Lim Eng Hock Peter *v* Lin Jian Wei and another and another appeal [2010] SGCA 26

Case Number	: Civil Appeals Nos 25 and 38 of 2009
Decision Date	: 28 July 2010
Tribunal/Court	: Court of Appeal
Coram	: Chan Sek Keong CJ; Andrew Phang Boon Leong JA; V K Rajah JA
Counsel Name(s)	: Alvin Yeo SC, Chan Hock Keng, Koh Swee Yen, Suegene Ang and Reina Chua (Wong Partnership LLP) for the appellant; Ang Cheng Hock SC, William Ong, Kristy Tan and Ramesh Selvaraj (Allen & Gledhill LLP) for the respondents.
Parties	: Lim Eng Hock Peter — Lin Jian Wei and another

Tort – Defamation

28 July 2010 Judgment reserved.

Chan Sek Keong CJ (delivering the judgment of the court):

Introduction

1 In *Lim Eng Hock Peter v Lin Jian Wei and another and another appeal* [2009] SGCA 48 ("the Judgment"), the appellant ("the Appellant") succeeded in his defamation action against the respondents ("the Respondents") and was awarded damages on an aggravated basis by this court. This present judgment concerns the issue of the quantum of damages to be awarded, and should, accordingly, be read together with the Judgment.

2 The subject of quantum of damages for defamation appears to be continually misrepresented or misunderstood by some sections of the public in Singapore. In order to clear up these misconceptions, we shall, in this judgment, touch on the various bases for awarding differentiated damages for defamation committed against different classes of plaintiffs.

The award of damages in a defamation case

3 It is apposite to begin this judgment by considering, in brief, the nature of and rationale behind damages awarded in defamation cases.

4 In *Arul Chandran v Chew Chin Aik Victor* [2001] 1 SLR(R) 86 ("*Arul Chandran*"), this court summarised the functions of *general* damages awarded in defamation actions in the following manner (at [53]):

> General damages serve three functions. Firstly, they act as a consolation to the plaintiff for the distress he suffered from the publication of the statement. Secondly, they repair the harm to his reputation. Thirdly, they serve to vindicate his reputation ....

In *Uren v John Fairfax & Sons Pty Ltd* [1966] 117 CLR 118 ("*Uren*"), Windeyer J, in a passage approved by the House of Lords in *Cassell & Co Ltd v Broome and Another* [1972] AC 1027 at 1071, stressed the vindicatory and consolatory functions of general damages (*Uren* at 150):

> It seems to me that, properly speaking, a man defamed does not get compensation for his damaged reputation. He gets damages because he was injured in his reputation, that is simply because he was publicly defamed. For this reason, compensation by damages operates in two ways – as a vindication of the plaintiff to the public and as a consolation to him for a wrong done. Compensation is here a solatium rather than a monetary recompense for harm measurable in money.

5 In *McCarey v Associated Newspapers Ltd (No 2)* [1965] 2 QB 86, Pearson LJ commented on general damages as follows (at 104–105):

> Compensatory damages ... may include not only actual pecuniary loss and anticipated pecuniary loss or any social disadvantages which result, or may be thought likely to result, from the wrong which has been done. They may also include the natural injury to his feelings – the natural grief and distress which he may have felt at having been spoken of in defamatory terms, and if there has been any kind of high-handed, oppressive, insulting or contumelious behaviour by the defendant which increases the mental pain and suffering caused by the defamation and may constitute injury to the plaintiff's pride and self-confidence, those are proper elements to be taken into account in a case where the damages are at large.

6 Other than general damages, other types of damages – such as aggravated damages (for aggravation of the injury suffered by a plaintiff through the defamation) and exemplary damages (to, *inter alia*, punish a defendant for the wilful commission of a tort) – may be awarded. With that said, Singapore law, like English law, does not regard the claimant's reputation as "vindicated by a symbolic award of a token or conventional sum of damages" (*Gatley on Libel and Slander* (Patrick Milmo QC & W V H Rogers eds) (Sweet & Maxwell, 11th Ed, 2008) ("*Gatley*") at p 267). In this regard, the following observation of the Supreme Court of Canada in *Hill v Church of Scientology of Toronto* [1995] 2 SCR 1130 is pertinent (at [166]):

> A defamatory statement can seep into the crevasses of the subconscious and lurk there ever ready to spring forth and spread its cancerous evil. The unfortunate impression left by a libel may last a lifetime. Seldom does the defamed person have the opportunity of replying and correcting the record in a manner that will truly remedy the situation.

