TJ System (S) Pte Ltd and Others v Ngow Kheong Shen (No 2)
[2003] SGHC 217

Case Number : NA 41/2003, Suit 815/2002

Decision Date : 22 September 2003

Tribunal/Court : High Court

Coram : Tai Wei Shyong AR

Counsel Name(s) : Daniel Koh and Martin Lee (Rajah & Tann) for 1st to 4th and 6th plaintiffs; Melanie Ho (Harry Elias Partnership) for the defendant

Parties : TJ System (S) Pte Ltd; Ting Siew Hood; Leow Chin Bee; Wang Yong Hong; Lo Ooi Yit; Foong Kok Seng; Leong Wai On; Yew Yeow Tiong; Seng Kong Keong — Ngow Kheong Shen

1 The 1st plaintiffs ("TJ Systems") in this suit are a Singapore registered company in the business of supplying security systems. The 2nd plaintiff, Ting Siew Hood ("Ting"), is the managing director of TJ Systems and the 3rd plaintiff, Leow Chin Bee ("Leow"), is a director. The 4th and 6th plaintiffs, Wang Yong Hong and Foong Kok Seng ("Wang" and "Foong" respectively) are employed as sales staff of TJ systems.

2 The defendant is the system sales manager of a Singapore company named "Cisco Security Technology Pte Ltd" ("Cisco"). Cisco too are in the business of supplying security systems and are competitors of TJ Systems.

3 Earlier this year, the 1st, 2nd, 3rd, 4th and 6th plaintiffs successfully brought a claim in the tort of defamation against the defendant in relation to an e-mail that the defendant had sent to 15 of his colleagues.

4 The facts are fairly straightforward. In early June 2002, Ting and Leow were interviewed by the Corrupt Practices Investigation Bureau ("the CPIB") in connection with an ongoing investigation against a police officer from the Police Technology Department ("the PTD"). On the evening of 11 June 2002, the defendant sent an e-mail to 15 persons within Cisco which contained the following message:

> This is to share with you that TJ system (sales staff and directors) has been called up by CPIB for investigation on bribery made to a police officer from Police Technology Dept, on 6 June 2002.
>
> CPIB are reviewing all information relating to projects awarded to TJ System by PTD in the last 4 years. From a reliable source, PTD has internally debar (*sic*) TJ System for future projects, or any supplier/vendor who works with them to bid for police projects, as CPIB has possessed "strong" evidence against TJ.
>
> If you have any dealings with TJ, please restrain (*sic*) from doing it as TJ System is our competitor and we should not help our competitor to grow.
>
> Regards
>
> Jonathan Ngow
>
> Manager, System Sales

Cisco Security Technology

5 The nine named plaintiffs brought an action in the High Court against the defendant in the tort of defamation, alleging that by reason of the publication of the e-mail, their reputations had been injured. The defendant proceeded on the basis that the e-mail was not defamatory, and also relied on the defences of fair comment, qualified privilege and justification. The 1st, 2nd, 3rd, 4th and 6th plaintiffs succeeded before the trial judge who ordered that damages be assessed by the Registrar. The claims of the other plaintiffs were dismissed with costs as they had chosen not to testify at the trial. The purpose of the hearing before me was to assess the damages to be paid by the defendant to the five successful plaintiffs.

6 In finding the e-mail defamatory, the learned trial judge said at paragraph 39 of her judgment:

> 39 There is little doubt that the following extract in the email is defamatory of TJ
>
> …CPIB has possessed strong evidence against TJ
>
> Read in their context, the words (reinforced by the words *internally debar TJ Systems for future projects*) impute the possible commission of a criminal offence (bribery) by the company or, TJ's imminent prosecution for corruption a police officer/public servant. Giving these words the most innocuous interpretation, they meant that the company was suspected of having bribed PTD staff to procure projects. The sting of the defamation was in Ngow's use of the words (i) *investigation for bribery*, (ii) *internally debar from future projects* and (iii) *Strong evidence*, the logical conclusion following upon (iii) being that ultimately, charges for abetting corruption would be preferred against TJ under s 109 read with s 161 of the Penal Code Cap 224 or, the company would be charged with corruption under ss 5(b) or 6 of the Prevention of Corruption Act Cap 241.

7 After hearing evidence from the parties, I awarded damages in the amount of $25,000 to the 1st plaintiffs, $30,000 each to the 2nd and 3rd plaintiffs, and $20,000 each to the 4th and 6th plaintiffs. In his closing submissions, Mr Koh for the five successful plaintiffs had submitted that the damages should be the region of $80,000 to $150,000 for each. In light of this submission, I felt that I should explain my reasons for the amounts I awarded.

