Oei Hong Leong v Ban Song Long David and Others
[2004] SGHC 253

Case Number : Suit 670/2003

Decision Date : 10 November 2004

Tribunal/Court : High Court

Coram : Tay Yong Kwang J

Counsel Name(s) : Michael Khoo SC, Josephine Low and Andy Chiok (Michael Khoo and Partners) for the plaintiff; Davinder Singh SC, Hri Kumar, Adrian Tan, Cheryl Tan and Chelsia Wong (Drew and Napier LLC) for the first and second defendants; Tan Chee Meng, Doris Chia and Chang Man Phing (Harry Elias Partnership) for the third and fourth defendants

Parties : Oei Hong Leong — Ban Song Long David; 98 Holdings Pte Ltd; Singapore Press Holdings Ltd; Catherine Ong

Tort – Defamation – Defamatory statements – First defendant making various comments regarding plaintiff – Comments published in newspaper article – Context in which comments appearing suggesting plaintiff being unreasonable and unfair – Whether comments defamatory in themselves or by virtue of their context

Tort – Defamation – Fair comment – Whether comments an expression of maker's honest opinion of plaintiff's conduct – Whether comments made regarding matter of public interest – Whether comments based on facts – Whether successful defence of fair comment by maker of comments extending to publisher and writer of article

Tort – Defamation – Justification – Whether comments made true in substance and fact in their natural and ordinary meaning

Tort – Defamation – Malice – Whether making and publication of comments actuated by malice

Tort – Defamation – Qualified privilege – Whether comments made by first defendant amounting to company director defending board of directors against attack – Whether first defendant having interest or duty to make such communication to public and whether public having corresponding interest to receive it – Whether publisher and writer of article protected under doctrine of derivative privilege

10 November 2004

Tay Yong Kwang J:

1 In this action, the plaintiff, a prominent businessman, seeks damages for libel in respect of an article published in the print and on-line editions of *The Business Times* ("BT") of 4 June 2003.

2 The first defendant ("David Ban") is a director with an indirect financial interest in the second defendant, 98 Holdings Pte Ltd ("98 Holdings"), which owns or controls some 51.23% of the share capital of NatSteel Ltd ("NatSteel"). On 25 January 2003, he was appointed a director of NatSteel and he has acted at all material times as one of four nominees of 98 Holdings on the board of directors of NatSteel.

3 At the material time, 98 Holdings was a consortium comprising Excel Partners Pte Ltd ("Excel"), Tazwell Pte Limited ("Tazwell") and two private equity funds, Standard Chartered Private Equity Limited and Vallance Resources Limited. Excel was and is the company of a prominent Malaysian businessman, Datuk Ong Beng Seng ("Datuk Ong") and his relatives, including David Ban. Excel held 50% of the shareholding in 98 Holdings (later increased to 54%).

4 The third defendant, Singapore Press Holdings Limited ("SPH"), is the publisher of the BT, an influential newspaper in Singapore with a wide readership among the business and financial community here and in the region. SPH used to be the employer of the fourth defendant ("Catherine Ong") who was a senior journalist at the material time. She wrote the BT article in question.

The plaintiff's case

5 The plaintiff's claim against the defendants is for damages suffered as a result of the publication of certain alleged defamatory words attributed to David Ban in the BT article of 4 June 2003. The alleged defamatory words were part of an article entitled "No Resolution in Sight for NatSteel-Oei Stalemate" written by Catherine Ong. The full text of the article is reproduced below:

> No compromise between NatSteel and tycoon Oei Hong Leong appears in sight as shareholders gather today for a second time to approve payment of a cash dividend and the right to scrip dividends in the future.
>
> David Ban, a NatSteel director representing hotelier Ong Beng Seng's interests, told BT that attempts by the company's legal counsel, Allen & Gledhill, to sound out Mr Oei's intentions have come to naught.
>
> "He's playing his card close to his chest. His lawyer said the client is away," Mr Ban said of Mr Oei.
>
> NatSteel wasn't the only party who couldn't contact Mr Oei. David Gerald, president of the Securities Investors Association of Singapore (Sias), said yesterday he had failed to arrange a meeting between Mr Oei and NatSteel's board.
>
> Mr Oei is out of town, an Sias statement said. "Up to now, it appears that minority shareholders are inclined to vote against all resolutions currently on the table."
>
> Minority shareholders, Sias added, are "outraged" that despite an assurance by the NatSteel board at the last annual general meeting that shareholders could expect dividends of $1 a share, only 45 cents has been paid.
>
> "NatSteel is now employing a new stance when paying the balance of the remaining one dollar … Sias calls on NatSteel board to severe [*sic*] the linkage (between the resolution to amend the M&A (memorandum and articles of association) and the resolution to pay the balance of 55 cents) and keep its promise to its shareholders," the Sias statement added.
>
> Mr Ban, however, feels that Mr Gerald is "playing to the gallery".
>
> "*What you have here is the obstructive action of a minority shareholder that is disadvantaging the majority, including 98 Holdings. It is not oppression by the majority but the minority. Everyone including 98 wants the dividends. If shareholders don't get their dividends, they should be blaming him.*"
>
> Mr Oei owns 29.9 per cent of NatSteel – above the crucial 25 per cent veto power over special resolutions including the amendment of the company's M&A to allow for future share buy-back and scrip dividend.
>
> He is unhappy that the board has tied the passage of a resolution to pay some $200 million in

cash dividends to the M&A resolution. He is also opposed to giving the company a share buy-back mandate.

Observers believe that NatSteel board has made the payment of dividend conditional on the passage of the resolution to amend the M&A because it wants to be sure of securing Mr Oei's vote on the latter.

NatSteel has said the M&A changes are necessary to bring its M&A in line with recent changes to listing rules and, more importantly, to provide flexibility in future capital management.

To allay Mr Oei's concerns that any future scrip dividend could dilute his interest in the company, 98 proposed at last week's extraordinary general meeting an amendment to white-wash – that is, to waive shareholders' right to a general offer from Mr Oei should the scrip dividend result in his stake hitting the 30 per cent mark that triggers a mandatory offer.

Mr Ban said Mr Oei's opposition isn't rational. "He has made public the issue of dilution and we've addressed that with the white-wash, and we've asked him many, many times what are the other issues."

Mr Oei wasn't available for comment yesterday.

I have highlighted (in italics) the alleged defamatory words. There was no dispute that the words attributed to David Ban were spoken by him.

6 The plaintiff had opposed the resolution proposed by NatSteel that payment of a cash dividend to shareholders, which had previously been recommended by the board of directors of NatSteel unconditionally, be dependent on approval of the resolution to amend NatSteel's Memorandum and Articles of Association ("M&A") to provide for a scrip dividend scheme. The plaintiff averred that the alleged defamatory words in their natural and ordinary meaning meant and were understood to mean that, in making his opposition, he:

(a) was acting in an unreasonable, malicious and/or perverse manner without considering the interests of the majority shareholders;

(b) intended to disadvantage the other shareholders of NatSteel without good reason, cause or justification;

(c) was using his opposition to the resolutions to wreak oppression on the other shareholders of NatSteel, including the majority shareholders of the company; and

(d) should be held responsible to the other shareholders of NatSteel if the proposed resolutions were not passed.

7 It was the plaintiff's case that Catherine Ong falsely and maliciously caused the words in question to be published and that David Ban, 98 Holdings and SPH falsely caused the same words concerning the plaintiff to be written and published. The plaintiff alleged that the statements made by David Ban were timed and intended to cause him maximum damage and embarrassment in the eyes of the influential readership of the BT which included the minority shareholders of NatSteel who were due to attend the adjourned extraordinary general meeting ("EGM") on 4 June 2003. He alleged that David Ban was both speaking in his own capacity as well as in the capacity of spokesman for 98 Holdings. The plaintiff also alleged that SPH must bear responsibility for Catherine Ong's acts and that SPH had

readily provided her with the opportunity to defame him. He also asserted that this was not the first time that SPH and Catherine Ong had libelled him during the battle for control of NatSteel but they had the grace to publish an apology on the previous occasions.

8 The plaintiff claimed that the words in issue caused him considerable distress and injured his dignity, character and reputation. On 5 June 2003, his former solicitors, M/s Rajah & Tann, sent letters to David Ban and to SPH demanding that they retract the allegedly defamatory statements made in the BT article of 4 June 2003, apologise and pay him damages and legal costs. On 23 June 2003, his solicitors sent similar letters of demand to 98 Holdings and to Catherine Ong. The demands were rejected by all the defendants.

9 I now set out the history of the so-called NatSteel takeover saga that led to the BT article of 4 June 2003. NatSteel is a Singapore-incorporated company listed on the Singapore Exchange ("SGX"). The NatSteel group is principally in the steel and industrial business. During the latter half of 2002 and up to January 2003, NatSteel was the subject of one of the most highly publicised corporate takeover battles in Singapore.

10 For the past 20 years, NatSteel was under the management and leadership of Ang Kong Hua ("Ang") who, until 1 January 2002, was also Chairman of the Securities Industry Council ("SIC"). Crown Central Assets Limited was a company owned and controlled by Ang and another senior executive of NatSteel. On 3 June 2002, Ang, through Crown Central Assets Limited, made an offer to acquire all of NatSteel's businesses, undertakings and assets, together with its investments in all its subsidiaries other than its investments in NatSteel Brasil and NatSteel Broadway, free from all bank borrowings, as at 31 December 2001. This will be referred to as the management buy-out offer ("the MBO"). The value of NatSteel Brasil and NatSteel Broadway, which were being sold, would have brought in some $586.6m for NatSteel. This represented cash available for distribution to shareholders at $1.55 per NatSteel share. The MBO was for $294m which would have allowed a distribution of $1.84 per share to be made. In August 2002, the MBO was increased to $350m, enabling a cash distribution of $1.91 per share to be made.

11 At that time, Temasek Holdings Pte Ltd ("Temasek") held 7.9% of NatSteel's equity. On 24 September 2002, Temasek announced in the BT that the MBO was not a "done deal" as far as it was concerned, that it remained open to considering any other bids and would make a final decision after all offers and information were made available to NatSteel's shareholders. As a result of this announcement, the plaintiff approached Mdm Ho Ching of Temasek to speak to her about the MBO and to seek Temasek's blessing should he decide to make a general offer for NatSteel. He claimed that Mdm Ho Ching gave him the blessing and support that he sought and that she emphasised that Temasek's objective was to maximise shareholder value.

