

**IN THE GENERAL DIVISION OF THE HIGH COURT OF THE REPUBLIC
OF SINGAPORE**

[2021] SGHC 34

Suit No 564 of 2018

Between

- (1) Shee See Kuen
- (2) Joveen Miu Harn Peng
- (3) Ng Seng Yu
- (4) Tay Pik Giok @ Cheng Pi Yu
- (5) Ng Ah Moi
- (6) Leong Churn Meng (Liang Junming)

... Plaintiffs

And

- (1) Sugiono Wiyono Sugialam
- (2) Juliana Julianti Samudro
- (3) Benjamin Sudjar Soemartopo
- (4) Ang Chuan Hui
- (5) PT Trikomsel Oke Tbk
- (6) Trikomsel Pte Ltd
- (7) Trikomsel Singapore Pte Ltd
- (8) Standard Chartered Bank
- (9) JP Morgan (SEA) Limited
- (10) Australia and New Zealand Banking Group Limited

... Defendants

Suit No 565 of 2018

Between

- (1) Leong Churn Meng (Liang Junming)
- (2) Ong Chong Hock Joseph
- (3) Chin Mui Leng
- (4) Tan Guan Lee Company Limited
- (5) Ng Seng Yu
- (6) Tong Sau Kwan
- (7) William Koh Chee Wei
- (8) Lin Zhuo @ Lin Ning
- (9) Yeo Yu Kin

... Plaintiffs

And

- (1) Sugiono Wiyono Sugialam
- (2) Juliana Julianti Samudro
- (3) Benjamin Sudjar Soemartopo
- (4) Ang Chuan Hui
- (5) PT Trikonsel Oke Tbk
- (6) Trikonsel Pte Ltd
- (7) Trikonsel Singapore Pte Ltd
- (8) Standard Chartered Bank
- (9) Deutsche Bank Aktiengesellschaft
- (10) Australia and New Zealand Banking Group Limited

... Defendants

GROUPS OF DECISION

[Damages] — [Assessment]
[Damages] — [Punitive Damages]
[Damages] — [Aggravation]
[Civil Procedure] — [Pleadings]

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Shee See Kuen and others
v
Sugiono Wiyono Sugialam and others and another suit

[2021] SGHC 34

General Division of the High Court — Suit No 564 of 2018; Suit No 565 of 2018

S Mohan JC

18 August, 10 December 2020

16 February 2021

S Mohan JC

Introduction

1 The assessment of damages by the plaintiffs in these actions against the fifth defendant, PT Trikomsel Oke Tbk, was uncontested. The plaintiffs in Suit No 564 of 2018 (“Suit 564”) hold a total of 15 board lots of 5.25% per annum Senior Fixed Rate Notes due 2016,¹ each with a principal amount of \$250,000 (the “2016 Notes”). The 2016 Notes were issued by the sixth defendant, Trikomsel Pte Ltd, on 10 May 2013 with payment of the principal sum and interest guaranteed by the fifth defendant.² The plaintiffs in Suit No 565 of 2018

¹ Suit 564 Statement of Claim (“Suit 564 SOC”) at para 1.

² Suit 564 SOC at paras 2–3; Suit 564 Affidavit dated 11 January 2019 of First Plaintiff (Shee See Kuen) and 4 others (“Suit 564 Affidavit of SSK and 4 others”) at para 16(b)–(c), which is supported by Suit 564 Affidavit of Evidence-in-Chief dated 7 August

(“Suit 565”) hold a total of 12 board lots of 7.875% per annum Senior Fixed Rate Notes due 2017,³ each with a principal sum of \$250,000 (the “2017 Notes”). The 2017 Notes were issued by the sixth defendant on 5 June 2014, and payment of the principal sum and interest under the 2017 Notes was similarly guaranteed by the fifth defendant.⁴

2 On 15 November 2019, interlocutory judgments in default of appearance were entered by the plaintiffs against the fifth defendant in both suits pursuant to Order 13 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) (the “ROC”), with damages to be assessed.⁵