Broad Considerations in Assessing Damages for Libel

8 The legal principles to be applied in assessing damages for libel are well established. The award of damages serves as a vindication of the plaintiff to the public, as compensation for the injury to the plaintiff's reputation and as a solatium for the plaintiff's injured feelings. The cases show that several factors are to be taken into account in trying to arrive at an appropriate award:

(a) The nature and gravity of the libel itself;

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

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

(d) The conduct of the defendant from the time the libel is published to the very moment of the verdict;

(e) An apology and retraction of the libel, if any; and

(f) The presence or absence of malice.

9 In *Goh Chok Tong v Jeyaretnam Joshua Benjamin* [1998] 3 SLR 337, the learned Yong Pung How CJ, delivering the judgment of the Court of Appeal, said at paragraph 57:

> …A broad framework of awards has emerged from past cases and these cases serve as a guide in determining the appropriate amount of damages to be awarded.

10 However, this statement was followed with the following cautionary note:

> In this respect, the awards made in cases preceding this appeal must be treated with care: they are not necessarily accurate indications of appropriate awards of damages.

11 My attention was also drawn to the following dicta of the learned LP Thean JA in the case of Tang Liang Hong v Lee Kuan Yew & Anor [1998] 1 SLR 97, which relates to the proper assessment of damages in defamation cases:

> Before we turn to the individual awards, we wish to register a caveat on quantum of damages for defamation. As reflected in those precedent cases, substantial damages have been awarded for defamation. Indeed there appears to be a trend of such damages rising steadily and significantly over the past few years, and in the few recent cases, each successive award appeared to overtop the preceding one. Such a trend should be discouraged; otherwise damages for defamation would mount and eventually be extremely high, ranking almost with the grossly exorbitant awards so often made by juries in other jurisdictions. Lest it should be misunderstood, we are not suggesting in any way that there should be a cap placed on quantum of damages for defamation. We accept that 'there could never be any precise, arithmetical formula to govern the assessment of general damages in defamation' (per Thomas Bingham MR in *John v MGN Ltd* (Supra) at p 608). Each case depends on its own facts and there is a great deal of factual diversity in defamation cases. However, we wish to stress that damages, even for defamation, should fall within a reasonable bracket so that what is awarded represents a fair and reasonable sum which is proportionate to the harm and injury occasioned to the victim who has been unjustly defamed. On this point, we share the sentiment so succinctly expressed by Sir Thomas Bingham MR in *John v MGN Ltd* (Supra) at p 611:
>
> > Any legal process should yield a successful plaintiff appropriate compensation, that is, compensation which is neither too much nor too little. That is so whether the award is made by judge or jury. No other result can be accepted as just.

12 With these broad considerations in mind, I now turn to explain how I arrived at the awards in this case.

The Awards

13 In arriving at the awards, I adopted a two-stage process. First, I considered a number of cases cited to me in order to determine a suitable range of values, based on the severity of the sting

of the defamatory words, and the general context in which the defamation arose. I took this as the starting point because in my view, a large component of the justice in putting a monetary value on a person's reputation and hurt feelings necessarily arises from the element of consistency with previous awards. Neither pure logic nor legal principle can dictate how much a person's reputation is worth in dollar terms in a vacuum. Both are, in a sense, parasitic on pre-existing norms, tempered with a subjective, but it is hoped fair, evaluation of the general context of the individual case.

14 A number of cases were cited to me as precedents, and I seek here to highlight only the more relevant ones. I begin with the case of *Yeo Nai Meng v EI-Nets Ltd and Anor* [2003] SGHC 110, a recent decision of the learned S Rajendran J. The plaintiff Yeo was a shareholder and director of a company named "Plan-B Technologies Pte Ltd". He alleged that he had been defamed by the defendants by means of the publication of certain reports (the 'Medora' and 'Chor Pee' reports) which impugned his conduct in relation to a wholly-owned subsidiary of Plan-B Technologies Pte Ltd, called Plan-B Speed.Com ("Speed"). In his view, the reports meant and were understood to mean that Yeo had, among other things,

(a) committed fraud and gross misconduct against Speed;

(b) breached s 76 of the Companies Act;

(c) manipulated the accounts of Speed;

(d) breached his fiduciary duties;

(e) manipulated the bank reconciliation statements of Speed; and

(f) committed the offence of criminal misappropriation.

15 The defendants did not in the proceedings seek to deny that the reports were defamatory, but rather relied on the defences of justification and qualified privilege. In the event, both defences failed, and the plaintiff was awarded damages in the amount of $80,000.