7 In determining the appropriate quantum of *general* damages to be awarded in any given case, circumstances that are relevant and should be taken into account include:

(a) the nature and gravity of the defamation;

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

(c) the mode and extent of publication;

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

(e) the conduct of the defendant from the time the defamatory statement is published to the very moment of the verdict;

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

(g) the presence of malice.

8 Another consideration relevant to the determination of the quantum of general damages to be awarded is its intended deterrent effect. In *The Gleaner Co Ltd and another v Abrahams* [2004] 1 AC 628, the Privy Council (*per* Lord Hoffman) said (at 646):

> [D]efamation cases have important features not shared by personal injury claims. *The damages often serve not only as compensation but also as an effective and necessary deterrent*. The deterrent is effective because the damages are paid either by the defendant himself or under a policy of insurance which is likely to be sensitive to the incidence of such claims. [emphasis added]

9 The effectiveness of the deterrent would depend on the amount of the damages awarded. In *Kiam v MGN Ltd* [2003] 1 QB 281, Sedley LJ discussed the importance of awarding an adequate amount of damages in order for the award to be an effective deterrent, and said (at 304):

> … the *ineffectiveness of a moderate award in deterring future libels is painfully apparent*. It is this, I believe, that is leading both judges and juries once more to lift the level of general damages for libel into a different league from personal injury damages, at least in cases like the present where the newspaper has not simply got its facts wrong but has behaved outrageously from start to finish. [emphasis added]

10 In recent times, the quantum of damages awarded to public personages, especially political figures, has come under much scrutiny. The primary criticism is that the amounts awarded in damages have an alleged "chilling" effect on political and public debate on matters considered to be of public interest. However, despite the expansion of the common law defence of qualified privilege to political speech in jurisdictions such as Australia, Canada, New Zealand and the United Kingdom (which, under the previous law, might or would have been defamatory), the general levels of damages awarded to political figures for defamation in these countries have not been consciously reduced. For the courts in these jurisdictions, the assessment of defamation damages still turns on a considered weighing of the facts and circumstances of each case. The rationale for continuing this established approach may be found in the following passage from *Gatley* (at p 268):

> While the level of damages should not be so high as unduly to curtail freedom of expression, "*the court should be careful not to drive down damages in libel cases to a level which publishers might with equanimity be tempted to risk having to pay*". Nevertheless, "the figure of Justice carries a pair of scales, not a cornucopia" and "it serves no public purpose to encourage plaintiffs to regard a successful libel action, risky though the process undoubtedly is, as a road to untaxed riches". [emphasis added]

Gradation of damages for different plaintiffs

11 Applying the principles set out above, the Singapore courts have, over the years, established a gradation or spectrum of damages to be awarded to plaintiffs. This gradation is based primarily on a few dominant considerations, *viz*, the position and standing of the plaintiff in society, the nature and gravity of the defamation, the mode and extent of the publication, and the position and responsibility of the defendant as a publisher or purveyor of the defamation. In this respect, counsel for the Appellant argued – correctly in our view – that broadly speaking, our courts have differentiated between categories of plaintiffs for the purpose of determining the amount of damages to be awarded for defamation.

