IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 66

Suit No 1185 of 2018 (Summonses Nos 148 and 428 of 2019)

Between

Lee Hsien Loong

… Plaintiff

And

Leong Sze Hian

… Defendant

And

Leong Sze Hian

… Plaintiff in Counterclaim

And

Lee Hsien Loong

… Defendant in Counterclaim

JUDGMENT

[Civil Procedure] — [Striking out]

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v
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12 March 2019 Judgment reserved.

Aedit Abdullah J:

Introduction

1 These applications arise out of Suit No 1185 of 2018 ("the Suit"), a claim in defamation which concerns the sharing of an article entitled "Breaking News : Singapore Lee Hsien Loong Becomes 1MDB's Key Investigation Target – Najib Signed Several Unfair Agreements with Hsien Loong In Exchange For Money Laundering" ("the Article"). The defendant in the Suit shared a link to the Article on his Facebook Timeline for three days, during which period his Facebook post garnered multiple "likes", "reactions" and "shares".

2 The present applications are:

(a) Summons No 148 of 2019 ("SUM 148/2019") – an application to strike out the defendant's counterclaim in the Suit; and

(b) Summons No 428 of 2019 ("SUM 428/2019") – an application to strike out the plaintiff's claim in the Suit.

3 Having considered the affidavits and arguments, I allow the striking out of the defendant's counterclaim, which is precluded by binding Court of Appeal authority, and dismiss the application to strike out the plaintiff's claim, as there is sufficient basis to allow the matter to proceed to trial.

Facts

The parties

4 The plaintiff in the Suit and the defendant in the counterclaim ("the plaintiff") is the current Prime Minister of Singapore.[1]

5 The defendant in the Suit and the plaintiff in the counterclaim ("the defendant") describes himself as a human rights activist and Government critic.[2] His Facebook profile page bears his name. The defendant had 5,000 Facebook "friends" and 149 Facebook "followers" at the material time.[3]

Background to the dispute

The allegedly defamatory Post

6 On or around 7 November 2018, the Article was published on "The Coverage", which describes itself as a Malaysian-based social news network. The Article stated that ongoing Malaysian investigations concerning Malaysia's state fund, 1Malaysia Development Berhad ("1MDB"), were "trying to find the

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1 Statement of claim ("SOC") at para 1.

2 Defence and counterclaim ("D&C") at para 3.

3 SOC at paras 2 and 13(d).

secret deals between the two corrupted Prime Ministers of Singapore and Malaysia". This referred to the plaintiff and former Malaysian Prime Minister Mr Najib Razak respectively. The Article referenced "several unfair agreements" that Mr Najib Razak had entered into with the plaintiff, including the agreement to build the Singapore-Malaysia High Speed Rail, and included other details about the alleged investigations.[4]

7 On 7 November 2018 at about 6.16pm, the defendant shared a link to the Article on his Facebook Timeline ("the Post"). The Timelines on users' profile pages serve as records of their Facebook activity. Among other functions, the Timeline showcases a user's posts in rough reverse chronological order. The defendant did not include any accompanying text in the Post. The Post displayed part of the Article's title, as shown below:[5]

4 SOC at para 6.

5 SOC at paras 4 and 5.

8 As at 10.16pm on 7 November 2018, the defendant's Post attracted 22 "reactions", five "comments" and 18 "shares".[6] The defendant removed the Post from his Facebook page at about 7.30am on 10 November 2018, after he read a notice from the Info-communications Media Development Authority ("IMDA") that had been sent to him at around 11.00pm on 9 November 2018.[7]

Government and media response

9 Media outlets covered the Article over 8 and 9 November 2018, quoting the Article's title and discussing its contents. On 8 November 2018, the Straits Times reported responses by the Law and Home Affairs Minister Mr K Shanmugam and the High Commission of the Republic of Singapore in Malaysia that refuted the Article and its contents.[8]

10 On 9 November 2018, the Straits Times reported that:[9]

(a) the Monetary Authority of Singapore had filed a police report in respect of a similar article published on 5 November 2018 on the Straits Times Review ("the STR"), a website that claims to be an Australia-based blog covering Singapore news; and

(b) IMDA had issued a statement that the article on the STR's website was "baseless and defamatory".