16 Mr Koh also cited the Court of Appeal case of *Goh Chok Tong v Jeyaretnam Joshua Benjamin and another action* [1998] 3 SLR 337. The plaintiff had been awarded $20,000 in damages in the High Court for the following words spoken by the defendant at an election rally on 1 January 1997:

> …and finally, Mr Tang Liang Hong has just placed before me two reports he has made to the police, against, you know, Mr Goh Chok Tong and his people.

17 The learned trial judge found that the words did not carry the meaning pleaded, namely, guilt of criminal offence, but that they had a lesser meaning, namely, that the words suggested that Mr Goh had committed an act of serious enough proportions to merit a police report. He also found that the conduct of the trial by Mr Jeyaretnam's counsel had aggravated the hurt caused to Mr Goh and awarded $10,000 compensatory damages and $10,000 aggravated damages accordingly. The Court of Appeal agreed with the trial judge as to the defamatory meaning of the words, but found that the quantum of damages was disconsonant with precedent cases. The Court thus revised the damages upward to $100,000.

18 Another case relied on by Mr Koh was the case of *Arul Chandran v Chew Chin Aik Victor JP* [2001] 1 SLR 505. The facts of that case were as follows. The plaintiff and defendant were both

members of the Tanglin Club. The defendant Chew caused three publications to be made which repeated certain defamatory remarks against the plaintiff Arul. The learned trial judge found that the sting in the publications was essentially that the plaintiff was an extremely vicious and dangerous fraud. The defences of justification, qualified privilege and fair comment failed and the learned judge awarded the plaintiff $100,000 general damages and $50,000 aggravated damages.

19 Finally, Mr Koh drew my attention, specifically in relation to the 1st plaintiff, to the case of *Sin Heak Hin Pte Ltd & Anor v Yuasa Battery Singapore Co Pte Ltd* [1995] 3 SLR 590. In that case, the plaintiffs and the defendants were all in the business of selling automotive batteries. In September 1990, the plaintiffs imported 1,400 pieces of Yuasa brand batteries from China into Singapore. The batteries were made by a Chinese manufacturer, Xinjiang Comprehensive Electric Motor Plant ("Xinjiang Electric"), who also had a licence from Yuasa Japan, but only to use the Yuasa trade mark on batteries manufactured for sale within China. The defendant subsequently issued a circular to all its dealers claiming, inter alia, that `Yuasa` brand batteries purported to be manufactured in China were illegal imitations, and that the defendant had nothing to do with the plaintiffs or their imitation `Yuasa` brand batteries. The plaintiffs brought an action against the defendant for defamation and slander of goods and succeeded on both claims. The learned trial judge found that the defendants had acted with malice, as the dominant intention of the circular was to nip the competition in the bud by traducing the plaintiffs' Yuasa batteries as imitations. That negatived the legitimate interest the plaintiffs had in sending the circular out and the corresponding interest in receiving it. She awarded $100,000 as damages for defamation, which took into account the aggravation of the defendant's failed plea of justification.

20 It was Mr Koh's submission before me based on the precedents, in particular the *EI-Nets* case and the *Yuasa Battery Singapore* case (both cited above), that awards within the range of $80,000 to $150,000 for each of successful plaintiffs would be appropriate.

21 Ms Ho, for her part, argued that the damages in the present case should be considerably lower than the amounts suggested by the plaintiffs' counsel. She too relied on a number of cases but it is only necessary to refer to a few of them.

22 The first is the case of *Chen Cheng & Anor v Central Christian Church & John Louis* [1999] 1 SLR 94. The New Paper had carried on its front page the headline "2 CULTS EXPOSED", with the statement underneath "Christian Groups warn of two new cults in Singapore. The Army of God and the Central Christian Church ("CCC") tend to "stretch the truth" and have "exclusive" practices, says one reverend…" The Lianhe Wanbao publication had carried essentially the same statements in a similar publication. The CCC and its leader, John Louis, sued The New Paper and Lianhe Wanbao, as well as a religious publication called "Impact", on which The New Paper and Lianhe Wanbao articles were based, for libel. They complained that the references to the CCC as a cult and to Louis as a cult leader were defamatory of them. The defendants relied on the defences of justification, fair comment and qualified privilege. At trial, the learned judge held that the all the defendants failed on the defence of justification. As for fair comment, he held that all of them succeeded except for The New Paper in respect of its front-page headline. As for qualified privilege, he held that Impact succeeded, but the other two defendants failed.