3 The assessment of damages hearing took place before me on 18 August 2020. The fifth defendant was absent and took no part in the hearing. After the plaintiffs in both suits had given their evidence and closed their case, I directed the plaintiffs to file written closing submissions. The submissions were to address, among other issues, the plaintiffs’ entitlement to obtain punitive and aggravated damages against the fifth defendant. The plaintiffs eventually filed their written submissions on 28 September 2020. On the issue of whether punitive and aggravated damages against the fifth defendant needed to be pleaded, the plaintiffs submitted that it was not necessary for them to do so. The

2020 of Leong Churn Meng (Liang Junming) (“Suit 564 AEIC of LCM”), Exhibit LCM-1, 4.

³ Suit 565 SOC at para 1 (“Suit 565 SOC”).

⁴ Suit 565 SOC at paras 2–3, which is supported by the respective plaintiffs’ AEICs in Suit 565. See, for example, Suit 565 Affidavit of Evidence-in-Chief dated 7 August 2020 of Leong Churn Meng (Liang Junming) (“Suit 565 AEIC of LCM”), Exhibit LCM-1, 3.

⁵ HC/JUD 641/2019 (Suit 564) and HC/JUD 642/2019 (Suit 565).

plaintiffs did not seek leave, in the alternative, to amend their pleadings if necessary.

4 I granted final judgment in both suits orally on 10 December 2020. In Suit 564, judgment was given in favour of the plaintiffs against the fifth defendant for the following sums:

- (a) the sum of \$3,750,000, broken down as follows:⁶
 - (i) \$1,750,000 for the first and second plaintiffs having seven board lots in total;
 - (ii) \$500,000 for the third plaintiff having two board lots;
 - (iii) \$250,000 for the fifth plaintiff having one board lot; and
 - (iv) \$1,250,000 for the sixth plaintiff having five board lots; and
- (b) interest on the sum of \$3,750,000 at the rate of 5.25% per annum from 10 May 2015 to the date of judgment.

5 In Suit 565, final judgment for the plaintiffs was granted against the fifth defendant for the following sums:

- (a) the sum of \$3,000,000, broken down as follows:⁷
 - (i) \$250,000 for the first plaintiff having one board lot;
 - (ii) \$500,000 for the second plaintiff having two board lots;

⁶ Suit 564 SOC at paras 4–8.

⁷ Suit 565 SOC at paras 4–12.

- (iii) \$250,000 for the third plaintiff having one board lot;
 - (iv) \$500,000 for the fourth plaintiff having two board lots;
 - (v) \$500,000 for the fifth plaintiff having two board lots;
 - (vi) \$250,000 for the sixth plaintiff having one board lot;
 - (vii) \$250,000 for the seventh plaintiff having one board lot;
 - (viii) \$250,000 for the eighth plaintiff having one board lot;
and
 - (ix) \$250,000 for the ninth plaintiff having one board lot; and
- (b) interest on the sum of \$3,000,000 at the rate of 7.875% per annum from 5 June 2015 to the date of judgment.

As counsel for the plaintiffs expressed a preference for costs to be taxed, I ordered the costs of and incidental to the assessment of damages in both suits to be taxed and paid by the fifth defendant to the plaintiffs.

6 I disallowed the claims of the plaintiffs in both suits for punitive and aggravated damages. When I delivered my oral judgment, I gave brief reasons explaining why I had disallowed those claims; in sum, it was because the claims for punitive and aggravated damages were not pleaded. The plaintiffs in both suits have appealed against my refusal to allow those claims. I now set out the full grounds for my decision.

