

Goh Chok Tong v Chee Soon Juan (No 2)
[2005] SGHC 3

Case Number : Suit 1460/2001

Decision Date : 06 January 2005

Tribunal/Court : High Court

Coram : Kan Ting Chiu J

Counsel Name(s) : Davinder Singh SC, Hri Kumar, Nicolas Tang (Drew and Napier LLC) for the plaintiff; The defendant in person

Parties : Goh Chok Tong — Chee Soon Juan

Tort – Defamation – Damages – Assessment of damages – Defendant alleging plaintiff mishandling nation's funds – Principles of assessment – Quantification of damages

6 January 2005

Judgment reserved.

Kan Ting Chiu J:

1 This matter came before me for damages to be assessed following a finding that the defendant had defamed the plaintiff.

2 The plaintiff, Mr Goh Chok Tong ("Mr Goh"), was the Prime Minister of Singapore until he assumed the office of Senior Minister on 12 August 2004. The defendant, Dr Chee Soon Juan, was and is the Secretary-General of the Singapore Democratic Party.

The subject words

3 This action arose out of words the defendant said in the course of campaigning in the 2001 Parliamentary General Elections on 28 October 2001 at two venues, namely the Hong Kah West Hawker Centre (which were referred to in these proceedings as "the Hong Kah words") and at an election rally at Nee Soon Central (which were referred to in these proceedings as "the Nee Soon words").

4 This action was filed and prosecuted in conjunction with Suit No 1459 of 2001, *Lee Kuan Yew v Chee Soon Juan*. That action which was commenced by the Minister Mentor and then Senior Minister Mr Lee Kuan Yew ("Mr Lee") related to the Nee Soon words.

The Hong Kah words

5 The first set of words complained of were spoken in the morning. While giving an interview with the print and broadcast media, the defendant said

... we kept saying Suharto, Suharto, Suharto find me one word, just that one word in Suharto in today's Straits Times did anybody say it? But that's the most important thing in our campaign right now, alright? It's a fact that this Government will not help our workers and they take all the money overseas, either investments in loans, they are not getting it back, and then they try to get it from people through taxes again ...

6 Upon seeing the plaintiff a short distance away, the defendant shouted:

Mr Goh! Mr Goh! Come here Mr Goh! I want to talk with you, come here! Where is our money Mr Goh? You can run, but you cannot hide.

and then he approached Mr Harun Abdul Ghani, a former Member of Parliament and said:

He took \$17 billion, 1998 you cannot run away! \$17 billion you lent it to Suharto. Number one, you were a Member of Parliament, did he tell you? You represent the people! Why didn't you say anything? You were wrong, that is very wrong.

The Nee Soon words

7 In the same evening, the defendant said at an election rally:

So when we met ... when we met Goh Chok Tong this morning during our walkabout, he was there just about 3 or 4 feet away, I asked him, "Mr Goh, what happened to our money? What happened to this \$17 billion?" He wouldn't answer. He just waved us on. I am very serious about this. My friends, it is your money, this is your money, no, not the Government's money, not Goh Chok Tong's money. It is your money. And when I asked him and he waved us on, it hit me, it hit me very clearly, that the Government will not answer you. The Government can say, "No, I am not interested in answering you, because you are not in Parliament ... But if you get Mr Ling How Doong from SDP into Parliament, this guarantee I give you, the first question that he will ask is what happened to your \$17 billion? ... And this is the same question that I want to ask Mr Lee Kuan Yew ... So Mr Lee Kuan Yew, I challenge you, tell us about the \$17 billion you loaned to Suharto.

8 The plaintiff's case is that the words set out here in italics ("the subject words") defamed him.

The apologies

The first and second apologies

9 On 29 October 2001, Mr Lee Kuan Yew ("Mr Lee"), then the Senior Minister, and now the Minister Mentor, demanded that the defendant withdraw the allegations and apologise to the plaintiff. On the same day, the defendant wrote to the plaintiff:

With reference to the incident at the Hawker Centre at Jurong East on the morning of 28 October 2001, I wish to reiterate my position that politics should not be conducted at the personal level.

