Jeyasegaram David (alias David Gerald Jeyasegaram) v Ban Song Long David [2004] SGHC 225

Case Number : Suit 898/2003

Decision Date : 01 October 2004

Tribunal/Court : High Court

Coram : Tay Yong Kwang J

Counsel Name(s) : Andre Yeap SC, Lee Eng Beng and Chan Hoe (Rajah and Tann) for plaintiff; Davinder Singh SC, Hri Kumar, Cheryl Tan, Adrian Tan and Chelsia Wong (Drew and Napier LLC) for defendant

Parties : Jeyasegaram David (alias David Gerald Jeyasegaram) — Ban Song Long David

Tort – Defamation – Defamatory statements – Plaintiff accused of "playing to the gallery" – Whether statement defamatory in its natural and ordinary meaning – Test for determining natural and ordinary meaning of words

Tort – Defamation – Fair comment – Whether defence of fair comment made out – Factors to consider

Tort – Defamation – Justification – Whether defence of justification made out – Factors to consider

Tort – Defamation – Qualified privilege – Whether defence of qualified privilege made out – Factors to consider

1 October 2004 Judgment reserved.

Tay Yong Kwang J:

1 The plaintiff, a lawyer, is the President and Chief Executive Officer of the Securities Investors Association (Singapore) ("SIAS"). SIAS is a non-profit organisation that is actively involved in the promotion of investor education, corporate transparency and corporate governance. It also serves as a watchdog for investor rights in Singapore.

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

3 NatSteel is a Singapore-incorporated company listed on the Singapore Exchange. The NatSteel group is principally in the steel and industrial business. During the latter half of 2002 and up to January 2003, NatSteel was the subject of one of the most highly publicised corporate take-over battles in Singapore.

The plaintiff's case

4 The plaintiff's claim against the defendant is for damages suffered as a result of the publication of certain words uttered by the defendant in both the print and on-line editions of *The Business Times* ("BT") on 4 June 2003. The allegedly defamatory words were:

> Mr Ban, however, feels that Mr Gerald is "playing to the gallery."

The above words were part of an article entitled "No Resolution in Sight for NatSteel–Oei Stalemate" written by Catherine Ong. The full text of the article is repeated below:

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

listing rules and, more importantly, to provide flexibility in future capital management.

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

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

Mr Oei wasn't available for comment yesterday.

I have highlighted the alleged defamatory words in the above article.

5 The plaintiff alleged, in para 21 of his Statement of Claim:

that the said words …, in their natural and ordinary meaning, meant and were understood to mean that the Plaintiff, in commenting on the continuing opposition by the minority shareholders of NatSteel to the proposed resolutions by NatSteel for the payment of a cash dividend and for the issue of scrip dividends in future:

(a) was not discharging his duties as the CEO/President of SIAS in an unbiased, impartial and objective manner in supporting the opposition by the minority shareholders of NatSteel to the proposed resolutions;

(b) had caused SIAS to support the said opposition by the minority shareholders of NatSteel for the dominant purpose of appeasing and gratifying the minority shareholders and/or the public;

(c) had caused SIAS to support the said opposition by the minority shareholders of NatSteel for the dominant purpose of displaying showmanship, and/or of enhancing his personal popularity and reputation amongst the minority shareholders and/or the public;

(d) had caused SIAS to take a position without impartially, seriously and diligently assessing the merits of that position; and

(e) had not acted professionally, credibly and properly as the CEO/President of SIAS in causing SIAS to issue the said statement.

6 The plaintiff claimed that the words in issue caused him considerable distress and injured his dignity, character and reputation. By a letter of demand dated 25 August 2003 from his solicitors to the defendant, the plaintiff demanded that the defendant retract the allegedly defamatory statement made in the BT article, apologise and pay him damages and legal costs. The defendant's solicitors replied, rejecting the plaintiff's contentions and demands as baseless. The defendant's failure to retract the statement and to apologise, the plaintiff claimed, increased the hurt to his feelings and aggravated the injury done to him.

7 I now highlight the matters raised by the plaintiff in his Affidavit of Evidence-in-Chief and the events that led to the publication of the BT article of 4 June 2003.

8 In June 1999, the plaintiff founded SIAS in response to the freezing of the Central Limit Order Book ("CLOB") shares by the Malaysian authorities in September 1998. Some 49,800 Singaporeans

who held CLOB shares joined SIAS to support his cause to free the CLOB shares. After nine months of active negotiations, he believed his "initiative and leadership" facilitated the final settlement which led to the release of the shares.

9 After resolving the CLOB issue, SIAS continued to play an active role in standing up and speaking out for the rights and interests of minority shareholders. It was instrumental in resolving many high-profile corporate governance and transparency issues relating to listed companies. The plaintiff gave seven examples of such and produced the newspaper reports on those cases. SIAS's membership has now increased to about 63,000.

10 The plaintiff said he was accorded widespread recognition and that he gained a strong reputation both in Singapore and in the region for being a champion of minority shareholders' rights. He reproduced extracts from articles about him appearing over the last five years in the English newspapers in Singapore, *Forbes Global Magazine*, *Far Eastern Economic Review*, *The Edge* and the *CFO Asia Magazine*. These described him as "a confident and fearless fighter" who "no longer minces his words", "an activist who's willing to 'walk the talk' ", "a former lawyer with an unflappable demeanour" who "also has the aggressive cross-examining technique of a star prosecutor", "the face of shareholder activism in Singapore" who "has been on the cover of international magazines like Forbes and CFO Asia and has appeared on CNN and BBC", someone whom retail investors loved and who "vowed to become a permanent watchdog to keep corporate malfeasance in check". The publications also referred to him as "a gadfly with an eagle eye for corporate hanky-panky", someone who "is such a power in the stock market that he is often given the royal treatment companies normally reserved for major fund managers such as Templeton's Mark Mobius" and who had proclaimed, "We will not be bullied. If a company doesn't back down, we will sue" and "I got fire in my belly".