12 Singapore courts have consistently awarded higher damages to public leaders than other personalities for similar types of defamation because of the greater damage done not only to them

personally, but also to the reputation of the institution of which they are members. The expression "public leaders" in this context would be a reference to political and non-political leaders in the Government and public sector and private sector leaders who devote their careers and lives to serving the State and the public. The expression is not used in reference to people who are merely famous in the public eye, such as footballers or singers and people in the entertainment industry. Instead, it covers prominent figures in business, industry and professions wherein the relevant outputs serve to augment public welfare. Public leaders are generally entitled to higher damages also because of their standing in Singapore society and devotion to public service. Any libel or slander of their character with respect to their public service damages not only their personal reputation, but also the reputation of Singapore as a State whose leaders have acquired a worldwide reputation for honesty and integrity in office and dedication to service of the people. In this connection, it is pertinent that it has been said that the most serious acts of defamation are those that touch on the "core attributes of the plaintiff's personality", *ie*, matters such as "integrity, honour, courage, loyalty and achievement" (see *Gatley* at p 267).

13 Defaming a political leader is a serious matter in Singapore because it damages the moral authority of such a person to lead the people and the country. In *Crampton v Nugawela* (1996) 41 NSWLR 176 ("*Crampton*"), the Supreme Court of New South Wales stated (at 193):

> In some cases, a person's reputation is, in a relevant sense, his whole life. The reputation of a clerk for financial honesty and [that] of a solicitor for integrity are illustrations of this. The reputation of a doctor is, I think, of this character: at least, it is so where a substantial part of his work is in an area where he acts on reference from or with the recommendation of other doctors.

In our view, the reputation of public leaders in Singapore can, to use the words of the court in *Crampton*, be considered to be their "whole life". Without a clean or credible reputation, their moral authority to lead the people is compromised. We should, however, clarify that this does not mean that public leaders may not be criticised at all. They certainly should be strongly – and perhaps even mercilessly – criticised for incompetence, insensitivity, ignorance, and any number of other human frailties where the critique does not go to the extent of besmirching their integrity, honesty, honour, and such other qualities that make up the reputation of a person.

14 For the reasons set out in the preceding paragraphs, we are of the view that on the whole, damages awarded by the Singapore courts in the past for the defamation of public figures have not been excessive, and indeed have been rather moderate. This assessment is borne out by a consideration of the damages awarded to plaintiffs of lesser public standing in other Commonwealth jurisdictions.

Damages in Singapore

15 In Singapore, damages awarded to the Prime Minister and other Ministers who have been defamed have to date not exceeded $500,000 in a single suit. In 1978, the then Prime Minister, Mr Lee Kuan Yew, was awarded damages of $130,000 for a slander against him. During an election rally, the defendant suggested, *inter alia*, that he (*ie*, Mr Lee) had abused the powers of his office (see *Lee Kuan Yew v Jeyaretnam Joshua Benjamin* [1979–1980] SLR(R) 24). In 1996, the then Senior Minister, Mr Lee Kuan Yew, was awarded $400,000 against the writer of an article that appeared in the *International Herald Tribune*, which alleged, *inter alia*, that Mr Lee had relied on a compliant judiciary to obtain judgment against political opponents, thereby bankrupting them irrespective of the merits of the claim (see *Lee Kuan Yew v Vinocur John and others* [1996] 1 SLR(R) 840 ("*Lee Kuan Yew v Vinocur John*")). In 2008, pursuant to an article published in the party newspaper of the

Singapore Democratic Party ("the SDP") stating that, *inter alia*, there was a "striking resemblance between how the NKF [*ie*, the National Kidney Foundation] operated and how the PAP [*ie*, the People's Action Party] ... runs Singapore" (*Lee Hsien Loong v Singapore Democratic Party and others and another suit* [2007] 1 SLR(R) 675 at [22]), the Prime Minister, Mr Lee Hsien Loong, was awarded $330,000 in damages against the SDP and members of the SDP's Central Executive Committee for defamation (see *Lee Hsien Loong v Singapore Democratic Party and others and another suit* [2009] 1 SLR(R) 642). That suit was consolidated for hearing with another suit in which the Minister Mentor, Mr Lee Kuan Yew, was awarded the sum of $280,000 against the same parties. It should be noted, however, that the court, in deciding on the awards of $330,000 and $280,000, had taken into account settlement sums of $170,000 received by each plaintiff. The original figures of damages that the court had been minded to award, therefore, were $500,000 for the Prime Minister and $450,000 for the Minister Mentor.