Facts

The parties

7 As I mentioned at [1], the plaintiffs are the holders of 15 board lots of the 2016 Notes and 12 board lots of the 2017 Notes respectively. The 2016 Notes and 2017 Notes were issued by the sixth defendant and payment of the principal sum and interest was guaranteed by the fifth defendant.⁸

8 The fifth defendant is a limited liability company incorporated in Indonesia. Up until late 2015, it was in the business of purchasing, importing, and distributing mobile telecommunication devices in Indonesia.⁹ The sixth and seventh defendants were incorporated in Singapore and are wholly owned subsidiaries of the fifth defendant. The eighth, ninth, and tenth defendants in the respective suits are the Joint Lead Managers and Bookrunners (the “Underwriters”) of the 2016 Notes and 2017 Notes respectively.¹⁰ The first to fourth defendants are related to the fifth defendant in the following manner:

(a) the first defendant was, at all material times, the Chief Executive Officer and President Director of the fifth defendant;¹¹

⁸ Suit 564 Affidavit of SSK and 4 others at para 16(a)–(b) and the respective plaintiffs’ AEICs in Suit 565. See, for example, Suit 565 AEIC of LCM at para 8, which is supported by Suit 565 AEIC of LCM, Exhibit LCM-1, 2.

⁹ Suit 564 SOC at paras 13; Suit 565 SOC at para 17.

¹⁰ Suit 564 SOC at para 16, which is supported by Suit 564 AEIC of LCM, Exhibit LCM-1, 4; Suit 565 SOC at para 20, which is supported by the respective plaintiffs’ AEICs in Suit 565. See, for example, Suit 565 AEIC of LCM, Exhibit LCM-1, 2.

¹¹ Suit 564 SOC at para 9; Suit 565 SOC at para 13.

(b) the second defendant was, at all material times, a Director and/or Director of Corporate Finance and Treasury of the fifth defendant;¹²

(c) the third defendant was, at all material times, the Commissioner of the fifth defendant;¹³ and

(d) the fourth defendant was, at all material times, the President Commissioner of the fifth defendant.¹⁴

9 By the time the assessment of damages hearing took place on 18 August 2020, the writs against the respective first, second, third, fourth, sixth, and seventh defendants in both suits had expired without being served and the writs against the respective eighth, ninth, and tenth defendants in both suits had been set aside.¹⁵ The only remaining defendant in both suits, the fifth defendant, was, as I mentioned earlier, unrepresented and absent from the hearing. I should add that on 5 October 2020, the fourth plaintiff in Suit 564 discontinued her action against the defendants in Suit 564.¹⁶

Background to the dispute

10 Briefly, the plaintiffs claimed damages against the fifth defendant for deceit and/or fraudulent misrepresentation arising from certain statements contained in offering circulars of the sixth defendant dated 30 April 2013 and

¹² Suit 564 SOC at para 10; Suit 565 SOC at para 14.

¹³ Suit 564 SOC at para 11; Suit 565 SOC at para 15.

¹⁴ Suit 564 SOC at para 12; Suit 565 SOC at para 16.

¹⁵ Suit 564 and Suit 565 Minute Sheet dated 18 August 2020.

¹⁶ Suit 564 Notice of Discontinuance.

28 May 2014 respectively.¹⁷ In their respective statements of claim (collectively, the “Statements of Claim”) in both suits, the plaintiffs sought the following relief:

- (a) damages;
- (b) exemplary or aggravated damages (against the third and eighth defendants in addition to the damages in (a) above);
- (c) interest; and
- (d) costs.

11 As explained at [2] above, on 15 November 2019, judgments in default of appearance were entered against the fifth defendant in both suits with damages to be assessed.¹⁸

The plaintiffs’ case

12 While “exemplary or aggravated damages” were reliefs sought in the Statements of Claim against the third and eighth defendants, it is pertinent to note that even against both of those defendants, the claims for exemplary or aggravated damages were not, strictly speaking, pleaded or particularised anywhere in the body of the Statements of Claim. As against the fifth defendant, not only was there no pleading or particularisation of the claims for punitive or aggravated damages in the body of the Statements of Claim, they were also not sought as specific reliefs against the fifth defendant. The earliest mention of

¹⁷ Suit 564 Written Submissions (“Suit 564 WS”) and SOC and Suit 565 Written Submissions (“Suit 565 WS”) and SOC.

¹⁸ HC/JUD 641/2019 (Suit 564) and HC/JUD 642/2019 (Suit 565).