23 On appeal, it was held that The New Paper and Lianhe Wanbao were liable in defamation, and a sum of $20,000 to CCC from each of them, and a sum of $30,000 to Louis from The New Paper was adequate damages.

24 The next case is *Cristifori Music Pte Ltd v Robert Piano Co Ltd* [2000] 3 SLR 503. In that case, the defendant was a Singapore company dealing in the sale of pianos and the teaching of music

and was, according to the defendant's managing director, one of the largest sellers of pianos in Singapore, amongst which were the Japanese brands, Kawai and Samick, pianos. The plaintiff similarly dealt in pianos and ran several music schools in Singapore. The plaintiff sold Asahi and Paco pianos, both of which retailed for a lower price than the pianos sold by the defendant.

25 On 1 February 1997, the defendant placed an advertisement for Kawai and Samick pianos on the front page of The Straits Times. It stated amongst other things that pianos 'like "A" & "P" brands (retailing at $3,799 & $4,970 respectively, as advertised)' were made and assembled in Pyongyang, North Korea. The advertisement asserted that although both brands claimed to use mainly Japanese parts, in actual fact, 80% to 90% of these piano parts were made in North Korea by North Korean workmen. These pianos were therefore 100% made and assembled in Pyongyang, North Korea, not Japan. The advertisement advised its readers that this was a `Sales Gimmick` and that they should not let the sellers of these brands pull wool over their eyes. The advertisement also contained an old Chinese proverb `One Cent Buys You One Cent Product` and went on to say that such pianos could not be compared with world-renowned Kawai and Samick pianos.

26 The plaintiff commenced an action in defamation against the defendant based on this advertisement. The defendant filed a counterclaim which alleged that the plaintiff had defamed them by virtue of a letter sent by it to one of its customers on 31 January 1997, which stated that the defendant was spreading untruths about the plaintiff and that it would be taking legal action against the defendant.

27 It was held by the court that the words in the advertisement were capable of referring to the plaintiff and conveyed to the ordinary person reading the statement that the plaintiff was dishonest in claiming that Asahi and Paco pianos used mainly Japanese parts. The ordinary person would infer that the plaintiff had made this false claim in an attempt to deceive its customers into buying its Asahi and Paco pianos by wilfully misrepresenting the pianos as using mainly Japanese parts when in fact they did not. The defences of justification, fair comment and qualified privilege all failed, and the plaintiff was awarded $50,000 in damages. The counter-claim also succeeded and the defendant was awarded $5,000 in damages on the counterclaim.

28 Returning to the instant case, in my view the striking features which located the award within a wider context were (a) the limited nature of the defamatory assertion, and (b) the fact that it was disseminated by the defendant to a restricted number of his colleagues within a controlled environment. In relation to the meaning of the words themselves, counsel for the plaintiffs Mr Koh sought to distinguish the *meaning* of the libel from the *effect* of the libel. He submitted that the average lay-person reading the e-mail or the media reports of the trial concerning the e-mail would think that since the CPIB had strong evidence, leading to another police department ceasing dealings with the 1st plaintiffs, the 1st plaintiffs were more likely than not involved in corrupt practices. In any event, Mr Koh argued that the unchallenged evidence of the plaintiffs' witnesses concerning the *effect* of the libel was that they understood the action to be one which implicated the plaintiffs in corruption.

29 In reply, Ms Ho for the defendant argued that there was a clear difference between saying that the plaintiffs were imminently to be prosecuted for offences on the one hand, and saying that they were guilty of offences on the other hand. She submitted that the former was the case in hand and that it was of much less gravity than the latter.

30 I agreed with Ms Ho that there is a difference in quality between an allegation that the defendants were imminently to be prosecuted for offences of corruption on the one hand, and an allegation that they were guilty of committing corruption on the other. Whilst the distinction may be

a fine one in ordinary parlance, I could not accept Mr Koh's argument that this Court should collapse it altogether in the name of extrapolating the *effect* of the defamation to the ordinary 'man in the street'. That would not be in accordance with the decision of the learned trial judge; nor would that be fair to the defendant.

31 Flowing from this, I did not accept Mr Koh's submission that the award in the *EI-Nets* case was a suitable starting point. The sting of the defamatory words in that case, in essence that the plaintiff was guilty of fraud, gross negligence and other criminal offences, was substantially more serious than in this case. I thus took the view that the award in this case should be in a lower bracket than in the *EI-Nets* case.

