Goel Adesh Kumar *v* Resorts World at Sentosa Pte Ltd (SATS Security Services Pte Ltd, third party)
[2015] SGHC 289

Case Number : Suit No 484 of 2013

Decision Date : 04 November 2015

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Abraham Vergis, Clive Myint Soe and Vanathi S (Providence Law Asia LLC) and Prakash Pillai and Clement Ong (Clasis LLC) for the plaintiff; N. Sreenivasan SC, Shankar s/o Angammah Sevasamy and Derek Ow (Straits Law Practice LLC) for the defendant; Paul Seah Zhen Wei and Kang Weisheng Geraint Edward (Tan Kok Quan Partnership) for third party.

Parties : Goel Adesh Kumar — Resorts World at Sentosa Pte Ltd — SATS Security Services Pte Ltd

Tort – Assault and battery – damages

Tort – False imprisonment – damages

Tort – Negligence

Tort – Vicarious liability

4 November 2015 Judgment reserved.

Choo Han Teck J:

1 Mr Goel is a lawyer from Australia who enjoys going to casinos. He became a Singapore permanent resident in 2010. On 21 April 2012, he went to the casino at Sentosa ("the casino") operated by the defendant, Resorts World at Sentosa Pte Ltd ("the Casino") for a night of gambling. Around 4.25am the next morning, Mr Goel got into an argument with another patron in the casino. The dispute between them escalated and Mr Goel was eventually brought to a side room by employees of the Casino. The present suit arose from the events that ensued in the side room, which are captured on close-circuit television ('CCTV') albeit without audio.

2 Mr Goel claims that he was the victim of various tortious acts — false imprisonment, assault and battery – committed by the Casino's security officers and the auxiliary police officers ("the APOs") provided by SATS Security Services Pte Ltd ("SATS") whilst they were in the side room. He claims that as a result of the tortious acts, he sustained serious injuries to his shoulder, which necessitated an arthroscopic operation on his right shoulder on 6 December 2012 and affected his quality of life and ability to work.

3 On 29 May 2013, he sued the Casino in the High Court for vicarious liability for the tortious acts of its security personnel and for negligence in failing to keep him safe and secure while within its premises. The Casino in turn brought SATS in as a third party on 19 November 2013 to seek an indemnity or contribution against it for any damages that the Casino may be liable for in this suit.

4 In addition to damages for pain and suffering and the medical expenses that were incurred for the injuries, Mr Goel is also claiming loss of income amounting to $407,280.42 from the loss of one of his customers, Mr Zeljko Ranogajec ("Mr Ranogajec"). He also seeks general damages for the loss of his year-long membership of the Casino and loss of the credit that he had accumulated in his Genting Rewards Gold Card as at 22 April 2012. Counsel for Mr Goel, Mr Abraham Vergis ("Mr Vergis") also urges the court to order aggravated and exemplary damages against the Casino for its "haughty and high-handed attitude". The damages for loss of income and aggravated and exemplary damages form the bulk of Mr Goel's claim, without which this case would not have exceeded the jurisdictional limit to be heard in the High Court.

5 The parties went into great detail on the events that occurred before Mr Goel was brought into the side room. Those events are useful as background to understand why the incident developed as it did, but are irrelevant to the issue of liability especially in respect of the alleged torts that were committed.

6 Mr Goel was described by Mr Vergis, and acknowledged by the Casino, as a "high roller" although what that meant exactly was not explored, save that he was entitled to use the "Maxim" room. Mr Goel stated in his evidence-in-chief that he enjoys "the past-time of gambling". He was a frequent patron of the casino, as evidenced by the 19 visits he made to the casino from January to mid-April 2012. He advanced from the basic membership to Silver and then to the Gold Card Membership, meaning that his privileges were increased.

7 On 21 April 2012, Mr Goel entered the casino at 4.32pm. He left and returned to the casino a few times in the hours that ensued. Finally, at about 4.14am on 22 April 2012, he went to a gaming table to play Pontoon, which he described is similar to the game of Blackjack. He sat next to two other patrons, Mr Tan Chee Kheng ("Mr Tan") and Miss Loi You Phing ("Miss Loi"). Mr Goel does not know either Mr Tan or Miss Loi. At about 4.25am, Mr Tan mistakenly took a chip that belonged to Mr Goel. That resulted in an altercation between Mr Tan and Mr Goel. From the camera footage from the CCTV (which had no audio recording), Mr Tan appeared agitated. The CCTV footage shows a standing Mr Tan gesticulating at a seated Mr Goel. Neither Mr Tan nor Miss Loi was called to testify at trial, but Ms Bridget Zhu ("Ms Zhu"), the shift manager of the Casino, testified in her evidence-in-chief that Mr Tan was angry because Mr Goel kept calling him a cheat.

