IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 30

District Court Appeal No 11 of 2017

Between

(1) ANTHONY MA KAR SUI
(2) ADRIAN HO KIM LEE
(3) KEN TSE CHO LEUNG
(4) JAMES NG BOON HO
(5) BRYANT HWANG
(6) PANSY NG BOON HOON
(7) LO SHIAW CHOON

… *Appellants*

And

YAP SING LEE

… *Respondent*

District Court Appeal No 12 of 2017

Between

(1) KEN TSE CHO LEUNG
(2) BRYANT HWANG
(3) PANSY NG BOON HOON
(4) QUEK LIT WEE
(5) LO SHIAW CHOON

… *Appellants*

And

YAP SING LEE

… *Respondent*

JUDGMENT

[Tort] — [Defamation] — [Defamatory Statements]

[Tort] — [Defamation] — [Damages]

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See Kee Oon J:

Introduction

1 The present appeals arise out of defamation claims between members of the 19th management corporation of the condominium development known as Yong An Park ("YAP") and one of YAP's subsidiary proprietors, Yap Sing Lee ("YSL"). YSL had brought a claim in libel in the District Court against the defendants in DC Suit No 266 of 2011 ("the DC Suit"). The defendants in turn counterclaimed that he had libeled them.

2 District Court Appeal No 11 of 2017 ("DCA 11") is an appeal by the 2nd, 3rd, 4th, 5th, 6th, 7th, and 9th defendants ("the DCA 11 Appellants") against the decision of the district judge ("the DJ") . The DJ found that YSL had brought a valid claim against the nine defendants who were members of the 19th

management corporation ("MCST") of YAP and in turn, the defences to defamation of justification, qualified privilege, right of reply privilege and fair comment respectively which the defendants had raised would fail. The DCA 11 Appellants also argue that, although the 8th defendant, Quek Lit Wee ("QLW"), is not an appellant in DCA 11, QLW nevertheless ought to have the advantage of any finding by this Court in the event it is found that the defendants in the proceedings below are not liable for defamation.

3 District Court Appeal No 12 of 2017 ("DCA 12") is an appeal by the 4th, 6th, 7th, 8th and 9th defendants ("the DCA 12 Appellants") who were among the counterclaimants below against the DJ's decision in the DC Suit on the quantum of general and aggravated damages awarded to them. YSL has not appealed against the DJ's decision. I note in this regard that although QLW is not a party to DCA 11, she has nonetheless chosen to lodge an appeal in DCA 12. The DJ's grounds of decision are reported as *Yap Sing Lee v Lim Tat and others* [2017] SGDC 233 ("the GD").

Facts

4 The material factual background and chronology of events leading to the DC Suit may be described as follows.

Events prior to March 2006

5 The condominium development known as YAP was completed in 1986 and was built to full development intensity. Although YAP had a paid-up gross floor area ("GFA") of 82,593.028 sq m, only 80,041 sq m had been utilised by 1996.

6 On 25 September 1996, the MCST of YAP at the time applied under the Planning Act (Cap 232, 1990 Ed) ("the Planning Act") to the Urban Redevelopment Authority of Singapore ("URA") to obtain approval to convert the roof terraces of the penthouses and townhouses to family halls. On 22 November 1996, the URA issued its written permission for the proposed additions and alterations in the MCST's application (hereinafter referred to as "the 1996 WP"). As a result, YAP was deemed to have incurred additional GFA of 1034.94 sq m. However, by 22 November 1998, which was the date on which the 1996 WP lapsed, none of the properties concerned was given approval by the MCST to carry out the additions and alterations which were the subject of the 1996 WP. In other words, although the URA had granted permission for the proposed works, separate and further approval had to be sought from the MCST in order for the said additions and alterations to be carried out, and this had not been obtained for any of the units concerned.

7 The issues pertaining to the proposed additions and alterations which formed the subject of the 1996 WP laid dormant for some time until 2004. On 3 June 2004, the MCST was copied a letter from the URA to the architects of the owner of Block 331 #15-01, who had proposed to retain some addition-and-alteration works that would have consumed the GFA of YAP. In the letter, the URA had informed the owner of Block 331 #15-01 that it was unable to waive the "requirement for the owner to declare that the subsidiary owners of condominium development ha[d] no objection to the development potential and baseline [*ie*, the GFA] being consumed by the retention proposal". The URA explained that this was because "the development potential and baseline [were] tied to the land and hence belong[ed] to the subsidiary proprietors collectively." In this regard, it appears that although the URA had rejected the owner's request for waiver on the basis that it was not the URA's prerogative to waive the other

subsidiary proprietors' consent for additional GFA to be consumed, the MCST had taken the URA's position to be that the retention of structures in a subsidiary proprietor's unit would not be approved as long as additional GFA was consumed.

8 Concerns pertaining to unauthorised structures in YAP such as those which surfaced in the case of the owner of Block 331 #15-01 appeared to gain traction in the years that followed. On 15 January 2005, the 18th Annual General Meeting ("AGM") of YAP was convened. The managing agent at the time briefed the meeting on the status of unauthorised structures erected within subsidiary proprietors' units in YAP. Members who attended the general meeting were noted to have raised various concerns over the existence of such structures. The discussion culminated with the minutes stating that "there was a strong consensus at (the meeting) that such unauthorised structures and alterations must be addressed and removed". It appears however that these issues were only ventilated again after they were raised in the course of YSL's proposal in 2006 to undertake construction works on his property.

Events subsequent to March 2006

9 In March 2006, YSL bought a penthouse unit at YAP and became the owner of Blk 327 #25-01 ("YSL's unit"). About this time, the 19th MCST took office as well. In the GD at [2], the DJ characterised March 2006 as the "start of the tumult that led to these cross-claims that reached across more than half a decade".

10 YSL's unit came with an existing roof terrace structure which the previous subsidiary proprietor had constructed, apparently without obtaining the MCST's approval to undertake addition-and-alteration works during the

subsistence of the 1996 WP. On 11 August 2006, YSL's architect wrote to the YAP condominium manager to "revalidate" the 1996 WP as he proposed to enhance the existing staircase leading to the roof garden. This would have consumed additional GFA, but YSL's architect proposed to offset this by reducing the approved family hall area on the roof, such that overall there would not be any net consumption of GFA. On this basis, YSL's architect proceeded to apply to the URA on 3 September 2006 for the proposed additions and alterations involving the staircase enhancement works. However, the next day on 4 September 2006, YAP's condominium manager replied to YSL's architect, rejecting the application to undertake the proposed staircase enhancement works at YSL's unit. The letter stated as follows:

> [T]he Management Council is unable to approve any application for renovation works which affect the GFA of Yong An Park. This is in accordance with … the Supplementary By-Laws. The said By-Laws also states that it shall be the onus of the Subsidiary Proprietor to obtain written confirmation from the relevant Statutory Body that any proposed works does not affect the Gross Floor Areas (GFA) of Yong An Park.