12 On 2 October 2002, the plaintiff went to meet Jackson Tai, the chief executive officer of DBS Bank, and his corporate finance team to discuss financing for a possible general offer. The amount discussed was $500m which was to come from a syndicate comprising DBS Bank and Citibank.

13 On 3 October 2002, 98 Holdings made a voluntary conditional offer for NatSteel at $1.93 per share. By 11 October 2002, the plaintiff had purchased through Sanion Enterprises Limited ("Sanion"), a company controlled by him, 11.2% of the issued capital of NatSteel at prices ranging between $1.93 and $2.00, making it the second largest shareholder after DBS Bank, which then held 14.67%. By November 2002, Sanion had become the single largest shareholder of NatSteel.

14 Sanion's relentless purchases of NatSteel shares forced 98 Holdings to increase its offer four times: from $1.93 to $2.00 on 31 October 2002, to $2.03 on 13 November 2002, to $2.05 on

9 December 2002 and finally to $2.06 on 18 December 2002. This was despite the fact that when the offer was increased on 31 October 2002, 98 Holdings stated publicly that the enhanced offer was final and would not be revised unless there was a competing bid. Under r 20.2 of the Singapore Code on Takeovers and Mergers ("the Takeover Code"), this was a "no increase" statement which meant that the offer was final and could not be revised unless there was a competing bid. There was no competing bid. It was also on 31 October 2002 that 98 Holdings and members of NatSteel's senior management who were behind the MBO joined forces via a participation agreement of the same date. These members of the senior management now supported the 98 Holdings offer. They would enjoy benefits if the 98 Holdings offer succeeded.

15 On 1 November 2002, Sanion made an offer to DBS Bank to buy its 14.67% stake in NatSteel at $2.03 per share. At this time, Sanion already had a 14.7% stake in NatSteel. On 2 November 2002, the BT reported that David Ban had demanded that the plaintiff declare his intentions, stating that "the time has come for him to declare his intentions – now, today, not tomorrow". The plaintiff believed that as a result of complaints by or on behalf of 98 Holdings, Sanion was required by the SIC to make submissions why it should not be made to announce its intentions at that time.

16 On 4 November 2002, as required by the SIC, Sanion announced that it was keeping its position under review. On 19 November 2002, the SIC published its ruling on the matter, stating that, having regard to the need for timely and sufficient information by NatSteel shareholders on the one hand and the need not to disturb the existing tactical balance between 98 Holdings and Sanion on the other, Sanion had until 13 December 2002 to announce its intention.

17 On 6 November 2002, NatSteel issued circulars to its shareholders about the MBO, stating that the cash available for distribution was $1.55 per share and that the main recommendation of the independent financial adviser and the advice of the independent directors to minority shareholders were to accept the 98 Holdings offer.

18 Up to and after 12 November 2002, the plaintiff was in discussions with DBS Bank on the issue of financing a possible general offer by Sanion. Such discussions only ended in the week before 2 December 2002. On 12 November 2002, at the request of DBS Bank's Jackson Tai, a meeting was held at the plaintiff's home at about 4.00pm with Jackson Tai and Ng Kee Choe, the then president of the bank. The meeting was stated by them to be "off the record". The plaintiff was asked whether he would sell his NatSteel shares if there was a buyer at $2.03 per share and thereby make millions of dollars in profit. The plaintiff dismissed this suggestion immediately and concluded that there was some hidden agenda on the part of the bankers as they did not appear to be there to discuss selling DBS Bank's stake to him. There was no indication that there was a competing offer for DBS Bank's stake. If there was such indication, the plaintiff would have immediately increased his offer to $2.05 or more for the very important strategic block of shares.

19 At 4.03pm on 13 November 2002, NatSteel shares were suspended from trading. Suspecting that something was brewing, at about 4.40pm, the plaintiff faxed to DBS Bank an increased offer of $2.05 per share. However, late that night, the bank announced that it had sold its stake to Excel at $2.03 per share.

20 The plaintiff continued his discussions with DBS Bank on the proposed financing for a general offer until early December 2002 when the bank withdrew from the syndicate for the proposed financing. The plaintiff tried unsuccessfully to persuade the bank to finance Sanion with Citibank. By then, Sanion had increased its stake in NatSteel to 29.25%. Sanion formulated a pre-conditional general offer at $2.10 per share, after taking into account the $1.55 dividend. Its lawyers then wrote to NatSteel to request that trading be suspended pending regulatory clearance for the pre-conditional

general offer. However, on 3 December 2002, the SIC ruled that the offer was not allowed.

21 At the EGM of NatSteel held on 4 December 2002, the MBO was rejected by the shareholders. That same day, Sanion issued a press release stating that it did not intend to accept the 98 Holdings offer and that it believed that a cash distribution of $1.55 per share should be made to shareholders based on statements made in NatSteel's circular of 6 November 2002. Sanion proposed that an EGM be called for this purpose and asked the board of directors to appoint three of its candidates to the board.

22 On 9 December 2002, Sanion reiterated its position and announced that it did not intend to make a general offer for NatSteel. It announced that it intended to call for an EGM to pursue the matter of the cash distribution of $1.55 per share.

23 On 13 December 2002, NatSteel announced its intention, subject to certain qualifications, to recommend a dividend of 97 cents per share in two tranches as the board did not believe it was commercially viable to distribute $1.55. On 15 December 2002, Sanion rejected this proposal and made it known that it would defer receipt of its dividend entitlement if the board would recommend a dividend of $1.55.

24 98 Holdings extended the closing date of its offer an unprecedented six times, with the final extension expiring on 10 January 2003. On 31 December 2002, the level of acceptance of its offer was only 7.2%. In January 2003, before the closing date of 10 January, Ang approached the plaintiff to propose several ways of making the 98 Holdings offer succeed. The plaintiff rejected his overtures. 98 Holdings then became desperate and even asked shareholders who had accepted its offer to withdraw their acceptance and sell their shares to 98 Holdings or in the market. On 10 January 2003, 98 Holdings managed to secure 50.31% of NatSteel's issued shares thus making its offer unconditional. The closing date for acceptance of its offer was then extended for the obligatory two weeks to 24 January 2003. In view of all these happenings, the plaintiff believed that there was a conspiracy to facilitate the success of the 98 Holdings offer by questionable means.

25 As a good sport, on 11 January 2003, the plaintiff congratulated Datuk Ong on the success of 98 Holdings in the takeover game by sending him a bouquet of flowers which was not acknowledged. That snub of his goodwill gesture showed the resentment and malice which Datuk Ong and, by logical extension, David Ban bore towards him for his participation in the takeover battle.

26 By 16 January 2003, Sanion had accumulated 29.99% of the shares, making it the second largest shareholder after 98 Holdings. The plaintiff did not accept 98 Holdings' offer as he was content to let others work for him. He did not seek any representation on the NatSteel board and did not attempt to interfere with the management of the company. After the close of the general offer on 24 January 2003, four nominees of 98 Holdings, including David Ban, were appointed to the board of NatSteel. Together with Ang, who had aligned himself with 98 Holdings by virtue of a participation agreement, 98 Holdings effectively controlled NatSteel's board of eight directors. Ang, David Ban and another of 98 Holdings' nominees formed the executive committee of the board.

27 The plaintiff said that many articles were written by Catherine Ong on the NatSteel takeover battle and they were published in the BT between October 2002 and March 2003. He claimed that SPH and Catherine Ong had a history of defaming him. He referred to the BT articles of 6 and 11 December 2002 to which he had taken objections through his solicitors. In response, SPH and Catherine Ong agreed to publish an apology in the BT of 31 January 2003. In addition, they agreed to pay him $20,000 as damages and legal costs. He donated this amount to the ST School Pocket Money Fund. Similarly, he obtained a published apology in the Lian He Zao Bao and $10,000 compensation

from SPH in respect of an article in the 25 December 2002 issue of the said Chinese newspaper. He donated this amount as well.

28 On 16 March 2003, NatSteel announced its full year results for the financial year ending 31 December 2002 and indicated that a final dividend of 55 cents per share for 2002 and an interim dividend of 45 cents per share for 2003 would be paid. There were no conditions attached for the 55 cents dividend, save for the need to get shareholders' approval. The 45 cents interim dividend, which did not need shareholders' approval at a general meeting, was paid on 18 April 2003.

29 On 2 May 2003, the board of directors issued a circular to the shareholders to give them notice of an EGM to be held on 28 May 2003 to pass six resolutions, three of which were to approve:

(a) contingent upon the passing of the M&A resolution (referred to below), the payment of a special dividend of 55 cents per share ("the special dividend resolution");

(b) certain amendments to the Memorandum and Articles of Association ("the M&A resolution"); and

(c) contingent upon the passing of the M&A resolution, a scrip dividend scheme under which shareholders could elect to receive future dividends declared in shares instead of in cash ("the scrip dividend resolution").

The resolutions in (a) and (c) above were ordinary resolutions requiring approval from more than 50% of the votes of the shareholders present and voting. The resolution in (b) was a special resolution which required approval from at least 75% of such votes to succeed. Although the special dividend resolution was totally unconnected with the other two proposed resolutions as the scrip dividend scheme was intended for future dividends only, it was made subject to and contingent upon the passing of the M&A resolution.

30 This linkage in the resolutions was not disclosed in the body of the circular of 2 May 2003 but "was hidden in the Notice of EGM, drafted into the technical and legal wordings of the resolutions themselves". No rationale was provided for this linkage in the 16 March 2003 announcement or in the said circular. As at 30 April 2003, the draft circular as approved by SGX included the following words in cl 5.9 in bold print:

> Accordingly, Shareholders should note that the Special Dividend is conditional upon the approval of the Shareholders for the Scrip Dividend Scheme and consequential amendments to the Articles and, as stated in paragraph [1.2] above, also conditional upon the approval of Shareholders for the Potential Financial Scheme.