8 The dispute attracted the attention of the table gaming pit manager, Mr Kenny Beh ("Mr Beh"), and the Ms Zhu, who approached them to diffuse the tension. Mr Tan and Miss Loi were eventually escorted away to a sofa where they had some refreshments while Ms Zhu talked to them. Mr Goel continued gambling.

9 A short while later (about 4.42am), Mr Tan returned to the Pontoon table and resumed his tirade against Mr Goel. Mr Beh again escorted Mr Tan away. He was brought to the entrance of the "high-rollers' section" of the casino a short distance away. Whilst this was happening, Miss Loi returned to the table and stood behind Mr Goel. At about 4.46am, Mr Goel heard some commotion behind him and became aware that Mr Tan was complaining about him. He got up and walked towards Mr Tan. The two of them resumed verbal hostilities against each other, which might have ended in violence had the staff of the Casino not stopped them. Mr Tan and Ms Loi were escorted away for the third time.

10 Five minutes later, Ms Zhu introduced herself to Mr Goel. She assured him that she would take care of his interrupted Pontoon game. She then accompanied him to a side room to discuss the incident. Mr Goel agreed. The CCTV footage shows that while Ms Zhu was away, Mr Goel exchanged words with the security officers. According to the Casino, this exchange was not a cordial one as Mr

Goel was rude to the security officers. Mr Goel denies this, stating that he merely rejected their offer to enter the side room and told them that Ms Zhu asked him to wait for her.

11 Ms Zhu returned at about 4.55am and Mr Goel freely walked with her to the side room. They were accompanied by Mr Kelvin Yong ("Mr Yong"), the "VIP" services director of the Casino, Mr Talib bin Abdul Rahim, a security officer of the Casino, and Mr Adi Mirza Sadli, ("Mr Adi"), a SATS APO. Mr Alex Lai ("Mr Lai") entered the room soon after. Mr Goel was displeased that so many security personnel were in the room. At his insistence, the security officers left the room, leaving only Mr Yong, Ms Zhu and Mr Goel behind. Mr Lai, however, returned two minutes later. After briefly speaking to Ms Zhu and Mr Yong, Mr Goel demanded to speak to the Casino shift manager whom he thought would be the most senior person on duty.

12 At about 5.03am, Mr Goel wanted to leave the room but was prevented from doing so by Mr Lai. Mr Goel became visibly agitated. For the next hour and 20 minutes until 6.25am, Mr Goel did not leave the room. In the intervening period, Mr Goel made several attempts to leave the room but was repeatedly stopped by the security officers (namely, Mr Lai and Mr Samsuddin Mahmud ("Mr Mahmud"), the Casino's security shift manager, and Mr Adi and Mr Anuar bin Kamis ("Mr Anuar") from SATS). There were periods where he appeared to have calmed down and spoke amicably to some of the Casino's staff (principally Mr Yong, Ms Zhu, and Mr Mahmud). On a few occasions, Mr Goel was seen to be speaking to the CCTV cameras, as though appealing for help from, or seeking the attention of, the security staff watching the live footage. It was undisputed that at 5.25am and again at 5.43am, Mr Goel called the police using his mobile phone in the presence of Mr Mahmud. Two police officers arrived in response to his calls at 5.49am.

13 Given that Mr Goel alleges that battery and assault were inflicted on him, it is important to examine the various scuffles (or potential acts of battery) that he had with the security officers. The footage shows that from around 5.05am to 5.16am, Mr Lai was involved in multiple brief scuffles with Mr Goel. These scuffles ensued when Mr Goel tried to leave the room, when he tried to take photographs of Mr Lai using his mobile phone and when he tried to snatch Mr Lai's identification card. Mr Vergis submits that Mr Goel also felt threatened when Mr Lai placed his hand on his belt at 5.16am because he thought Mr Lai was going to subdue him with a weapon. This is denied by the Casino, who takes the position that Mr Lai had no such intention and in any case, had no weapon with him. Mr Goel did not appear intimidated at all.

14 The next round of scuffles took place from 5.33am to 5.48am. They involved Mr Goel, Mr Adi, Mr Anuar and Mr Mahmud. At 5.34am, the CCTV footage shows Mr Goel being restrained by Mr Mahmud, and Mr Adi and Mr Anuar grabbing hold of his left and right arm respectively. The situation became more chaotic when Mr Goel again tried to force his way to the door. The scuffles between them resulted in Mr Goel being pushed against the wall on two occasions, once at 5.35am and again at 5.39am. Mr Goel proceeded to shift the furniture in the room in what appeared like an attempt to create a barricade around him. Peculiarly, Mr Goel was seen to be lying on the ground for a few seconds at 5.43am. The parties put forward different accounts for this act. Mr Vergis submits that Mr Goel was by that time resigned to his fate and laid "defencelessly on the floor" ready to receive a beating. On the other hand, counsel for the Casino, Mr N. Sreenivasan, SC ("Mr Sreenivasan"), argues that it was a provocative and vulgar act by Mr Goel.