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6 D&C at para 12.8; Plaintiff's Submissions in SUM 428/2018 at para 55.

7 D&C at paras 5.1, 5.2 and 12.8.

8 SOC at paras 3(k) and 3(l).

9 SOC at paras 3(m) and 3(n).

Procedural history

11 The plaintiff filed the writ of summons in the Suit on 20 November 2018, suing the defendant for defamation. The plaintiff claimed that the offending words in the Article and Post, in their natural and ordinary meaning, respectively meant and were understood to mean that:

(a) the plaintiff corruptly used his position as Prime Minister to help Mr Najib Razak launder 1MDB's Billions ("the offending words in the Article"); and

(b) the plaintiff was complicit in criminal activity relating to 1MDB ("the offending words in the Post").

The plaintiff claimed that these offending words were false and baseless and were calculated to disparage and impugn the plaintiff in his office as the Prime Minister.[10]

12 The defendant filed his defence and counterclaim in the Suit on 26 December 2018. The defendant's counterclaim was premised on the tort of abuse of process as the relevant cause of action.

13 On 9 January 2019, the plaintiff pleaded in his defence to the counterclaim that the counterclaim did not disclose a reasonable cause of action. The plaintiff filed SUM 148/2019 on the same day. On 25 January 2019, the defendant filed SUM 428/2019.

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[10] SOC at paras 10–12.

My decision

14 Having considered parties' submissions, I allow the application in SUM 148/2019: the counterclaim should be struck out as it discloses no reasonable cause of action. I dismiss the application in SUM 428/2019: the claim discloses triable issues and should be permitted to proceed to trial.

15 I will address the two applications in turn, laying out parties' respective cases and the detailed reasons for my decision.

SUM 148/2019: Striking out the counterclaim

The parties' cases

The plaintiff's case

16 The plaintiff relied on O 18 r 19(1)(*a*) of the Rules of Court (Cap 322, R5, 2014 Rev Ed) ("ROC") to argue that the counterclaim should be struck out on the basis that it does not contain a "reasonable cause of action". A "reasonable cause of action" is one that has "some chance of success when only the allegations in the pleading are considered": *Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin and others* [1997] 3 SLR(R) 649 at [21]. A claim based on a cause of action that is not recognised at law will be struck out for disclosing no reasonable cause of action: *TMT Asia Ltd v BHP Billiton Marketing AG (Singapore Branch) and another* [2015] 2 SLR 540 at [55] and [57].[11]

17 The defendant relied on the tort of abuse of process to mount his counterclaim. However, the five-member Court of Appeal unequivocally rejected the tort of abuse of process as a recognised cause of action in *Lee Tat*

[11] Plaintiff's Submissions in SUM 148/2019 at paras 12 and 14.

Development Pte Ltd v Management Corporation Strata Title Plan No 301 [2018] 2 SLR 866 ("*Lee Tat*") at [161]. The Court of Appeal stated that recognition would:[12]

(a) undermine the principle of finality in the law, by encouraging unnecessary satellite litigation and prolonging disputes: at [151]–[153];

(b) open the floodgates of litigation: at [154]; and

(c) create a chilling effect on regular litigation: at [156].

In any case, civil procedure mechanisms afford innocent parties adequate legal remedies in the event of abuses of process. For instance, a plaintiff can apply for summary judgment against a defendant pursuant to O 14 of the ROC: at [157]–[159].

18 *Sunbreeze Group Investments Ltd and others v Sim Chye Hock Ron* [2018] 2 SLR 1242 ("*Sunbreeze*") applied *Lee Tat* two months after it was decided. At [37], the Court of Appeal reiterated its finding in *Lee Tat* that the tort of abuse of process is not recognised in Singapore.[13]

19 Accordingly, as the defendant's counterclaim discloses no *recognised* cause of action, let alone a reasonable one, it should be struck out.