11 In addition to those publications, the plaintiff said his work was also recognised by the broadcast media such as Channel News Asia, CNBC Asia Pacific and News Radio 93.8, which had requested him to appear on their programmes.

12 Being the President and Chief Executive Officer of SIAS, he followed the developments in the take-over battle in respect of NatSteel as reported in the media. In October 2002, 98 Holdings announced a voluntary conditional cash offer for NatSteel shares at $1.93 per share. That price was increased several times by 98 Holdings to finally reach $2.06 and the closing date of the offer was also extended several times to, ultimately, 24 January 2003.

13 During the period of the take-over battle, NatSteel issued circulars to its shareholders which contained the advice of its independent financial adviser and the recommendations of the independent directors. The principal recommendation was for the shareholders to accept the offer by 98 Holdings.

14 One of the largest minority shareholders was Sanion Pte Ltd ("Sanion"), a company controlled by Oei Hong Leong, a well-known businessman. Sanion progressively increased its shareholding in NatSteel during the take-over saga to just below 30%. Sanion did not accept any of the offers by 98 Holdings.

15 On 10 January 2003, 98 Holdings obtained enough acceptances to bring its shareholding in NatSteel to above 50%. Its offer thus became unconditional and it was extended for a final two weeks to 24 January 2003.

16 In the meantime, the plaintiff read an article by Lee Han Shih entitled "Latest NatSteel

Results Crucial" in the BT of 1 January 2003 which pointed out that NatSteel's results for the third quarter of 2002, which had not been disclosed at that stage, would be much better than many had expected. The article also noted that NatSteel had some $600m in its coffers and that the release of the results would enable the shareholders to make a better judgment on the value of their shares.

17 The plaintiff agreed with the views of the writer. On 7 January 2003, SIAS therefore wrote to the President of NatSteel, Ang Kong Hua, calling for the release of the results for the last two quarters of 2002 to help minority shareholders better decide on the appropriate action to take at that critical juncture of the take-over offer by 98 Holdings. SIAS also asked why NatSteel had failed to apply in time to the Ministry of Trade and Industry for an extension of certain anti-dumping orders of steel bars from Malaysia and Turkey with the consequence that the said Ministry turned down NatSteel's application. According to NatSteel's announcement of 23 December 2002, such failure to obtain an extension was expected to have an adverse impact on the prospects of the NatSteel group's steel business in Singapore.

18 On 8 January 2003, NatSteel replied to SIAS stating that its board was not aware of any material developments which would have necessitated further revisions to a Revised Statement of Prospects on the projected financial results of the NatSteel group for the second half of 2002, which had been issued as part of its circular dated 6 November 2002. NatSteel's reply was released to the public and was reported in the BT.

19 The plaintiff believed that he had caused embarrassment to the board of NatSteel by questioning whether proper disclosure was being made by the said board. This incident, he alleged, formed part of the series of events which led to the defendant's malice and ill will towards him.

20 On 14 January 2003, the plaintiff assured Oei Hong Leong at a lunch meeting that SIAS was happy to champion issues relating to minority shareholders' rights. Oei Hong Leong joined SIAS at that meeting. The next day, Sanion issued a press release stating that it was a "stayer" and did not intend to accept the offer by 98 Holdings notwithstanding that it had become unconditional. Sanion further stated that it was encouraged by the plaintiff's assurance and that this contributed to its decision to reject the offer by 98 Holdings. These events were reported in the press.

21 The plaintiff believed that the extensive media coverage of the take-over battle and the keen rivalry between NatSteel and 98 Holdings on the one hand and Sanion on the other caused some of the unhappiness generated thereby to spill onto him. Although he took a neutral position in the saga, he believed that the defendant could have been under the impression that he was taking sides with Sanion in trying to thwart the bid by 98 Holdings and that this contributed to the malice and ill will that the defendant felt towards him.

22 On 16 March 2003, after 98 Holdings had become the controlling shareholder of NatSteel, NatSteel announced its full year results for 2002. The board decided to recommend a total dividend payment amounting to $1 per NatSteel share, comprising a final dividend of $0.55 for 2002 and an interim payment of $0.45 for 2003.

23 On 2 May 2003, the NatSteel board issued a circular to the shareholders to convene an extraordinary general meeting ("EGM") on 28 May 2003 to pass resolutions to approve the following:

(a) the payment of a special dividend of $0.55 per share ("the special dividend resolution"), contingent upon the passing of the resolution in (b) below and a resolution relating to the provision of financial assistance;

(b) amendments to the memorandum and articles of association of NatSteel ("the M & A resolution"); and

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

24 The special dividend resolution and the scrip dividend resolution were ordinary resolutions which could be passed by a simple majority of shareholders. The M & A resolution was a special resolution which could only be passed if at least 75% of the votes were in favour. Sanion was therefore in a position to block the M & A resolution as it held almost 30% of the shares in NatSteel.

25 The plaintiff and SIAS were alerted to the proposed resolutions by several members of SIAS who were shareholders of NatSteel. The shareholders included retirees who depended on the dividends for their livelihood and who therefore regarded the dividends to be of paramount importance. Upon studying the proposed resolutions, the plaintiff noted that none of the proposed amendments under the M & A resolution was necessary for the purpose of the special dividend resolution. The scrip dividend scheme was not intended to apply to the special dividend to be paid but was meant for future dividends. There was therefore no good reason to link the special dividend resolution to the approval of the scrip dividend resolution and the M & A resolution. The plaintiff was concerned that the minority shareholders were being pressurised to vote for the other resolutions if they wanted the special dividend to be paid to them. Further, if Sanion voted against the M & A resolution, there would be no special dividend as a consequence.

26 Accordingly, the plaintiff wrote to the NatSteel board on 14 May 2003 to express SIAS's concerns as to the implications of the "unnecessary linkage between the resolutions" on the minority shareholders of NatSteel. SIAS suggested that the linkage be removed.