11 On 2 October 2006, Mr Clement Lim of the URA replied to YSL's architect, stating that as the proposed staircase enhancement works would consume additional GFA, the URA required written confirmation by the MCST that a 90% resolution of the MCST had been passed approving of YSL's proposed renovation works. The relevant portion of Mr Clement Lim's letter stated as follows:

> We have evaluated your proposal and we would like to inform you that this is an A/A proposal involving increase in GFA in strata-titled developments and we cannot issue planning permission until the following condition is met.
>
> There is new GFA created due to the enlarged staircase which would cause the overall GFA of the development to increase. For proposed A/A works within strata units which involve an increase in Gross Floor Area (GFA), the applicant is required to

> obtain a letter signed by the Secretary or Chairperson of the council of the MC confirming that the MC has by 90% resolution authorized the carrying out of the proposed works for the strata unit.

12 Pursuant to the correspondence with YSL's architect, Mr Clement Lim attended at YSL's unit on 29 October 2006 to inspect YSL's roof terrace. During the inspection, Mr Clement Lim found that the structures on the roof terrace conformed to the dimensions approved by the URA in 1996. Thus, on 30 October 2006, Mr Clement Lim wrote an email to YSL's architect stating that insofar as the GFA which would be incurred by the proposed staircase enhancement works could be offset by reducing the existing roof terrace structures on YSL's unit, the URA had no issue with the proposed works. This was on the basis that no additional GFA would be consumed overall. Mr Clement Lim's email stated as follows:

> URA has no issue with GFA since there is existing GFA from the approved roof terrace structures which you can offset from to secure the GFA for your proposal.
>
> You will simply need to obtain MCST's endorsement in your resubmission … to show us that MCST approves of the A/A works.

13 It appears, however, that Mr Clement Lim had proceeded on the assumption that the roof terrace structures on YSL's unit had been built after having received all the requisite approvals, including that of the MCST, for its construction. YSL's architect proceeded in any event to follow up on the URA's advice by writing to the MCST on 13 November 2006 for its endorsement of the proposed works. Further communications with the YAP condominium manager, however, were unavailing. YSL was later informed that the MCST would be consulting its lawyers for a legal opinion.

14 YSL expressed his concern over the delay since his submission on 11 August 2006, and how despite having obtained the URA's opinion (as suggested by the condominium manager) that there was no GFA increment arising from his proposed additions and alterations, the MCST appeared unhappy with the URA's position.

15 On the MCST's part, it appears that the concern at the time was that, although the proposed staircase enhancement works would not consume additional GFA, YSL's unit had existing roof terrace structures that had *already* consumed additional GFA under the 1996 WP but without the MCST's prior approval or authorisation. In other words, it was no answer for YSL to suggest "offsetting" the GFA consumed by the proposed works by reducing the family hall area on the roof. This was because YSL was essentially proposing to preserve the status quo, under which his unit would continue to consume additional GFA of YAP that was never authorised. The MCST's concerns were amplified in December 2006 when they obtained legal advice from WongPartnership LLP indicating that the retention of unauthorised structures would consume the GFA of YAP and affect the other subsidiary proprietors.

16 Pursuant to the apparent deadlock in the approval process for the proposed works, YSL filed an application to the Strata Titles Board ("STB") on 20 December 2006 against the MCST and its members by way of STB 106/2006, to secure inspection of "the records and documents of the [MCST] immediately". The proceedings in STB 106/2006 reached a mediated settlement, by which YSL was allowed to inspect the MCST's records and documents. YSL, however, proceeded to submit resolutions for the 20th AGM, where members of the new MCST were to be elected, by which he sought to move that (a) any MCST member who was derelict and caused loss to the MCST

should be held liable for any such loss; and (b) any such member should be barred from vying for a position on the MCST ("the Resolutions").

17 In January 2007, the MCST again sought legal advice on YSL's proposed staircase enhancement works, by consulting Drew & Napier LLC on whether the retention of unauthorised structures would consume the GFA of YAP and affect other subsidiary proprietors of YAP.

18 On 2 February 2007, YSL filed a further application before the STB (STB 10/2007) against the MCST for "[a]n interim order to the [MCST] to endorse the proposed additions and alterations as submitted to the [MCST] on 11th August 2006 and amended on 13th November 2006 for [YSL's] submission to the relevant authorities for further approvals."

The March 2007 "special edition" newsletter

19 Following these events, the MCST released a "special edition" newsletter in March 2007, which forms the subject of YSL's claim in libel. This newsletter was released ostensibly in an attempt to clarify the issues surrounding the use of YAP's GFA and to set out the background of the various disputes which emerged as a result. I set out the text of the said newsletter in full, with the words at which YSL took offence emphasised in italics (at paragraphs 12 and 14 of the newsletter):

> **Legal Issues relating to unauthorised structures**
>
> Introduction
>
> 1. Yong An Park has eight townhouse and 16 penthouse units.
>
> 2. Several units contain addition and alteration works that were carried out from 1996 to 2003 without prior approval being obtained from the management corporation. Owners of three units have also recently applied for additions and alterations to

be carried out. These additions and alterations ("A&A"), if constructed or retained (as the case may be), consume Yong An Park's gross floor area ("GFA").

3. The subsidiary proprietors ("SPs") of these three units are presently engaged in legal proceedings with the management corporation in connection with these A&A.

4. Council has decided to publish this special edition newsletter to as an update to residents of Yong An Park concerning the background of the various disputes and to explain why the underlying issues are important to all residents at Yong An Park.

Background

MC's Decisions

5. On 3 July 1996, the 9th Management Council ("MC") approved the design of A&A for penthouses/townhouses and subsequently, applied to Urban Redevelopment Authority ("URA") for permission to carry out A&A for the penthouses/townhouses. On 22 November 1996, URA granted approval, with the written permission lapsing on 22 November 1998.

6. The 10th MC decided that the management corporation would grant permission to the penthouses/townhouses for A&A to be carried out only if all the penthouse/townhouse SPs execute a Deed of Undertaking ("Deed"). The paramount objective of requiring all the penthouse/townhouse SPs to jointly agree to the terms of the Deed was to ensure consistency and uniformity of design of the A&A and not to compromise the façade of the buildings in Yong An Park. The penthouse SPs did not execute the Deed. Although the Deed was signed by the townhouse SPs, the 10th MC did not issue written approval to the townhouse SPs to carry out A&A because 2 of the townhouse SPs did not make the requisite deposits to the architect (as required under the terms of the Deed).