20 The plaintiff sought costs on an indemnity basis. The defendant had known about the decision in *Lee Tat* when he filed the counterclaim. Knowingly pursuing a hopeless claim is a factor that might lead to an award of indemnity costs: *Tan Chin Yew Joseph v Saxo Capital Markets Pte Ltd* [2013] SGHC 274

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12 Plaintiff's Submissions in SUM 148/2019 at paras 16–23.

13 Plaintiff's Submissions in SUM 148/2019 at paras 24 and 25.

at [99], citing *Three Rivers District Council v The Governor and Co of the Bank of England (No 6)* [2006] EWHC 816 (Comm) at [25]. Wholly unmeritorious conduct could also lead to an award of indemnity costs: *Anne Joseph Aaron (m w) and Others v Cheong Yip Seng and Others* [1995] SGHC 131.[14]

The defendant's case

21 The defendant submitted that the Court of Appeal should reconsider the position it took in *Lee Tat* as to whether the tort of abuse of process exists in Singapore law. The present case can be distinguished as it involves the constitutional right of freedom of expression under Art 14(1)(*a*) of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) ("the Constitution"). *Lee Tat* had not been concerned with this issue.[15]

22 Furthermore, *Lee Tat* had failed to address whether the tort of abuse of process should apply in exceptions where there is an abuse of a public function. The defendant drew an analogy to the tort of malicious prosecution, which the Court of Appeal noted at [91] is a "tool for constraining the arbitrary exercise of the powers of public prosecuting authorities", citing *Crawford Adjusters (Cayman) Ltd v Sagicor General Insurance (Cayman) Ltd* [2014] AC 366 at [145]. *Lee Tat* had declined to extend the tort of malicious prosecution to civil claims generally (at [91]), but accepted that the tort could apply in special and limited circumstances where there has been an abuse of a public function (at [96]).

23 On this basis, the defendant argued that the Court of Appeal should have held that the *tort of abuse of process* would be available in the same limited

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14 Plaintiff's Submissions in SUM 148/2019 at paras 26–28.

15 Defendant's Submissions at para 75–77.

circumstances where there is a need to restrain the abuse of a public function in situations where freedom of expression is exercised in the private sphere.[16]

Whether a reasonable cause of action exists

The ruling in Lee Tat

24 I am satisfied that the Court of Appeal's decision in *Lee Tat* is binding on me and that the doctrine of *stare decisis* applies. *Lee Tat* precludes the defendant's counterclaim from succeeding. The Court of Appeal was emphatic at [161] that the tort of abuse of process is not recognised in Singapore law:

> 161 … [W]e do ***not*** recognise the tort of abuse of process in Singapore … there are ample legal mechanisms within the existing rules of civil procedure that afford innocent parties adequate legal remedies in the event that there is indeed an abuse of process by the party concerned on the other side. *For this reason* ***alone****, it is clear that the appeal on this particular issue must fail simply because … [the appellant's] claim cannot even take off since the* ***legal basis*** *upon which it premises that claim* ***does not exist****.* [emphasis in original]

25 The defendant acknowledged the binding precedent in *Lee Tat*. However, the defendant highlighted that the Court of Appeal's recognition that the tort of malicious prosecution is needed to control criminal prosecutions reflects an intention on its part to control or regulate the misuse of public office or public functions. This recognition serves as a basis for the limited recognition of the tort of abuse of process to similarly regulate public functions or powers.

26 I do not see anything in the Court of Appeal's judgment which leaves room for the tort of abuse of process to be recognised as a possible control to counter the misuse of public functions or powers. The Court of Appeal's reasoning clearly excludes any such possible approach.

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[16] Defendant's Submissions at para 76(b)–76(e).

27 For one, *Lee Tat* expressly departed from the line of Commonwealth cases supporting the existence of the tort of abuse of process, laying out numerous policy reasons as to why the tort should not be recognised in Singapore: at [136]–[161].