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

28 Not convinced by the board's explanation, the plaintiff decided to make public SIAS's opinion on the purported rationale for the linkage of the resolutions. That same day, he issued a press statement in his capacity as President and Chief Executive Officer of SIAS as he wanted the concerns of the minority shareholders to be adequately considered and addressed by the board.

29 The press statement claimed that the board had failed to justify the linkage of the resolutions and that its reasons were difficult to understand. SIAS reiterated its call to the board to de-link the resolutions as the exercise was doomed to failure, since it was clear by then that Sanion would not support the resolutions. SIAS stated that the linkage only gave rise to unnecessary controversy and prejudiced the minority shareholders' expectation for the special dividend payment.

30 On 22 May 2003, Sanion issued a press release asking that the linkage of the resolutions be removed. It stated that it would vote against the scrip dividend resolution and the M & A resolution and would take steps to convene another EGM to seek approval for the payment of the special dividend without any condition.

31 On 26 May 2003, the plaintiff requested Ang Kong Hua, the President and Chief Executive Officer of NatSteel, by e-mail to allow three of SIAS's committee members to attend the EGM as observers. Ang Kong Hua replied the same day granting the request and welcoming SIAS to attend the EGM.

32 On 28 May 2003, NatSteel held its EGM. The plaintiff attended as an observer in order to hear personally the development of events. If appropriate, he was prepared to make his opinion known and to persuade the NatSteel board to remove the linkage of the resolutions. He was shown to a seat in the front row on the right side of the meeting hall. The defendant also attended the EGM as a member of the board.

33 When the EGM began, the representative of 98 Holdings proposed amendments to the resolutions by introducing a "whitewash" solution to try to address Sanion's concerns about the potential dilution of its shareholding. We need not be concerned about the detailed working of this proposed "whitewash" solution in this trial. Sanion's representative objected to the amendments, contending that they were being proposed at the last minute and that Sanion needed to take legal advice on the amendments. The EGM became boisterous and the chairman did not appear to be able to control the proceedings. Shareholders were angry and were shouting at the board members. Several of the shareholders were shouting angrily that they were being cheated of their dividends. Some were calling for the de-linking of the resolutions.

34 The plaintiff then spoke to the chairman from where he was seated to offer some suggestions as to what to do as he felt that the chairman was losing control of the proceedings. When the chairman looked in the plaintiff's direction, the latter pointed to the microphone and gestured to the former whether he wanted the plaintiff to speak. The chairman nodded. The plaintiff then went up to the microphone to speak as an observer.

35 He thanked the chairman for the opportunity to speak and advised the shareholders that they should not be questioning the board on why it was putting up the resolutions or blaming the board for having done so as it was merely carrying out the request of the majority shareholder. He stated that it did not matter to the small investors whether 98 Holdings or Sanion had their own agenda. What mattered to them was that they would get the dividend. He then suggested that one of the small investors propose that the link be removed and stated SIAS's objection to the linkage of the resolutions. He further noted that the board had not accepted SIAS's position and commented that "when elephants fight, the ants get trampled". He asked the shareholders not to complicate the issue as the question was whether they should be voting for the resolutions. He then asked them whether they wanted the dividends and they responded with a resounding "yes".

36 As the EGM was getting more disorderly, the plaintiff reminded the shareholders to conduct themselves with decorum. He then stated that the special dividend resolution should not be linked to the other resolutions as there was no legal requirement mandating such. He then asked the shareholders whether he was right in saying that that was what they were angry about and they responded with an emphatic "yes".

37 The board then suggested that the EGM be adjourned so that the representative from Sanion could take instructions and seek legal advice. The representative agreed with the proposal to adjourn

the EGM. There was then an exchange between him and the board on the length of the adjournment. At this juncture, the plaintiff stated that SIAS would be happy to invite both Sanion and 98 Holdings to SIAS's office to discuss the matter. The shareholders applauded his proposal. The EGM was then adjourned for a week.

38 On 30 May 2003, the plaintiff sent an e-mail to Ang Kong Hua of NatSteel to ask if they could explore a solution together. He got a reply on 1 June 2003 saying that Ang Kong Hua was busy the next day but would contact him. On 2 June 2003, the plaintiff followed up with another e-mail to ask if the board was keen to meet him. Subsequently, he spoke to Ang Kong Hua over the telephone and was told that the board could not accommodate such a meeting as there were legal issues involved.

39 The plaintiff did not attend the adjourned EGM on 4 June 2003 as he had other commitments. One of the officials of SIAS attended as an observer. None of the resolutions proposed was approved at that EGM.

40 On 31 July 2003, another EGM was held by NatSteel. This EGM was requisitioned by 98 Holdings. This time, the special dividend resolution was not linked to the other proposed resolutions and it was passed.

41 Reverting to the BT article of 4 June 2003 which appeared on the day of the adjourned EGM, the plaintiff stated that the article quoted a SIAS statement which was communicated by him orally and spontaneously over the telephone to Catherine Ong, the writer of the article in issue. It was not a prepared statement. In response to the statement, the article quoted the defendant's allegedly offending words uttered in respect of the statement.

42 The plaintiff claimed that the words in issue were "especially hurtful towards my reputation and character in view of my role as a public figure who receives widespread and constant coverage and exposure in the local and regional press and broadcast media". He claimed that the words also had an adverse effect on the integrity of his office in SIAS, undermining his ability to negotiate with companies, in particular, his ability to champion minority shareholders' rights with the boards of public listed companies. Some SIAS members felt so outraged by the words against him that they urged him to take legal action against the defendant.