16 Damages that have been awarded to Members of Parliament who have been defamed have not exceeded $210,000. Mr Chiam See Tong was awarded $50,000 as damages against the defendant in the case of *Chiam See Tong v Xin Zhang Jiang Restaurant Pte Ltd* [1995] 1 SLR(R) 856. In that case, the defendant restaurant had used a photograph of Mr Chiam in its publicity materials. The court held that the advertisements were defamatory, suggesting that Mr Chiam had consented to the use of his photograph for publicity, either for gain or to sponsor a private restaurant, and that he had done so by taking advantage of his position as a Member of Parliament. In another case, the plaintiff was awarded $210,000 as damages against the defendant, as the defendant had alleged that the plaintiff, who was, at that time, the head of the Department of Social Work and Psychology at the National University of Singapore ("the NUS") and a Member of Parliament, had given fabricated evidence to Parliament to justify the defendant's dismissal as a lecturer at the NUS (see *S Vasoo v Chee Soon Juan* Suit No 936 of 1993 (15 April 1994, unreported)).

17 For professionals, to our knowledge, damages of up to $150,000 have been awarded. In *Au Mun Chew (practising as Au & Associates) v Lim Ban Lee* [1997] 1 SLR(R) 220, an architect was awarded $45,000 in damages. In that case, the defendant had written letters to the plaintiff architect that were copied to various contractors and the Building Control Division of the Public Works Division, stating that the plaintiff architect had attempted to "con" him (at [7]). In *Arul Chandran*, a lawyer was awarded general damages of $100,000 and aggravated damages of $50,000 for a serious libel that he was, *inter alia*, a "vicious and most dangerous fraud" (see [14], [17], [19] and [20]).

Damages in other countries

18 The levels of damages awarded in other Commonwealth jurisdictions, such as the United Kingdom, Canada and Hong Kong, are not directly relevant to the levels appropriate to our own circumstances as the significance of the reputations of the various classes of plaintiffs differ in different jurisdictions. For example, the public in Singapore may generally have a higher regard and respect for its public leaders and business leaders than the public in other jurisdictions have for similar classes of persons. Nevertheless, it is useful to consider some cases in these jurisdictions for an indication on whether the damages awarded by the Singapore courts are unreasonably excessive, having regard to the personalities defamed and the nature of the defamation.

19 In 1987, the writer Jeffrey Archer (later Lord Archer) was awarded £500,000 in damages by a jury for an alleged defamation by *The Daily Star* concerning a paid 15-minute sexual encounter with a woman in a Mayfair hotel (see *Archer v Express Newspapers Plc* (24 July 1987, unreported)). In 1989, Lord Aldington was awarded £1.5m in damages by a jury after he had been allegedly described by the defendant, Count Nikolai Tolstoy Miloslavsky, as a war criminal. The award was later found to be in breach of the right to freedom of expression under the Convention for the Protection of Human Rights

and Fundamental Freedoms (more commonly referred to as the European Convention on Human Rights) by the European Court of Human Rights (see *Tolstoy Miloslavsky v United Kingdom* (1995) 20 EHRR 442). Recent awards, however, have not attained the region of those figures. In *Galloway v Telegraph Group Ltd* [2006] EMLR 11, the English Court of Appeal upheld an award of £150,000 obtained by a then Member of the English House of Commons, Mr George Galloway, against *The Daily Telegraph* for defamatory remarks that he had, *inter alia*, received money from Saddam Hussein's regime in Iraq. In a recent case, *Berezovsky v Russian Television and Radio Broadcasting Co* [2010] EWHC 476 (QB), the plaintiff had been accused, on a television programme, of, *inter alia*, being a participant in a high profile political murder and several other related death threats, and also being "a knowing party to a criminal conspiracy to avoid his extradition and obtain political asylum in Britain" (at [53]). He was eventually awarded £150,000 in damages for defamation.