15 At 5.49am, two police officers arrived. Mr Goel finally left the room at 6.25am accompanied by the police officers. Some of the Casino staff and APOs followed behind them on their way out of the casino. Another issue arises from this. Mr Vergis submits that the Casino deliberately made Mr Goel take a much longer exit route, which involved an escalator ride and a walk through the main gaming floor of the casino, even though there was an exit close to the side room. After the police had

recorded a statement from him, Mr Goel left the casino with deep resentment — and a notice of *Persona Non Grata* which prohibited him from entering the casino for a period of a year.

16 I will first deal with the issue of liability and will start with the tort of false imprisonment. The purpose of this tort is to protect persons from loss of liberty without lawful authority or justification. The tort is made out if the defendant directly and intentionally causes the plaintiff to be confined within a particular area delimited by the defendant without a lawful basis. It is not disputed that when Mr Goel first entered the side room with Ms Zhu, he did so voluntarily. But when Mr Goel decided that he had stayed long enough at 5.03am and wanted to leave, he was stopped by Mr Lai. Each and every time he tried to leave the room in the next hour, he was stopped by the security officers. At all times, save for the periods when the Casino staff or APOs were entering or leaving the room, the door was electronically locked. Unless it can be shown that there was any lawful basis for the detention, the tort of false imprisonment would be made out.

17 I do not accept Mr Sreenivasan's submission that Mr Goel was not unlawfully detained because it was always open for him to leave the room as long as he agreed to be immediately escorted out of the casino. Even if I resolve the factual issue of whether the offer was made in the Casino's favour, the Casino (and thus the security officers and the APOs) has no right to restrict his liberty and detain him just because he refused to follow their instructions. In fact, a similar situation occurred in the Australian case of *Walter Vignoli v Sydney Harbour Casino* [1999] NSWSC 1113 ("*Walter*") that was relied on by Mr Sreenivasan for other purposes. The defendant casino in *Walter* was held to have falsely imprisoned the plaintiff even though the latter was explicitly told that he could leave once he handed over the sum that had been overpaid to him.

18 The Casino has not proven that it has any lawful basis to detain Mr Goel. Although casino operators in Singapore are required under s 129(1)(*c*) of the Casino Control Act (Cap 33A, 2007 Rev Ed) to "take all appropriate steps" to ensure that patrons are not "drunken, disorderly or riotous", this section does not confer a legal basis or power on the Casino to detain its patrons. Part XII of the Act governs the powers of detention and enforcement that a casino operator has. The power-conferring provision, s 180(1) of the Act, states that an authorised person of the casino "may detain [a] suspected person in a suitable place on or near the casino premises until the arrival … of a police officer or an inspector" if he "suspects on reasonable grounds that [the] person [who is] within the casino premises in committing, attempting to commit or has committed any offence under Part XI or under a prescribed provision of this Act". This section does not come to the aid of the Casino for two reasons. There is no suggestion that Mr Goel had committed or was going to commit any of the offences listed in Part XI of the Act. Furthermore, the power under s 180(1) of the Act is subject to the pre-conditions in ss 180(2)(*b*) and (*c*) that the person detained must be informed of the reasons for the detention and the authorised person must immediately notify the police. Neither of this was done.

19 In the absence of any lawful basis for the detention, I find that Mr Goel was falsely imprisoned for a total of 46 minutes from 5.03am to 5.49am. Mr Sreenivasan's submission that the periods when Mr Goel was speaking amicably to the Casino staff ought to be excluded because Mr Goel made no demands to leave the room is hardly persuasive. Even though Mr Goel only left the room at 6.25am, the detention ceased when the police officers entered the room at 5.49am. I accept that the APOs were merely acting on the instructions of the Casino and had no say in the matter. Notwithstanding this, they have by their direct and intentional actions caused Mr Goel to be confined in the side room. Thus, the APOs, along with the Casino staff who prevented Mr Goel from leaving, are liable for the tort of false imprisonment against him.

20 Closely linked to Mr Goel's claim in false imprisonment are his claims in assault and battery. He

asserts that Mr Mahmud, Mr Adi and Mr Anuar used "violent and excessive force" on him "by repeatedly pinning [him] to the wall of the side room and shoving him" onto a chair on more than one occasion.