This vital piece of information appeared to have been removed surreptitiously from the final version of the circular to shareholders sometime between 30 April and 2 May 2003, apparently in order to conceal from minority shareholders, including Sanion, the linkage of the payment of the 55 cents dividend with the M&A resolution.

31 The plaintiff did not think that it was in Sanion's interests that the M&A resolution be passed and the scrip dividend scheme be allowed to be implemented as it held 29.99% of NatSteel's shares, just short of the 30% threshold (which would trigger the obligation to make a takeover offer for all of NatSteel's shares) which Sanion would reach if it elected to take its dividend in scrip and not all the other shareholders elected to do the same. Alternatively, if Sanion elected to take its dividend in cash and other shareholders elected to take scrip, Sanion's stake in NatSteel would be diluted. He was

particularly concerned that the linkage in the resolutions had been designed to dilute Sanion's shareholding to below 25%, at which level it would not be able to veto future special resolutions. He felt that the linkage was to benefit only 98 Holdings and not the body of shareholders generally and that it was a ploy to pressurise minority shareholders to vote for the M&A resolution and the scrip dividend scheme or lose out on the special dividend. This was confirmed by David Ban's evidence that the board knew that it needed Sanion's support for the resolutions and that it had considered how best to ensure that its proposals would receive the necessary support from the shareholders.

32 On 9 May 2003, Sanion requested, through its solicitors, the newly-constituted board of directors to remove the linkage. Instead of responding in private to Sanion, on 19 May 2003, NatSteel announced publicly for the first time the purported rationale for the linkage. The NatSteel board released an announcement seeking to justify the linkage by citing the increasingly uncertain economic outlook and stating that it was important for NatSteel to ensure it had a healthy cash position and strong cash flow to fund the continuing growth of its businesses and investments and its working capital and capital expenditure requirements. The board also stated that it took into account the above considerations as well as the impact of the special dividend on NatSteel's resources and that it was in the interests of the company to have the flexibility to raise capital efficiently and to retain cash. It therefore proposed the amendments via the M&A resolution to facilitate capital raising through the issue of convertible instruments and to retain cash by allowing shareholders to elect for scrip in lieu of cash dividends. It reiterated its view that the resolutions proposed were in the interests of the company and its shareholders and recommended that the shareholders vote in favour of the resolutions.

33 On 22 May 2003, Sanion issued a press release to explain why it had to vote against the resolutions, stating that it would requisition an EGM to approve the special dividend without conditions.

34 On 27 May 2003, one day before the EGM, 98 Holdings issued a statement to say that it was prepared to support amendments to the scrip dividend resolution so that it would be subject to the passing of a "whitewash" resolution whereby the shareholders would waive their right to receive a general offer from Sanion should the 30% threshold be reached. This was proposed purportedly to address Sanion's concerns although it failed to address the concern about the dilutive effect of the scrip dividend scheme. The board of directors of NatSteel welcomed the proposal and stated publicly that it believed that it should accommodate Sanion's concerns.

35 The first time that the plaintiff heard about the whitewash proposal was in the evening of 27 May 2003 when he received a telephone call from Catherine Ong asking for his response to it while he was having dinner with some friends. He did not really understand what it was and said he would leave it to his lawyers. Later, having received legal advice, the plaintiff could not agree with the efficacy of the whitewash proposal, as a waiver from the obligation to make a general offer could only be given by the SIC.

36 At the EGM of 28 May 2003, Sanion's proxy was asked by the board of directors to respond to the whitewash proposal after 98 Holdings' representative (Dilhan Pillay Sandrasegara, an advocate and solicitor) had explained it. Sanion's proxy raised a few issues and said essentially that he needed to take instructions and legal advice as Sanion had other concerns. The plaintiff felt that Sanion's proxy overstepped his mandate, which was merely to go and cast a nay vote on the resolution, when he engaged the board of directors at the EGM. The other minority shareholders also voiced their opposition to the linkage of the special dividend resolution to the other resolutions as they believed it would definitely not be approved in the light of Sanion's opposition to the other resolutions. In the end, the rowdy EGM was adjourned for one week for Sanion to take instructions and legal advice on

the whitewash proposal.

37 The plaintiff was abroad between 28 and 30 May and again from 2 June 2003 and could not be contacted by his solicitors or by David Gerald, the President of the Securities Investors Association of Singapore ("SIAS") mentioned in the BT article in issue. He said he was the boss and he would call others when he wanted to and it was not for others to call him when they wanted to. In any event, he did not think it was necessary for him to say anything at that time.

38 On 4 June 2003, Sanion issued a press release, read out at the adjourned EGM, stating its appreciation for the attempt, albeit last minute, by 98 Holdings to address Sanion's concerns. It stated categorically that under the Takeover Code, a whitewash waiver from the obligation to make a general offer must be obtained not only from the independent shareholders of NatSteel but from the SIC as well. It stated that it was uncertain whether the SIC would grant a general whitewash waiver that would apply throughout the life of the scrip dividend scheme and what conditions it would impose. In Sanion's view, therefore, 98 Holdings' proposal was too simplistic and presumptuous. Further, Sanion could only consider such a proposal meaningfully if and when a specific future dividend was proposed as it would review the circumstances prevailing at that time. Accordingly, Sanion stated that it would vote against the M&A and the scrip dividend resolutions.

39 As no attempt had apparently been made to obtain the SIC's approval for the whitewash solution, the plaintiff felt that the proposal was not a serious one but an afterthought conjured up to relieve NatSteel of the public embarrassment suffered as a result of the linkage having been uncovered.

40 At the adjourned EGM on 4 June 2003, all three resolutions were rejected as a result of the minority shareholders' votes. In July 2003, at an EGM requisitioned by 98 Holdings immediately after the EGM of 4 June 2003, NatSteel finally removed the linkage in the resolutions and the special dividend resolution was passed and the dividend paid. The plaintiff felt he was vindicated by those subsequent events.

41 Turning again to the articles in the BT, the plaintiff highlighted two articles written by Catherine Ong in the 28 and 29 May 2003 issues on the proposal to declare a special dividend. On 4 June 2003, the allegedly defamatory article appeared in the BT. In late 2003, Tazwell (a Temasek subsidiary) sold its shares in 98 Holdings and left the consortium.

42 The plaintiff went on to explain why he viewed David Ban's allegedly defamatory words as having been spoken by him on behalf of 98 Holdings. He pointed to the speed with which David Ban had been nominated by 98 Holdings and appointed to the board of NatSteel – it was one day after the close of the general offer on 24 January 2003. The BT article in question identified David Ban as "a NatSteel director representing hotelier Ong Beng Seng's interests". Further, in an earlier article in the BT of 5 October 2002, David Ban was described by Catherine Ong as "Mr Ong's trusted lieutenant", a description which accurately reflected the relationship between David Ban and Datuk Ong. It was evident, he said, from the words in the BT article in issue that David Ban was speaking to Catherine Ong because of his relationship with the majority shareholder and as its representative on the NatSteel board. The BT article in question quoted him as having said, "we've addressed that with the whitewash". A director of NatSteel, it was argued, would not be making statements on a disagreement between shareholders. Further, the whitewash amendment was proposed by 98 Holdings, not NatSteel.

43 Both 98 Holdings and David Ban pleaded that David Ban was speaking in his capacity as a director of NatSteel when he uttered the allegedly defamatory words. When the plaintiff's solicitors

wrote to NatSteel on 1 August 2003 to seek confirmation of the truth of that averment, the company's solicitors merely responded by saying that they had advised NatSteel that it had no obligation to reply or to provide the confirmation sought.

44 The plaintiff maintained that he had always acted in the interests of all the shareholders and that it was due to his involvement through Sanion that NatSteel in December 2002 and March 2003 recognised its obligation to pay out its surplus funds by way of a special dividend. He averred that if there had been any oppression of minority shareholders, it was the work of 98 Holdings, to whom Catherine Ong had aligned herself as shown in her articles in the BT. He believed that the introduction of the linked resolutions was not accidental, bearing in mind the combined experience of the NatSteel board, 98 Holdings and their advisers.

45 The plaintiff said in publishing or causing to be published the words complained of, all the defendants were actuated by express malice. The words were a vicious attack on his character, integrity and reputation as a businessman and were meant to suggest to the public at large that he was seeking to serve his own interests as a minority shareholder and, in so doing, was oppressing the innocent majority. He resented being called irrational or mad. His actions in purchasing NatSteel's shares must have caused considerable annoyance and resentment in 98 Holdings, its shareholders and its representatives, which included David Ban, as they resulted in 98 Holdings having to pay a lot more for its controlling stake in NatSteel. The defendants thereafter resolved to adopt a course of action which they knew or ought to have known would antagonise him. When the linkage strategy was exposed, David Ban, on behalf of 98 Holdings, used the opportunity when speaking to Catherine Ong to defame the plaintiff.

46 The plaintiff maintained that David Ban and 98 Holdings had published or caused to be published the words in issue knowing them to be false or recklessly not caring whether they were true or false or with an improper dominant motive to inflict maximum public damage to the plaintiff's reputation and integrity as a businessman when all that he was doing was to exercise his rights as a shareholder. When the plaintiff's solicitors sent the first letter of demand to David Ban and to the BT, the solicitors for David Ban challenged the plaintiff to "see through, and make good on, his threat" of legal action if he believed he had a case. No apology or retraction was published by any of the defendants. Their attempt to justify the words in issue increased the damage to the plaintiff's reputation and the hurt to his feelings. The plaintiff greatly resented being portrayed as some sort of villain in the NatSteel saga. The libel was particularly damaging as the article was published in a widely read, influential newspaper and also on its website. The BT was circulated principally among the business community where the plaintiff's reputation was most important to him. Accordingly, the plaintiff asked for a substantial amount of damages for the alleged libel.

47 The plaintiff submitted that the scrip dividend scheme was only a smokescreen for a more devious plan to dilute Sanion's shareholding, to provide for the anticipated early exit of one or more of the members of the 98 Holdings consortium or for the dissolution of the consortium altogether. If the consortium was dissolved, Excel would be left with about 25% of NatSteel shares, making Sanion the largest single shareholder with 29.99%. This would have created a situation where Excel might have to be engaged in a proxy fight with Sanion, something Excel could not afford to be engaged in. 98 Holdings, or at least Excel, therefore had to ensure that Sanion's shareholding would be diluted to below 25% and a declaration of about 65 cents per share in dividend would be sufficient to achieve that if Sanion elected to take cash. The scheme was also a double-edged sword because if Sanion accepted scrip in place of cash, it could reach the critical 30% level triggering the mandatory obligation to make a general offer for the rest of NatSteel's shares.