As such I wish to let you know that if I have offended you in a personal manner during our meeting I would like to extend to you my sincerest apologies.

At the political level, however, I stand by the issues that I have been raising in this election.

I shall refer to this as the first apology.

10 On the following day, he issued a media release that:

The only reason why we brought up the issue about the \$17b loan to Indonesia was to compare it with the \$2.1b the SDP has proposed to help retrenched workers in Singapore. There was never any intention to cast any aspersion on anyone, least of all Mr Goh Chok Tong. I therefore

withdraw my allegation that Mr Goh was dishonest and not fit to be the Prime Minister. I offer to him my apologies.

I shall refer to this as the second apology.

The retracted apology

11 The plaintiff was not placated by those apologies. He instructed his solicitors, Drew & Napier LLC, to write to the defendant. The solicitors informed the defendant on 30 October 2001 that he had falsely accused the plaintiff of being dishonest and unfit for office because he had concealed from or misled Parliament and the public on a \$17bn loan made to Indonesia and had continued to evade the issue because he had something discreditable to hide about the transaction.

12 The solicitors also informed him that the plaintiff demanded that he agree by 10.00am on 2 November 2001 to:

- (a) publish, at [his] expense, an apology and undertaking in terms of the draft now enclosed. The apology and undertaking is to be published with appropriate prominence in the 31st October, 1st, 2nd or 3rd November edition of the Straits Times and the Today newspaper;
- (b) read out the said apology at an SDP rally no later than 10 pm on 2nd November 2001;
- (c) compensate [the plaintiff] by way of damages; and
- (d) agree to indemnify [the plaintiff] in respect of the costs which he will have incurred in connection with this matter.

13 The defendant complied with the demands. On 31 October 2001 he read out an apology in the set form at a rally at Jurong East:

1. On Sunday 28 October 2001, during a walkabout at Jurong GRC and, later, at a rally at Nee Soon Central, I made certain statements which were understood to mean that Singapore's Prime Minister, Mr Goh Chok Tong, is dishonest and unfit for office because

- (a) Mr Goh Chok Tong concealed from Parliament and the public, and/or deliberately misled Parliament in relation to, a \$17 billion loan made to Indonesia; and
- (b) Mr Goh Chok Tong's continued evasion of the issue was because he had something discreditable to hid about the transaction.

2. I admit and acknowledge that I had no basis for making these allegations, and that they are false and untrue.

3. I, Chee Soon Juan, do hereby unreservedly withdraw these allegations and apologise to Mr Goh Chok Tong for the distress and embarrassment caused to him by my false and baseless allegations.

4. I hereby also undertake not to make any further allegations or statements to the same or similar effect. I also wish to state that I have agreed to pay Mr Goh Chok Tong damages by way of compensation and to indemnify him for all costs and expenses incurred by him in connection with this matter.

and he also caused the apology to be published in *The Straits Times* and *Today* newspapers on 1 November 2001.

14 When the defendant failed to pay the promised compensation and costs, the plaintiff brought these proceedings against him.

The action

15 The plaintiff's action was framed on two bases. The first was that the plaintiff and the defendant had entered into a binding compromise whereby the defendant was to perform the acts set out in the letter of 30 October 2001, and the plaintiff impliedly agreed not to ask for full damages that he would otherwise be entitled to.

16 The alternative claim was for defamation. The plaintiff complained that the natural and ordinary meaning, as well as the innuendo meaning of the Hong Kah words and the Nee Soon words, was that the plaintiff is dishonest and unfit for office because:

- (a) the Plaintiff concealed from Parliament and the public, and/or deliberately misled Parliament in relation to, a S\$17 billion loan made to Indonesia; and
- (b) the Plaintiff's continued evasion of the issue was because he had something discreditable to hide about the transaction.