21 Both the Casino and SATS deny this. They argue that any force that was used on Mr Goel was reasonable and was necessitated by Mr Goel's aggressive behaviour. In particular, counsel for SATS, Mr Paul Seah ("Mr Seah"), submits that the APOs acted to prevent "a breach of peace". Mr Seah argues that from the perspective of the APOs who were not aware of the full picture, Mr Goel was behaving in an unruly, aggressive and agitated manner on that day. First, Mr Anuar witnessed him arguing with Mr Tan and Ms Loi, where he allegedly uttered insulting and vulgar words to provoke Mr Tan. Then, the APOs heard shouting when they were standing outside the side room and they were told by Mr Mahmud that Mr Goel was behaving aggressively. It did not help that Mr Goel did not seem to like the security officers and was allegedly rude to them on several occasions. Mr Seah submits that the APOs' impression was that Mr Goel was an aggressive and irrational person – as seen from how he laid on the ground and allegedly taunted them in a vulgar manner at 5.43am. Mr Seah argues that the APOs used legitimate force to prevent him from causing harm to a person (Mr Mahmud, or Mr Tan and Ms Loi whom the APOs were unaware had already left the casino premises) or property (the door or the electromagnetic lock).

22 The CCTV footage, though without audio recording, has been very useful in allowing me to understand the events that took place. After watching the footage and considering the evidence of the parties, I am of the view that Mr Goel, the Casino staff and the APOs involved in this case had little respect for each other. The staff thought of Mr Goel as a troublemaker. They had brought Mr Goel to the side room, which is also known as the "cooling off room", because he was behaving rudely and agitatedly. Mr Goel, on the other hand, believed that the staff acted unfairly and rudely when he (Mr Goel) was the innocent party so far as his altercation with Mr Tan and Miss Loi was concerned. Mr Goel seemed to be particularly displeased and difficult whenever the APOs or the Casino security officers were near him, and only wanted to speak to senior officers of the Casino. The Casino staff appeared to have laboured under the impression – and it seems that this is still the Casino's position at trial – that they had the right to detain Mr Goel who was being aggressive. The need to physically restrain Mr Goel arose from this common objective – to prevent Mr Goel from leaving. This, in my view, was the reason for the multiple scuffles that occurred each and every time he tried to leave. Having said that, the footage also shows that the security officers used physical force on Mr Goel only when he tried to leave the room and only for the purpose of restraining him from doing so. They appeared to have taken some care to not use any more force than was required to achieve this objective (albeit an unlawful one), and did not inflict any violence on him when he did not attempt to leave the room.

23 Notwithstanding this, the torts of battery and assault are made out. I accept Mr Vergis' submission that the actions of the security officers in particular Mr Lai, Mr Mahmud, Mr Adi and Mr Anuar, caused Mr Goel to reasonably apprehend the affliction of immediate, unlawful, force on him. Similarly, the actions of the security officers amounted to acts of battery. The acts of holding him back, grabbing his arms and the scuffles that resulted in him being hit against the wall are not conduct that are ordinarily acceptable in daily life. In my view, the security officers cannot be said to have acted with lawful excuse (*ie*, used reasonable force to prevent a breach of peace or in self-defence). Even if it is arguable that Mr Goel showed signs of violence or aggression towards Mr Mahmud at the end of the period of detention, this was occasioned by the security officers' repeated refusal to let him leave. Mr Goel may have been rude or even vulgar to the various security officers, but it does not appear that he intended to be violent or physically abusive towards any of them. As it is not pleaded in the Statement of Claim that Mr Lai committed the tort of assault or battery, I will only find Mr Mahmud, Mr Adi and Anuar to be liable.

24 But it is not the respective security officers or APOs who are sued in this case. Mr Goel sues the Casino for the vicarious liability of the wrongful acts of its security officers. The Casino, in turn, joined SATS as a third party. It is not disputed that the Casino is vicariously liable for the acts of its direct employees, *ie*, the security officers such as Mr Mahmud. The issue is whether the Casino or SATS should be vicariously liable for the acts of the APOs. The Casino tried to absolve itself from vicarious liability for the acts of the APOs by arguing that the APOs were exercising "police powers in their own right" and were not acting as agents of the Casino, and that in any case, they were SATS' employees and not the Casino's. Apart from the Casino's bare allegation, there is no evidence before me that the APOs were using their police powers in dealing with Mr Goel. I am thus only concerned with the Casino's second argument.