“punitive, exemplary or aggravated damages” against the fifth defendant was in the affidavits of evidence-in-chief (“AEICs”) of the respective plaintiffs dated 7 August 2020.¹⁹ The particular paragraph, identical in each of the plaintiffs’ affidavits, stated that:

But for the overstatement of the 5th Defendant’s income and assets by IDR 7,580 billion (IDR 7.58 trillion), I would not have bought the Notes. I am advised and I believe that such conduct of the 5th Defendant constitutes outrageous conduct for the purposes of a claim for punitive, exemplary or aggravated damages.

13 The plaintiffs claimed the following damages against the fifth defendant in their respective AEICs:²⁰

- (a) damages corresponding to the respective principal sums for, and interest on, the 2016 and 2017 Notes;
- (b) damages for conspiracy, without any quantified sums;
- (c) punitive or aggravated damages, without any quantified sums; and
- (d) interest at the rate of 5.33% per annum from the date of judgment to the date of payment.

14 Apart from the scant mention of “damages for conspiracy” in the plaintiffs’ respective AEICs, that claim was not addressed or advanced in any

¹⁹ This paragraph appears in the respective plaintiffs’ AEICs in Suit 564 and Suit 565. See, for example, Suit 564 AEIC of LCM at para 23 and Suit 565 AEIC of LCM at para 23.

²⁰ This paragraph appears in the respective plaintiffs’ AEICs in Suit 564 and Suit 565. See, for example, Suit 564 AEIC of LCM at para 24 and Suit 565 AEIC of LCM at para 24.

way in the plaintiffs’ written closing submissions. Quantum for punitive or aggravated damages was only addressed in the plaintiffs’ closing submissions dated 28 September 2020. In particular, the plaintiffs submitted that “punitive damages of 150% of the principal amount of the Notes should be awarded”²¹ (the “Punitive Damages Claim”) and that “\$150,000 be awarded as aggravated damages for each board lot of the Notes” (the “Aggravated Damages Claim”).²²

The issue to be determined

15 In their notices of appeal, the plaintiffs have appealed that part of my decision:

(a) disallowing the plaintiffs’ claims for punitive damages and aggravated damages on the ground that the claims were not pleaded or particularised; and

(b) declining to consider if the evidence adduced by the plaintiffs demonstrated conduct on the part of the fifth defendant which warranted an award of punitive damages and aggravated damages.²³

16 As my decision revolved around the pleading point as set out above at [15(a)], it is to that issue that I now turn.

²¹ Suit 564 WS at para 38; Suit 565 WS at para 43.

²² Suit 564 WS at para 44; Suit 565 WS at para 49.

²³ Notices of Appeal in AD/CA 4/2021 and AD/CA 5/2021.

Pleading the Punitive Damages Claim and Aggravated Damages Claim

17 As my reason for disallowing the Punitive Damages Claim and Aggravated Damages Claim was the same, I address both claims together. As a matter of terminology, since “punitive damages” and “exemplary damages” are “used interchangeably and no distinction is to be drawn between them” (*ACB v Thomson Medical Pte Ltd* [2017] 1 SLR 918 (“*ACB*”) at [156]), I will hereafter refer only to “punitive damages”.

The plaintiffs’ submissions

18 The plaintiffs referred to *ACB* in their submissions in support of their claim for punitive damages. In *ACB*, the Court of Appeal held that punitive damages is a “response to conduct which is beyond the pale and therefore deserving of special condemnation,” and hence “may be awarded in tort where the totality of the defendant’s conduct is so outrageous that it warrants punishment, deterrence, and condemnation” (at [176]). The plaintiffs argued that the 2016 Notes and 2017 Notes were “Ponzi scheme[s] ... perpetrated to fund [the fifth defendant’s] fictitious business and the lavish lifestyle of its controllers”.²⁴ Such conduct, in the plaintiffs’ view, was “despicable” and “properly described as ‘conduct which is beyond the pale and therefore deserving of special condemnation’” [emphasis in original].²⁵

19 With regard to punitive damages, the plaintiffs submitted that “it is not necessary for exemplary or punitive damages to be pleaded”.²⁶ In contrast with

²⁴ Suit 564 WS at para 8; Suit 565 WS at para 8.