48 The plaintiff argued that Catherine Ong had aligned herself to 98 Holdings' cause and "was

spewing out malice against him". Her former employers, SPH, had to apologise to the plaintiff for what she had written in the two previous articles in the BT and she admitted in court that she was not too thrilled about the decision to apologise to him. She also maintained defiantly that the apology was nothing more than a "commercial settlement with no admission of defamation" and that the plaintiff was a person who loved to harass journalists with lawyers' letters and lawsuits. The plaintiff said therefore that Catherine Ong readily provided a platform for David Ban to attack him publicly on 4 June 2003 by publishing David Ban's remarks.

The case for David Ban and 98 Holdings

49 David Ban and the solicitor and representative of 98 Holdings, Dilhan Pillay Sandrasegara ("Dilhan Pillay"), testified. Most of the events mentioned by the plaintiff were not in dispute. What was disputed was essentially the interpretation the parties gave to the events. David Ban and 98 Holdings submitted that the plaintiff's case must fail because:

(a) the words in issue were not in their natural and ordinary meaning defamatory of the plaintiff as they meant and were understood to mean that "any attempt by the plaintiff at the Adjourned EGM to block the resolutions proposed by NatSteel for the payment of a cash dividend and to allow a scrip dividend scheme would be unreasonable and if the shareholders do not receive the dividends and therefore suffer a disadvantage, they should blame him";

(b) even if the words were in their natural and ordinary meaning defamatory of the plaintiff, the words were fair comment on a matter of public interest and the plaintiff had not proved malice on their part;

(c) the words were published on an occasion of qualified privilege and the plaintiff had not proved malice on their part;

(d) the defamatory imputation of the words in their natural and ordinary meaning was justified on the plaintiff's own evidence; and/or

(e) 98 Holdings was not liable for the words in issue as David Ban was not speaking to Catherine Ong on its behalf.

50 On 15 November 2003, DBS Bank gave its version of its meeting with the plaintiff on 12 November 2002 in its press release via the Monetary Authority of Singapore Network ("MASNET'). The bank stated that its senior officers asked the plaintiff whether he was also a seller of NatSteel shares as he had previously indicated to the bank that he was both a buyer and a seller at $2.03 per share. The plaintiff responded by saying he was not interested in selling at that price. He also said he was not interested in extending a general offer to the other shareholders. When the bank asked him to improve his offer to $2.05 per share, which was the highest price he had paid at that time, he said he had no intention of raising his offer price. Since that was the plaintiff's position, the bank committed itself to Excel in the evening of 12 November 2002.

51 On the issue of seeking financing from DBS Bank, the bank's chief executive officer, Jackson Tai, wrote in a letter dated 9 December 2002 that the plaintiff first approached the bank on 3 October 2002 with a Wall Street investment banking firm to explore financing for his proposed acquisition of NatSteel shares. The discussions were general in nature and no details were given. As the plaintiff did not follow-up immediately following that meeting, the bank assumed he no longer had an interest in pursuing financing with the bank. On 8 November 2002, the plaintiff asked for $560m in financing. The bank indicated to him the importance of the other bank's joint participation. On

11 November 2002, the bank put forward an indicative financing proposal of $475m. The plaintiff reiterated that he required financing of $560m. On 12 November 2002, the bank revised the quantum to $500m but the plaintiff indicated to Jackson Tai and Ng Kee Choe later that day that he had no intention of making a general offer for the shares he did not already own. Jackson Tai understood the plaintiff to mean that he no longer required financing from the bank for a general offer.

52 By 14 November 2002, DBS Bank had already put forward its best proposal to the plaintiff. Nevertheless, the plaintiff continued to press for terms which he knew were unacceptable to the bank. This, David Ban and 98 Holdings alleged, was done to keep up his charade of getting ready to make a general offer so as to foil 98 Holdings' general offer. Although the plaintiff claimed in court that Jackson Tai was not stating the truth, he chose not to call Jackson Tai as a witness. This was despite having issued a subpoena against Jackson Tai.

53 When pressed by the SIC on 19 November 2002 to announce by 13 December 2002 whether or not Sanion would be making a general offer for NatSteel, another of the plaintiff's companies, 99 Holdings Pte Ltd, proposed making a pre-conditional voluntary cash offer. One of the pre-conditions was the recommendation by the board of directors of NatSteel and the approval of the shareholders of a cash distribution of not less than $1.55 per share. The proposed offer price of $2.10 was to be reduced by the said cash distribution, making the net price 55 cents per share. While NatSteel had the cash resources to make that distribution, the board was of the view that it would be commercially imprudent to do so. The plaintiff had not conducted a due diligence check on NatSteel at that time to determine whether such a hefty cash distribution was in its interests. He did not even know where NatSteel's premises were at that time. This, it was argued, showed that the proposal was a farce and all that the plaintiff was interested in was NatSteel's cash pile and that he was buying into the company for the short term only. When the SIC ruled that the said pre-condition was unacceptable, Sanion reverted to announcing vaguely that it would keep its position on NatSteel under review.

54 After the success of 98 Holdings' general offer, the new board of directors met several times to discuss, among other issues, the amount of the proposed cash distribution to NatSteel's shareholders. It considered the impact of the pay-out on the company's cash position and discussed possible measures to conserve cash and to retain flexibility to raise capital efficiently in future. It considered several options to do so, one of which was a scrip dividend elective scheme. Such measures would necessitate amendments to the company's articles of association by way of a special resolution. Given Sanion's shareholding of 29.99%, its support for any special resolution was crucial.

55 The consensus of the board of directors, *ie* including those not nominated by 98 Holdings, was that it was necessary to link the payment of the dividend to the amendments to the articles of association to give the shareholders, particularly Sanion, an incentive to agree to the scrip dividend scheme. Such a scheme was not new in the corporate world. Many other listed companies, such as the OCBC Bank, Cycle & Carriage and Datacraft, had implemented it. The board was of the opinion that all the proposed resolutions were in the interests of the company and should be considered in their totality and not individually. Ultimately, it was for the shareholders to decide whether or not they agreed with the board's views. In the first quarter of 2003, the outlook was uncertain because of the situation in the Middle East and the looming Iraq war. In addition, there was the emergence of the Severe Acute Respiratory Syndrome (or SARS).

56 It was argued that NatSteel would have to pay a dividend of $1 per share before the plaintiff's shareholding in the company fell below the 25% level, assuming he took the entire dividend in cash and everyone else elected to take scrip. The plaintiff could also make up for any shortfall by purchasing NatSteel shares in the market. It might be more expensive for him to do that but the point

was that he could restore his shareholding level. In any event, the whitewash proposed by 98 Holdings was a complete answer to his publicly stated concerns.

57 The 2 May 2003 circular was sent to the board of directors by the company's secretary only on 30 April 2003 for its approval by circular resolution. There was no evidence that the board had met to consider and approve the proposals and the resolutions before the despatch of the notice to shareholders. The resolutions and their proposed linkage were not made public before 2 May 2003 because they had not been finalised. All that happened on 20 February 2003 was that the company's lawyers, M/s Allen & Gledhill, were asked to draft resolutions in a manner that would provide some certainty that the contemplated scrip dividend scheme and other methods of conserving cash could be effected. As at 16 March 2003, when the announcement on the dividend was made, the board had not made any decision yet on the linkage of the resolutions.

58 The removal of the words in cl 5.9 appearing in earlier drafts of the circular had a perfectly valid explanation. The special dividend resolution and the scrip dividend scheme resolution were initially conceived as one resolution but were separated into two after comments from the SGX were received. The said words were originally included to highlight to shareholders that the special dividend was conditional upon the scrip dividend scheme. With the separation into two resolutions, it was no longer accurate to state it as such. The words had become otiose in the light of the drafting changes made to the resolutions.

59 At any rate, the linkage was properly reflected in the notice of EGM attached to the circular. Further, the exact operation of the resolutions was made clear to the public on 19 May 2003 in NatSteel's announcement in MASNET. There, it was explained that the special dividend was to be subject to the approval of the M&A resolution but that it was not subject to the scrip dividend scheme being approved. The plaintiff and the other shareholders also did not appear to have misunderstood the resolutions. The SGX, in a statement published in the BT of 17 October 2003, exonerated NatSteel from any alleged wrongdoing, stating, among other things, that the issue of linkage was a matter for NatSteel. There was therefore no substance to the allegation that NatSteel and/or 98 Holdings had perpetrated a deception on the SGX, the shareholders and the investing public.

60 David Ban and 98 Holdings submitted that it was the plaintiff, who had met David Gerald, the President of SIAS, and joined the association, who made the issue of the linkage of the resolutions public through the association. SIAS's complaint about the unnecessary linkage was reported in *The Straits Times* ("ST") of 15 May 2003. The association also urged NatSteel to respond to its concerns by the next day. NatSteel did so but SIAS remained unconvinced, stating that it did not buy the arguments or even understand the reasons given. These exchanges were reported by the BT and the ST on 20 May 2003.

61 It was in the light of all these actions by the plaintiff and SIAS that NatSteel issued its announcement via MASNET on 19 May 2003 explaining the resolutions and their linkage to all shareholders who would have been concerned as to what the fuss was all about. No reference at all was made to the plaintiff or to Sanion in the announcement. It was therefore incorrect for the plaintiff to accuse NatSteel of having fired the first shot across the bow to make the issue public so that it could later disparage the plaintiff openly for opposing the linkage. Despite the absence of reference to the plaintiff or to Sanion, the latter decided to join the public fray and released its statement to the press on 22 May 2003.