17 The defendant resisted the claim and filed a defence. He also commenced third party proceedings, but did not prosecute them. In his defence, he denied speaking the words the plaintiff complained of, that those words referred to the plaintiff, that they were defamatory, and that he was liable for the republication of the words, and he pleaded the defences of justification, qualified privilege and fair comment. He also asserted that the compromise was invalid because it was the product of duress and intimidation.

18 The plaintiff applied for summary judgment on his claim. The application was argued before a senior assistant registrar ("SAR"). At the hearing, the plaintiff produced clear and comprehensive evidence that no loan as alleged by the defendant was made, and that had been made known to Parliament and the public, and the information was in the public domain. The plaintiff asserted that there was no loan made to Indonesia as the defendant had alleged and produced clear documentary evidence in the public domain to support that. The SAR noted in his grounds of decision that the defendant's only reply to the application for summary judgment was that the compromise was null and void by the taint of duress and intimidation.

19 On 19 August 2002 after hearing the parties, the SAR entered interlocutory judgment for the plaintiff on the compromise as well as for defamation with damages (including aggravated damages) to be assessed by a judge in open court.

20 The defendant appealed against that decision. The appeal was heard by MPH Rubin J who dismissed the appeal and affirmed the SAR's decision. The defendant did not pursue the matter further.

The assessment hearing

21 The defendant, who had appeared in person before the SAR and Rubin J, did not attend the assessment hearing scheduled for 6 to 8 September 2004.

22 The defendant was kept informed of the developments leading to the assessment hearing before me. After the order for summary judgment was affirmed by Rubin J, the plaintiff's solicitors applied for directions for the assessment of damages.

23 On 29 July 2003, counsel for the plaintiff, and the defendant himself attended before an assistant registrar. The assistant registrar ordered that the parties file their lists of documents relating to damages by 19 September 2003, and for inspection of the documents within 21 days from that date. The assistant registrar also ordered the parties to file and serve their affidavits of evidence-in-chief by 16 January 2004. The defendant did not file his list of documents or affidavit of evidence-in-chief.

24 By a letter dated 31 January 2004, the defendant informed the Registrar:

I will be away on a fellowship in the United States (National Endowment for Democracy) from February until August 2004. As such I would be grateful if you could adjourn the above matter until my return.

25 On 4 February 2004, the plaintiff's solicitors wrote to the Registrar to seek an appointment to fix hearing dates for the assessment of damages. In response to the request, the parties were directed to attend before the assistant registrar on 10 February 2004.

26 On 10 February 2004, the solicitors for the plaintiff attended before the assistant registrar, but the defendant was absent. The assistant registrar fixed the assessment of damages for hearing on 6 to 8 September 2004. The solicitors for the plaintiff informed the defendant of the hearing dates.

27 Nothing was heard from the defendant for months. Then he informed the Registrar by a letter dated 28 July 2004:

With reference to the date of 6 September 2004 for the hearing of the assessment of damages for Suit Nos 1459 of 2001/F and 1460 of 2001/X, please be informed that due to unforeseen circumstances, I will return to Singapore only in September 2004.

As I will require time to settle in after being away for half a year, I will not be able to prepare for the hearing immediately upon my return. I would like to be able to explore a mutually convenient date with the plaintiffs for the hearing.

28 In response to that letter, the Registry issued a notice to the parties to attend before me for directions on 2 September 2004, to which it received another letter from the defendant dated 20 August 2004 stating:

I refer to your letter dated 12 August 2004 in which you indicated that the parties would appear before Justice Kan Ting Chiu for directions on Thurs 2 Sept 2004 at 10 am.

I had faxed you a letter dated 10 August 2004, indicating that I would be back in Singapore only in September. Perhaps it wasn't clear in my letter but I will only be returning in mid-September, hence, my letter to indicate that I would not be able to attend the hearing originally set for 6 September 2004.