²⁵ Suit 564 WS at para 9; Suit 565 WS at para 9.

²⁶ Suit 564 WS at para 20; Suit 565 WS at para 20.

the English position where a “claim for exemplary damages must be specifically pleaded together with the facts on which the party pleading relies” (O 18 r 8(3) of the Rules of the Supreme Court 1972 (UK)), the Singapore ROC stipulates no such requirement.²⁷

20 Concerning aggravated damages, the plaintiffs relied on *Tan Harry v Teo Chee Yeow Aloysius* [2004] 1 SLR 513 (“*Tan Harry*” at [82]) and *Li Siu Lun v Looi Kok Poh* [2015] 4 SLR 667 (“*Li Siu Lun*” at [167]) for the proposition that the conduct of a defendant must be “exceptional” before a court may grant aggravated damages.²⁸ The plaintiffs argued that “compensatory damages will not suffice” to compensate the “additional injuries suffered” to “feelings and mental distress caused”.²⁹

21 The plaintiffs also submitted that a “claim for aggravated damages need not be specifically pleaded” relying on the decision of Goh Joon Seng J in *Lee Kuan Yew v Vinocur John* [1995] 3 SLR(R) 38 (“*Lee Kuan Yew*”) at [37]. Compared with *Li Siu Lun* at [163] where the High Court observed that “aggravated damages have to be specifically pleaded and the amount awarded as aggravated damages must be identified separately in the court’s final award”, the plaintiffs asserted – without any further substantiation – that *Lee Kuan Yew* is “the more direct and cogent authority on the point”.³⁰ The plaintiffs also submitted that “because there is no rule in the ROC that requires exemplary

²⁷ Suit 564 WS at paras 21–25; Suit 565 WS at paras 21–25.

²⁸ Suit 564 WS at paras 13–14; Suit 565 WS at paras 13–14.

²⁹ Suit 564 WS at para 15–19; Suit 565 WS at para 15–19.

³⁰ Suit 564 WS at para 28; Suit 565 WS at para 28.

damages to be specifically pleaded, there is similarly no need to specifically plead aggravated damages”.³¹

My decision

22 I rejected the plaintiffs’ submission that punitive damages and aggravated damages need not be pleaded or particularised. I found the argument premised on the lack of mandatory rules in the ROC unconvincing. In my view, the plaintiff’s conclusion that there is no need to plead or particularise such claims does not *necessarily* follow even assuming the ROC is silent on the matter.

23 In my judgment, the weight of case law in Singapore leans clearly in favour of the position that claims for punitive and aggravated damages must be pleaded and particularised, in order to be considered by the court. In relation to aggravated damages, I disagree with the plaintiffs that *Lee Kuan Yew* is “the more direct and cogent authority on the point” with regard to the need to plead aggravated damages, for several reasons. First, that case must be understood in its proper context, *ie*, a defamation suit. The issue under consideration in *Lee Kuan Yew* at ([29]) was whether “aggravated damages on grounds of malice and for injury to feelings were encompassed within the plaintiffs’ pleadings.” It is material to note that in the statements of claim in *Lee Yuan Kew*, it was pleaded that that the plaintiffs had “been gravely injured in (their/his) character, credit and reputation” and had been brought “into public scandal, odium and contempt”.

³¹ Suit 564 WS at para 29; Suit 565 WS at para 29.

24 It would be helpful to set out in full the passage in *Lee Kuan Yew* that the plaintiffs relied on to appreciate why the specific context of a defamation suit is of material significance:

Thus a plea using the traditional phrase of being held up to “hatred, ridicule and contempt” would include a claim for mental distress which is injury to feelings. Moreover on the basis of these authorities, a claim for aggravated damages need not be specifically pleaded but in any event, the claim for aggravated damages for injury to feelings would also fall within the parameters of the plaintiffs’ claims of having been “gravely injured in [their/his] character, credit and reputation” and having been “brought into public scandal, odium and contempt”.