7. Subsequent MCs from 1997 (10th MC) to 2005 (18th MC) took the approach that council had no authority to approve A&A to the penthouses/townhouses where they involved the use of GFA of Yong An Park.

8. Yong An Park was built without fully utilizing its GFA. However, if the unused GFA was used by SPs for their A&A, Yong An Park may be left with insufficient GFA should management corporation decide in future to carry out upgrading works involving GFA (eg building of a new clubhouse etc.

AGM Decisions

9. At the 17th AGM held on 17 January 2004, a penthouse SP sought unanimous resolution from the general meeting to obtain consent from the SPs regarding the private enclosure that the penthouse SP had constructed on her penthouse roof terrace. The penthouse SP offered to contribute the sum of S$150,000.00 to the management corporation. Members who attended the general meeting were noted to have raised concerns as to whether granting the SP consent (to retain her A&A) would "affect each individual subsidiary proprietor" and whether such consent (if granted) would "set a precedent for future or other penthouse units with similar structures". In the event, the resolution was not carried as there were 9 votes cast against the resolution against 2 cast in favour.

10. At the 18th AGM held on 15 January 2005, the managing agent briefed the meeting on the status of unauthorised structures constructed within SPs units in Yong An Park. Members who attended the general meeting were noted to have raised various concerns over the existence of such structures. The discussion culminated with the minutes stating that "there was a strong consensus at (the meeting) that such unauthorised structures and alterations must be addressed and removed".

The Present MC's Approach

11. In respect of the unauthorised structures and alterations existing in townhouses and penthouses, the present 19th MC sought to continue the approach set by the previous MCs and in line with the strong consensus on the subject-matter noted during the 18th AGM.

12. However, penthouse SPs of Block 327 #25-01 and Block 333 #09-03 have been embroiled in legal proceedings against Yong An Park (and members of the MC). *The penthouse SPs sought to compel the management corporation to allow them to construct A&A to their roof terrace or allow A&A already constructed without authorization from previous MCs, even when the same results in the use of GFA of Yong An Park.*

13. Members of the 19th MC have committed much of their time in this matter and have relied on legal advice with a view of ensuring that the interest of the SPs at Yong An Park are protected.

14. It is the 19th MC's firm belief that if the unauthorised structures and alterations were allowed to continue in the penthouse/townhouse, *the SPs of these penthouses/townhouse*

> *would have used GFA of Yong An Park to the detriment of all other SPs and occupiers.*
>
> 15. It is paramount that all SPs should now consider the future of the unauthorised structures/alterations in the penthouse/townhouse. Resolutions have been tabled at the forthcoming AGM which deals with these issues.
>
> 16. It would be highly desirable that a permanent resolution to this issue be achieved in a manner which constitutes a win-win for all SPs living at Yong An Park. We therefore hope that you will take time to consider the above issues and let us have your views in the weeks leading to the AGM.

Events subsequent to publication of the "special edition" newsletter

20 On 31 March 2007, the 20th AGM of the MCST was held. As noted above, elections for members of the new MCST were to be held at this meeting. Pursuant to the MCST seeking legal advice from Drew & Napier LLC in January 2007, Mr Jimmy Yim SC ("Mr Yim SC") addressed the meeting, stating that the present MCST was not selectively prosecuting anyone for the removal of the unauthorised structures at the penthouses nor were they aggressively pursuing an agenda of their own to prohibit any subsidiary proprietors from carrying out addition-and-alteration works according to the by-laws and other statutory requirements. Mr Yim SC also stated that the matter was pending clarification from the planning authorities. YSL subsequently agreed to withdraw the Resolutions after clarification had been obtained. In addition, YSL withdrew STB 10/2007 on 11 June 2007.

21 On 3 August 2007, and pursuant to clarifications sought from the URA, the MCST received an email from one Ms Catherine Lau of the URA, which contained the following advice:

(a) Generally, for proposed addition-and-alteration works within a strata unit, the respective unit owner's consent would suffice for the URA to grant planning permission.

(b) But if the addition-and-alteration works incurred additional GFA, approval from the MCST in the form of a "90% resolution" would be required.

22 In response to the MCST's queries on the perceived inconsistency between the URA's position regarding YSL's submission (which the URA appeared to support), and that of the subsidiary proprietor of Block 331 #15-01 in 2004 (which the URA appeared *not* to support - see above at [7]), Ms Catherine Lau explained the differences between the two cases as follows:

(a) In the case of the subsidiary proprietor of Block 331 #15-01, the URA noted that the proposal to retain the addition-and-alteration works was *not consistent* with the approved plans granted under the 1996 WP as it would consume additional GFA, of about 10 sq m more than what was previously permitted under those plans. The URA therefore took the position that his proposal affected the GFA of YAP, and hence required him to obtain consent from the other subsidiary proprietors of YAP in his submission.

(b) In YSL's case, the proposed works were *consistent* with the approved plans granted under the 1996 WP as they would not incur GFA in addition to what was previously permitted under those plans. This was confirmed by the site inspection performed by Mr Clement Lim, where it was observed that any additional GFA consumed by the enlarged staircase would be offset by a reduction of GFA consumed by the roof

terrace structures. YSL's submission was therefore "significantly different from the 2004 [Block 331 #15-01] submission, as it involved only new A&A works and no additional GFA." In the premises, the URA did not consider that further clearance was needed from the MCST in YSL's submission.

23 On 12 September 2007, the MCST's lawyers wrote back to Ms Catherine Lau, essentially stating that YSL's unit had not complied with the MCST's requirements in undertaking addition-and-alteration works under the 1996 WP. The MCST's lawyers went on to query the URA on a number of points. One of these was that, since YAP "was deemed to have incurred additional GFA of 1,034.94 sq m" when the 1996 WP was issued, whether this deemed GFA "had in effect reverted" to YAP upon the lapsing of the 1996 WP when none of the penthouse or townhouse owners had carried out the approved works. Mr Clement Lim of the URA replied on 27 September 2007, stating that the URA did not see any issue of unconsumed GFA that would need to be reverted to development potential since the existing roof terrace structures had already been constructed in accordance with the 1996 WP's approved plans. As for the MCST's contention that the previous owner of YSL's unit had not complied with their requirements in undertaking the addition-and-alteration works, Mr Clement Lim stated that it would be up to the MCST to follow up on their own approval requirements for the installed structures.