62 The whitewash resolution proposed by 98 Holdings on 27 May 2003 was to address Sanion's only concerns about the dilutive effects of the scrip dividend scheme and the possibility of triggering

a takeover obligation. The Whitewash Guidance Note in the Takeover Code required a specific grant of a waiver from the obligation to make a general offer and such a grant would be subject to various conditions in the said Guidance Note. If the SIC did not approve the waiver, the proposed scrip dividend scheme could not be implemented, given the language used in the proposed amendment to the resolution in question. Sanion would be required to abstain from voting on the whitewash resolution. However, 98 Holdings, with its majority shareholding, would support any whitewash that was proposed at a subsequent general meeting, subject to the SIC's prior approval. The whitewash therefore ought to have allayed the plaintiff's concerns and if it did not, NatSteel expected him to explain what the real problem was. The effect of the whitewash was that Sanion, like any other shareholder, would have the option of taking its dividend in scrip or in cash and its 29.99% shareholding would not put it at a disadvantage.

63 As it transpired during the trial, the plaintiff would have voted against the scrip dividend scheme in any event and his opposition to the scheme was not due to the linkage in the resolutions.

64 On 28 May 2003, the annual general meeting ("AGM") of NatSteel was held immediately before the EGM. Prior to the AGM, the two nominees/custodian agents of Sanion had submitted proxy forms which indicated that they were voting against all the resolutions proposed at the AGM. The plaintiff did not attend the AGM or the EGM personally. The resolutions for the AGM included the adoption of the audited accounts for the financial year ending on 31 December 2002 which formed the basis for the special dividend and other routine matters such as the re-appointment of the auditors and the directors. Although there was no reason for anyone to object to such resolutions, Sanion's proxy voted against them anyway. The plaintiff claimed during cross-examination that he had some reservations about the accounts but admitted that he had not voiced such before or after the voting. He said Sanion's vote would not have affected the outcome at any rate and he was merely sending out a very clear message about his opposition to the linkage of the resolutions for the EGM. It was, he said, "a basic right a shareholder has. No one should challenge the rights of a shareholder. I do not owe them any explanation".

65 It was submitted that the plaintiff was angry and was using his vote at the AGM to signal to the board of directors that he could be obstructive. By taking a completely unrelated matter into account in his vote against the routine resolutions at the AGM, it was argued that the plaintiff had exhibited irrational behaviour.

66 The plaintiff acknowledged that the proxy had taken legal advice before attending the AGM/EGM. At the EGM, however, the proxy complained that the whitewash was too complicated and he criticised the linkage in the resolutions as being irrational and unnecessary. The rationale for linking the resolutions as a package was explained by David Ban. Another NatSteel director said that if Sanion objected to the linkage or the whitewash, the shareholders should be focusing on why it was objecting rather than asking the board to change its stance. He added that if the board was trying to conserve cash, the fault might not lie with it. Yet another director tried to reason with the proxy and to find out what some of Sanion's other concerns were when the proxy mentioned that "that is not our only concern" and that "there are other reasons why we are not happy with this resolution". The EGM was then adjourned for a week for Sanion to consider its position on the whitewash and the resolutions and to articulate what its other concerns were. 98 Holdings' representative and solicitor, Dilhan Pillay, said he was prepared to meet Sanion's solicitors to try and work out a solution. The EGM was adjourned on the basis that there would be dialogue among NatSteel, 98 Holdings and Sanion and perhaps with SIAS as well.

67 There was no need for 98 Holdings to use the resolutions as a pretext to slip in amendments to the articles of association (by way of a proposed Art 140A) in order to allow the introduction of *ad*

hoc scrip dividend electives by ordinary resolution. The existing Art 140 already conferred that power on the board. What was sought to be introduced was a scheme to be institutionalised. 98 Holdings was willing to seek a general waiver from the SIC. Even if a specific waiver was required for every scrip dividend, 98 Holdings was prepared to have the scrip dividend be subject to a whitewash each time and would vote in favour of the whitewash on each occasion.

68 If Sanion had to buy NatSteel shares in the open market in order to redress any dilution of its shareholding by a scrip dividend scheme, it would be in a better position than 98 Holdings. The Takeover Code stipulated that a shareholder who owned more than 50% of the shares of a listed company, which subsequently fell to below 50%, could only increase his stake by 1% in the open market every six months. This restriction would not apply to Sanion. Any whitewash resolution would not apply to shares bought in the open market but that should not be of concern unless Sanion deliberately bought enough for it to cross the 30% threshold.

69 The EGM of 28 May 2003 was widely reported in the BT and the ST the next day. Between 28 May and 3 June 2003, repeated attempts were made by NatSteel's solicitors, Allen & Gledhill, to contact the plaintiff to sound out his intentions. They did not succeed as the plaintiff's solicitors said he was abroad. This, it was submitted, was another instance of the plaintiff's *modus operandi* of being evasive and not caring about anyone else's interests.

70 On the eve of the adjourned EGM, Catherine Ong telephoned Dilhan Pillay, the solicitor and representative of 98 Holdings, to enquire if there were any new developments regarding the plaintiff's position on the resolutions. He told her it would be more relevant for her to speak to a NatSteel director and suggested that she contact Ang or David Ban as they were directors of NatSteel. It was in that context that David Ban spoke the words which form the subject of this suit. When 98 Holdings made its press statement of 27 May 2003 on the whitewash proposal, it was Dilhan Pillay, not David Ban, who disseminated it to the press on behalf of 98 Holdings.

71 At the adjourned EGM of 4 June 2003, Sanion voted against all the resolutions except the special dividend resolution. The special dividend was therefore not paid out to the shareholders. Given Sanion's stance, the board of NatSteel had no choice. By a circular dated 4 July 2003, it gave notice of another EGM to be held on 31 July 2003. The scrip dividend scheme was no longer proposed and the proposed Art 140A was also deleted from the M&A resolution. The special dividend resolution was approved by the shareholders but despite the removal of the linkage and Art 140A, Sanion still voted against the M&A resolution.

72 It was submitted that the plaintiff, in his attempt to deflect further scrutiny of his conduct and to distract the court from the real issues, had attacked the integrity and motives of not only 98 Holdings and David Ban but also those of the SIC, DBS Bank, NatSteel and its director, Ang. It was argued that, in the light of this approach and the admissions and departure from his pleaded case, Ang's evidence was no longer relevant. Ang was therefore not called as a witness although he had affirmed an affidavit of evidence-in-chief. However, the portions of his said affidavit were admitted into evidence in so far as they had been adopted by David Ban in his own affidavit.

The case for SPH and Catherine Ong

73 Catherine Ong and Vikram Khanna, Associate Editor of the BT, testified. It was submitted that this action had nothing to do with defamation and that it was merely a platform for the plaintiff to lash out publicly at various parties whom he believed were in a conspiracy against him in the NatSteel takeover saga. SPH and Catherine Ong were dragged into this action simply because they were doing their job of reporting the news and in order to warn journalists not to report things which

were adverse or negative about the plaintiff. It was a pseudo-oppression action under s 216 of the Companies Act (Cap 50, 1994 Rev Ed).

74 The BT article in question, taken as a whole, was not one directed at the plaintiff. It set out David Ban's views on the plaintiff's position as well as the plaintiff's similarly critical view of the position taken by the board of NatSteel. It was an impartial and balanced presentation of the NatSteel shareholder dispute when read in its entirety. The "bane" had therefore been neutralised by the "antidote". The BT's readers were also more likely to be commercially savvy and would be familiar with corporate disputes, especially when they received wide coverage. Such readers would not read the BT article in issue in isolation but would see it as part of a series of articles on the same subject. They would see the comments in the article as part of the continuing debate on the resolutions issue.

75 It was argued that the words in issue could not possibly bear the meanings pleaded by the plaintiff. There was no implication anywhere in the BT article that the plaintiff was acting in a malicious and/or perverse manner. All that was said was that the plaintiff's continued opposition to the resolutions after his concerns had been addressed would be unreasonable. The phrase "oppression by the minority" was uttered by a lay person to another lay person (Catherine Ong) in an article meant for lay persons. It was not meant to be given its strict legal definition as it was not possible for a minority shareholder to oppress a majority one. What was meant was simply that the plaintiff was using his veto power to oppose the resolutions to initiate a course of action that would be unfairly detrimental to the rest of the shareholders, including 98 Holdings.

76 SPH and Catherine Ong pleaded that the words in issue meant and were understood to mean that:

(a) the adjourned EGM appeared to be heading towards a stalemate as the plaintiff would use his control over 29.99% of the shareholding in NatSteel to block the resolutions tabled at the adjourned EGM;

(b) any attempt by the plaintiff at the adjourned EGM to block the resolutions for the payment of a cash dividend and to allow a scrip dividend scheme would be unreasonable;

(c) if the shareholders did not receive the dividends, and therefore suffered a disadvantage, they should blame the plaintiff.

77 They also pleaded the defences of justification, fair comment and derivative/ancillary qualified privilege. They denied harbouring malice against the plaintiff. Catherine Ong stated she bore him no grudge. The apology published on 31 January 2003 in respect of the 6 and 11 December 2002 articles in the BT simply stated that the words in question there "may be defamatory". There was no written undertaking given not to repeat them and no retraction of the statements. As Vikram Khanna said, SPH accepted that while offence was not meant, offence was taken and, in the interests of goodwill, SPH decided to settle out of court. It was a commercial settlement. After that, articles on the NatSteel saga underwent several levels of internal scrutiny before they were published. It was also indicated in the written submissions that SPH and Catherine Ong would, if need be, apply for damages to be assessed separately pursuant to s 18 of the Defamation Act (Cap 75, 1985 Rev Ed).

78 Although the press was not invited to NatSteel's EGM, Catherine Ong, like other journalists on various other occasions, obtained a proxy form from one of the shareholders in order to attend and to report on the proceedings. The presence of reporters at the EGM was a fact known to the board of directors. The article in issue written by her was part of a series of articles published in the BT on NatSteel's EGM of 28 May and 4 June 2003. In the article of 29 May 2003, she set out the views of

the parties during the EGM of 28 May 2003. She reported that some 150 shareholders had rallied to the plaintiff's cause and put the directors on the defensive and that those shareholders believed that it was mostly the fault of the directors that they were not getting the special dividend.

