Koh Sin Chong Freddie *v* Chan Cheng Wah Bernard and others and another appeal [2013] SGCA 46

Case Number : Civil Appeals No 63 and 68 of 2012

Decision Date : 26 August 2013

Tribunal/Court : Court of Appeal

Coram : Sundaresh Menon CJ; Chao Hick Tin JA; V K Rajah JA

Counsel Name(s) : Ragbir Singh s/o Ram Singh Bajwa (Bajwa & Co) for the appellant in CA 63/2012 and respondent in CA 68/2012; Tan Chee Meng SC, Chang Man Phing, Yong Shu Hsien and Ng Shu Ping (WongPartnershipLLP) for the appellants in CA 68/2012 and respondents in CA 63/2012.

Parties : Koh Sin Chong Freddie — Chan Cheng Wah Bernard and others

Tort – Defamation – Damages

[LawNet Editorial Note: This was an appeal from the decision of the High Court in [2012] SGHC 193.]

26 August 2013 Judgment reserved.

Chao Hick Tin JA (delivering the judgment of the court):

Introduction

1 The present cross-appeals arise from an award made at an assessment of damages by the High Court judge ("the Judge") on 15 May 2012 in *Chan Cheng Wah Bernard and others v Koh Sin Chong Freddie* [2012] SGHC 193 ("the Damages Judgment") pursuant to a decision of this court in *Chan Cheng Wah Bernard and others v Koh Sin Chong Freddie and another appeal* [2012] 1 SLR 506 (the "Merits Judgment"). The Judge awarded a total sum of S$420,000 to the four plaintiffs as damages for defamation with each plaintiff being awarded $70,000 in general damages and $35,000 in aggravated damages.

2 At the close of the hearing on 18 March 2013, we reserved judgment and directed parties to file further written submissions on three questions:

(a) What is the appropriate approach to take in an assessment of damages for defamation where the plaintiffs are members of a collective group? Is there any specific principle of proportionality which the court should have regard to?

(b) Are there any particular principles which the court should apply in assessing aggravated damages?

(c) Would this Court be entitled to vary the taxed costs awarded to the Plaintiffs on the issue of liability pursuant to the Merits Judgment of this court?

Background

3 Chan Cheng Wah Bernard@Alif Abdullah ("Bernard Chan"), Tan Hock Lay Robin ("Robin Tan"), Chong Tjee Teng Nicholas ("Nicholas Chong") and Ho Bok Kee ("Michael Ho") were members of the

2007/2008 management committee ("the previous MC") of the Singapore Swimming Club (the "Club") holding the positions of President, Vice-President, Honorary Treasurer and Facilities Chairman of the Club respectively. They were the plaintiffs in the action below, Suit No 33 of 2009 ("the action"). They are the respondents in CA 63 of 2012 and the appellants in CA 68 of 2012. They will hereinafter be referred to as "the Plaintiffs".

4 Freddie Koh Sin Chong was defendant in the action and is the appellant in CA 63 of 2012/respondent in CA 68 of 2012. He was elected President of the 2008/2009 management committee of the Club ("the current MC") at the Club's Annual General Meeting ("AGM") held in May 2008 ("the May 2008 Elections"). He was re-elected as President for a further one-year term at the AGM held in 2009. He will hereinafter be referred to as "the Defendant".

5 In the action the Plaintiffs sued the Defendant for defamation. The facts of the case were set out at length in our Merits Judgment and will not be repeated here. Briefly, the present dispute arose from two statements ("the First Statement", "the Second Statement" and collectively, "the Statements") made by the Defendant in the course of an investigation carried out by the current MC into certain "emergency" expenditure incurred by the previous MC relating to the purchase of a new water system for the two swimming pools of the Club ("the TWC Expenditure"). These statements were reflected in the minutes of meetings of the current MC held on 29 October 2008 and 26 November 2008 ("the Minutes"), which were posted on the notice board of the Club.

6 At the conclusion of the trial to establish liability, the Judge held that while the statements were defamatory of the Plaintiffs, the Defendant was successful in his plea of justification. She also held that the statements were made on an occasion of qualified privilege. On appeal by the Plaintiffs, we reversed the decision of the Judge and held that the defence of justification was not made out by the Defendant and that the defence of qualified privilege was defeated on account of his malice. We further ordered that damages be assessed by the Judge. Costs for that appeal and for the trial were awarded to the Plaintiffs on a standard basis.

7 Following the Merits Judgment, the Statements were republished as part of a narration of events surrounding the TWC Expenditure in a Press Publication concerning the Club's matters dated 8 February 2012 ("the Facts Sheet").