43 The plaintiff claimed that the defendant knew his words would be published in the BT and would therefore reach a wide audience here and in the region. He alleged that the words were "published at a time calculated to cause the most damage to my reputation" as the BT article appeared in the very morning of the day on which the adjourned EGM was to be held. Some, if not most, of the NatSteel shareholders would read the BT before attending the adjourned EGM at 2.00pm. The defendant's words were intended to attack the plaintiff's integrity and character for the ulterior motive of influencing the minority shareholders to disregard the position taken by SIAS and the plaintiff. This, the plaintiff contended, was consistent with the personal malice and ill will that the defendant bore towards him. He claimed that the defendant disapproved strongly of his vocal opposition to the linkage of the resolutions and wanted to "mar my credibility on the day of the adjourned EGM before the NatSteel shareholders".

44 The plaintiff claimed that the defendant had no basis or good reason to have uttered the words complained of. He noted that the defendant had initially denied having said those words in his Defence filed on 25 September 2003 and only changed his mind some seven months later in his Amended Defence. The plaintiff asserted that there was nothing in the SIAS statement reported in the BT article of 4 June 2003 that could have suggested that he was "playing to the gallery".

45 His statements and conduct at the EGM of 28 May 2003 were consistent with the position that SIAS had maintained all along, which was to call on the NatSteel board to remove the linkage of the various resolutions in view of the prejudice such linkage would cause to minority shareholders. The plaintiff was also concerned that such linkage, if successful in NatSteel's case, would set a bad precedent for other public companies. There was no issue of the plaintiff wanting to boost his own popularity and reputation or abusing the occasion to glorify himself by speaking at the said EGM and no such suggestion was made by the board at the EGM itself.

46 In addition to the reasons mentioned earlier, the plaintiff believed the defendant harboured malice and ill will towards him because he had spoken publicly against the linkage. This stand was contrary to and was likely to undermine 98 Holdings' intentions and objectives. The plaintiff had also agreed with Sanion's concern that the implementation of the scrip dividend scheme would dilute its shareholding in NatSteel. Since Sanion held marginally less than the trigger level of 30% of the shares, it could not take any scrip dividend without being at risk of having to make a mandatory take-over. On the other hand, if the other shareholders opted for scrip dividend, Sanion's shareholding would be diminished.

47 The plaintiff's comments and public support for Sanion's position "would have caused considerable distress, embarrassment and annoyance within 98 Holdings and its shareholders and representatives, including the defendant". The plaintiff therefore believed that the defendant said the words complained of maliciously as a personal attack on him.

48 In his Second Affidavit of Evidence-in-Chief, the plaintiff stated that although Oei Hong Leong had also commenced an action in defamation (Suit No 670 of 2004) against the same defendant together with others, the only similarity in both actions was that they arose out of the same BT article. The plaintiff knew Oei Hong Leong, a recent member of SIAS, personally but there was no collusion between the two of them in commencing these actions. The plaintiff also stated that the words complained of related to the statement he had given to the writer of the BT article of 4 June 2003 and to his conduct at the EGM of 28 May 2003: see para 5 of the said Second Affidavit set out in full at [72], *infra*. However, his counsel's submissions sought to explain that para 5 "was intended to set out the defendant's pleaded case" and to emphasise the different contexts in which the alleged defamatory statements in the plaintiff's suit and in Oei Hong Leong's suit were made. It was argued that para 5 was not expressed or intended to be an admission or acknowledgement by the plaintiff.

49 The plaintiff accepted the contents of the transcript of the proceedings at the EGM of 28 May 2003 but he did not agree with the comment "(interrupting)" inserted by the transcriber in some instances where he rose to speak. There was applause from the shareholders at certain stages of his speech but that was because they appreciated the points he was making. Further, they also applauded another speaker from the floor. Any laughter that took place was not worked up by the plaintiff – the shareholders were simply amused although the plaintiff was speaking seriously and was not joking or laughing as he spoke. He acknowledged that there were instances where he was addressing the shareholders rather than the board of NatSteel. If he was indeed playing to the gallery, the board ought to have stopped him from speaking further. He did not need this incident to boost his popularity as he was already a popular man.

50 The plaintiff's preferred style of going about his job was to communicate with the management of a company in a gentlemanly fashion behind closed doors and not to embarrass the management in public. If the management refused to meet SIAS's officials, as in the case of NatSteel, SIAS would then campaign through the press. He did not deny that he used the media to reach out to SIAS's members and to canvass corporate issues. However, he did not use the media to encourage

others to join the association. He also did not use the media to embarrass any company publicly.

51 The plaintiff was aware that Sanion voted against the M & A resolution even after the resolutions had been de-linked but he saw no reason to criticise a shareholder exercising its right to vote.

52 Asked why he took almost three months to issue a letter of demand to the defendant in respect of the words complained of, the plaintiff replied that he was agonising over this matter with his wife as their faith did not encourage law suits. His wife advised him to leave the matter aside for a while and he did that for a couple of weeks. After that, he went to consult the law firm of M/s Rajah & Tann, which had been providing free legal services to SIAS and which was coincidentally also acting for Oei Hong Leong in his defamation claim then. The plaintiff denied that he had taken legal action in order to support Oei Hong Leong's cause.

53 The plaintiff called Denis Walter Distant ("DWD") as a witness to give a fair, accurate and independent view of the events which transpired at the EGM of 28 May 2003 and the circumstances under which the plaintiff addressed the EGM. DWD was not a shareholder of NatSteel at the material time but decided to go to the EGM to see the action. He managed to obtain a proxy from a shareholder.

54 DWD, who joined SIAS in early 2003, testified that the shareholders, other than Sanion and 98 Holdings, became increasingly upset and angry as the EGM progressed because of the way the resolutions were structured. There were many shouts of anger directed at the NatSteel board and the chairman of the EGM appeared to be losing control of the proceedings. About 45 minutes into the EGM, the plaintiff stepped to the front of the auditorium to speak. It seemed to DWD that the chairman was seeking the plaintiff's assistance to calm the shareholders down.

55 The plaintiff reminded the shareholders what the real issues were and encouraged them to behave with proper decorum. He "was not playing up to any of the shareholders" and was not taking sides. He was speaking as the President and CEO of SIAS, protecting the interests of minority shareholders.