20 In a Canadian case, *Hodgson v Canadian Newspapers Co* [2000] 49 OR (3d) 161, the plaintiff, who was the Commissioner of Engineering for the Region of York, was awarded C$400,000 as general and aggravated damages, C$380,000 as special damages and C$100,000 as punitive damages for a series of defamatory articles published by *The Globe & Mail* concerning the alleged corrupt purchase of certain lands from a developer by the Region of York. The Region of York had paid a substantial sum for the lands on the recommendation of the plaintiff, who allegedly knew that the Region of York was entitled to acquire the lands at no cost. It was alleged that the plaintiff had not disclosed that fact to the Regional Council and that the developer who received the money was a long-time friend of the plaintiff. These allegations were repeated in several subsequent articles.

21 A final illustration would be the recent Hong Kong SAR case of *John Simpson Warham v Cathay Pacific Airways Ltd* [2009] HKCFI 1046, where the Senior Captain and the First Junior Officer of the defendant airline were each awarded general damages of HK$3m and aggravated damages of HK$300,000 by the Court of First Instance of the Hong Kong SAR. The airline had alleged that the plaintiffs, in threatening industrial action against the airline, had been unprofessional, poor employees and did not care for the interests of the airline and of the Hong Kong SAR. The airline has since appealed against the judgment.

22 Compared with the awards for general damages in these cases, the quantum of damages awarded by the Singapore courts cannot be said to be unreasonable or excessive.

The nature and gravity of the defamation in the present case

23 The Appellant has submitted that the sting of the defamatory statements in question was the unbridled attack on the Appellant's competence and integrity in managing businesses. The allegations that the Appellant had culpably mismanaged Raffles Town Club Pte Ltd ("the Company"), approved grossly excessive dividends, permitted the off-setting of substantial loans against dividends and that the Appellant received part of these dividends which led to the Company's financial difficulties, have all struck at the core of the Appellant's professional attributes. These comprise, among other things, his management ability, general competence and overarching integrity as a businessman. The sums involved were huge, as the amounts alleged to have been depleted from the Company due to the Appellant's mismanagement – including a sum of $124m paid out as dividends to shareholders – were by no means insignificant.

24 The Respondents' response is that the libel did not attack the core attributes of the Appellant's reputation, personal integrity and personality, but merely suggested negligence, impropriety or mismanagement on the part of the Appellant in the latter's depletion of the assets of the Company. As a result of its depleted assets, the Company was unable to pay the damages ordered against it in an earlier suit concerning the Company's deception of members of the Raffles Town Club ("the Club"),

a social club the Company owns (see the Judgment at [5]). Nonetheless, in the Respondents' view, the nature and gravity of the defamatory statements were much less damaging to the Appellant than the defamatory statements in *Arul Chandran* where $100,000 as compensatory damages and $50,000 as aggravated damages were awarded, making up a total of $150,000. The suit in *Arul Chandran* arose out of the election for new club committee members for the Tanglin Club. The defendants had circulated three publications to members of the club containing defamatory remarks against the plaintiff, a practising advocate and solicitor of more than 30 years' standing and also the vice-president of the club. The sting of the defamatory remarks was that the plaintiff was an "extremely vicious and dangerous fraud", who was incapable of discharging his official duties within the club (at [23]). It is the Respondents' position that the defamatory statements in the present case were not as grave as those countenanced in *Arul Chandran*, and accordingly a smaller quantum of damages should be awarded to the Appellant.

25 We do not agree with the Respondents' argument that the defamatory statements against the Appellant are any less serious than the defamatory statements in *Arul Chandran*. In *Arul Chandran*, the court was concerned with alleged fraud on the part of a lawyer. Here, the Respondents insinuated that there was an element of dishonesty in the way the Appellant had caused the Company's assets to be depleted. In their closing submissions, the Respondents said:

> [T]he charges which the [Respondents] have proven substantially show the [Appellant] to be a dishonest man who mismanaged [the Company] and who applied [the Company's] monies improperly for his own benefit.