79 It was against the backdrop of the adjourned EGM where the spirited exchange took place that she telephoned Dilhan Pillay on 3 June 2003 to find out if there were any developments concerning the plaintiff's position on the resolutions to be tabled the next day. To the best of her recollection, Dilhan Pillay suggested that she speak to David Ban as he was a director of NatSteel. She could not recall whether it was suggested that she speak to Ang as an alternative. She therefore called David Ban to find out NatSteel's reaction to the SIAS statement which she read to David Ban over the telephone. She also asked him whether Sanion had contacted him. She wrote down his comments in her notebook. These matters were reported factually on 4 June 2003, as a "curtain raiser" to the adjourned EGM to be held that afternoon. On 5 June 2003, she wrote another article to report on the proceedings at the adjourned EGM, giving an objective and factual narration on the positions and views of the parties involved.

80 There was never any intention to defame the plaintiff or anyone else. The words in issue attributed to David Ban in the BT article of 4 June 2003 were his comments on the plaintiff's position on the resolutions. The contents of that article, the takeover battle for NatSteel, the two EGMs, the resolutions and the conduct of 98 Holdings and of Sanion attracted considerable media coverage in both the BT and the ST and public criticism or attention at that time. They were matters of public interest as they concerned a listed company with a market capitalisation of some $870m. She merely set out the matters which were true and on which David Ban's comments were based. The article was not a commentary or critique by her. She was not, as alleged, "a critic of the plaintiff" or someone who wanted to portray him "as a villain".

81 Even if the plaintiff's pleaded meanings were accepted, they would also be justified as they were true. At the EGM of 4 June 2003, Sanion did vote against all the resolutions save for the one relating to the special dividend.

82 The BT article in question also represented NatSteel's response to the attacks and criticism regarding the resolutions levelled against it by the plaintiff/Sanion and SIAS prior to 4 June 2003. For instance, in the ST article of 29 May 2003, it was reported that Sanion's proxy had stated at the EGM of 28 May 2003 that the linkage of the resolutions was "irrational and unnecessary". Looking at the allegations made against the NatSteel board and 98 Holdings, Catherine Ong was of the view that the comments by David Ban represented a newsworthy response.

83 As further testimony to the absence of malice against the plaintiff, Catherine Ong pointed to earlier articles written by her which, among other things, lauded his role in the takeover battle as having benefited shareholders because it caused NatSteel's share price to surge to a 15-year high at that time. She also spoke to the plaintiff after the apology of 31 January 2003 had been published. If she was malicious, she would not have telephoned the plaintiff to obtain his views on the resolutions and to report the same so extensively in her article of 28 May 2003. Further, in the course of her reporting, although Sanion's press statements tended to be released late at night, she always made it a point to contact the plaintiff, his lawyers or his investment bankers for their views to ensure accuracy. She did not take a partisan view in this matter.

The decision of the court

84 The first issue that the court has to decide is, what is the natural and ordinary meaning of the words in issue? Do they bear the defamatory meaning pleaded by the plaintiff or some lesser

defamatory meaning? I have already set out what the parties said the words meant. The meanings suggested by the two sets of defendants are similar.

85 In *Microsoft Corp v SM Summit Holdings Ltd* [1999] 4 SLR 529, the Court of Appeal set out the principles applicable in determining the natural and ordinary meaning of the words complained of in a defamation action. The court there said, at [53]:

> The court decides what meaning the words would have conveyed to an ordinary, reasonable person using his general knowledge and common sense: *Jeyaretnam Joshua Benjamin v Goh Chok Tong* [1984–1985] SLR 516; [1985] 1 MLJ 334 and *Jeyaretnam Joshua Benjamin v Lee Kuan Yew* [[1992] 2 SLR 310]. The test is an objective one: it is the natural and ordinary meaning as understood by an ordinary, reasonable person, not unduly suspicious or avid for scandal. The meaning intended by the maker of the defamatory statement is irrelevant. Similarly, the sense in which the words were actually understood by the party alleged to have been defamed is also irrelevant. Nor is extrinsic evidence admissible in construing the words. The meaning must be gathered from the words themselves and in the context of the entire passage in which they are set out. The court is not confined to the literal or strict meaning of the words, but takes into account what the ordinary, reasonable person may reasonably infer from the words. The ordinary, reasonable person reads between the lines.

86 If the words in question are capable of several meanings, it is incorrect to simply choose the most defamatory one: *The Capital & Counties Bank v George Henty & Sons* (1882) 7 App Cas 741.

87 To obstruct is to hinder or impede. An "obstructive action" would therefore be one that hinders or impedes progress towards an objective. The words suggest that the person guilty of the obstructive action is not very co-operative. That is not necessarily defamatory. They do not imply that that person is acting in a malicious or perverse manner. However, used in juxtaposition with "disadvantaging the majority", they do hint of unreasonable and unfair conduct. That reflects on a person's character or reputation and is defamatory.

88 Both sets of defendants submitted that "oppression" in the context of the BT article in issue did not have the legal meaning attributed to that term in s 216 of the Companies Act because it was used in a newspaper article and not in legal submissions. It was further argued that the ordinary reader of the BT would not understand it as having that legal meaning. In my view, it was clear that David Ban, an experienced company director, speaking in the context of a board-shareholder tussle, used that term in its legal sense as defined in s 216 Companies Act. Even if the meaning intended by him is irrelevant, a good number of readers of the BT would understand what oppression in company law means even if they could not immediately recite the statutory formula. Unfairness on the part of the plaintiff and consequential prejudice suffered by those oppressed would spring to their minds upon reading the words of David Ban, especially with "oppression" used in the proximity of "disadvantaging". The fact that minority shareholders could not be guilty of oppressive conduct against the majority does not take the sting out of the word. Obviously, David Ban intended to inject a touch of critical irony.

89 Even if the word "oppression" is understood in its non-legal sense, it would still imply unfairness with consequential hardship suffered. The accusation that someone is behaving unfairly in a public matter and is thereby causing suffering to others reflects on his character or reputation and is defamatory.

90 The words "If shareholders don't get their dividends, they should be blaming him" are not defamatory in themselves. They were spoken in response to the SIAS statement reported in the same

article about the outrage of shareholders in not having been paid the special dividend of 55 cents. However, they are tainted by the context in which they appear. They elaborate on the consequences of the plaintiff's alleged unreasonable and unfair conduct in his continued opposition to the resolutions and accuse him of being blameworthy as a result of being unreasonable and unfair.

91 David Ban's comment that the plaintiff's opposition was not rational must be read in the context of his earlier words. He was not accusing the plaintiff of being an irrational or mad man, contrary to what the plaintiff felt. Those words were a follow-up argument to his earlier comments about the plaintiff's obstructive action and oppressive conduct. It was as if David Ban had said, "I really do not see the logic of his continued opposition". By themselves, they are not defamatory but they are similarly tainted by the context in which they appear because they elaborate on the unreasonable and unfair conduct that the plaintiff has been accused of.

92 For good measure, I do not think it is defamation to say that someone is playing his card(s) close to his chest. That says nothing more than that the person is not revealing his strategy or what is in his mind. It is as innocuous as saying figuratively that someone is playing poker or has a "poker face".

93 *Gatley on Libel and Slander* (Sweet & Maxwell, 10th Ed, 2004) states (at para 2.9):

> Words or matter which merely injure the feelings or cause annoyance but which in no way reflect on character or reputation or tend to cause one to be shunned or avoided or expose one to ridicule are not actionable as defamation.

Similarly, it has been said that insults which do not diminish a man's standing among other people do not found an action for libel or slander, although the exact borderline may often be difficult to define: *Berkoff v Burchill* [1996] 4 All ER 1008. In my opinion, the sting in the words in issue is that the plaintiff was accused of being unreasonable and unfair in his opposition to the resolutions at the EGM and that reflects adversely on his character or reputation. The words taken as a whole are therefore defamatory in this sense.

94 Was David Ban justified in making those remarks about the plaintiff? The defence of justification requires a defendant to prove that the words in issue, in their natural and ordinary meaning, were true in substance and in fact. In *Sin Heak Hin Pte Ltd v Yuasa Battery Singapore Co Pte Ltd* [1995] 3 SLR 590 at 598–599, [31], it was held:

> In order to establish the defence of justification, a defendant must prove that the defamatory imputation is true and he must prove the truth of the very imputation complained of. He must also prove the truth of all the material statements in the libel, ie he must justify everything that the libel contains which is injurious to the plaintiff.

This does not mean the court should engage in a meticulous examination of every word in question or every detail of fact. It suffices that the substance or the gist of the libel has been justified: *Aaron v Cheong Yip Seng* [1996] 1 SLR 623; s 8 of the Defamation Act.

95 In seeking to show obstructive and irrational action or conduct on the plaintiff's part, the defendants highlighted Sanion's vote against all the resolutions tabled at the AGM, which preceded the EGM, on 28 May 2003, despite having no quarrels with their merits. It was suggested that the plaintiff was conveying the message that he was going to be a thorn in the flesh and that the same conduct and attitude continued into the EGM and the adjourned EGM in July 2003 even though the linkage of the resolutions had been removed and the scrip dividend scheme scrapped by then. The

plaintiff, it was argued, felt it was his divine right to vote as he pleased and he did not need to spare any thoughts for anyone else's interests.

96 It can be seen from the BT article in issue that David Ban's words were directed at the conduct or attitude of the plaintiff up to 3 June 2003 when he spoke to Catherine Ong. Since the allegation was that the plaintiff was conducting his business matters in an unreasonable and unfair way up to that stage, I do not think that events after that date are relevant for the purposes of this defence. At that stage, the linkage of the resolutions and the whitewash proposal had been debated at the EGM of 28 May 2003 and the proceedings had been adjourned for one week for Sanion to re-consider its stand. The issue then was whether Sanion would accept the whitewash proposal in that form or in any modified version. All interested parties were anxious to hear from the plaintiff. NatSteel's and 98 Holdings' lawyers were keen to meet the plaintiff's lawyers to see if some solutions could be worked out. The board of NatSteel was eager to learn what the other concerns of Sanion were before the resumed EGM. Even SIAS was hoping to arrange a meeting between the plaintiff and the board. Suddenly, the plaintiff was abroad and could not be reached by anyone for six days and apparently did not call anyone as well.