25 Goh J thus reasoned that it was precisely because “a plea using the traditional phrase of being held up to ‘hatred, ridicule and contempt’ would include a claim for mental distress which is injury to feelings” that there was no need to specifically plead aggravated damages. Such a reading of Goh J’s remarks reproduced above is supported by the subsequent parts of the judgment. In particular, the learned judge further emphasised the unique context of pleading damages in a defamation suit at [43]–[47], namely, that injury to feelings (on which a claim for aggravated damages was premised) was “the necessary and immediate consequence” of injury to the plaintiffs’ character, credit and reputation”. As highlighted above at [23], those matters had already been specifically pleaded. That, in my view, is the context in which Goh J’s reference to not having to specifically plead aggravated damages should be understood. Indeed, as observed in *Singapore Civil Procedure 2020: Volume I* (Justice Chua Lee Ming gen ed) (Sweet & Maxwell, 2020) at para 18/8/14, after *Lee Kuan Yew* is discussed:

If the claim for aggravated damages cannot be regarded as a necessary and immediate consequence of the defendant’s wrong, then the facts giving rise to this relief must be pleaded so that the defendant is not unfairly surprised.

26 Secondly, while O 78 r 3(3) of the ROC is applicable to defamation actions, O 18 r 7(1) of the ROC still remains operative even in the context of defamation actions. Order 18 r 7(1) and O 78 r 3(3) of the ROC are not at odds insofar as the “principle underlying O 18 r 7” is that “a party should be given the opportunity to know what his opponent’s case is and should not be caught by surprise at the trial” (*Lee Kuan Yew* at [44]). Thus, based on the pleadings in *Lee Kuan Yew*, it could not be said that the defendants had no notice of the plaintiffs’ claim for aggravated damages. Understood in its proper context, it cannot be said, and I disagree that *Lee Kuan Yew* stands as authority for the proposition that, as a *general starting position*, aggravated damages need not be pleaded, much less that it need not even be sought as a specific relief (as in the case against the fifth defendant).

27 In any case, it is pertinent to note that *Lee Kuan Yew* was decided in the context of the then-existing O 78 r 3(3) of the ROC. The 1997 amendments to the ROC added O 78 r 3(3A) which stipulates that:

Without prejudice to Order 18, Rule 12, the plaintiff must give *full particulars in the statement of claim of the facts and matters on which he relies* in support of his claim for damages, including *details of any conduct by the defendant* which it is alleged has **increased the loss suffered** and of any loss which is peculiar to the plaintiff’s own circumstances.

[emphasis added]

As such, the undoubted position after the 1997 amendments to the ROC is that, even in defamation actions, the plaintiff must now specifically plead and particularise the facts and matters on which he will rely in support of his claim for aggravated damages (*Halsbury’s Laws of Singapore* vol 8(2A) (LexisNexis, 2020) at para 96.307). The plaintiffs’ heavy reliance on *Lee Kuan Yew* as support for their position is therefore arguably dated. As noted in *Singapore Court Practice 2021* (Jeffrey Pinsler gen ed) (LexisNexis, 2021) at para 18/12/5,

O 78 r 3(3A) “extends to all damages claimed including aggravated damages, and therefore *modifies* the decision of the High Court in *Lee Kuan Yew*” [emphasis added].

28 This shift in position is also observable elsewhere. The more recent case authorities have recognised that claims for punitive damages and aggravated damages must be pleaded and particularised in order to be entertained by the court. For example, in *Li Siu Lin* at [163], Belinda Ang J (as she then was) stated that “aggravated damages have to be specifically pleaded and the amount awarded as aggravated damages must be identified separately in the court’s final award”, consistent with “the legal position that aggravated damages are ‘parasitic’ and depend ultimately on the adequacy of the quantum of general damages awarded.” Similarly, and more recently, in *Noor Azlin bte Abdul Rahman and another v Changi General Hospital Pte Ltd and others* [2021] SGHC 10 (“*Noor Azlin*”), Belinda Ang JAD unequivocally held at [192]:

It is critical that a claim for aggravated damages is pleaded because the defendant must be given notice that the plaintiff is pursuing a claim for aggravated damages, so that the defendant is given adequate opportunity to adduce evidence to respond to the plaintiff’s claim that the defendant aggravated the plaintiff’s injury by the manner in which the defendant committed the wrong or by his motive in so doing.