This would mean that I would not be able to make it on 2 September 2004 for directions. I apologise for the misunderstanding and would like to request that another date be selected in early October for directions.

(The reference to the letter dated 10 August 2004 appears to be a mistake. The letter was dated 28 July 2004.)

29 On 24 August 2004, the Registry informed the defendant that the hearing for directions on 2 September 2004 would proceed, and that the assessment of damages would be heard on 6 to 8 September 2004.

30 The defendant did not respond to the letter and did not attend before me on 2 September 2004. Counsel for the plaintiff, who have consistently stated their opposition to vacating the hearing dates, informed me that they were ready to proceed with the assessment. I directed the assessment of damages to proceed for Suit No 1459 of 2001, to be followed by the assessment of damages in this action. The Registry informed the defendant of these directions.

31 When the defendant failed to attend the hearing on 6 September 2004, I proceeded with the assessment in his absence. The plaintiff's affidavit of evidence-in-chief was admitted in evidence with minor corrections. At the close of the hearing, I ordered the parties to make their written submissions by 13 September 2004 and their replies by 20 September 2004. The plaintiff's written submissions were filed in compliance with my order.

32 The defendant did not file his submissions. Instead, he wrote to the Chief Justice on 16 September 2004 to request for the hearing to be reconvened so that he could cross-examine the plaintiff.

33 The parties were informed to come before me on 30 September 2004. The defendant then made the application to me. Mr Davinder Singh SC ("Mr Singh"), who appeared for the plaintiff, did not object to the application, but asked that the defendant state the grounds of the application in an affidavit, and that the defendant be subject to cross-examination on his affidavit.

34 I agreed that the defendant should state the full facts and basis on which he wanted to have the assessment hearing reconvened for him to cross-examine the plaintiff, and I directed him to file and serve his affidavit by 13 October 2004. I left the question whether he was to be cross-examined on his affidavit to be decided after the affidavit was made.

35 The events that followed are described in my judgment in Suit No 1459 of 2001 ([2005] SGHC 2). The defendant was cross-examined on his application to reconvene the assessment in that suit. He then applied to cross-examine Mr Lee, the plaintiff in that case, and his counsel, Mr Singh, as part of his application. I dismissed both his applications.

36 The defendant was unhappy that his application to cross-examine Mr Lee and Mr Singh was dismissed. When he was directed to proceed with the application to cross-examine Mr Goh and Mr Singh in this action, he was reluctant to comply unless he was given time to prepare his submissions and return on another day.

37 When I declined to grant the adjournment, he did not proceed with the application. I gave him the opportunity to file his written submissions and reply to the plaintiff's submissions on the damages to be awarded, but he did not file either.

Quantification of damages

38 In assessing the appropriate damages to be awarded on a case of defamation, the following factors should be taken into consideration:

- (a) the nature of the defamation;
- (b) the standing of the parties;
- (c) the mode and extent of publication of the defamatory statements;
- (d) the conduct of the parties; and
- (e) the effect of the defamation on the plaintiff.

The nature of the defamation

39 The slander was serious. It accused the plaintiff of concealing from Parliament and the public, information on a \$17bn loan made to Indonesia and of continuing to evade disclosure of the loan because he had something to hide. This was a severe indictment against Mr Goh as the Prime Minister and the head of the Government for the disposal of a large sum of the nation's funds.

The standing of the parties

40 The plaintiff was at the material time the Prime Minister and Secretary-General of the People's Action Party. Since 12 August 2004, he is the Senior Minister in the Cabinet.

41 The defendant was at the material time the Secretary-General of the Singapore Democratic Party and a candidate in the 2001 parliamentary elections.

42 They are prominent public figures. The public perception of their integrity will affect their effectiveness and standing, and they have the capacity to damage the reputations of those they speak ill of.

The publication of the defamatory statements

43 The statements were made in the presence of members of the public and members of the news media. The defendant must have expected his words to be republished, and had expressly requested that they be covered in the news.