28 Further, the defendant's argument from analogy is at odds with the care the Court of Appeal took at [128] to limit the tort of malicious prosecution to criminal as opposed to civil proceedings. If the recognised need to deter abuses of public power did not justify the extension of the tort of malicious prosecution to civil proceedings generally, it is difficult to see that the Court of Appeal intended to leave open the issue of whether the tort of abuse of process might apply in certain limited types of civil proceedings, especially when it apparently eschewed the latter cause of action entirely at [161]. Indeed, it noted at [160] that the same policy reasoning that justified the non-extension of the tort of malicious prosecution to civil proceedings also justified the non-recognition of the tort of abuse of process:

> 160 Finally, as was also our view as to why the tort of malicious prosecution should not be extended to civil proceedings generally in Singapore, we are of the view that the introduction of the tort of abuse of process might at least possibly – if not actually – be *incompatible with* the increased (as well as increasing) shift towards integrating ***mediation*** into the fabric of the Singapore legal system – a point which we have already elaborated upon (see [119]) in relation to the tort of malicious prosecution. [emphasis in original]

29 The defendant sought to distinguish *Lee Tat* from the present case on the basis that the constitutional right to freedom of expression under Art 14(1)(*a*) of the Constitution is engaged. Regardless of whether Art 14(1)(*a*) is engaged, it is not open to a puisne judge to develop the law in the manner advocated by the defendant.

30 As with the appellant's claim in *Lee Tat*, the defendant's counterclaim cannot take off as the legal basis upon which the counterclaim is premised does not exist. As no reasonable cause of action exists, the counterclaim should be struck out.

Costs

31 The plaintiff argued that costs should be awarded on an indemnity basis as the defendant would have been well aware of the controlling authority of the Court of Appeal in *Lee Tat*, which was subsequently applied in *Sunbreeze*, when he filed the counterclaim. Both cases clearly held that no tort of abuse of process exists in Singapore law, and both were decided before the counterclaim was filed. Bringing a counterclaim in the face of these clear statements of law justifies an award of indemnity costs.

32 I do not agree with the plaintiff. I am of the view that the fact that the counterclaim was brought in the face of contrary Court of Appeal authority is not in itself a reason for an award of indemnity costs, no matter how clear such authority may be. Otherwise, any attempt to challenge the law would attract indemnity costs; this would not be conducive for legal development and innovation. Indemnity costs might be awarded if a party's challenge to established legal authority was accompanied by other egregious conduct, but nothing of that nature was raised to me.

SUM 428/2019: Application to strike out the claim

The parties' cases

The defendant's case

33 The defendant made an oral application under O 14 r 12 of the ROC for the court to determine the natural and ordinary meaning of the offending words in the Article and Post. The defendant submitted that *Basil Anthony Herman v Premier Security Co-operative Ltd and others* [2010] 3 SLR 110 ("*Basil Anthony Herman*") allows for such a determination as no triable defences are raised. Indeed, determination of meaning at this stage would allow for a more effective determination of the application to strike out the plaintiff's claim.[17]

34 Regarding the striking out of the plaintiff's cause of action, the defendant argued that O 18 rr 19(1)(*b*), 19(1)(*c*) and 19(1)(*d*) are engaged.

35 First, the plaintiff's claim should be struck out as it is an abuse of the process of the court. As the meaning of the offending words is less than what was pleaded by the plaintiff and the plaintiff's reputation did not require vindication, the plaintiff's case is not a "real and substantial tort". The disproportionate costs involved justify striking out.[18] The defendant's argument was structured as follows:

(a) The principles in *Jameel (Yousef) v Dow Jones & Co Inc* [2005] QB 946 ("*Jameel*") apply to the present case. In *Yan Jun v Attorney-General* [2015] 1 SLR 752 ("*Yan Jun*"), the Court of Appeal noted that *Jameel* contained general principles that were applicable in the Singapore context, despite differences in English and Singaporean civil

17 Defendant's Submissions at paras 8–10.

18 Defendant's Submissions at paras 60–62.

procedural rules. The High Court had correctly struck out the plaintiff's case as an abuse of process given that the appellant's claim in defamation "did not disclose a real and substantial tort": at [120].[19]

(b) The meaning of the offending words in the Article and Post do not go so far as to suggest that the plaintiff was guilty of criminal conduct or of complicit in criminal activity. The vindication of the plaintiff's reputation required on the defendant's submitted meaning is less than that under the plaintiff's claimed meaning, and the substance of the tort is diminished.[20]

(c) Publication was minimal. The Post was online for a short time and did not feature prominently on the defendant's Facebook Timeline.[21]

(d) By 8 November 2018, various Government representatives had responded to the Post and Article, calling it false. Readers of the offending words would have known the words to be false and defamatory, and no damage would have been caused to the plaintiff's reputation.[22]

(e) The costs of the case are projected to be in the range of $300,000 to $400,000. These costs are disproportionate where publication was limited and where no actual damage accrued.[23]

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19 Defendant's Submissions at paras 33–42.