2 5 *Prima facie*, SATS would be vicariously liable for the tortious acts of its own employees, the APOs: *BHN (administratix of the estate of B, deceased) on her own behalf and on behalf of others v National University of Singapore and others and another appeal* [2014] 4 SLR 931 ("*BHN v NUS*"). The question is whether this presumption has been displaced. The Court of Appeal held in *BHN v NUS* that there are several ways of determining whether a party is in law the employer of the primary tortfeasor and should be vicariously liable for his actions. The court further listed various factors that were relevant in its consideration of the issue at [31] and [32] of the judgment. One way to look at the inquiry is to determine whether the contract between the two is regarded as a contract for services or a contract of services.

26 Having looked at the facts surrounding the relationship between SATS and the Casino, I am of the view that the Casino had a contract for services with SATS. SATS was responsible for paying the APOs' salaries, had the power and responsibility of scheduling and selecting the APOs that are to be on duty, and was also responsible for the training and supervising the APOs, and also had to ensure that they are of proper behaviour. Further, SATS not only retained profits of its own business but also undertook significant financial risks under the contract. It is clear that SATS was carrying on business on its own account and was an independent contractor that agreed to provide security services to the Casino through the provision of security guards. The law imposes vicarious liability on SATS for the acts of its employees. I therefore find SATS, not the Casino, vicariously liable for the tortious acts of the APOs.

27 Mr Goel's claim is only against the Casino, and not SATS. Thus, in this set of proceedings, he can only seek the damages that the security officers of the Casino are responsible for. He is of course entitled to pursue a separate claim against SATS for the APOs' tortious acts if he wishes to. The apportionment of the liability between the Casino security officers and the APOs depends on the extent of their respective responsibility for the damages that Mr Goel suffered. This usually involves a consideration of the degree of the tortfeasor's fault and the degree to which his acts contributed to the damage in question: *Downs and another v Chappell and another* [1997] 1 WLR 426.

28 The evidence shows that the APOs were carrying out instructions given to them by the security officers of the Casino. According to the letter of agreement between the Casino and SATS and the Casino's internal protocols, the APOs were expected to abide by the instructions of the Casino security staff. This was also apparent from the events that transpired that day. For example, the APOs entered and left the side room as and when they were commanded to do so by the Casino staff. In order to carry out the instructions of the security officers to keep Mr Goel in the room, the APOs had to use some amount of force to prevent Mr Goel from barging his way out of the room. This was exactly what the APOs did. The security officers of the Casino, in my view, should bear a greater degree of the fault for the events that occurred. In fact, the Casino officers should bear the full blame for the wrongful detention of Mr Goel. If Mr Goel had not been detained, there would have been no need to physically restrain him and the night would have turned out very differently. On the other

hand, the APOs were the ones who inflicted more force on Mr Goel. Notably, the scuffle with the APOs caused Mr Goel to be hit against the wall on two occasions at 5.35am and 5.39am. Although it is possible to consider liability for the three torts separately (*ie*, to consider tort of false imprisonment by itself), I do not propose to segregate them since they occurred in the same transaction. Taking all the factors into consideration, I find that the Casino officers (and thus the Casino) are to bear 80% liability for the tortious acts.

29 This may be an appropriate juncture to address the third party claim between the Casino and SATS. Mr Sreenivasan submits that SATS is bound by clause 5(c) of the contract between them to indemnify the Casino for the damages and costs that it is liable for in these proceedings. In the alternative, he submits that SATS should be liable for contribution to such extent that the court may find that the damage was caused by the APOs' actions. I have found that SATS, and not the Casino, is vicariously liable for the APOs' tortious acts. This in effect renders the third party claim redundant because given that the Casino is only liable in these proceedings for the acts of its own employees and not the APOs, there is no basis for the Casino to claim an indemnity or contribution from SATS for any damages I may order against it.

30 For completeness, I note that there was some suggestion in SATS' written submissions that a literal reading of the clause unreasonably requires SATS to indemnify the Casino for any of its losses arising from the acts of not only the employees of SATS but also those of the Casino. As pointed out by Mr Sreenivasan in his reply submissions, the clause in no way requires SATS to indemnify the Casino for the acts of the Casino's employees. It appears that the confusion may have been caused by counsel for SATS' inadvertence in misquoting the last part of the clause as stating "you or our employees" instead of "you or your employees".

31 Separately, Mr Goel claims against the Casino for negligence in the breach of its duty of care to keep him, as a patron, safe from harm. Mr Vergis submits that the Casino owes a duty of care to its patrons to ensure that they are safe while in its premises. He further submits that the Casino breached this duty by failing to adequately handle the situation and by failing to ensure that its security team is properly trained and would not use excessive force or wrongfully detain patrons. I find that the Casino has not been negligent. Even though the Casino has a duty of care towards its patrons, I find that there has been no breach of that duty. I am satisfied that the security officers, including the APOs, were adequately trained. What happened on that day could be described as a series of unfortunate events and poor judgment by the Casino staff. The incident could have been better dealt with and the Casino officers and APOs should have known that they did not have the lawful power to detain Mr Goel. The conduct of the Casino was deliberate but did not amount to negligence.