97 The plaintiff did not appear to care that many people were anxiously awaiting his response. Even if he was justifiably peeved at the board for having introduced the linkage in the first place, a reasonable and fair person would not have retreated into absolute silence in those circumstances. He must have found out what the outcome of the EGM was and that his response was being sought. He could have easily instructed someone to make a "holding" statement of sorts, perhaps merely to announce that his advisers were looking further into the matter. In that context, it was justifiable to describe the plaintiff's action, in continuing to oppose the resolutions and the whitewash proposal without further explanation and in maintaining a distant silence, as obstructive and oppressive. To that extent, the defence of justification succeeds.

98 The defence of qualified privilege accords a right to a person whose character or conduct has been attacked to answer such attack. Any defamatory statements he may make about the attacker will be privileged provided they are published *bona fide* and are fairly relevant to the accusations made. "The law justifies a man in repelling a libellous charge by a denial or an explanation. He has a qualified privilege to answer the charge; and if he does so in good faith, and what he published is fairly an answer, and is published for the purpose of repelling the charge, and not with malice, it is privileged, though it be false. Mere retaliation, which cannot be described as an answer or explanation, is not protected, but the defendant is not required to be diffident in protecting himself and is allowed a considerable degree of latitude in this respect": see *Gatley on Libel and Slander* ([94] *supra*) at para 14.49.

99 The defence is also available where the person who makes a communication has an interest or a duty, legal, social or moral, to make it to the person to whom it is made, and the person to whom it is made has a corresponding interest or duty to receive it: see *Adam v Ward* [1917] AC 309. The shareholders and the officers of a company have a common interest in the affairs of the company: see *Gatley on Libel and Slander* at para 14.44.

100 The issue as at 3 June 2003 was not so much the correctness of the linkage of the resolutions but whether Sanion would accept the whitewash solution as proposed or in a modified form. The 28 May 2003 EGM, at which Sanion's proxy had criticised the linkage as irrational and unnecessary, was reported in the newspapers. Although the EGM was meant to be a closed-door matter, the proceedings had become very public. SIAS had issued a statement to Catherine Ong rehashing the issues debated on at the said EGM and that statement was going to be published in the BT article of 4 June 2003. The SIAS statement attacked the board of directors of NatSteel in public

by stating that the minority shareholders were outraged by the board's failure to keep its promise of paying the remaining 55 cents in dividend. It must not be forgotten that the said attacks took place as part of an ongoing debate. David Ban, as chairman of the executive committee and a director of NatSteel, was entitled to respond to the attack, even if he was of the view that it was inspired by dramatic showmanship, by explaining why the shareholders' outrage ought to be directed at the plaintiff rather than the board.

101 The response could not be said to be disproportionate to the attack and unreasonable in the circumstances. The attacks against the board may have been justified in the eyes of Sanion and SIAS but David Ban and the board obviously did not think so. David Ban made his defence when the press telephoned him. He did not seek out Catherine Ong in order to say his piece. He was not taking a cheap shot at the plaintiff. He was responding to Catherine Ong's questions to him. His words were therefore not an angry retaliatory outburst but were spoken in legitimate defence.

102 As NatSteel is a listed company, the public, in particular the shareholders, had an interest in its corporate governance. The defendant had a duty to respond to the criticism levelled against the board (with him as a director and the chairman of its executive committee) and the public, in particular the shareholders, had a corresponding interest in his response. The defence of qualified privilege therefore succeeds, unless malice is proved.

103 "Where a publication is made on an occasion which is privileged by reason of a duty or interest in one of the publishers in making the communication, any other person whose participation in the publication is reasonably necessary or in the ordinary course of business is also protected by the privilege." (*Gatley on Libel and Slander* ([94] *supra*) at para 14.74). This doctrine of derivative privilege was applied in *Oversea-Chinese Banking Corp Ltd v Wright Norman* [1994] 3 SLR 760. SPH and Catherine Ong were therefore protected by the defence of qualified privilege as well.

104 I turn now to the defence of fair comment. In *Chen Cheng v Central Christian Church* [1999] 1 SLR 94 at [33], the Court of Appeal held that to succeed in a defence of fair comment, the defendant has to prove that:

(a) the words complained of are comments, although they may consist of or include inferences of facts;

(b) the comment is on a matter of public interest;

(c) the comment is based on facts; and

(d) the comment is one which a fair-minded person can honestly make on the facts proved.

The court also said, at [46] and [47], that it was not necessary to prove each of the facts pleaded in support of the defence of fair comment. All that was needed was to prove such of the facts as were sufficient to form the basis of a fair comment. The court reiterated at [49] what it said in *Aaron v Cheong Yip Seng* ([95] *supra* at 650, [78]), that:

> The essential thing is the honest opinion of a fair-minded person and in this connection every allowance or latitude must be given for any prejudice and exaggeration entertained by such a fair-minded person.

and at [51] the court said:

> However, the word 'honestly' here is used in an objective sense. The fourth element requires the comment to be one that, objectively speaking, a fair-minded person can honestly make given the proven facts, unless in making such statement the author is actuated by malice.

On the difficulty of distinguishing an assertion of fact from a comment, the court laid down these guiding principles, at [35]:

> At the end of the day much depends on how the defamatory statement is expressed, the context in which it is set out and the content of the entire article or passage in question. One should adopt a common sense approach and consider how the statement would strike the ordinary reasonable reader, ie whether it would be recognizable by the ordinary reader as a comment or a statement of fact.

105 Adopting the common-sense approach advocated by the Court of Appeal above, the words spoken by David Ban in the BT article in issue were his deductions made in the context of the events which had taken place. They were an expression of his opinion on the plaintiff's conduct. They were clearly comments on the plaintiff's conduct and attitude in opposing the resolutions.

106 The matters concerning the NatSteel saga leading up to the comments in the BT article in issue were constantly in the news and attracted a lot of public attention and debate. They involved a listed company and a prominent businessman. They concerned dividends amounting to millions of dollars. They were certainly matters of public interest.

107 The comments by David Ban were based on the largely undisputed facts set out earlier in this judgment and which were widely reported in the media. The BT article in question encapsulates the latest episodes of the eventful saga and assumes the reader has background knowledge of the issues. A reasonable reader who is reading about the NatSteel saga for the very first time in that article would know immediately that there are other matters that have occurred. The SIAS statement was not the first time SIAS made a public statement on the NatSteel saga. The BT article was not the first time that Catherine Ong wrote about the saga. David Ban was speaking to someone who was totally aware of all that had transpired. It would therefore be absurd to require him to spell out to the reporter all the facts on which he based his comments. Further, David Ban and anyone else interviewed by reporters cannot be constricted by the parameters of press articles as they do not wield the editorial powers of what goes into print. Articles in the press about an ongoing issue do not necessarily recapitulate everything that has happened earlier.

108 I now deal with the fourth requirement of fair comment. Bearing in mind the matters I have already set out, there was no reason why David Ban or any other fair-minded person could not have felt honestly that the plaintiff's conduct in continuing to oppose the resolutions and the whitewash proposal and remaining incommunicado after the EGM of 28 May 2003 was obstructive and oppressive to the other shareholders. David Ban also could not understand the logic of the plaintiff as he felt that the whitewash proposal had addressed the plaintiff's concerns about dilution of his shareholding and the plaintiff did not seem to want to make his other concerns known. His observation that the shareholders should therefore blame the plaintiff flowed logically from his honest views about the matter. Another observer may well disagree with his critical denunciation but that does not make his comments any less honest or fair. The comments have to be honest, not correct. In the circumstances, the defence of fair comment succeeds too, unless malice is shown.

109 So long as David Ban's comments were his honest opinion, it is not necessary for SPH and Catherine Ong to prove that the offending words represent their own honest opinion as well (*Telnikoff v Matusevitch* [1992] 2 AC 343). They had not added their own views in the BT article but were

merely presenting the positions of the relevant parties.

110 The plaintiff asserted repeatedly that he had the right to vote any way he wished as a shareholder and that he owed no duty to the company or the other shareholders to consider their interests or views in his vote. The defendants do not dispute this right. However, the plaintiff appeared to be saying also that no one should therefore criticise him for the way he votes. That surely is a different matter. By way of analogy, a person may have the unfettered right to spend his money in any way he chooses, even to the point of being wasteful. No one can go to court to compel him to curb his capricious extravagance. However, that does not mean that people cannot criticise what they perceive to be his folly. The right to do as one pleases does not carry with it immunity from comments and criticism.

111 On the question of malice, my attention was drawn to the decision of the Court of Final Appeal of Hong Kong in *Cheng Albert v Tse Wai Chun Paul* [2000] 4 HKC 1. In that case, Lord Nicholls of Birkenhead, with whom all the other judges agreed, said at 10:

> The point of principle raised by this appeal, crucial to the outcome of the action, is whether, in contemplation of law, malice may exist in this context even when the defendant positively believed in the soundness of his comment. More specifically, the issue is whether the *purpose* for which a defendant stated an honestly held opinion may deprive him of the protection of the defence of fair comment; for instance, if his purpose was to inflict injury, as when a politician seeks to damage his political opponent, or if he was simply acting out of spite. [emphasis in original]

112 He distinguished the much-quoted passage in *Horrocks v Lowe* [1975] AC 135 at 150 where Lord Diplock said that even a positive belief in the truth of what was published on a privileged occasion might not suffice to negative express malice if it could be proved that the defendant misused the occasion for some purpose other than that for which the privilege was accorded by the law. After stating why the purposes for which the defences of qualified privilege and of fair comment exist were not the same, the learned judge debunked the notion that the cases on malice in the different contexts of the two defences were essentially interchangeable. He concluded, at 22:

> To summarise, in my view a comment which falls within the objective limits of the defence of fair comment can lose its immunity only by proof that the defendant did not genuinely hold the view he expressed. Honesty of belief is the touchstone. Actuation by spite, animosity, intent to injure, intent to arouse controversy or other motivation, whatever it may be, even if it is the dominant or sole motive, does not *of itself* defeat the defence. However, proof of such motivation may be evidence, sometimes compelling evidence, from which lack of genuine belief in the view expressed may be inferred. Proof of motivation may also be relevant on other issues in the action, such as damages. [emphasis in original]

In responding to the difficulties that the different meanings of malice in the two defences might cause to juries, the judge advocated the shunning of the word "malice" altogether.