20 Defendant's Submissions at paras 20–29 and 43.

21 Defendant's Submissions at paras 44–45.

22 Defendant's Submissions at paras 47–49.

23 Defendant's 1st Affidavit at para 7, Defendant's Submissions at para 58.

36 In support of the above, or in the alternative, the plaintiff's claim should be struck out as it was brought for impermissible collateral advantages:[24]

(a) to preserve public confidence in the Singapore Government, and not to vindicate the plaintiff's reputation; and

(b) to target the defendant, who is an outspoken critic of the Singapore Government – the claim was brought to send the message that criticism or adverse debate about the plaintiff and the Singapore Government will be retaliated against, first through the use of state machinery and then through the use of libel laws.

37 Finally, the defendant submitted that the plaintiff's plea of malice should be struck out as it was not pleaded sufficiently. The plaintiff had pleaded that the defendant was malicious in making the Post and sharing the Article.[25] However, this is insufficient to establish bad faith on the defendant's part.[26]

The plaintiff's case

38 Regarding the O 14 r 12 application, the present case involves triable issues, and it is not conducive to proper case management for the court to rule on the question of meaning at this stage. *Basil Anthony Herman* did not apply as the defendant's characterisation of the meaning of offending words rely on the context in which those words were published; such context is triable. The defence also raised triable issues of whether publication was substantial, and whether malice and aggravation were present. If there is to be a trial, it would

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24 Defendant's Submissions at paras 63–69.

25 SOC at paras 3(k) to 3(n) and 21(d), Plaintiff's Affidavit at paras 55 and 56.

26 Defendant's Submissions at paras 70–74.

not be cost-efficient to consider the meaning of the offending words at two stages.

39 In relation to the substantive striking out application, the plaintiff submitted that the high threshold for striking out is not met.

40 First, the defendant's reliance on *Jameel* is misconceived. *Yan Jun* and *Qingdao Bohai Construction Group Co, Ltd and others v Goh Teck Beng and another* [2016] 4 SLR 977, which had applied *Jameel*, should be distinguished: the defamation claims in those cases had been struck out on other bases, and *Jameel* had mainly been considered for completeness. The present case involves allegations of corrupt and criminal conduct which go towards the plaintiff's integrity and fitness to hold the office of Prime Minister. These are grave and serious charges that would amount to a real and substantial tort even if published to one person in Singapore.[27]

41 Furthermore, the following triable issues require determination at trial:

(a) whether substantial publication had taken place in Singapore;[28]

(b) whether the defendant is liable for republication – it has to be shown that a reasonable person in his position would have appreciated that there was a significant risk that his words would be repeated and that that would increase the damage caused by what he said: *Gatley on Libel and Slander* (Alastair Mullis & Richard Parkes QC joint eds) (Sweet & Maxwell, 12th Ed, 2013) ("*Gatley on Libel and Slander*") at para 6.52;[29]

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27 Plaintiff's Submissions in SUM 428/2019 at paras 26–49.

28 Plaintiff's Submissions in SUM 428/2019 at paras 50–72.

29 Plaintiff's Submissions in SUM 428/2019 at paras 73–87.

(c) whether substantial damages should be awarded and therefore whether the costs that will be incurred will be out of all proportion to damages, as claimed by the defendant – the trial court will have regard, *inter alia*, to the nature and gravity of the allegations, malice, and the defendant's conduct: *Lim Eng Hock Peter v Lin Jian Wei and another and another appeal* [2010] 4 SLR 357 at [7];[30] and

(d) related to the issue of the quantum of damages that should be awarded, whether the defendant's use of the suit to wage a public campaign to gain sympathy amounted to classic aggravation.[31]