24 The MCST's lawyers followed up with further queries on 28 January 2008, asking if the URA had verified if YSL's roof terrace structures had been installed during the validity of the 1996 WP and, if the structures were installed after the expiry of planning approval, whether the URA would approve such

structures retrospectively. The URA replied on 3 March 2008 declining to respond to the lawyers' queries as they considered them to be "hypothetical".

25 At the same time, the MCST's lawyers commenced a parallel set of enquiries with the Ministry of National Development ("MND") on the same issue. On 26 August 2008, the MND replied with their position as follows:

> 7. It was … mentioned in your letter that the roof structures in some units could have been built before or after the grant of the 1996 WP. Such built roof structures will be regarded as being regularized and authorised by 1996 WP if the roof structure for a unit, built before the grant of the 1996 WP, is similar to the works approved for a unit under the 1996 WP.
>
> 8. If the roof structure in a unit was built after the grant of the 1996 WP and in accordance with the plans approved under the 1996 WP, such roof structure will be regarded as being authorised by the 1996 WP in the absence of evidence sufficient to prove that it was built after the validity period of the 1996 WP.
>
> …
>
> 10. You have informed us that MCST's clearance was not given to the SPs between 1996 and 1998 to carry out the A&A works at the roof terraces. We would like to stress that the requirement for the SPs to obtain the MCST's clearance under the by-laws is a matter between the MCST and the SPs, and the failure to obtain such clearance does not render the works unauthorised under the Planning Act.
>
> 11. Nevertheless, we believe that the position under the Planning Act should not hinder the MCST in the exercise of its rights and powers under its by-laws or under the Building Maintenance and Strata Management Act to pursue demolition of any of the built roof structures which have not been approved by the MCST.

26 Following these events, YSL circulated open letters on seven separate occasions between 6 February 2010 and 6 February 2013 to YAP's residents, which, in broad terms, called into question the integrity and fitness of the DCA 12 Appellants as members of the MCST. YSL's allegations included

claims relating to how the DCA 12 Appellants handled the issue of YSL's addition-and-alteration works. The seven letters formed the subject of the DCA 12 Appellants' counterclaim in libel in the DC Suit below. Although the DC Suit was filed in 2011, it did not proceed to trial until March 2016, as a related action was commenced in Suit No 112/2013 in the High Court against YSL for defamation. That action was settled by YSL, and the counterclaim in the DC Suit was filed thereafter in October 2014.

The defamatory statements

27 The defamatory statements with which YSL took issue were statements published in the MCST's "special edition" newsletter of March 2007 (see [19] above) that sought to address legal issues relating to unauthorised structures in YAP. For ease of reference, I reproduce the relevant statements as follows:

> 12. … The penthouse SPs sought to compel the management corporation to allow them to construct A&A to their roof terrace or allow A&A already constructed without authorization from previous MCs, even when the same results in the use of GFA of Yong An Park.
>
> …
>
> 14. … the SPs of these penthouses/townhouse would have used GFA of Yong An Park to the detriment of all other SPs and occupiers.

These will be referred to respectively as "the Para 12 Statement" and "the Para 14 Statement", and collectively as "the Statements".

28 In YSL's Statement of Claim, it was pleaded that the defamatory meanings of the Statements were that:

> (a) If YSL's addition-and-alteration works were approved, YAP's available GFA would be diminished;

(b) YSL had sought to compel the MCST to allow his disputed addition-and-alteration works despite the fact that this would affect and diminish the available GFA of YAP to the detriment of the other subsidiary proprietors;

(c) YSL "sought to utilize part of the unused GFA allocation of [YAP] to the detriment of" YAP;

(d) YSL intended to act in "a manner that was prejudicial to the [MCST]";

(e) YSL's seeking approval in these circumstances was unreasonable and "detrimental to [the MCST]"; and

(f) YSL "had disregarded the interests of the other Subsidiary Proprietors and occupiers of [YAP]".

29 In the DCA 11 Appellants' Defence, they pleaded that the natural and ordinary meanings of the Statements were that "the Defendants at the material time believed that [YSL's] Disputed Works would result in [YSL] using the GFA allocation of Yong An Park to the detriment of the other SPs and occupiers of Yong An Park", and were fair comment on a matter of public interest as they related to community co-existence amid strata titled apartments.

The District Judge's Decision

30 The DJ found in favour of YSL and determined that he had been defamed by all nine defendants to the DC Suit. He ruled that the defendants were unable to rely on their pleaded defences. In particular, he found that there was express malice behind the defendants' statements, thus defeating the

defences of qualified privilege and fair comment. The DJ further ruled that the defendants were liable to pay general damages of $30,000 and aggravated damages of $15,000 to YSL.

31 As for the counterclaim in the DC Suit, the DJ also found in favour of all the plaintiffs to the counterclaim (hereinafter referred to as "the counterclaimants") below. He assessed the general damages to be paid by YSL to each counterclaimant at $3,000. He did not make any order for aggravated damages.

The DJ's decision on liability in YSL's claim

32 In the DJ's decision on liability in YSL's claim, he began by examining the natural and ordinary meaning of the alleged offending words as contained in the Statements. In the DJ's view, they meant that YSL had "brought pressure to bear on the [19th MCST] so that he could wrongfully use GFA belonging to [YAP] for his penthouse alone. He was out to grab GFA belonging to [YAP]" (see GD at [57]). He therefore agreed with YSL that the Statements carried the defamatory imputations pleaded by him.

33 The DJ then turned to consider the four defences mounted by the DCA 11 Appellants, namely, those of (a) justification; (b) qualified privilege; (c) right of reply privilege and (d) fair comment.

34 On justification, the DJ held that the defence was not made out. The reasons for his decision were essentially as follows (see GD at [65]–[68]):

> (a) Based on the communications between the 19th MCST's lawyers, URA and MND, the planning authorities had taken the clear position that GFA had been consumed upon the issue of the 1996 WP,

that the existing roof terrace structures in YSL's unit had complied with the approved plans under the 1996 WP, and that the consumed GFA could not revert to the MCST;

(b) Since YSL's proposed works sought to enlarge his staircase but offset the additional GFA incurred by reducing the roof terrace structures on his property, the URA had no objection to the said works because they did not consume further GFA. This was made known to the 19th MCST; and

(c) In the premises, there was "nothing wrongful" about YSL's actions. The Statements were therefore untrue in their substance.

35 On qualified privilege, right of reply privilege and fair comment, the DJ essentially held that these other defences applied but they were defeated by the presence of malice on the part of the 19th MCST. The DJ's finding of malice was premised on the following facts (see GD at [90]–[92]):

(a) Based on URA's correspondence of 30 October 2006 (see above at [12]), it was clear that URA had taken the position that YSL's proposed works would not incur any additional GFA, which went beyond what was permitted under the 1996 WP. This was something that was made known to the 19th MCST before the Statements were published.