56 When the plaintiff was speaking, there were laughter and applause because he was "a very charismatic and humorous man but this did not mean that the plaintiff was deliberately boosting his own popularity". He brought some semblance of order back to the EGM and showed his conciliatory and constructive approach by offering to be a peacemaker between Sanion, 98 Holdings and NatSteel. That was the usual manner in which he assisted in the resolution of minority shareholder disputes in other cases. DWD had much respect for the plaintiff.

57 DWD explained under cross-examination that he did not have any discussion with the plaintiff before going for the EGM. Indeed, he was surprised to see the plaintiff there. DWD accepted that the proposed scrip dividend scheme was a good thing for NatSteel, or any other company, to have. He also agreed that the plaintiff was addressing the small shareholders and not Sanion or the board when he asked the question whether they wanted the cash dividend. He did not address the so-called "whitewash" solution proposed by 98 Holdings as those small shareholders would not understand what that technical corporate matter was all about. Some thought it was about eyewash.

58 DWD concluded his testimony by saying that he had known the plaintiff for about two years and that the plaintiff was a "good chap".

The defendant's case – no case to answer

59 One week before this trial was scheduled to commence, the defendant took out an application to determine the meaning of the words in issue as a preliminary issue. As the application was so close to the trial dates, it was fixed for hearing on the first day of trial. As if in retaliation, a few days later, the plaintiff took out an application to strike out parts of the Amended Defence should I rule that the words in issue were defamatory in their natural and ordinary meaning. That application was also fixed to be heard on the first day of trial. On that day, I informed both parties that it would be pointless to proceed with the applications at the stage we were in because my decision might not result in a final determination of the suit. Should I rule in the defendant's favour and dismiss the action and should the plaintiff subsequently succeed on appeal, the parties would have to come back for trial again.

60 The defendant and his two intended witnesses filed affidavits of evidence-in-chief but these were not used because of the developments described below. At the start of the trial, the parties agreed that the whole of the evidence adduced in Suit No 670 of 2003, where Oei Hong Leong is the plaintiff and the present defendant is one of the defendants, be adopted for this trial so that the undisputed common facts would not need to be revisited. I was also the trial judge for Suit No 670 of 2003 which was heard shortly before the present trial.

61 At the close of the plaintiff's case, the Defence decided to submit that there was no case to answer and undertook to call no evidence. As a result, the parties then agreed the present case would stand on only the evidence adduced here together with the six volumes of agreed bundles of documents and the defendant's core bundle of documents. The affidavits of evidence-in-chief of the defendant and his intended witnesses were thus not adduced in evidence.

62 The defendant submitted that there was no case to answer because:

(a) the words in issue are not in their natural and ordinary meaning defamatory of the plaintiff;

(b) even if the words are in their natural and ordinary meaning defamatory of the plaintiff, the defamatory imputation therein is justified on the plaintiff's own evidence;

(c) the words are fair comment on a matter of public interest and the plaintiff has not proved malice on the defendant's part; and/or

(d) the words were published on an occasion of qualified privilege and the plaintiff has not proved malice on the defendant's part.

The decision of the court

63 The first issue that the court has to decide is whether the words complained of bear the defamatory meaning pleaded by the plaintiff or some lesser defamatory meaning. I have already set out what the plaintiff said the words meant. The defendant pleaded that the words in issue, "in their natural and ordinary meaning and in their proper context, meant and were understood to mean that the plaintiff was attempting to gain the strong approval and/or support of NatSteel's minority shareholders on the issue of the linkage".[1]

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

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

6 5 *Longman Dictionary of Phrasal Verbs* (Longman, 1983) states, in respect of the phrase "play to the gallery":

> *derog* to perform or behave so as to win the favour of those with least judgment …

The Cambridge International Dictionary of Idioms (Cambridge University Press, 1998) defines the phrase "play to the gallery" as:

> to spend time doing or saying things that will make people admire or support you, instead of dealing with more important matters.

The phrase has also been equated to "try to gain popular favour, [especially] by crude appeals" (*Collins Concise Dictionary* (HarperCollins Publishers, 21st Century Ed, 2001)) or "to attempt to appeal to the popular taste, as opposed to a more refined or esoteric taste" (*Webster's Encyclopedic Unabridged Dictionary of the English Language* (Portland House, 1997)). *Collins COBUILD Dictionary of Idioms* (HarperCollins Publishers, 2nd Ed, 2002) offers the following explanation:

> If you say that someone such as a politician *is playing to the gallery*, you are criticizing them for trying to impress the public and make themselves popular, instead of dealing seriously with important matters. [emphasis in original]

It adds a note to explain:

> The gallery in a theatre is a raised area like a large balcony, that usually contains the cheapest seats. In the past, the poorest and least educated people sat there. Actors and other performers found it easier to get applause from them than from the other members of the audience.

66 It is clear that when one uses the words "playing to the gallery" to describe another person's conduct or speech, one is usually not paying that person a compliment. The words imply that the person referred to enjoys attention and applause. The words in issue are not in the same genre as words such as "establishing rapport with the audience" or "connecting well with his listeners", which would show admiration and appreciation for that person's communication skills.

67 However, the common theme of the above definitions is the focus on the manner of doing or saying things. The words in issue do not impugn a person's integrity or belief in doing or saying those things. In other words, they do not imply that the person does not believe in what he is doing or saying. The words convey the speaker's opinion of that person as someone who concentrates more on form and flamboyance than substance and subtlety. Saying a person has rather more form than

substance is no worse than saying a person has a lot of substance but little form. The former implies a dramatic, stylish showman while the latter conjures up an image of a dull, soporific speaker. However, it seems to me that the remarks in both instances, while not complimentary, are not defamatory. I do not think, therefore, that merely saying a person is playing to the gallery defames him.