113 For the purposes of my judgment, I am content to follow the guidance given by our Court of Appeal in *Chen Cheng v Central Christian Church* ([105] *supra*). As will become apparent, whichever approach I take, the outcome will still be the same in this case.

114 The burden of proving malice, in order to defeat the defences of qualified privilege and fair comment, falls on the plaintiff. Malice has to be proved against each of the defendants (*Lee Kuan Yew v Davies* [1989] SLR 1063). In considering this question, we should not be hasty in imputing

malice simply because two persons have stood at opposing ends of an idea. There should be room for genuine disagreement over ideas. A spirited debate, occasionally with righteous anger expressed by one or both of the contending parties, even over a period of time, need not mean that enmity and animosity will rule their relationship for the rest of their lives.

115 The evidence that the plaintiff relied on for his allegations of malice against David Ban and 98 Holdings was the following:

(1) that he must have caused them considerable annoyance and resentment by forcing 98 Holdings to raise its offer price four times from $1.93 to $2.06, to extend its general offer six times and to end up paying considerably more to secure a controlling interest in NatSteel;

(2) 98 Holdings and David Ban adopted a course of action which they knew or must have known would antagonise the plaintiff and Sanion and put them in an unreasonable position as a shareholder owning 29.99% of NatSteel shares; and

(3) they defamed the plaintiff because they had failed in their attempts to implement the scrip dividend scheme.

116 It is true that the plaintiff caused the takeover battle to last longer and the victory to be more expensive. However, 98 Holdings still managed to win a majority stake in NatSteel at what even the plaintiff thought was a very good price. The people running 98 Holdings and David Ban were seasoned business people who could not have gone into the takeover battle thinking victory would be a breeze. After all, they were the second contenders to enter the ring. They would know there was every possibility some other contender might step in to contest their offer. They could not have been so naïve as to think that there would never be a need to increase their offer price or to extend the period for acceptance. The battle was over in only slightly more than three months anyway.

117 98 Holdings knew that Sanion held a veto power over any special resolution. It tried to offer what it thought was an incentive for Sanion to lend its support to the resolutions. The plaintiff was entitled to hold the view that he was being enticed with something that should rightfully be his. Just as 98 Holdings was entitled to put forth the linkage of the resolutions as a means of securing Sanion's support, the plaintiff was entitled to criticise the linkage as being unnecessary and irrational. What the plaintiff had succeeded in showing was the futility, perhaps even folly, of trying to use the special dividend to make him cast his vote where the money was.

118 The SGX did not find any wrongdoing on the part of NatSteel. It felt that linkage of resolutions was something best left to the judgment of the company concerned. It would be naïve to think that clever drafting would have hidden the linkage of the resolutions from the discerning eyes of the plaintiff's legal and financial advisers. I saw no attempt to camouflage the linkage at all. In fact, it was more likely the shareholders would read only the resolutions listed in the notice of EGM rather than the long explanatory notes in the circular.

119 The scrip dividend scheme sought to be introduced was not something new to the corporate world. Other listed companies had it. The plaintiff acknowledged that it was generally beneficial to companies to have such a scheme. It could not therefore be said to be a concoction of evil being brewed specially for the plaintiff. As shown in David Ban's testimony, such a scheme would be more disadvantageous to 98 Holdings because there were limitations on a majority shareholder buying shares in the market to restore its lost majority whereas there was none applicable to a significant minority shareholder like Sanion. In any event, dilution would only have an impact when Sanion's shareholding of 29.99% fell to 25% or below and, as the plaintiff has shown, he could easily make up

for any deficiency by going into the open market. Further, if 98 Holdings truly wanted to dilute Sanion's shareholding, it could have caused a scrip dividend elective to be implemented on an *ad hoc* basis by way of an ordinary resolution through its majority vote.

120 The fact that David Ban's words appeared in a newspaper with wide coverage in the morning of the adjourned EGM was nothing remarkable. It was Catherine Ong who initiated the interview. He spoke to the reporter and so did SIAS's David Gerald. That occasion was certainly not the first and only time that the BT reported on the NatSteel saga. It was natural that the BT would want to give its readers a preview of the hottest corporate event at that time.

121 I see no evidence that 98 Holdings or David Ban would hurl brickbats in response to bouquets and find no evidence of malice on their part.

122 Similarly, I find that the plaintiff has failed to show that SPH or Catherine Ong was actuated by malice. SPH took a sensible commercial approach when accused of defamation by the plaintiff in the earlier episodes. It took the precaution of having extra layers of editorial checks on articles featuring the NatSteel saga. Catherine Ong was doing no more than reporting on the various parties' stance. She had even written articles complimenting the plaintiff for stepping into the NatSteel fray and thereby bringing benefits to other shareholders by the increase in the share price. She had sought the plaintiff's views on the whitewash proposal a week earlier. She could not reach the plaintiff for comments in the evening of 3 June 2003. The news about NatSteel's adjourned EGM was of great topical interest and the BT article formed part of the continuing saga. It was certainly not written as a sniper shot in the dark.

123 The plaintiff highlighted Catherine Ong's evidence under cross-examination that she was not too thrilled when SPH decided to settle amicably with him in the earlier episodes. She also said that the plaintiff was someone who loved to harass journalists with lawyers' letters and lawsuits and that the settlement was a way of saying, "Okay, Mr Oei, if you want us to print an apology, we will do so. Now buzz off". While there was a hint of truculence in that response, I was satisfied that it was more a manifestation of her frustration at being sued in these proceedings rather than evidence of any general disdain for the plaintiff. The evidence did not bear out the allegation that she was aligned to 98 Holdings or that she was a "serial defamer".

124 Was David Ban speaking on behalf of 98 Holdings in the BT article? He was a director of both NatSteel and 98 Holdings when he said the words in issue. He was also Chairman of NatSteel's executive committee. Catherine Ong and David Ban had no doubt that his views were being sought in his capacity as a NatSteel director. She had spoken to Dilhan Pillay of 98 Holdings first and he had asked her to speak to a director of NatSteel. That could only be for the purpose of finding out NatSteel's position. 98 Holdings had its internal arrangement that all press statements would be handled by its media consultant, its financial adviser or its legal adviser and representative. 98 Holdings responded to the plaintiff's solicitors' letter of demand denying that David Ban was speaking on its behalf although NatSteel refused to confirm that he was speaking on behalf of NatSteel as it had been advised against inviting a lawsuit.

125 The headlines of the BT article in issue mentioned a "NatSteel-Oei stalemate". The by-lines declared that NatSteel had got no hint of the plaintiff's plans before the adjourned EGM. While David Ban was described as a NatSteel director representing hotelier Ong Beng Seng's interests (*ie* 98 Holdings), he was telling the reporter about attempts made by NatSteel's, not 98 Holdings', solicitors to sound out the plaintiff's intentions. Although David Ban's later words mentioned "including 98 Holdings" and "including 98", they appeared in observations uttered to refute SIAS's expression of outrage at the NatSteel board. The penultimate paragraph of the BT article quoted David Ban as

having said, "He has made public the issue of dilution and we've addressed that with the whitewash, and we've asked him many, many times what are the other issues". The plaintiff submitted that the "we" could only be referring to 98 Holdings as it was that party which proposed the whitewash. However, that proposal was endorsed by the NatSteel board and it was that board which kept asking Sanion's proxy at the EGM of 28 May 2003 what Sanion's other concerns were.

126 Looking at all the evidence set out above, it is clear to me that David Ban was speaking to Catherine Ong in his capacity as a director of NatSteel rather than of 98 Holdings. The plaintiff's case against 98 Holdings therefore falls even at this first threshold.

127 On the question of damages, which is of course academic in the light of my findings, the plaintiff sought "a fair and decent award of damages to reflect both the damage to his reputation and to act as a public vindication". He argued that a substantial award would be appropriate as the defamation was "a serious and wounding libel going to the core of [his] reputation as a businessman and investor". He also said that the defendants' refusal to apologise, the severe cross-examination and the defendants' malice ought to be taken into account in assessing damages.

128 However, both sets of defendants submitted that if they were found liable in defamation, only nominal damages should be awarded to the plaintiff. They argued that the words in question did not attack his reputation or integrity as a businessman but related only to the one issue of his conduct in opposing the resolutions. Further, if they had portrayed him as being unreasonable and acting only in his own interests, that was already how the public and the business community viewed him. Various newspaper articles were cited in support of the argument that the plaintiff had a general bad reputation. These referred to the plaintiff over the years as a corporate raider *par excellence*, an asset trader, an asset stripper and a wheeler dealer.

129 If I had to decide on damages, bearing in mind that I have found no malice on the part of the defendants, an award of $60,000 would be fair compensation for asserting that the plaintiff had been conducting himself in an unreasonable and unfair manner. The article was taken off the Internet website by SPH immediately after the plaintiff's complaint was received. The allegation was narrow in its scope and effect. It related only to his opposition to the resolutions. It was quite clear from the subsequent events that the other minority shareholders did not share the views of David Ban enunciated in the BT article of 4 June 2003 because they voted with Sanion anyway. I also do not think the labels (mentioned above) given to the plaintiff necessarily indicate a general bad reputation (or as SPH's and Catherine Ong's counsel put it, "blemished reputation"), except perhaps for the term wheeler dealer. In recent times, the plaintiff has even been complimented over radio as the man with the Midas touch.

130 On the issue relating to DBS Bank's Jackson Tai, I need only say that the plaintiff's allegation about the lack of truthfulness on Jackson Tai's part has not been borne out at all in evidence. The plaintiff had issued a subpoena against him but decided not to call him to the witness stand. An adverse inference must therefore be drawn against the plaintiff. Similarly, the failure of Ang of NatSteel to testify despite having filed an affidavit of evidence-in-chief, portions of which were adopted by David Ban, would generally have warranted an adverse inference to be drawn against the party for whom he was supposed to be a witness. However, all facts that were relevant to this trial were already proved and many of them were not in dispute anyway.

131 For the reasons set out above, the plaintiff fails in his claim against all the defendants and his action is dismissed. In view of my finding that the words in issue did have a defamatory meaning, essentially one of the five main issues in this trial, I reduce the costs payable to the defendants by 20%. The plaintiff is therefore to pay 80% of the costs to be agreed or taxed by the Registrar.

Claim dismissed.