(b) However, the 19th MCST, in their subsequent communications with the planning authorities, then took the position that none of the units which formed the subject of the 1996 WP had been authorised by the MCST to carry out any additions and alterations in accordance with the

approved plans and sought to enquire if the GFA which was deemed to have been incurred under the 1996 WP could revert to YAP.

36 On these facts, the DJ concluded as follows (at [94]–[98] of the GD):

(a) First, the 19th MCST was resiling from their position in their correspondence of 4 September 2006, where the reason for their rejection of YSL's application to carry out the proposed works appeared to be that it affected the GFA of YAP rather than the fact that there was no MCST approval granted for the existing roof terrace structure on YSL's property (see above at [10]);

(b) Second, with the knowledge that YSL's proposed works would not consume further GFA in addition to what was already incurred, the 19th MCST sought to claw back the GFA that YSL's unit incurred in accordance with the 1996 WP; and

(c) Third, the "special edition" newsletter released by the 19th MCST in March 2007 conveniently omitted reference to (i) the URA's correspondence of 30 October 2006 which made clear that YSL's proposed works would not incur any additional GFA that went beyond what was permitted under the 1996 WP; and (ii) the MCST's attempts to claw back GFA from YSL's unit.

In the circumstances, the DJ concluded that, even as he gave "due credit for the defendants' professed confusion" about the state of affairs, he found that they did not believe in the truth of the Statements (at [99] of the GD). Since none of the defences were established, the defendants were liable for defamation in YSL's claim.

The DJ's decision on damages in the DCA 12 Appellants' counterclaim

37 As for the DJ's decision on damages in the counterclaim, the DJ took into account the following considerations in his assessment:

(a) Although the language of YSL's letters was "really quite strong", "it would have been apparent to reasonable subsidiary proprietors … that [YSL] had felt himself hard done by [the 19th MCST] and indeed subsequent management councils, because his roof terrace works never received the approval he craved" (at [114] of the GD);

(b) While the inherent sting of the words used was serious, none of the counterclaimants suffered any real harm or injury from the defamatory statements especially considering the fact that the words were targeted at a group of persons and any adverse impact on their individual reputation would have been diluted (at [118]);

(c) Only one of the counterclaimants (*ie,* the 6th defendant) had testified, whereas the other counterclaimants did not explain their absence nor joined in the separate High Court action commenced by some other defendants against YSL in relation to the seven letters and the Resolutions (at [116]);

(d) The 6th to 9th defendants were not members of the MCST when the statements were published (at [116]);

(e) The 4th and 8th defendants were no longer resident in YAP by the time YSL published the offending statements (at [116]); and

(f) The imputations alleged went to the counterclaimants' office in the MCST, and they had all ended their term in office in March 2007, at the conclusion of the 20th AGM (at [117]).

38 In the course of his decision, the DJ also did not consider it appropriate to differentiate the damages ordered in their favour. In the circumstances, the DJ fixed the general damages payable in favour of each of the counterclaimants at $3,000, and no aggravated damages were ordered.

The appeal in DCA 11 of 2017

The issues

39 In DCA 11, the Appellants do not seek to challenge the DJ's finding that the Statements were defamatory. The thrust of the Appellants' submissions was that the DJ erred in finding, against the weight of the evidence, that they were unable to avail themselves of the various pleaded defences. The following issues arose for my determination:

(a) Whether the DJ erred in finding that the defences to defamation, of justification, qualified privilege, right of reply privilege and fair comment respectively failed; and

(b) Whether QLW, who has chosen not to appeal, can take advantage of any finding by this Court in the event it is found that the defendants in the proceedings below are not liable for defamation.

My Decision: Whether the DJ erred in finding that the defences to defamation failed

Issue (a): Justification

40 The onus is on the DCA 11 Appellants to establish the defence of justification by proving that the natural and ordinary meaning of the defamatory statement was justified. In his GD, the DJ considered the natural and ordinary meaning of the Statements to be that (at [57]):

> YSL had brought pressure to bear on the MC so that he could wrongfully use GFA belonging to the condo for his penthouse alone. He was out to grab GFA belonging to the condo. This carried the defamatory imputations pleaded by [YSL], or as the defendants preferred to put it, caused "detriment" to the condo.

41 According to the DJ (at [78] of the GD), the real issue in the justification defence was "whether [YSL's] conduct relating to his proposed A&A was selfish and prejudicial to the MCST because it took GFA belonging to the MCST".

42 The DJ reasoned (at [67] of the GD) that justification was not made out based on the "factual premise" that there was "nothing wrongful" about YSL's actions. This was because of his view that the planning authorities had taken the clear position that the existing roof terrace structures in YSL's unit had complied with the approved plans under the 1996 WP, and that the consumed GFA could not revert to the MCST in any event. Since YSL's proposed staircase enhancement works would not consume further GFA, the planning authorities had no objection to the said works. In the premises, the DJ concluded that it could not be asserted that YSL was seeking to pressure the MCST into acceding to his request, or to "grab" GFA that rightfully belonged to YAP in the course of his proposed works.

43 In rejecting the DCA 11 Appellants' defence of justification, the DJ's factual premise was that there was "nothing wrongful" about YSL's actions so long as they received the requisite sanctions from the planning authorities. With respect, I am of the view that this premise is erroneous. In this regard, I accept the DCA 11 Appellants' primary contention that what lies at the heart of the appeal in DCA 11 is an understanding that even though a structure is permitted under the Planning Act or approval has been given under the said Act, a subsidiary proprietor is not exempt from obtaining the MCST's approval.

44 On examining the factual background and the various exchanges of correspondence, it is apparent that in order for any subsidiary proprietor to carry out works on his property that had a bearing on the overall GFA of YAP, separate and further approval had to be sought from the MCST regardless of whether approval from the planning authorities had been granted. Should a subsidiary proprietor fail at any one of these two stages, any works that had been carried out or were being contemplated would be unauthorised and hence "wrongful".

45 In this case, it appears that the source of the present dispute can be traced to when the previous subsidiary proprietor of YSL's unit had constructed roof terrace structures on the property which incurred additional GFA in accordance with the 1996 WP, which had been approved by the planning authorities, but without first obtaining the requisite approval from the MCST. Indeed, there is no record of any such approval from the MCST for those purposes. It is not open to YSL to speculate and contend that the MCST of the day must have expressly or impliedly sanctioned it at the time. To my mind, given the lack of evidence of any relevant MCST approval, it is more consistent overall with the inherent

probabilities of the case that no such approval had been sought or obtained by the previous owner of YSL's unit, and none existed.