68 Do the words in question convey the meanings pleaded by the plaintiff? They do not impugn his impartiality and objectivity or suggest in any way that he was biased or was not diligent. The words also do not mean that the plaintiff or SIAS did not believe the stand taken in the statement or that the plaintiff did not act professionally, credibly and properly. The meaning conveyed in the context of the BT article of 4 June 2003 is that the plaintiff was reiterating what was already known to be the stand of the minority shareholders so as to enhance his image of being the champion of minority shareholders. There was no new argument canvassed. There was no suggestion that SIAS did not believe in that statement which was made more for dramatic effect than to carry the debate further. As *Gatley on Libel and Slander* (Sweet & Maxwell, 10th Ed, 2004) puts it at para 2.9:

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

Similarly, it has been said that insults which do not diminish a man's standing among other people do not found an action for libel or slander, although the exact borderline may often be difficult to define: *Berkoff v Burchill* [1996] 4 All ER 1008. The words said of the plaintiff may not be complimentary but they do not injure his character or reputation or question his integrity. In the circumstances, I do not think the plaintiff was defamed in the way pleaded or at all.

69 Counsel for the plaintiff relied on *Goh Chok Tong v Jeyaretnam Joshua Benjamin* [1998] 1 SLR 547 in submitting that a similar phrase "directed at the gallery" was used to describe defence counsel's objectionable conduct in cross-examination. In that case, Rajendran J said, at [199]:

> It is clear, by the failure to call evidence to support the allegations, that the questions were directed not towards assisting the court in determining the issues before it but directed at the gallery and the press in order to denigrate the Prime Minister and the way he governs Singapore. For such conduct, aggravated damages is payable.

A counsel's duty in court is not to ask irrelevant, sensational questions or to make popular, quoteworthy speeches but to address and assist the court on the issues. It was little wonder then that such conduct as described by the judge met with his disapproval. The passage cited does not suggest that playing to the gallery is objectionable conduct attracting legal sanctions in every situation.

70 I agree with defence counsel's submissions that the worst that could be said of the words in issue is that they alleged that the plaintiff had engaged in theatrics. Assuming that calling a person a dramatic showman with more style than substance amounts to defamation, was the defendant justified in making that remark about the plaintiff?

71 In *Sin Heak Hin Pte Ltd v Yuasa Battery Singapore Co Pte Ltd* [1995] 3 SLR 590 at 598–599, [31], it was held:

> In order to establish the defence of justification, a defendant must prove that the defamatory

> imputation is true and he must prove the truth of the very imputation complained of. He must also prove the truth of all the material statements in the libel, *ie* he must justify everything that the libel contains which is injurious to the plaintiff.

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

72 The plaintiff alleged that the words in issue were only uttered in respect of the SIAS statement referred to in the BT article of 4 June 2003. The defendant disagreed. He pleaded that the words were not spoken as a comment on only the SIAS statement but related to the plaintiff's conduct at the 28 May 2003 EGM as well. He relied on the plaintiff's Second Affidavit of Evidence-in-Chief as having acknowledged that fact. The plaintiff, in that Affidavit, said at para 5:

> The contexts in which the statements complained of were made are also different. In brief, the defamatory statement in the Oei Suit was against Mr Oei and criticized him for being "irrational" and "obstructive" in opposing the resolutions tabled at an Extraordinary General Meeting on 28 May 2003 ("EGM") of NatSteel Ltd ("NatSteel"). On the other hand, the defamatory statement made against me criticizes me for "playing to the gallery", meaning that I was not being objective and impartial. This was in relation to the statement I had given to Catherine Ong, the Business Times journalist of the offending article, and my conduct at the EGM. As I was at the EGM not a shareholder of NatSteel but as an observer, my conduct at the EGM is obviously different from Mr Oei's conduct as a minority shareholder at the EGM.

The plaintiff was responding to the defendant's supplemental Affidavit of Evidence-in-Chief which sought to incorporate the defendant's Affidavit of Evidence-in-Chief in Suit No 670 of 2004 where he was sued by Oei Hong Leong. In my opinion, the plaintiff has accepted that the words in issue related to the SIAS statement in the BT article of 4 June 2003 as well as his conduct at the EGM of 28 May 2003. He was not merely stating what the defendant had alleged. He was also stating his understanding of what the words referred to. Further, it could not be said, as the plaintiff has submitted, that there was no reference whatsoever to the EGM of 28 May 2003. The defendant's words relating to Oei Hong Leong alluded to it and so did the first paragraph and the second and third last paragraphs of the BT article.

73 The transcript of the EGM of 28 May 2003 showed that the plaintiff, although permitted to speak by the chairman, addressed many of his remarks to the minority shareholders sitting behind him instead of the board of directors in front. He did not contribute to the debate on the proposed "whitewash" solution as he was not interested in it. To him, it was not really a solution to the linkage and, in any event, it was a matter for Sanion, not the other minority shareholders, to consider.

74 The plaintiff asked rhetorical questions such as whether the minority shareholders wanted cash. That, without a doubt, was calculated to elicit a resounding "yes!" from the audience. His speech was demagogic and roused the audience from its disunited cacophony to a united chorus of dissent. There was laughter and applause. It could be, as his witness DWD said, due to the fact that the plaintiff was a charismatic and humorous speaker but those are also qualities of speakers who know how to galvanise an audience. If the plaintiff had considered the laughter and applause out of place and distracting the message in his professed serious speech, he could have appealed to his audience to refrain from laughing and cheering as he spoke. Instead, his words continued to build the minority shareholders' chorus into a crescendo. He added to the action, he enhanced the entertainment. In my view, such a public performance by the plaintiff could, without any distortion of language, be described as playing to the gallery.