32 Having dealt with the issue of liability of the various torts, I now determine the appropriate quantum of damages that should be awarded to Mr Goel. In the present suit, Mr Goel is entitled to claim 80% of the damages from the Casino for the acts of false imprisonment, assault and battery.

33 I will first look at damages for the tort of false imprisonment. What is of concern here is not pecuniary loss but a loss of dignity and the like, because an injury to the detainee's liberty, feelings and possibly reputation has been resulted. In the case of *Thompson v Commissioner of Police of the Metropolis* [1999] QB 498, the English Court of Appeal suggested that £500 was an appropriate sum of damages for the first hour in a straightforward case of wrongful arrest and imprisonment by the police. The present case involves significantly different facts. The defendant in question is not the State police or the prison authorities, but a private entity. Mr Goel was deprived of his liberty for a total of 46 minutes (and not 38 minutes as erroneously calculated by the Casino). During the course of the detention, it was clear that he became increasingly frustrated and desperate to leave. Yet, it

must be borne in mind that the security officers would not have thought it necessary to keep Mr Goel in the room if he had not been rude or aggressive. Though this does not absolve them of tortious liability, it is a relevant to the issue of damages. The present case is more similar to *Walter*, which was cited by Mr Sreenivasan in his submissions. An award of A$30,000 was made in *Walter*, where the plaintiff had been wrongfully detained in a casino for six hours. Considering the circumstances surrounding the wrongful detention, including the fact that Mr Goel was detained in a comfortable room intended for patrons of the Casino, and also that his detention was for less than 50 minutes, I am of the view that $4,000 is a sufficient award of damages.

34 Mr Goel claims that he suffered the following injuries as a result of the security officers' tortious acts:

(a) an avulsion fracture of the greater tuberosity of his right shoulder;

(b) intrasubstance to bursal surface tear of the supraspinatus/ infraspinatus tendon;

(c) tendinosis or contusion of the suprapinatus tendon;

(d) marrow odema in the region of the greater tuberosity;

(e) Type 2 superior labral tear from anterior to posterior ("SLAP") tear of the bicep tendon; and

(f) secondary "frozen shoulder".

In layman's terms, these refer to a fracture to his right shoulder, a labral tear, a rotator cuff injury as well as a "frozen shoulder". As he experienced persistent pain in his shoulder even up till September 2012, he underwent a right shoulder arthroscopic surgery on 6 December 2012. After the surgery, his condition improved though he had to continue with physiotherapy sessions and the movement of his right shoulder remains limited. There is some dispute between the parties as to whether Mr Goel continued going for physiotherapy sessions after October 2013. Mr Goel asserts that he continues to feel constant pain and discomfort as a result of the injuries, and that he can no longer play certain sports that he used to play on a regular basis, such as ten-pin bowling, tennis and swimming.

35 It is undisputed that the avulsion fracture occurred as a result of the incident, though the Casino and SATS take the position that it is unclear who caused the fracture and at which point it was sustained. Mr Seah submits that the remaining injuries are likely to be pre-existing injuries and thus cannot be attributed to the incident. At trial, the parties each called a doctor to give expert evidence on the injuries. Mr Goel's witness was Dr Chang Wei Chun ("Dr Chang"), the Casino's was Dr Kamal Bose ("Dr Bose") and SATS' was Dr Yagappan Muthukaruppan ("Dr Yagappan").

36 Dr Yagappan testified that changes related to adhesive capsulitis (*ie*, "frozen shoulder") take weeks to months to develop and thus, the fact that the MRI results show a "diffuse thickening of the glenohumeral joint capsule" just five days after the incident suggests that Mr Goel had a pre-existing injury to his shoulder. He was also of the view that the rotator cuff injury could have been existed even before the incident. Dr Bose gave similar evidence in respect of the "frozen shoulder".

37 Dr Chang disagreed that the rotator cuff injury was pre-existing. He testified that if Mr Goel had a pre-existing tendon tear, muscle atrophy would have been noted on the magnetic resonance imaging ("MRI") because Mr Goel would not have been able to use his shoulder as much. Further, the MRI showed that there was swelling around the tendons which indicated that the injuries were

recent. Dr Chang was also of the view that the evidence was not conclusive that Mr Goel had a pre-existing "frozen shoulder". Although he acknowledged that the MRI report states that Mr Goel had thickening of the anteroinferior joint capsule, glenohumeral and coracohumeral ligaments "suggestive of adhesive capsulitis [*ie*, frozen shoulder] or fibrosis", he explained that a diagnosis of "frozen shoulder" needs to be confirmed by a clinical diagnosis noting that the patient felt pain and stiffness in his shoulder. Mr Seah submits that Dr Chang's evidence ought to be disregarded as he wrongly ignored primary evidence.