42 The plaintiff rejected the claim that the Suit was brought for the impermissible collateral advantage of deterring criticism of the plaintiff and the Singapore Government, and that the plaintiff's use of the legal process chilled freedom of expression. It is settled law that the right to freedom of speech and expression under Art 14(1)(*a*) of the Constitution is subject to and restricted by the laws of defamation: see, *eg*, *Tang Liang Hong v Lee Kuan Yew and another and other appeals* [1997] 3 SLR(R) 576 at [117]. Although the defendant is entitled to criticise the plaintiff and his policies, he was not entitled to defame the plaintiff. The plaintiff had given the defendant a reasonable opportunity to apologise and resolve the matter. As the defendant refused to do so, the plaintiff was entitled to sue to recover damages, seek an injunction and obtain costs.[32]

Whether meaning should be determined at this time

43 The defendant submitted that the meaning of the offending words as pleaded by the plaintiff was pitched "far too high":[33]

30 Plaintiff's Submissions in SUM 428/2019 at paras 94–110.

31 Plaintiff's Submissions in SUM 428/2019 at paras 111–124.

32 Plaintiff's Submissions in SUM 428/2019 at paras 188–201.

(a) The Article was couched in careful terms and only stated that unfair agreements were "believed" to be entered into. Other parts of the Article were heavily qualified. Taking the plaintiff's case at its highest, the Article only suggested grounds to suspect the plaintiff's involvement in 1MDB matters.

(b) The defendant's Post only conveyed that an investigation was underway against the plaintiff in relation to 1MDB matters. An ordinary and reasonable reader could not understand it to bear the meaning that the plaintiff was complicit in or guilty of criminal activity.

44 The plaintiff contended that it is not appropriate to determine the meaning of the offending words at this point. The natural and ordinary meaning of the offending words includes inferences or implications that the ordinary reasonable person may draw from those words in the light of his general knowledge, common sense, and experience. Inferences or implications based on extrinsic evidence are not admissible as a matter of law in determining the natural and ordinary meaning: *Review Publishing Co Ltd and another v Lee Hsien Loong and another appeal* [2010] 1 SLR 52 at [28] and [29]. In determining the natural and ordinary meaning, the court should holistically consider the broad impression conveyed by the words that fall to be considered, and not the meaning of each word or sentence under analysis: *Jeyasegaram David (alias David Gerald Jeyasegaram) v Ban Song Long David* [2005] 2 SLR(R) 712 at [27].[34]

45 The plaintiff argued that the context in which the offending words were published is material. The meaning of the offending words must take into

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[33] Defendant's Submissions at paras 20–29.

[34] Plaintiff's Submissions in SUM 428/2019 at para 127.

account the general knowledge that readers of the Post and Article were assumed to have of the 1MDB investigations. Given that 1MDB had become a byword for corruption and criminal activity, the association of the plaintiff with 1MDB and the suggestion that he was a key investigation target in 1MDB investigations would have led readers to understand that the plaintiff was alleged to be involved in or culpable of money laundering in exchange for favourable deals.[35]

46 Considering the above, I am persuaded that it would not be appropriate for a determination to be made at this time of the meaning of the offending words. I accept that the context of the use of the offending words would be material, and that such context can only be ascertained at trial.

47 Applying the reasoning in *Basil Anthony Herman* at [69], I also cannot conclude that the determination of the meaning of the complained words would save costs and time. A segmented approach is not likely to be cost- or time-efficient given the time it would take for the case to be steered through the various stages and the possibility of an appeal at each stage. Further, leaving the question of meaning to be ascertained at trial will allow the trial judge to make findings at trial unencumbered by any prior interpretations determined at the O 14 r 12 stage.

Whether the plaintiff's claim should be struck out

48 The threshold for striking out is high; a plaintiff's case should only be struck out in a "plain and obvious" case: *Antariksa Logistics Pte Ltd and others v Nurdian Cuaca and others* [2018] 3 SLR 117 at [79]. The decision in *Qroi Ltd v Pascoe, Ian and another* [2019] SGHC 36, which has received some attention

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[35] Plaintiff's Submissions in SUM 428/2019 at paras 134, 157 and 158.

recently, does not purport to lay down a different test: at [6]. On the facts here, the defendant has not succeeded in persuading me that a clear case has been made out for the striking out of the plaintiff's claim.