44 The Hong Kah words were widely republished by the Television Corporation of Singapore in its news broadcast, Channel News Asia in its broadcasts and in its website, the *Today* newspaper and *The New Paper* in its website.

45 The Nee Soon words were broadcast by Channel News Asia and covered in *The Business Times* newspaper on 28 and 29 October 2001 respectively.

The conduct of the parties

46 The defendant issued three apologies to the plaintiff for his statements.

47 The first two apologies did not placate the plaintiff. The third apology was prepared by the plaintiff's solicitors. He made an apology in that form, and then failed to pay the damages and costs promised. When he failed to pay damages and costs promised in the apology, and was sued by the plaintiff, he denied saying the words complained of and alleged that the apology or compromise was null and void, being the product of duress and intimidation. He also pleaded justification, qualified

privilege and fair comment in his defence, but led no evidence and made no submissions to support these defences.

48 As Mr Singh had pointed out, the defendant had delayed the progress of the action. When the plaintiff applied for summary judgment, the hearing was adjourned to allow the defendant to apply for the admission of Stuart Littlemore QC to represent him. After that application was dismissed, the defendant obtained a further adjournment of the hearing of the plaintiff's application on the ground that he intended to appeal against the dismissal. However, he did not file an appeal, nor did he inform the court or the plaintiff that he had decided not to appeal.

49 When the plaintiff sought to reinstate his application for hearing, the defendant informed the court that he intended to apply for William Henric Nicholas QC and Martin Lee QC to represent him. He was given three weeks to file the applications, but he failed to do that, and filed the applications three weeks late, and the hearing of the plaintiff's application was again adjourned. When the applications were heard and dismissed, he again informed the court that he intended to appeal against the dismissals. The hearing of the plaintiff's application was adjourned again pending the appeals, but once again the defendant did not file them or inform the court or the plaintiff of his change of intention.

50 The defendant's conduct of his defence is also noteworthy. He claimed that the apology was the result of threat and intimidation. This allegation was found to be so lacking in substance and merit as to raise no triable issue. On his other pleaded defences of justification, qualified privilege and fair comment, he did nothing to make good any of them.

51 His conduct leads inexorably to the inference that he acted in bad faith throughout. He knew the allegations he made were false, but he refused to admit that, and tried instead to delay the progress of the legal proceedings against him.

52 After the hearing of the application for summary judgment, and the appeal from the SAR's judgment, the hearing of the assessment of damages was delayed again by the defendant. This has been recounted already in this judgment. It suffices for me to state here that he was withholding information about his travel commitments and had made communication with him difficult by not disclosing his address in the United States.

53 The earlier two apologies must also be considered. They were interesting statements. There was neither retraction of the charge that a \$17bn loan was made to Indonesia without the knowledge of Parliament and the public and that the plaintiff was evading the issue, nor acknowledgement that the allegations were untrue, as were made clear in the third apology. In the earlier two apologies, the defendant merely apologised for the offence caused to Mr Goh and withdrew his allegation that Mr Goh was dishonest and unfit to be the Prime Minister.

54 The wording of the apologies left room to doubt the defendant's sincerity in apologising. His subsequent conduct in denying that he spoke the Hong Kah words and Nee Soon words, and the plea of justification in his defence, without referring to these two apologies, confirmed his lack of sincerity.

55 In contrast to the defendant's conduct, the plaintiff's conduct cannot be faulted. He had done nothing to provoke or encourage the defendant to make the statements complained of, and had offered him the opportunity to retract them and avoid litigation.

The effect of the defamation on the plaintiff

56 The defamatory statements had brought annoyance to the plaintiff, and had obliged him to spend time and effort in seeking the aborted compromise, and then to prosecute this action to protect and preserve his reputation. That aside, there was nothing which suggested that his standing in and outside Singapore was affected in any way.