29 Furthermore, I found the plaintiffs’ reliance on *Tan Harry* somewhat selective. While I did not disagree with the general proposition of law on the availability of aggravated damages for which *Tan Harry* [at (82)] was cited by the plaintiffs (see [20] above), Woo Bih Li J (as he then was) held in the very next paragraph (at [83]):

In view of the absence of evidence as well as the point that *this claim and its grounds were not pleaded*, I did not allow the plaintiffs’ claim for aggravated damages. Accordingly, it was also not necessary for me to decide whether a claim for such

damages was allowable in principle in respect of a negligence claim.

[emphasis added]

30 The approach adopted by the courts in recent years would also be more consistent with the underlying purpose of pleadings, *ie*, “to ensure that each party was aware of the respective arguments against it and that neither was therefore taken by surprise” (*Ma Hongjin v SCP Holdings Pte Ltd* [2020] SGCA 106 at [35]). In my view, this underlying principle applies equally notwithstanding that in this case, the fifth defendant did not appear or take part in the proceedings. Otherwise, the court would be faced with the untenable position that the pleading rules do not apply or are relaxed when the defendant does not appear to contest the proceedings, be it on liability, quantum or both.

31 There is a further consideration quite apart from the need to give a defendant notice of the case against it. Even if a defendant did not appear, as in this case, *the court* would in any event, need to be satisfied that the necessary factual averments in support of the claims for punitive and aggravated damages were properly pleaded and particularised. This is so that the court would then be in a position to gauge if *the evidence* led by the plaintiffs met their pleaded case for punitive and aggravated damages. Otherwise, without any pleading to anchor the factual basis for the claims for punitive and aggravated damages, the court would be deciding the issue in a vacuum. In this case, it was possible for the plaintiffs to seek leave to amend their Statements of Claim even after the interlocutory default judgments had been entered. However, they did not take up this option and instead nailed their colours to the mast by submitting that there was no need to plead or particularise punitive or aggravated damages.

32 In my judgment, the same principles which support the need to plead and particularise a claim for aggravated damages apply similarly to a claim for

punitive damages. As such, while the cases discussed at [23]–[29] above concerned aggravated damages, claims for punitive damages should, in my view, likewise be pleaded and particularised before they may be entertained by the court. The conclusion I have reached is consistent with cases which concerned punitive damages, for example, *Aries Telecoms (M) Bhd v ViewQwest Pte Ltd (Fiberail Sdn Bhd, third party)* [2020] 3 SLR 750 (“*Aries*”), *AKRO Group DMCC v Discovery Drilling Pte Ltd* [2019] 4 SLR 222 (“*AKRO*”) and *Noor Azlin* ([28]).

33 In *Aries*, Woo Bih Li J (as he then was) allowed a claim advanced by the plaintiff for punitive damages at [122]). In that case, however, the court noted (at [27]) that the plaintiff “initially pleaded” and “subsequently continued to claim” punitive damages. In contrast, in *AKRO*, Patricia Bergin IJ sitting in the Singapore International Commercial Court disallowed a claim for punitive damages as it was not pleaded (at [164]–[165]). The lack of pleading was also one of the reasons for which the claim for punitive damages was disallowed in *Noor Azlin* (at [192]).

Conclusion

34 The plaintiffs’ Punitive Damages Claim and Aggravated Damages Claim against the fifth defendant were neither pleaded nor particularised by the plaintiffs; nor was any such relief sought against the fifth defendant in the Statements of Claim. I thus disallowed both claims.

35 Following my decision to disallow the Punitive Damages Claim and Aggravated Damages Claim because they were not pleaded, I did not find it necessary to go on and consider if the evidence adduced by the plaintiffs was in any event sufficient to establish the claims for those damages.

S Mohan
Judicial Commissioner

Goh Kok Leong / Dillion Chua Hong Bin (Cai Hongbin) (Ang &
Partners) for the plaintiffs.
