaviour of the plaintiff which was causally connected to the libel sued upon. It was noted that the libel did not impinge on the plaintiff's professional capabilities. In the present case, whilst the libel suit attracted much interest, there was no positive proof of adverse impact on the plaintiffs' reputations generally. Nor was the libel aimed at their professional reputations. However, the publication was wider and the plaintiffs' behaviour had not been provocative nor aimed at the defendant in any way. This distinguished the present case from *Segar Ashok*.

30 As far as aggravated damages were concerned, this was a case in which aggravated damages had to be awarded because of the findings of the Court of Appeal in relation to the conduct of the defendant in seeking to injure the reputations of the plaintiffs (at [96] of the CA decision). There was no apology and there was prolonged cross-examination of the plaintiffs as was previously noted. The defendant had made some attempt to deter the plaintiffs from proceeding with the proceedings. However, to an extent, it could not be said that the defendant's plea of justification was bound to fail since it succeeded in the first instance. Therefore, I did not consider that last factor as aggravating the damages. Also I did not place emphasis on the republication since this took place in February 2012, long after the Court of Appeal's judgment had vindicated the plaintiffs and found the defendant to be malicious. Thus, such republication could not have damaged the plaintiffs' reputations.

31 When I considered the circumstances overall, I concluded that $70,000 per plaintiff as general damages and $35,000 per plaintiff as aggravated damages were the correct awards. The most relevant authorities were *Peter Lim* and *Arul Chandran* but the awards here could not be in the same quantum as those cases because of the differentiating factors that I have mentioned previously, in particular the extent of the publication, the fact that no attack was made on the plaintiffs'

professional reputations and that the Statements referred to the MC as a whole and did not ascribe blame to individuals.