26 We accept that in terms of damage to character and reputation, false allegations that a lawyer has committed a fraud on his clients will seriously damage his reputation and standing in his profession. But so would allegations of dishonesty, mismanagement and asset depletion for personal gain against a heretofore reputable businessman. The Appellant is a prominent businessman and investor. Since the 1980s, he has built up a formidable reputation in the stock broking industry as the "remisier king". In more recent times, the Appellant has come to be regarded as a shrewd investor with well-publicised shareholdings in companies like "Wilmar International and F J Benjamin". The Company itself owns a luxurious social club, *viz*, the Club, with some 17,000 members. Separately, the Appellant is frequently cited in *Forbes Asia* as one of the richest men in Singapore and Asia. There can be no doubt that the defamatory statements in question attacked his professional reputation and standing as a prominent businessman and investor. The libel called into question his competence, integrity and business acumen.

27 The facts as laid out in the Judgment show that the Appellant, by adopting certain policies in the fiscal management of the revenue of the Company (*viz*, members' subscriptions), was able to defer payment of a huge tax liability for the Company. In contrast, when the Respondents took over control of the Company and reversed these policies in order to take money out of the Company (lawfully, we should add), they caused the Company to incur a huge tax liability immediately. This contributed to the Company having insufficient funds to pay damages due to members of the Club pursuant to the earlier suit regarding the Company's deception of members about the Club's exclusivity (see [24] above).

28 While the defamatory statements did not allege fraud, they suggested that the Appellant had caused the Company's financial losses through mismanagement for his own benefit, as a result of which the Company was unable to meet its liabilities to the members of the Club amounting to potentially some $52,122,000. The Respondents wanted to put the blame for this on the Appellant and other persons who had been in control of the Company, even though they were substantially, if not, wholly responsible for the financial plight the Company was in. The libel lay in the insinuation that

the Company's debt was due to the past management's activities, which was untrue. The Appellant has been vindicated in this respect.

29 The Appellant has further contended that he is a public figure in the business fraternity, and that his reputation is a key component to his ability to carry on his business. However, he is in business for himself and not for the public welfare. He is not a public figure in the sense used in defamation law. He is not a national leader or involved in public affairs. He is undoubtedly a shrewd and successful investor whose reputation for shrewdness has been vindicated by this court, but that does not justify elevating his standing to that of a person who serves the public and the State. Accordingly, we do not regard as relevant the decisions in relation to public figures referred to earlier. In *A Balakrishnan and others v Nirumalan K Pillay and others* [1999] 2 SLR(R) 462, this court upheld (at [46]) counsel's argument that where the plaintiff is not a public figure, the quantum of damages should be less. Nonetheless, plaintiffs who are professionals should get a higher sum than ordinary individuals because of the damage done to their professional reputations. The Appellant agreed that our courts have rightly distinguished between public leaders and others; in our view, however, the damages awarded to the Appellant should be closer to that awarded to individuals who are not public leaders.

30 The Appellant cited several cases to show that the damages to be awarded in the current case should be higher than in those cases as they concerned private individuals of lesser public standing and reputation than the Appellant. The cases in question are: (a) *Arul Chandran*; (b) *Ei-Nets Ltd and another v Yeo Nai Meng* [2004] 1 SLR(R) 153 ("*Ei-Nets Ltd*"); and (c) *TJ System (S) Pte Ltd and Others v Ngow Kheong Shen (No 2)* [2003] SGHC 217 ("*TJ System*").

31 In *Ei-Nets Ltd*, $80,000 in damages was awarded for an allegation that the plaintiff was dismissed as an employee of the company for conspiring to make fictitious journal entries in the company's books with a view to misappropriating funds. In *TJ System*, a false statement was made by email to 15 persons within Cisco's organisation that "TJ [S]ystem (sales staff and directors) has been called up by CPIB [*ie*, the Corrupt Practices Investigation Bureau] for investigation on bribery made to a police officer from Police Technology Dept, on 6 June 2002" (at [4]). The first plaintiff was a Singapore registered company in the business of supplying security systems. The second plaintiff was the managing director of the first plaintiff and the third plaintiff was a director. The fourth and sixth plaintiffs were employed as sales staff of the first plaintiff. The first plaintiff was awarded $25,000 in damages, the second and third plaintiffs $30,000 each while the fourth and sixth plaintiffs each received $20,000. The court held that the first plaintiff was not a household name but was well known within industry circles and that its reputation was closely linked to the second and third plaintiffs. The fourth and sixth plaintiffs were sales staff and their careers were not at the same stage of progression as the second and third plaintiffs.