*The applicability of the "*Jameel *doctrine"*

49 The defendant cited the English Court of Appeal decision in *Jameel* for the proposition that that it may be disproportionate to continue proceedings to vindicate a libel where the plaintiff had not suffered a "real and substantial tort". The *Jameel* doctrine allows otherwise valid claims to be struck out if taking the claim to trial would be disproportionate.

50 I have some concerns about the proper scope of *Jameel*, which was really a case concerned with private international law principles. In that context, the focus on the existence of a "real and substantial tort" is perfectly understandable: the defendant in *Jameel* was a US publisher of a newspaper that had published an allegedly defamatory article on the Internet, and the issue arose as to whether the defamation claim could be struck out if no publication arguably occurred in England: at [48] and [49]. Requiring that "a real and substantial tort [be] committed within the jurisdiction" (at [50]) may be seen as an additional criterion in such cases.

51 However, *Jameel* has been taken as laying down a broad principle that a defamation claim may be struck out as abuse of process if it is clear and obvious that, in the words of *Gatley on Libel and Slander*, "the claim [is one that is] trivial or pointless, such that it would be disproportionate to permit it to proceed any further": at para 30.48. This approach was adopted in *Yan Jun* by the Court of Appeal at [118], though with the warning that "necessary circumspection" was needed in applying the principle enunciated in *Jameel*:

> 118 … [B]ecause [*Jameel*] entails – in part, at least – the (potentially far reaching) proposition that an action may be struck out on the basis that the *publication* of the defamatory material is *limited*, or the *amount* claimed as damages is *de minimis*, the principle enunciated in that case should be approached with the *necessary circumspection* by the Singapore courts. … [emphasis in original]

52 Choo Han Teck J also considered the application of *Jameel* in a more limited manner in *Chan Boon Siang and others v Jasmin Nisban* [2018] 3 SLR 498. At [7], Choo J noted that "although the court's resources ought not to be used for the pursuit of trivial or pointless claims, each case must be determined on its own facts". Counsel in that case had referred to *Jameel* as espousing the "*Jameel Doctrine*" as if it was a law until itself, but this was not entirely so. The law that ultimately governs the striking out of an action is that under O 18 r 19(*d*) of the ROC, as the words there express. *Jameel* had to be considered in context (at [6]):

> 6 … The Court of Appeal [in *Jameel*] was of the view that the plaintiff was forum shopping and that the question of jurisdiction was another issue the plaintiff had to properly establish. Furthermore, the idea of striking out a libel action in England was more readily acceptable because of two developments … the then new Civil Procedure rules and … the Human Rights Act of 1998. Lord Phillips held that English courts must thus balance the freedom of expression with the protection of individual reputation. It was in the above context that the court considered whether "the game [was] worth the candle" (*Jameel* at [57]). Improving on the comment at first instance, Lord Phillips held that [not only would it] "not have been worth the candle, it will not have been worth the wick" (*Jameel* at [69]).

53 In any event, I accept that the present case falls outside of the mischief targeted by *Jameel*. The plaintiff has a substantial reputation as the Prime Minister of Singapore. I acknowledge the line of cases cited by the plaintiff that establish that allegations of corruption and criminal conduct are "very grave charges" especially when made against the Prime Minister of a country – such

allegations are an "attack on the very core of [his] political credo" and erode his "moral authority": *Lee Kuan Yew v Seow Khee Leng* [1988] 2 SLR(R) 252 at [25], *Lee Kuan Yew and another v Vinocur John and others and another suit* [1995] 3 SLR(R) 38 at [55]. Such reputation may be marred even by publication of allegedly defamatory material to a small number of persons.

54 Having rejected the applicability of the *Jameel* doctrine to the facts, I consider whether the grounds for striking out under O 18 r 19 have been met: whether the plaintiff's claim is scandalous, frivolous or vexatious under O 18 r 19(1)(*b*), whether it may prejudice, embarrass or delay the fair trial of the action under O 18 r 19(1)(*c*), or if it is otherwise an abuse of the process of the Court under O 18 r 19(1)(*d*).