46 In this connection, it should be recalled that in August 2006, YSL was seeking to "revalidate" the 1996 WP through his proposed works. By later instituting STB proceedings in STB 10/2007 for an order that the MCST endorse those proposed works, YSL was in effect asking that the MCST be compelled to regularise the unauthorised consumption of GFA, or to sanction a state of affairs which had been subsisting (but apparently without the MCST's knowledge or concurrence) and which had only come to light after August 2006. His application in STB 10/2007 was still extant when the Statements were published in the "special edition" newsletter in March 2007. He only withdrew that application in October 2007.

47 Consequently, had the additional GFA not already been consumed by the construction of the roof terrace structures in YSL's unit, the unconsumed GFA would continue to form part of YAP's development potential, which the MCST could then utilise for the construction of, say, other common facilities that would benefit the subsidiary proprietors of YAP as a whole. Instead, the GFA was consumed to the potential detriment of other subsidiary proprietors and YSL was seeking to legitimise its consumption for his own sole benefit.

48 In my judgment, there was truth to the substance of the Statements when they are read and understood in the proper context they were made in March 2007. I find that the DJ had erred in his factual premise and in thereby concluding that the defence of justification was not made out on the facts. Since justification constitutes a complete defence against YSL's claim, I find that the

defendants should not be held liable in defamation. On this basis alone, the appeal in DCA 11 should be allowed.

Issue (b): Fair comment, qualified privilege and right of reply privilege

49 Although my finding above is sufficient to dispose of the appeal in DCA 11, for completeness, I go on to consider the remaining defences. With respect, I am of the opinion that these defences should also have applied on the facts.

50 To succeed in the defence of fair comment, the defendant has to satisfy all of the following criteria (see *Loh Siew Hock and others v Lang Chin Ngau* [2014] 4 SLR 1117 at [85]):

(a) the words complained of are comments;

(b) the comment is based on facts;

(c) the comment is one which a fair-minded person can honestly make on the facts provided; and

(d) the comment is on a matter of public interest.

51 However, the defence of fair comment will not succeed if the defendant's comments are motivated by malice. In the context of fair comment, a statement of opinion is made maliciously if the defendant did not genuinely believe in what he stated. Malice does not mean "improper motive" in the defence of fair comment (see Gary Chan, *The Law of Torts in Singapore* (Academy Publishing, 2nd Ed, 2016) ("*The Law of Torts in Singapore*"), at para 13.033). In order to defeat the defence of qualified privilege, the plaintiff has

to prove that the defendant acted with malice in making the defamatory statements (*The Law of Torts in Singapore* at para 13.085).

52 As noted above (at [35]), while the DJ had found that all the defences of qualified privilege, right of reply privilege and fair comment applied in this case, he eventually held that they were defeated by the presence of express malice on the MCST's part. The DJ's determination was that the defendants did not believe in the truth of the Statements when they published the "special edition" newsletter in March 2007. On my examination of the facts, however, I am unable to find that the DJ's conclusion is supported by the evidence as a whole.

53 In my assessment, the DJ appears to have placed insufficient weight on the likely confusion and misapprehension that the MCST was under as to the correct legal position on the matter. Indeed, it appears that the confusion as to the state of affairs had commenced from the time the owner of Block 331 #15-01 sought approval to retain addition-and-alteration works that would have consumed the GFA of YAP. In reliance on the URA's position in that case, the defendants had believed that the retention of structures in a subsidiary proprietor's unit would not be approved by the planning authorities as long as additional GFA was consumed.

54 It seems that the defendants continued to operate under this assumption, and thus they took pains to clarify the position after being confronted with what they saw as a curious change in position by the planning authorities. The change was apparently communicated in Mr Clement Lim's email of 30 October 2006 (see [12] above), which suggested that the URA had "no issue" with the proposed works and their effect on GFA even though the retention of the

existing works would have meant YSL's unit would have consumed additional GFA. Thus, the defendants embarked on a protracted exchange of correspondence with the planning authorities and expended efforts to seek legal advice on the matter in the two years subsequent to YSL's application to undertake the proposed works in August 2006.

55 In any event, the following facts make it clear that the Statements were informed by a genuine and honest belief on the defendants' part as to the truth of those statements:

(a) First, at the time of the publication, the defendants knew that none of the properties which were the subject of the 1996 WP had been given approval by the MCST to carry out the relevant addition-and-alteration works. They therefore knew that the roof terrace structures in YSL's unit could not have been installed under the 1996 WP and thus the consumption of GFA from those works had not been authorised.

(b) Second, after seeking legal advice on YSL's proposed works in or around December 2006, WongPartnership LLP had informed them that the retention of unauthorised structures would consume the GFA of YAP and affect the other subsidiary proprietors of YAP.

56 Moreover, even before the publication of the "special edition" newsletter in March 2007, there was already strong consensus among YAP's subsidiary proprietors at the 18th AGM that legal action ought to be taken against those with unauthorised structures in their units. Given the context set out above, the evidence which the DJ relied on in the course of his determination is clearly insufficient to show that there was express malice on the defendants' part in publishing those statements:

(a) At the time of the publication, the DCA 11 Appellants knew that YSL's roof terrace structure had already consumed and utilised additional GFA and was unauthorised by the MCST. They thus believed that it could not have been validly installed. This was reinforced by their experience with the precedent case involving the owner of Blk 331 #15-01 in 2004, where the URA had rejected the owner's proposal for works which would consume additional GFA, on the basis that it would have to be consented to by the other subsidiary proprietors of YAP.

(b) The DCA 11 Appellants acted reasonably in seeking legal advice on such proposed works and had been advised in or around December 2006 by WongPartnership LLP that the retention of unauthorised structures would consume the GFA of YAP and affect the other subsidiary proprietors of YAP. In January 2007, the DCA 11 Appellants also consulted Drew & Napier LLC on the same issue.

57 According to YSL, the following facts show that the Statements were actuated by an improper or ulterior motive (*ie,* of garnering support for election into the new MCST at the 20th AGM):

(a) The DCA 11 Appellants had published the Election Circular a few days after the offending newsletter was published, seeking to be re-elected into the 20th MCST. The Election Circular referred to the legal issues in the Newsletter and urged the subsidiary proprietors to consider their re-election so that the DCA 11 Appellants can "follow through with the work they started";

(b) The DCA 11 Appellants need not have published the offending newsletter, which was a "special edition" newsletter. This had never been the practice of the MCST; and

(c) The DCA 11 Appellants could have addressed the issues raised in YSL's resolutions at the AGM on 31 March 2007 without publishing a newsletter to specifically address those issues.