32 The Respondents pointed out the High Court decision of *Oei Hong Leong v Ban Song Long David and others* [2005] 1 SLR(R) 277 ("*Oei Hong Leong (HC)*") (upheld by this court in *Oei Hong Leong v Ban Song Long David and others* [2005] 3 SLR(R) 608). In that case, an article in *The Business Times* contained, *inter alia*, an assertion that the plaintiff was not "rational" in obstructing the passing of certain resolutions (*Oei Hong Leong (HC)* at [5]). The claim for defamation was dismissed because certain defences were applicable. However, the High Court judge stated that he would have awarded $60,000 to the plaintiff if he had decided to award damages. In his view, the libel was not a serious libel. There was no malice, the allegation was narrow in scope and effect and the terms used did not indicate a general bad reputation on the part of the plaintiff. The Respondents here have argued that the Appellant is not as prominent as the plaintiff in *Oei Hong Leong (HC)* and that therefore damages should be lower. We do not agree. Both are prominent or well known in their respective circles. The nature of the defamation against the Appellant was, however, undoubtedly more serious.

Mode and extent of publication

33 It is trite law that the wider the extent of publication, the greater the award of damages for defamation. In *Lee Kuan Yew v Vinocur John*, the fact that the defamatory statements were published in the *International Herald Tribune*, which has worldwide circulation, was found to be an aggravating factor for the purposes of awarding damages. The high standing of the *International Herald Tribune* as a credible international newspaper made the allegations more likely to be believed and this further aggravated the damages.

34 The Appellant submitted that the wide circulation of the libel to over 17,000 members of the Club, many of whom are distinguished professionals, and the extensive press coverage of the entire saga should increase damages. Additionally, the introductory section of the Explanatory Statement (dated 2 November 2005 ("the ES") explaining a Scheme of Arrangement and Compromise ("the Scheme")) under the heading "Background to [the Company's] financial difficulties" would have surely been given more attention by creditors under the Scheme since they would have been keen to find out why the Company was unable to pay the damages that had been awarded against it. Additionally, the defamatory statements were published in a document issued pursuant to the Companies Act (Cap 50, 1994 Rev Ed), which afforded the document the imprimatur of the court's approval, thereby making the defamatory statements even more credible to the recipients.

35 The Respondents claimed that the fact that the statements were published in the ES and not in a national newspaper (unlike in *Oei Hong Leong (HC)*), meant that the extent of publication was limited to members only and the quantum of damages should be reduced. We agree with this submission to the extent that there were and are many more readers of *The Business Times* than there were members of the Club. Only the members would have known about the defamatory innuendos in the ES. The *prima facie* knowledge of some 17,000 members that the Appellant had been incompetent or negligent in managing the Company and had caused it to lose hundreds of millions of dollars would be, without question, seriously damaging to the reputation of the Appellant as a reputable businessman and investor.

Quantum of damages to be awarded

36 The Respondents submitted that an award of $70,000 – comprising a compensatory element of $50,000 and an aggravating element of $20,000 – should be made. We do not accept this submission.

General damages

37 Applying the yardstick in *Oei Hong Leong (HC)* and *Arul Chandran*, we assess the general damages to be $140,000, as the defamation of the Appellant was more serious than the defamation in *Oei Hong Leong (HC)*, and having regard to the fact that *Arul Chandran* was decided more than 10 years ago.

Aggravated damages

38 We have decided that the conduct of the Respondents in this case aggravated the damages payable to the Appellant. Not only did the Respondents deliberately and knowingly use the court process to defame the Appellant, in the process misleading the court in order to protect their own investment in the Company, they also pleaded the defence of justification unjustifiably and refused to tender any apology or make amends.