38 Having considered the expert evidence, I am of the view that Mr Goel sustained a fracture to his right shoulder as a result of the incident but some of his other shoulder injuries were likely to have been pre-existing. The scuffles likely caused those injuries to worsen, which eventually required the operation on 6 December 2012.

39 Counsel for the parties have different submissions on the figures that should be awarded for pain and suffering and loss of amenities that was resulted by the shoulder injuries. Mr Vergis submits that a global sum of $60,000 should be awarded. In support of this, he cites the following authorities: (a) *Guidelines for the Assessment of General Damages in Personal Injury Cases* (11th Ed, Oxford University Press) which states that the English courts usually award £9,100 to £13,700 in "serious" cases involving rotator cuff injuries and £5,600 to £9,100 for "moderate" injuries like "frozen shoulder"; (b) an English case where the claimant suffered wasting of her left trapezius muscle and was awarded £30,000 for pain and suffering and loss of amenities; and (c) *See Song Chang v Hairuddin bin Mohammad* [2004] SGDC 140 where $10,000 was awarded for the claimant's left rotator cuff tear. Mr Sreenivasan submits on behalf of the Casino that a global sum of $19,000 should be awarded in the light of the overlapping nature of the shoulder injuries and precedents. Mr Seah put forward various precedents showing that awards ranging from $9,000 to $15,000 are usually made in similar cases, and submits that damages here should be no more than $10,000.

40 The fracture that Mr Goel sustained is a fairly serious injury. Although I have found that some of the shoulder injuries were pre-existing, I am of the view that the incident considerably worsened these injuries. Taking into account the overlapping nature of the shoulder injuries and the precedents, I award $25,000 for pain and suffering and loss of amenities.

41 Mr Goel claims $15,990.74 for pre-trial medical expenses and $925 in transport expenses. The medical expenses were incurred across the 20 consultations, 19 physiotherapy sessions and from the surgery that Mr Goel had to go for. As these figures are not disputed by the Casino and appear to have been properly recorded, these damages are awarded as claimed.

42 As mentioned above, the bulk of Mr Goel's claim is for loss of pre-trial earnings and aggravated and exemplary damages. He claims a very substantial sum of $407,280.42 in pre-trial loss of earnings from May 2012 to December 2013. Mr Goel holds various jobs. According to him, he is a venture capitalist, a legal services provider and the Chief Financial Officer ("CFO") of a local company, TrustSphere Pte Ltd ("TrustSphere"). Mr Goel's claim in loss of earnings is unrelated to his job as a venture capitalist or the CFO of TrustSphere. The loss is allegedly due to the loss of a major client, Mr Ranogajec, whom he had been providing legal services to. Mr Goel claims that Mr Ranogajec terminated his retainer on 31 December 2012, because the quality of his work had suffered tremendously as he was not able to sleep or concentrate well due to the injuries. Further, he was "out of action" when he was on medical leave for 23 days in December 2012.

43 This was disputed by Mr Sreenivasan and Mr Seah. They highlight that this claim was added in at a very belated stage. It was first introduced when Mr Goel's affidavit of evidence in chief was filed on 4 May 2015 (almost two years after the claim was commenced), and was thereafter added into

the Statement of Claim. They also point out that the evidence for this claim is severely lacking. Mr Goel did not produce any letter or correspondence from Mr Ranogajec to substantiate his claim. He failed to explain why he could continue working as a venture capitalist and in his job at TrustSphere, which on his own account was a demanding one, despite the problems he claims he suffered. They further submit that he failed to adduce medical evidence to show that he was so significantly impaired by the injuries that his work or concentration was adversely affected.

44 This head of claim has not been satisfactorily proven by Mr Goel. The evidence of the doctors suggests that Mr Goel would have had no problems returning to his work within a few months. Although I accept that his injuries continued to cause him pain and necessitated a surgery in late 2012, it does not follow that he could not work. Mr Goel's claim fails on several levels. He has not proved that he had lost Mr Ranogajec as a client. He has also not satisfied me that the loss of this client – if that had occurred – had a causal link with the injuries. There could be many other reasons why a client may have dropped his retainer. Even if I find both these factual issues in his favour, the evidence of his accounting expert is highly problematic, casting great doubt on the figure he claims. His claim for pre-trial loss of earnings thus fails.