58 In my view, the facts highlighted above fall short of demonstrating an improper motive on the DCA 11 Appellants' part. As observed by Mr Yim SC at the 20th AGM, the MCST was not selectively prosecuting anyone for the removal of unauthorised structures nor were they aggressively pursuing any agenda of their own to prohibit any subsidiary proprietors from carrying out addition-and-alteration works according to the by-laws and other statutory requirements. This is reinforced by the following considerations:

(a) The DCA 11 Appellants are volunteers serving the interests of YAP as a whole and do not stand to gain any individual benefit in obtaining re-election to the MCST. In this regard, I accept the evidence of Mr Lim Tat, one of the members of the MCST at the time of the dispute, that the true motivation of the MCST at the time was to act according to the direction given at the 18th AGM, that unauthorised structures must be addressed and removed. YSL has not pointed to any convincing reason for me to find otherwise;

(b) The DCA 11 Appellants held a genuine and honest belief that YSL's proposed works would result in using the GFA allocation of YAP to the detriment of the other subsidiary proprietors of YAP (see above at [55]); and

(c) It is within the DCA 11 Appellants' prerogative, as members of YAP's MCST at the time, to publish statements addressing important issues pertaining to unauthorised structures within the compound if they considered it necessary and in the interests of the subsidiary proprietors as a whole.

59 In my judgment, therefore, the DJ had also erred in finding that the defences of fair comment, qualified privilege and right of reply privilege were defeated by the presence of express malice. Given that the DCA 11 Appellants' defences to YSL's claim are sustainable on the facts, I am of the view that YSL does not have a valid cause of action. His claim ought therefore to have been dismissed.

My Decision: Whether QLW should have the advantage of this Court's findings on liability

60 Having determined that the DCA 11 Appellants are not liable for defamation, I turn to the next issue having regard to my findings above. This pertains to whether QLW, who was a defendant below but not an appellant in the present appeal, ought nevertheless to have the advantage of my findings in DCA 11 if the appeal is to be allowed.

61 It is a basic principle that, as far as possible, all the appropriate parties should be before the court at the same time so that there may be proper and complete determination of all issues and comprehensive adjudication of all affected interests (see *Singapore Court Practice* (Jeffrey Pinsler gen ed) (LexisNexis, 2003) at para 15/4/1). As stated by the court in *Wytcherley v Andrews* (1871) LR 2 P & D 327, at p 329, if the person is "content to stand by

and see his battle fought by someone else he should be bound by the result, and not be allowed to re-open the case".

62 In my view, the principle above applies with equal force to appellate proceedings. Since QLW has chosen not to appeal against the DJ's findings below, this would mean that she has chosen to accept the decision of the DJ and she should not be entitled to enjoy the fruits of the present appeal. In my judgment, there is no compelling reason to rule otherwise, and in this regard, I note that even though QLW is not a party to DCA 11, she did choose to file an appeal in DCA 12. QLW is not entitled to benefit from my findings in DCA 11, when she has chosen not to prosecute this appeal.

Conclusion on DCA 11 of 2017

63 For the reasons above, I conclude that the DJ's findings were against the weight of the evidence, and he ought to have accepted the Appellants' pleaded defences. I will therefore allow the appeal in DCA 11. I also find that QLW should not have the advantage of my findings on liability in DCA 11 as she is not a party to the present appeal.

The appeal in DCA 12 of 2017

64 I now turn to DCA 12, which is an appeal against the DJ's decision on the quantum of general and aggravated damages awarded to the DCA 12 Appellants in their counterclaim against YSL in libel.

The Issues

65 The issues are:

(a) Whether this Court should intervene in the award of general damages of $3,000 to each of the DCA 12 Appellants and whether aggravated damages should be awarded to the DCA 12 Appellants; and

(b) If (a) is answered in the affirmative, what should be the quantum of general and aggravated damages awarded to the DCA 12 Appellants.

Legal principles

66 The factors that affect the quantum of damages in defamation are as follows (see *Lim Eng Hock Peter v Lin Jian Wei and another and another appeal* [2010] 4 SLR 357 at [7]):

(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; and

(g) the presence of malice.

67 Where the defendant's conduct causes additional injury to the plaintiff's feelings, aggravated damages may be awarded (see *Au Mun Chew (practising as Au & Associates) v Lim Ban Lee* [1997] 1 SLR(R) 220). The defendant's conduct that aggravates the injury suffered by the plaintiff may take the following forms (see *The Law of Torts in Singapore* at para 13.140):

(a) allegations of bad behavior during mitigation;

(b) a refusal to apologise;

(c) a repetition of defamatory remarks;

(d) persisting in pleas of justification until a very late stage of the proceedings; and

(e) the malicious and reckless conduct of the defendant.

68 In *Koh Sin Chong Freddie v Chan Cheng Wah Bernard and others and another appeal* [2013] 4 SLR 629 at [80], it was held that an appeal court would reject the damages awarded by the judge below in "very special" or "very exceptional" cases, where the judge must be shown to have arrived at his figure either by applying a wrong principle of law or through a misapprehension of facts or for some other reason to have made a wholly erroneous estimate of the damage suffered.

My decision

Whether this Court should intervene in the award of damages to the DCA 12 Appellants

69 In my judgment, the threshold for appellate intervention is met on these facts. The following reasons merit the rejection of the DJ's assessment of damages below:

(a) It is evident from the GD that the DJ did not apply or make reference to any applicable precedents in arriving at his assessment, and appears to have fixed the quantum of damages simply based on his subjective view of the facts before him;

(b) The DJ failed to consider clearly relevant factors in his assessment, such as YSL's conduct from the time of the publication till the issue of the verdict, his failure to apologise and retract the defamatory statements as well as the presence of malice (which is evident from the vitriolic language used in the publications as well as the frequency and duration over which the publications took place);

(c) The DJ erred in his blanket application of the dilution factor to all the DCA 12 Appellants. As the DCA 12 Appellants point out, Ken Tse and Bryant Hwang (the 1st and 2nd Appellants) had been singled out specifically for attack in some of YSL's letters, even though the attacks were directed at their capacity as a council member; and

(d) The DJ considered a number of irrelevant factors in his assessment. In particular, the DJ should not have given weight to the fact that the DCA 12 Appellants' term in office had ended in March 2007 since YSL's defamatory statements went beyond the DCA 12

> Appellants' fitness for membership in the MCST and to their character and therefore affected their personal standing within the YAP community.

70 In my view, on a proper application of the principles, aggravated damages are also warranted on these facts based on the considerations set out above at [67]. As the DCA 12 Appellants point out, YSL had failed to apologise from the time of publication until the issue of the verdict and had persisted in his plea of justification until a very late stage of the proceedings. There is also clear evidence of malice on YSL's part as noted above at [69(b)]. The DJ, however, does not appear to have given these factors sufficient weight or consideration, and some of these aspects do not feature at all in his GD.