The appropriate damages

57 The plaintiff tendered written submissions on damages, setting out most, if not all, of the awards made to the plaintiff as the Prime Minister and Mr Lee as the Prime Minister and the Senior Minister. Counsel specifically drew attention to the advice given by the Court of Appeal in *Tang Liang Hong v Lee Kuan Yew* [1998] 1 SLR 97 where L P Thean JA, in delivering the judgment of the court, noted at [158]:

[T]here appears to be a trend of such damages rising steadily and significantly over the past few years, and in a 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 become extremely high, ranking almost with the grossly exorbitant awards so often made by juries in other jurisdictions.

58 Subsequently, the Court of Appeal delivered another judgment in *Goh Chok Tong v Jeyaretnam Joshua Benjamin* [1998] 3 SLR 337 (the decision of the High Court from which some facts stated herein are taken is reported in [1998] 1 SLR 547), which is particularly relevant for consideration. I shall refer to this case as *Goh v Jeyaretnam*.

59 In that case, Mr Goh was then the Prime Minister. The defendant, Mr Jeyaretnam, was standing as an opposition candidate in parliamentary elections together with Mr Tang Liang Hong ("Mr Tang"). In the course of the campaign, Mr Goh declared that Mr Tang was unsuited to be a Member of Parliament as he was anti-Christian and was a Chinese chauvinist. Mr Tang was indignant at these remarks and he made two police reports.

60 In one of the reports he complained that Mr Goh and ten members of the plaintiff's party had falsely accused him of being an anti-Christian Chinese chauvinist and of being anti-English-educated, and that they were making statements that might cause social and racial disharmony in Singapore. He requested the police to investigate into his complaint on an urgent basis.

61 At an election rally, Mr Tang interrupted Mr Jeyaretnam while he was speaking, and handed him some papers. After taking a glance at them, he said:

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. But just remember. Have one thing on your mind, one purpose, one will, that it is not for Mr Tang Liang Hong or for me or for the Workers' Party that you are voting. You are voting for yourself. And the PAP have been trying desperately to win this battle. They've been trying to stop you from voting for your rights. Well, show them tomorrow and I will then be very, very proud of you people of Cheng San.[\[1\]](#)

Those words were republished in *The Straits Times* and referred to by *The Business Times*.

62 Mr Goh sued Mr Jeyaretnam for defamation on those words. The trial judge found in his favour and awarded him \$20,000 damages. Both parties appealed against the judgment, and the matter came before the Court of Appeal.

63 In the judgment delivered by Yong Pung How CJ, the court considered the inferences the ordinary man would draw from Mr Jeyaretnam's words, and held at [27]:

We agree with the trial judge that to the ordinary man the words would not imply that Mr Goh was guilty of criminal defamation and criminal conspiracy or a serious criminal offence; they would not impute guilt. But the ordinary man, having heard the statement that Mr Tang had made police reports against Mr Goh and his colleagues, would understand that Mr Tang, being a lawyer and politician, 'having avowed to protect his reputation and integrity' had taken a serious step and made police reports against Mr Goh, and that it would be likely that the police would investigate into some wrong doings alleged in the reports on the part of Mr Goh. In our opinion, that was the natural and ordinary meaning conveyed to the ordinary man, and the words bearing such meaning were defamatory of Mr Goh.

The court went on to consider the innuendo meaning of those words, and held that:

[T]he words suggested more than that an investigation was possible: they suggested that Mr Goh would be likely to be investigated for the offence or offences alleged in the reports.

64 The court found that the trial judge erred in finding that there was no malice and found that there was malice on the authority of *Horrocks v Lowe* [1975] AC 135, as Mr Jeyaretnam had made the statement recklessly, without considering or caring whether it be true or not.

65 The court also found that the trial judge had failed to give sufficient weight to the aggravation caused by defence counsel's accusations against the plaintiff during cross-examination which the court found "amounted to an attack on his integrity, character and suitability for Mr Goh's position as Prime Minister"[\[2\]](#) and (at [57]) that:

[I]nsufficient regard was paid to the precedents established in case law. 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. 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. Even so, given our findings on the issue of malice and the gravity of the aggravating factors, together with the extent of republication and the high standing of Mr Goh, the global award of \$20,000 appears to us totally dissonant with those awards, including those which might now be considered excessive.

and raised the award to \$100,000.