45 Mr Vergis made forceful submissions that I should award aggravated damages because the Casino's conduct was "contumelious, exceptional and deplorable". He submits that additional compensation should be awarded to Mr Goel for the humility, distress and insult that have been caused to him by the Casino's conduct in the commission of the torts against him and in the manner in which the Casino sought to wear him out by attrition by obstructing the course of litigation and slandering him. He argues that the Casino had discriminated against Mr Goel by treating him and Mr Tan differently, had humiliated him by making him walk through the entire casino with a large convoy behind him when there was a nearer exit. The Casino, he submits, is unremorseful despite its acts and had deliberately gone on to suppress information such as the House Rules, CCTV footage and medical reports of Dr Bose in the course of litigation. Mr Vergis also argues that the Casino had deliberately and baselessly insinuated that Mr Goel was a drunk who was creating trouble and an opportunistic individual who preyed on casinos. Such allegations, he submits, caused irreparable damage to Mr Goel's reputation.

46 The Casino denies those allegations. It maintains that it never had any intention to humiliate Mr Goel or smear his reputation. Instead, it was Mr Goel who was the aggressor on the day of the incident. As for the long exit route that was taken, the Casino asserts that Mr Goel had led the way and had chosen to take that path. It also denies that it has conducted the litigation in an obstructive manner. Mr Sreenivasan submits that quite on the contrary, Mr Goel was the one who has repeatedly threatened to ruin the Casino's brand name.

47 I decline to award aggravated damages. Neither the Casino nor Mr Goel was particularly cordial or cooperative with each other during pre-trial proceedings, which resulted in numerous interlocutory battles between them. But this is not uncommon between parties in litigation. I am also not satisfied that the conduct of the Casino officers during the material incident was so wrongful as to warrant an award of aggravated damages.

48 For similar reasons, I decline to grant exemplary damages. Unlike aggravated damages which are compensatory in nature, exemplary damages are punitive damages awarded to punish the defendant and to deter him and others from similar behaviour in the future. It was emphasised in very strong words that the court ought to award exemplary damages in this case to "put all corporations on notice that Singapore does not condone the abuse of its legal system by the wealthy and powerful against individuals and that there are consequences for those who try to disclaim their responsibilities". Even leaving aside the issue of whether exemplary damages are recognised in

Singapore, it is plain to me that there is no cause for making such an award here. Contrary to Mr Goel's assertion, this is not a case where "a multi-billion dollar government licensed corporation that wields powers with an individual's civil rights" has abused its powers and needs to be punished. It is simply one where an employer is held to be vicariously liable for the torts that its employees had committed which were in turn due to poor judgment and the way events developed on the material day.

49 Lastly, there is no ground for me to award damages for Mr Goel's loss of use of his annual membership and the loss of the credits in his Genting Rewards Gold Card. Mr Goel pleaded that the issuance of the *Persona Non Grata* Notice against him was "unwarranted and unsubstantiated". Mr Vergis argues that in any event, the Casino's internal rules stipulate that the maximum barring period for Mr Goel's alleged behaviour (presumably public nuisance) should only be six months. The decision to serve the *Persona Non Grata* notice on Mr Goel is related to the events that occurred, but is not a direct consequence of the tortious acts of the security officers. Damages arising out of the ban thus cannot be said to flow directly from the tortious acts. It is also unclear from the pleadings or submissions whether Mr Goel's claim in this regard is contractual in nature or whether its basis is that the Casino was not permitted to impose such a ban for other reasons. I have no evidence before me to substantiate either. Referring to the House Rules does little to assist Mr Goel: an act does not become a wrongful one just because it departs from an organisation's internal guidelines or even rules. I also note that s 120 of the Casino Control Act seems to give a casino operator the power to prohibit persons from entering the casino premises. In the absence of evidence and proper submissions by the parties on this claim, I need say no more on this.

50 To conclude, I have found that the Casino is vicariously liable for the tortious acts of the Casino officers. I have apportioned liability between the Casino officers and the APOs at 80% to 20%. For the purposes of this suit, only the former is relevant. This is because SATS, which I have held is vicariously liable for the APOs' acts, is not a defendant in this action. I have also dismissed the claim in negligence against the Casino. On the issue of quantum, I have made the following awards:

(a) damages for false imprisonment: $4,000;

(b) damages for pain and suffering and loss of amenities for the shoulder injuries: $25,000;

(c) pre-trial medical expenses: $15,990.74; and

(d) pre-trial transport expenses: $925.

Mr Goel's claim for loss of pre-trial earnings, aggravated and exemplary damages are dismissed. The Casino is liable for $36,732.59, that being 80% of the total damages that I have awarded (*ie*, $45,915.74).

51 I will hear submissions on costs at a later date.

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