75 On 3 June 2003, when the plaintiff spoke to the reporter and gave the SIAS statement that was subsequently quoted in the BT article of 4 June 2003, it was Sanion's response that all concerned were interested to know. SIAS's and the minority shareholders' position was already public and nothing had changed where SIAS was concerned. The statement added nothing to the debate. It was clearly a reiteration made just for dramatic effect and to remind the minority shareholders who was championing their cause. The defendant was therefore also justified in saying that the plaintiff was playing to the gallery in issuing that statement.

76 The defence of qualified privilege accords a right to a person whose character or conduct has been attacked to answer such attack. Any defamatory statements he may make about the attacker will be privileged provided they are published *bona fide* and are fairly relevant to the accusation made. The law justifies a man in repelling a libellous charge by a denial or an explanation. He has a qualified privilege to answer the charge and if he does so in good faith, and what he published is fairly an answer and is published for the purpose of repelling the charge and not with malice, it is privileged, though it be false: see *Gatley on Libel and Slander* ([68] *supra*) at para 14.49.

77 The defence is also available where the person who makes a communication has an interest or a duty, legal, social or moral, to make it to the person to whom it is made, and the person to whom it is made has a corresponding interest or duty to receive it: see *Adam v Ward* [1917] AC 309.

78 The plaintiff submitted that the defence of qualified privilege could not succeed if the defendant knew that the SIAS's criticism was valid and justified, as the privilege did not attach to a response to what the defendant knew to be a justifiable attack. The plaintiff said the evidence showed that SIAS was right to have objected to the linkage of the resolutions as the special dividend of 55 cents was a separate and independent issue from the other resolutions. The linkage, it alleged, was nothing more than a tactical move by 98 Holdings directed at Sanion and this was confirmed by 98 Holdings' requisition for the 31 July 2003 EGM on the same day that the linked resolutions were defeated at the 4 June 2003 EGM. No linkage was proposed at the 31 July 2003 EGM.

79 However, the issue on 3 June 2003 was not so much the correctness of the linkage but whether Sanion accepted the proposed "whitewash" solution. The 28 May 2003 EGM was adjourned for Sanion to consider the proposal. Nevertheless, the plaintiff issued a statement rehashing the issues debated on at the last EGM. In the SIAS statement issued by the plaintiff and published in the BT article of 4 June 2003, he attacked the board of directors of NatSteel in public by stating that the minority shareholders were outraged by the board's failure to keep its promise of paying the remaining 55 cents in dividend. The defendant was entitled to respond, as acknowledged by the plaintiff, and he did respond to the attack when the SIAS statement was read out to him by the reporter.

80 The response could not be said to be disproportionate to the attack and unreasonable in the circumstances. The defendant was a member of the board of directors of NatSteel. He merely criticised the plaintiff's manner of making his points and nothing more. Further, it would be highly artificial to say that the defendant's response was against the plaintiff personally when it was SIAS which made the statement to the press. The plaintiff referred to himself and SIAS interchangeably during the trial. One of the press articles (BT, 21 June 2003) cited by him in his evidence pronounced him as the face of shareholder activism in Singapore. He made the statement of 3 June 2003, he testified, spontaneously and not through a prepared text. That showed he was the alter ego of SIAS and the defendant was not wrong in directing his response at the maker of the statement.

81 The final point made by the plaintiff on this defence was that he viewed the defendant as "98 Holdings' man" and he testified that the defendant was speaking in his capacity as a director of 98 Holdings. The defendant has offered no evidence to the contrary. Since the criticism was directed

only at the board of NatSteel, it was argued that the defendant had no qualified privilege to respond as a director of 98 Holdings.

82 There is no reason to assume the defendant was responding in the BT article of 4 June 2003 as a 98 Holdings director only and not as a director of NatSteel. He does not assume a different personality simply because the plaintiff thought so. He was referred to as a NatSteel director in the opening paragraphs of the BT article.

83 As NatSteel is a listed company, the public has an interest in its corporate governance. The defendant had a duty to respond to the criticism levelled against the board (with him as director and Chairman of its Executive Committee) and the investing public had a corresponding interest in his response. The defence of qualified privilege therefore succeeds.

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

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

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

(c) the comment is based on facts; and

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

The court also said, at [46]–[47], that it was not necessary to prove each of the facts pleaded in support of the defence of fair comment. All that was needed was to prove such of the facts as were sufficient to form the basis of a fair comment. The court reiterated at [49] and [51] what it said in *Aaron v Cheong Yip Seng* ([71] *supra*), that:

> The essential thing is the honest opinion of a fair-minded person and in this connection every allowance or latitude must be given for any prejudice and exaggeration entertained by such a fair-minded person. [Citing *Silkin v Beaverbrook Newspapers Ltd* [1958] 1 WLR 743 at 749.]
>
> …
>
> However, the word 'honestly' here is used in an objective sense. The fourth element requires the comment to be one that, objectively speaking, a fair-minded person can honestly make given the proven facts, unless in making such statement, the author is actuated by malice.

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

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

85 In para 20 of the Statement of Claim, the plaintiff averred that the BT article of 4 June 2003 "quoted the defendant as commenting on the SIAS statement …" When the defendant responded in

para 24 of the Amended Defence that the plaintiff had thereby admitted that the words in issue were in the nature of a comment, the plaintiff then denied in para 19 of his Amended Reply that he had made such an admission. He averred that the words, in the context in which they were published, contained allegations of fact.

86 I note that the plaintiff has nevertheless left the pleadings as they stood without substituting the word "commenting". That word means what it says. In any event, adopting the common-sense approach advocated by the Court of Appeal above, saying someone is playing to the gallery must be in the nature of a comment. The words in issue are a metaphor which is used to describe certain factual situations. They are, by their nature, an expression of opinion or an observation.

87 The matters concerning the NatSteel saga leading up to the comment in the BT article in question were constantly in the news and attracted a lot of public attention and debate. They were certainly matters of public interest.