39 In *Goh Chok Tong v Jeyaretnam Joshua Benjamin and another action* [1998] 2 SLR(R) 971, this

court disagreed with the trial judge's approach of awarding separate awards for general damages and for aggravated damages. The following was observed by this court (at [51]):

> We now turn to the issue of damages. Before we proceed further, we should say a word on the separate awards for general compensatory damages and aggravated damages made by the trial judge. It is well-established that aggravated damages in defamation represent merely a component of the compensatory damages and aggravated damages are awarded when the defendant's conduct before and during trial has aggravated the hurt to the plaintiff's feelings. For such conduct, the quantum of damages payable in respect of the defamatory publication may be enhanced to compensate adequately the plaintiff for the injury occasioned. Reverting to the present case, the trial judge should have awarded a single global sum compensating the plaintiff for the collective actions of the defendant, from the date of publication to the end of the trial. This is the approach which we explored and applied in the Tang appeal, and in our judgment is the right approach. It is relevant to bear in mind the following passage from the speech of Lord Hailsham of St Marylebone LC in *Cassell & Co Ltd v Broome & Anor* [1972] AC 1027, p 1072:
>
> > [I]t has always been a principle of English law that the award of damages when awarded must be a single lump sum in respect of each separate cause of action … I must say I view with some distrust the arbitrary subdivision of different elements of general damages for the same tort as was done in *Loudon v Ryder* [1953] 2 QB 202, and even, subject to what I say later, what was expressly approved by Lord Devlin in *Rookes v Barnard* [1964] AC 1129, 1228 for the laudable purpose of avoiding a new trial. In cases where the award of general damages contains a subjective element, I do not believe it is desirable or even possible simply to add separate sums together for different parts of the subjective element, especially where, as was done by agreement in this case, the subjective element relates under different heads to the same factor, in this case the bad conduct of the defendant.
>
> We therefore do not commend to our courts the practice of separating an award for aggravated damages from the award of general compensatory damages. The courts should award one single lump sum as damages.

40 One point we wish to make at this juncture would be that whilst a single award can be made for damages in a defamation action, for the purposes of assessing the damages, a judge would necessarily (in his mind) have to come up with a figure for general damages and a figure for aggravated damages (or other types of damages, as the case may be). The sums would then be added together to constitute a single lump sum award for damages. Therefore, it would be odd if the court does not provide a breakdown of the sums awarded as general damages and as aggravated damages (or other types of damages, as the case may be). Such an approach should be discouraged. In this connection, it would be apposite to reiterate what was recently stated in *Basil Anthony Herman v Premier Security Co-operative Ltd and others* [2010] SGCA 15 by this court (at [65]):

> [W]hile damages for defamation may be given as a single award, we are of the opinion that, in awarding damages for defamation, a judge ought to demarcate and explain the damages awarded for the defamation itself and the additional damages awarded for the defamer's aggravating conduct in relation to the defamation. The need for some form of separation is self-evident where financial loss is concerned.

41 Having said that, we would like to highlight *Arul Chandran* once again. In that case, the High Court awarded $100,000 as general damages and $50,000 as aggravated damages. The court considered the following as aggravating circumstances: the reckless justification defence that was bound to fail, the humiliating and embarrassing "put" questions during cross-examination as a result of

the adoption of the defence of justification, the unsubstantiated allegation of bad reputation that was made during mitigation, and the presence of malice on the part of the defendant. On appeal, this court held that even if there had been no reckless reliance on the defence of justification, the award of $50,000 for aggravated damages could be justified in view of the humiliating cross-examination, unsubstantiated allegations of bad reputation during mitigation and the presence of malice.

42 On the facts of this case, and taking into account the various aggravating factors, we award the sum of $70,000 for aggravated damages.

Conclusion

43 Based on the foregoing, the total amount of damages payable to the Appellant is $210,000 – comprising $140,000 for general damages and $70,000 for aggravated damages. In addition to this sum, we award the Appellant costs fixed at $10,000 plus disbursements.