The effect of the allegedly defamatory statements

55 This is not a clearly unsustainable case of defamation. It could not be said that the natural and ordinary meaning of the offending words was plainly non-defamatory, namely, that the plaintiff was only being investigated in 1MDB investigations. A clear element of criminality was imputed to the plaintiff:

(a) the displayed words in the Post stated that the plaintiff had become a "key investigation target" and that some element of "unfair[ness]" was at play; and

(b) the Article stated that the "Singapore government was immediately summoned for questioning in Kuala Lumpur" and that "according to a source closed [*sic*] with the dictator, [the plaintiff] refused to be personally interviewed".

Whether there was insufficient publication

56 The defendant contested the extent of publication. I understand this submission to be premised on *Jameel* and going towards establishing that a "real and substantial tort" had not been made out, as well as a broader point that publication by the defendant was minimal or not pleaded.

57 I am of the view that this issue merits consideration at trial. It does not point towards the conclusion that the claim should be struck out. In any case, I find that publication was sufficiently made out on the pleadings. 45 persons interacted with the Post (see above at [8]), and given the size of the defendant's following on Facebook at the material time, which comprised 5,000 Facebook "friends" and 149 "followers", it can be inferred that the actual size of the Post's audience was larger than the 45 persons that directly interacted with it.

The effect of the known falsity of the statements

58 I do not accept the defendant's argument that subsequent Government statements debunking the Post and Article ensured that no damage was caused to the plaintiff's reputation.

59 The fact that statements were issued by Government agencies from 8 to 9 November 2018 debunking the allegations made in the Post and Article did not mean that the statements complained of lost their defamatory effect thereafter. As argued in the plaintiff's oral submissions, the situation here was not one where the maker of a statement retracted his statements, thus removing the sting of the statements: no antidote had been supplied by the defendant. The allegedly defamatory effect of the statements published by the defendant continued to operate as long as the Post was left online: the Post competed with

the clarificatory statements issued by the Government and was not nullified by them.

60 Indeed, the plaintiff submitted that the fact that the defendant left the Post up after its known falsity was established goes towards proving malice and aggravation. Whether this is the case should be determined at trial.

Whether the claim is brought for a collateral purpose

61 No collateral purpose has been made out at this time. The defendant asserted only that he was being "targeted" and that he is an outspoken critic of the Government. This alone does not establish that the plaintiff brought the Suit for a collateral purpose. I find that the defendant cannot show on the affidavit evidence and submissions that the plaintiff is pursuing the claim for any reason than to vindicate the alleged damage caused to his reputation.

Whether costs and damages are disproportionate

62 It is premature at this point to conclude that the costs and damages awarded will be disproportionate; these are matters better left to determination at trial. If the tort is made out, the award of damages will not be minimal. It may even be that malice and aggravation can be established against the defendant, thereby establishing aggravated damages. In these circumstances, the damages that may be awarded may not be out of proportion to the costs of the proceedings.

Conclusion

63 In sum, it has not been shown that the plaintiff's claim is scandalous, frivolous or vexatious; that it would prejudice, embarrass or delay the fair trial of the action; or that it is otherwise an abuse of the process of the court. The

threshold for striking out is high, and the plaintiff's claim is not such a clearly unsustainable one as to make it a "plain and obvious" case for striking out. In contrast, a different result has been reached in respect of the defendant's counterclaim because it goes against binding authority of the Court of Appeal, from which it is not possible for a court at this level to depart.

64 Given that I have allowed the plaintiff's application in SUM 148/2019 and dismissed the defendant's application in SUM 428/2019, costs in both applications are awarded to the plaintiff. The costs awards will be set out separately.

Aedit Abdullah
Judge

Davinder Singh S/O Amar Singh SC, Lim Xianyang Timothy and Fong Cheng Yee, David (Drew & Napier LLC) for the plaintiff in the claim and the defendant in counterclaim;
Lim Tean (Carson Law Chambers) for the defendant and the plaintiff in counterclaim.