66 The judgment offers a useful guide on the assessment of damages in the present case. However, in drawing guidance from that judgment, the similarities and differences between the present case and that case must be taken into account.

67 In both cases, the plaintiff was defamed while he held the office of Prime Minister. In *Goh v Jeyaretnam*, the defamation related to his conduct towards an opposition candidate during an election campaign and in the present case, it related to his conduct as the Prime Minister.

68 In *Goh v Jeyaretnam*, the defamatory words were republished in *The Straits Times* and *The Business Times*. In the present case, the Hong Kah words were more widely republished, as they were broadcast over television.

69 The statements in both cases attacked the integrity of Mr Goh, a person of unblemished

integrity whose ability to discharge the burdens of his high office would be affected if his reputation was tarnished by false accusations. However, a distinction can be made between a statement that "B has reported to the police that A has committed an offence, and the police are likely to investigate into it", which is the nature of the defamation in *Goh v Jeyaretnam*, and a statement that "I tell you that A has done something wrong and is suppressing the truth about his actions", which is the essence of the defendant's charge against the plaintiff. The first statement is a less severe indictment in that it refers to the complaint of another person, and did not go beyond stating that the police are likely to investigate into the complaint. The second statement is more damning in that the maker is speaking from his own knowledge and has declared the actions to be wrongful.

70 I also find that aggravated damages should also be awarded in the present case. In this regard I find the malice and aggravation in the present case to be greater. The defendant made unfounded allegations about the alleged loan when he would have known that there was no loan if he had made a check before making those statements. Then he refused to retract them, and claimed justification without adducing any evidence in support of that defence. Then he treated the court proceedings as a continuation of his confrontation with the plaintiff, delaying the proceedings, and complaining that he was denied the right to legal representation when he chose not to appoint local counsel to act for him.

71 Of the factors mentioned, the specific charge of wrongdoing in relation to the alleged loan and the baseless defence of justification most clearly distinguish this case from *Goh v Jeyaretnam*, and higher damages than the \$100,000 awarded in that case are called for.

72 An award of \$300,000 is appropriate in this case. This is higher than the \$200,000 awarded in Suit No 1459 as I took into account Mr Goh's office, the number of statements made, the persistence and hostility shown when the statements were made, and the wider republication of the statements.

73 Some of the SAR's orders relating to the assessment of damages need to be examined.

74 When he entered interlocutory judgment for the plaintiff, he ordered that the defendant was to pay the plaintiff "damages (including aggravated damages) to be assessed by a Judge in Open Court".

75 It is not entirely clear what was intended by "damages (including aggravated damages)". If it meant that the damages assessed may include aggravated damages, the words are superfluous as the assessment process must necessarily include the determination whether aggravated damages are to be awarded.

76 An alternative and more likely intended meaning is that there shall be an assessment of aggravated damages. If this was the intention, the order was inappropriate. Inasmuch as the assessment process must necessarily include the determination whether aggravated damages are to be ordered, that decision should be left to the person who assesses the damages.

77 If it were open to me, I would vary the order by deleting the reference to aggravated damages. However, the SAR's order was affirmed on appeal by Rubin J, when this point was not taken up, and I cannot vary the order of my brother judge.

78 In principle, the liability for the costs of the assessment hearing and the basis for the taxation of the costs should also be reserved to the person who makes the assessment. However, in this case, the defendant had agreed under the compromise to indemnify the plaintiff for all costs and expenses incurred by him. This converted the plaintiff's claim for costs into a contractual right the

court will recognise and enforce, and the order made was correct.

[\[1\]](#)para 19 of the High Court decision

[\[2\]](#)para 56

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