32 In my view, the closest case in terms of the meaning of the defamatory words to the present which was cited to me was *Goh Chok Tong v Jeyaretnam Joshua Benjamin and another action* (cited above), where the sting of the defamation was that Mr Goh had committed an act of serious enough proportions to merit a police report. I noted that the amount of damages awarded in that case by the Court of Appeal was $100,000. However, the standing of the party defamed in that case, and the context in which it arose, suggested to me that the awards in the present case should be within a substantially lower range.

33 The second stage was to arrive at an appropriate value within the range, based on the circumstances of each plaintiff and the presence or absence of any mitigating and aggravating factors in the particular case.

34 Mr Koh had submitted that there were several significant aggravating factors in this case. First and foremost, the defendant's refusal to apologise and his lack of remorse, which was highlighted by his persistence in a plea of justification at trial. He referred me to the following passage from the learned trial judge's judgment:

> 54. …What I found to be reprehensible conduct on his part was Ngow's total lack of regret/remorse for what can only be said to be an irresponsible act – sending out an e-mail containing such serious allegations without taking steps to verify what he had heard; even worse, embellishing the allegations in the process.

35 Ms Ho, for her part, had argued that in this case the plea of justification should not aggravate the damages as the defendant had not, at trial, attempted to prove that the sting of the defamation as found by the learned trial judge was true. She submitted that the defendant had simply tried to prove that the plaintiffs were under investigation, and that even if this were taken against him, it should not substantially aggravate the damages.

36 It is established law that a plea of justification, if unsuccessful, is generally a factor that will aggravate the damages awarded. It is not disputed that in this case a plea of justification was raised, and I was prepared to treat this as an aggravating factor, notwithstanding that the thrust of the plea may not have been entirely within the defamatory meaning of the words as found by the learned trial judge. The point is that the attempt to justify the libel repeats the allegation in a public forum. Taking into account also the defendant's unrepentant attitude at trial, I agreed with Mr Koh that the plea should aggravate the damages awarded.

37 In addition, Mr Koh also invited me to take the following factors into account:

(a) The recklessness of the defendant;

(b) The hurt and embarrassment caused by the trial and the trial publicity;

(c) The mode and extent of publication; and

(d) The ease and forseeability of republication.

38 While these were all relevant factors, there was nothing exceptional in relation to any of them in the present case. Rather, they were simply present as would be expected in any typical case where libel is proved. I would add that in particular I did not think that any special consideration should be given to the fact that the publication was by way of an e-mail, as Mr Koh had urged me to do. There is nothing inherently more insidious in publishing something by e-mail than by any other form of the written word. Whilst it is true that re-publication of an e-mail is a relatively simple matter, the same argument could apply, for example, to defamation by a letter, given the ease at which photocopies of documents can now be made. In any event, I do not think that publication by e-mail to 15 persons can be considered more aggravating than say, publication to a large crowd of people, or by way of a newspaper advertisement, which was the case in some of the precedents cited to me.

39 In relation to the 2nd and 3rd plaintiffs, having considered all the factors, I felt that an award of $30,000 each was fair. In relation to the 4th and 6th plaintiffs, they were sales staff of TJ systems and it was quite clear from the evidence that their careers were not at the same stage of progression as the 2nd and 3rd plaintiffs. Consequently, I felt that the award could not be the same and that $20,000 was a fair award to each of them.

40 Finally, I turn to the position of the 1st plaintiffs. Mr Koh had submitted that a different basis should be used in relation to the 1st plaintiffs, since they were a corporate entity, and he had referred me to a different line of cases, in particular the *Sin Heak Hin* case (cited above) and the *Cristifori Music* case (cited above). He also highlighted the evidence that the 1st plaintiffs are one of the fastest growing companies in the securities industry with an annual turnover climbing from approximately $4.4 million in 2000 to $6.4 million in 2001 and $8.5 million in 2003.

41 I agree that in an appropriate case, the position of a corporate entity which is defamed in the same breath as other persons may stand on a different footing. However, having examined all the facts of this case, I felt it would be proper to regard the damage done to the reputation of the 1st plaintiffs as in the same region as the others, and to further reduce the sum on account of the fact that a corporate entity does not suffer hurt feelings. In this case, the 1st plaintiffs were not a household name, and appeared to be well known only within industry circles. Furthermore, it was a private company owned by the 2nd and 3rd plaintiffs, and therefore its reputation was closely linked to theirs. I therefore felt that an award of $25,000 was a fair award.

42 In closing, I would say that I was conscious of the fact that the total amount of the award against was a very substantial one, some $125,000. However, I did not feel that it was entirely excessive in light of the number of successful plaintiffs, and the position and attitude taken by the defendant throughout the trial.