88 The comment made by the defendant was based on the largely undisputed facts set out earlier in this judgment which were widely reported in the media. The BT article in question encapsulates the latest episodes of the eventful saga and assumes the reader has background knowledge of the issues. A reasonable reader who is reading about the NatSteel saga for the very first time in that article would know immediately that there are other matters that have occurred. The SIAS statement was not the first time the plaintiff spoke to the press. The BT article was not the first time that that reporter wrote about the saga. The defendant was speaking to someone who was obviously aware of all that had transpired and it would be ridiculous to require him to spell out to the reporter all the facts on which he based his description of the plaintiff as playing to the gallery. Further, the defendant and anyone interviewed by reporters cannot be constricted by the parameters of press articles as they do not wield the editorial powers of what goes into print. Articles in the press about a continuing issue do not recapitulate everything that has happened earlier.

89 On the fourth requirement of fair comment, I have always wondered how a man could be described as fair-minded if he harbours prejudices. In any event, bearing in mind the matters I have already discussed, there was no reason why the defendant or any other fair-minded person could not have felt honestly that the plaintiff was playing to the gallery, especially where his speech-making at the EGM of 28 May 2003 was concerned. There is no need to prove that everything the plaintiff had done throughout the NatSteel episode or that every word uttered by him was part of his playing to the gallery. It is enough if a fair-minded person looking at the situation as a whole may form the general impression that he was playing to the gallery.

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

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

He distinguished the much-quoted passage in *Horrocks v Lowe* [1975] AC 135 at 150 where Lord Diplock said that even a positive belief in the truth of what is published on a privileged occasion

may not suffice to negative express malice if it can be proved that the defendant misused the occasion for some purpose other than that for which the privilege is accorded by the law. After stating why the purposes for which the defences of qualified privilege and of fair comment exist are not the same, the learned judge debunked the notion that the cases on malice in the different contexts of the two defences were essentially interchangeable. He concluded, at 22:

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

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

91 For the purposes of my judgment, I am content to follow the guidance given by our Court of Appeal in *Chen Cheng v Central Christian Church* ([84] *supra*). As will become apparent, whichever approach I take, the outcome will still be the same in this case.

92 The burden of proving malice falls on the plaintiff. He has pleaded express malice here and relies on the same particulars in support of this averment in respect of both the defences of qualified privilege and of fair comment.

93 The matters enumerated by the plaintiff to make good his claim that the defendant bore him ill will and malice are all inferential ones. Put simply, the plaintiff's contention is as follows. He and SIAS stood on one side with Sanion and the other minority shareholders while the defendant was on the opposing side with 98 Holdings. The great divide between the two groups was the linkage of the resolutions. The defendant's group wanted the resolutions to be passed *en bloc*. The plaintiff had made public statements criticising the linkage and calling for it to be dropped. The plaintiff's stance supporting Sanion, which partly caused Sanion not to accept 98 Holdings' offer for its shares, irritated and embittered the defendant because it hindered 98 Holdings' plan for a quick exit from NatSteel by sale, winding up or capital distribution. The venom the defendant had for Sanion, the plaintiff reckoned, overflowed onto him. The plaintiff was the metaphorical grass feeling the thundering beat and heat of the offended behemoth that was 98 Holdings.

94 It is apparent from the plaintiff's evidence that all he was saying was that the two Davids were in opposing camps and one must therefore hate the other. There was no incident cited where they had crossed verbal swords personally before the BT article of 4 June 2003. The only time when the two Davids came face to face was at the EGM of 28 May 2003. There, the plaintiff was accorded every respect. He was allowed to attend the EGM, shown to a front-row seat and permitted to address the board of directors without any restriction. At no time did the board, particularly the defendant who was sitting with the board, attempt to curb his demagogic flair. The plaintiff did not even say that the defendant was glaring angrily at him or making grunting sounds of disapproval or irritation when he was speaking. He would have been allowed to attend the adjourned EGM of 4 June 2003 as well if he had wanted to. Indeed, one of SIAS's committee members did attend the adjourned EGM.

95 The fact that the defendant's words appeared in a newspaper with wide coverage in the

morning of the adjourned EGM was nothing remarkable. There was no evidence that the defendant set this up. He spoke to the reporter and so did the plaintiff. The sequence of the matters reported indicates that it was the plaintiff who spoke with the reporter before the defendant did. That occasion was certainly not the first and only time that the BT reported on the NatSteel saga. In the BT article in question, the defendant, in making only one statement about the plaintiff, might have appeared dismissive but should we read reticence or even silence as evidencing ill will and malice? After all, a lot of people do not go around swatting gadflies. They simply walk away from them.

96 To infer the presence of ill will and malice from such evidence is to say that he who has not shown me love hates me. That leaves no room for indifference. By that token, every majority shareholder and company director whom SIAS and the plaintiff have debated with must, *prima facie*, bear ill will and malice towards SIAS and the plaintiff too. That can hardly be correct. The plaintiff has failed to show that the defendant was actuated by ill will or malice or that he had a predominant motive to injure the plaintiff.

97 Counsel for the plaintiff suggested that the amount of damages to be awarded to the plaintiff, if he succeeds, should be close to the range awarded to senior political leaders here and should be $200,000 or more. He argued that the plaintiff's role as head of a watchdog body like SIAS depended on his credibility. Counsel for the defendant thought that if there was defamation, it was a "very low-grade libel" as there was no attack on the plaintiff's honesty or integrity and it was, at worst, a criticism of his style of doing things. It was argued that since the plaintiff was none the worse as a result of the words in issue, nothing more than nominal damages should be awarded.

98 In my opinion, if effectively calling a person a showman in these circumstances is actionable in defamation, an award of $10,000 should be more than adequate to soothe any hurt feelings and repair any damage done.

99 For the reasons set out above, on the plaintiff's evidence and the agreed documents, there is no case for the defendant to answer and the plaintiff fails in his claim against the defendant. The plaintiff's action is therefore dismissed with costs to be agreed or taxed by the registrar.

Claim dismissed.

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[1]Para 23 of the Amended Defence.