71 Finally, I agree with the DCA 12 Appellants that [47] of the DJ's GD indicates that he was under a misapprehension of fact. In that paragraph, the DJ essentially held that, since the DCA 12 Appellants' claim that YSL used GFA to the detriment of other subsidiary proprietors was not justified, this meant that YSL "would have been found to have been" justified in questioning the fitness and integrity of the DCA 12 Appellants as members of the MCST. In my view, the latter statement is not a necessary corollary of the former finding. Furthermore, it indicates that the DJ had overlooked or failed to appreciate the fact that YSL had withdrawn his plea of justification in the proceedings by the time the trial below commenced. At any rate, the DJ made no mention in the GD of YSL's withdrawn plea of justification.

72 On the basis of the DJ's errors in fact and in principle, I am satisfied that the threshold for appellate intervention in the award of damages is met.

The quantum of general and aggravated damages to be awarded

73 It is helpful, first, to outline in brief the content of YSL's letters which form the subject of DCA 12. In this regard, the defamatory statements contained therein generally go to the character and professionalism of the DCA 12 Appellants as members of the MCST. They include the following imputations:

> (a) That the DCA 12 Appellants, in their capacity as MCST members, (i) acted illegally and caused a breach of the statutory requirements under the law or of YAP's by-laws, (ii) wielded the issue of the GFA as a weapon to brand penthouse or townhouse owners as subsidiary proprietors with illegal or unauthorised structures even though they knew that that was an unjustified position; (iii) misled the subsidiary proprietors about the regulatory authorities' position on GFA to ensure that they would remain "ignorant" about the true position on the GFA; (iv) instructed a lawyer to lie or mislead the subsidiary proprietors regarding the GFA issue; (v) were not impartial; (vi) dishonestly created the issues regarding GFA use to dishonestly conceal their failures and mistakes as a means of confusing the subsidiary proprietors into handing the DCA 12 Appellants their proxy votes; (vii) harboured sinister motives and concealed information from the subsidiary proprietors and abused legal privilege to cover up their wrongdoings and obtain re-election; (viii) had no legitimacy and were unfit to remain in office; (ix) deliberately abused their position by acting aggressively and with hostility against errant subsidiary proprietors and were incapable and incompetent as members of the MCST, which has caused or will cause the financial valuation of YAP to be negatively affected;

(b) That the DCA 12 Appellants had abused their powers or practised favouritism by condoning the installation of illegal structures by the 2nd Appellant, who was a member of the MCST, and had thus given him special treatment and applied the relevant rules dishonestly;

(c) That the DCA 12 Appellants were prejudiced or biased against YSL and had abused their authority or pursued a personal vendetta against YSL by withholding approval for YSL's applications to install awnings in his penthouse;

(d) That the DCA 12 Appellants were aggressive and would pursue a vendetta against YAP's subsidiary proprietors if they did not toe the line with them; and

(e) That the DCA 12 Appellants were liars.

74 As noted above, the 1st and 2nd Appellants in DCA 12, Ken Tse and Bryant Hwang, were also specifically named in some of YSL's letters and were thus singled out for attack with those statements.

75 In assessing the quantum of general damages to be awarded, I was of the view that the nature and gravity of the defamatory statements in YSL's letters were akin to those present in the case of *Lai Chong Meng v Liew Leong Wan* [2016] SGDC 252 ("*Lai Chong Meng*") where the district judge had assessed general damages at $30,000. *Lai Chong Meng* involved allegations that the plaintiff, who was a member of the Singapore Island Country Club, posted an email regarding two employees of the said country club with a Private Investigator's report on their private matters attached. The email subsequently

went viral. It was also said that the plaintiff's actions were hypocritical, despicable and mendacious.

76 In the present case, I note also that YSL's letters were disseminated to all the residents of YAP and were furthermore published over an extended period. He did not apologise or retract the defamatory statements. The vitriolic nature of the language used in YSL's letters also fortifies my view that the publications were made maliciously against the DCA 12 Appellants with the dominant motive to injure them.

77 Finally, I observe also that the dilution factor is least applicable to Ken Tse and Bryant Hwang, as they were specifically named in YSL's defamatory statements. Having regard to the circumstances as a whole, I am of the view that Ken Tse and Bryant Hwang should each be awarded $25,000 and that the remaining DCA 12 Appellants should each be awarded $20,000 in general damages.

78 I further consider that aggravated damages of $10,000 should be awarded to each of the DCA 12 Appellants. I note in this regard that YSL had repeatedly published the letters conveying similar defamatory imputations between 6 February 2010 and 6 February 2013 on seven different occasions. As stated above, YSL's conduct was malicious and he neither apologised nor retracted the statements he had published. I observe also that, since the DCA 12 Appellants mounted their counterclaim on 14 October 2014, YSL had persisted in his defence of justification for a not insignificant period of time and only abandoned his claim on 16 July 2015. In the premises, I consider aggravated damages of $10,000 to be fair and adequate in all the circumstances.

Conclusion on DCA 12 of 2017

79 I therefore allow the appeal in DCA 12 and substitute the DJ's award of damages below accordingly.

Conclusion

80 In sum, both the appeals in DCA 11 and 12 are allowed. In relation to DCA 11, I also find that, since QLW is not a party to the appeal, she should not have the advantage of my findings therein. In relation to DCA 12, the damages awarded to the 1st and 2nd Appellants are enhanced to $35,000 ($25,000 being general damages and $10,000 being aggravated damages) whereas the damages awarded to the remaining DCA 12 Appellants are enhanced to $30,000 ($20,000 being general damages and $10,000 being aggravated damages).

81 Having heard the parties' submissions on costs, I order the respondent to pay to the appellants $24,850 for the costs of defending the claim in the proceedings below. The DJ's order for $9,000 as costs of the counterclaim is to stand. I further award the appellants their costs of the appeals fixed at $10,000, with reasonable disbursements in addition to be agreed between the parties.

See Kee Oon
Judge

Roderick Martin, SC, Joseph Lau Chin Yang and Gideon Yap (M/s RHTLAW Taylor Wessing LLP) for the appellants in District Court Appeal No 11 of 2017;
Roderick Martin, SC, Joseph Lau Chin Yang and Gideon Yap (M/s RHTLAW Taylor Wessing LLP) for the appellants in District Court

Appeal No 12 of 2017;
N Sreenivasan, SC and Valerie Ang Mei-Ling (M/s Straits Law Practice LLC) for the respondent.