The Decision Below

8 On the nature and gravity of the defamation, the Judge held that the Statements were grave as they imputed dishonesty on the part of the Plaintiffs, notwithstanding this court's finding of minor inaccuracies in the representations made by the previous MC when it sought ratification of the TWC Expenditure. However, she also observed that the sting of the charge was diluted as dishonesty was not imputed to the Plaintiffs individually but to the previous MC as a whole. Further, the suggested dishonesty related to persuading members to ratify expenditure which had been incurred on the Club's behalf, rather than a more serious level of dishonesty such as the taking of funds for their own direct financial benefit or the commission of a criminal offence. [note: 1]

9 The Judge also held that the fact the Plaintiffs, as Club members, were defamed in the eyes of other Club members by a person holding a position of authority, was a factor which should enhance the quantum of damages to be awarded to the Plaintiffs, even though they were not public figures. [note: 2]

10 Emphasis was placed by the Judge on the less than widespread publication of the defamatory statements. Crucially, she noted that the form of publication was passive in the sense that the

Minutes were simply put on the Club's notice board as a matter of course and would not have been read except by members interested in the Club's affairs. She further found it likely that the Minutes did not remain on the board for more than a month. Although she recognised that the dispute was a live one and the Statements were thus *possibly* published to quite a number of people, she was not satisfied that the Plaintiffs had discharged the burden of proving that there was more than a moderate dissemination of the defamatory statements. [note: 3]

11 Aggravating factors considered by the Judge included the Defendant's failure to apologise; the presence of malice as noted by this court in the Merits Judgment; and the conduct of the Defendant at the trial, in particular the prolonged and aggressive cross-examination of the Plaintiffs. [note: 4] In light of these factors and our finding in the Merits Judgment that the dominant motive of the Defendant in publishing the defamatory statements was to injure the Plaintiffs, the Judge awarded aggravated damages. However, she held that the Defendant's plea of justification was not "bound to fail" as it succeeded in the first instance and thus could not be considered as a factor aggravating damages. [note: 5]

12 The Judge also placed no weight on the republication of the Statements in the Facts Sheet in February 2012, as this took place after the the Plaintiffs had been vindicated by the Merits Judgment. Hence, the republication would not have further damaged the Plaintiffs' reputations. [note: 6]

13 Having considered all these factors as well as the awards given in *Lim Eng Hock Peter v Lin Jian Wei and another and another appeal* [2010] 4 SLR 357 ("*Peter Lim*") and *Arul Chandran v Chew Chin Aik Victor* [2001] 1 SLR(R) 86 ("*Arul Chandran*"), the two precedents which the Judge thought were most germane to the present case, the Judge awarded each of the Plaintiffs S$70,000 as general damages and S$35,000 as aggravated damages. [note: 7] Both the Plaintiffs and Defendant have appealed against the Judge's award, with the Defendant seeking to reduce it and the Plaintiffs to have it increased.

Issues

14 The issues which arise in the present appeals on the Judge's assessment may be categorised as follows:

(a) Whether the Judge erred in her assessment of general damages and/or aggravated damages;

(b) Whether the same quantum of damages needed to be awarded to each of the Plaintiffs; and

(c) Whether this Court would be justified in varying the award of damages.

Our decision

Assessing damages where the plaintiffs are part of a collective group defamed

15 As the Plaintiffs in the present case were defamed as members of an unincorporated group (*ie*, members of the previous MC), a preliminary point which we need to address is how damages should be awarded in favour of such a group. [note: 8] *Gatley on Libel and Slander* (Patrick Milmo & W V H Rogers eds) (Sweet & Maxwell, 2008, 11th Ed) ("*Gatley on Libel and Slander*") at para 8.28 states the following in relation to defamation involving unincorporated associations:

> …Where the members of such a group are defamed, each has his own action if sufficiently identified by the libel. An action for libel will not lie against an unincorporated association or body of persons in its collective name, for as an entity it can neither publish not authorize the publication of a libel. Nor can it sue for it lacks sufficient personality…

Hence where an unincorporated group is defamed, members of the group must bring an action in defamation in their individual names. There is no concept of representative action; members of the group may not bring an action in defamation on behalf of the group or the other members.

16 However, the Defendant submits that the correct approach for the court to adopt in assessing damages where an unincorporated body is involved is to assess damages collectively and make a single award to the group. [note: 9] Apportionment between the individual claimants comprising the group can then be carried out, taking into account factors such as who was principally targeted and who within the group was most closely associated with the defamatory remarks. [note: 10] The Defendant also seeks to distinguish between the defamation of a strictly organized and homogeneous group which acts collectively, which he argues was the case here, and the situation where individuals bring an action in defamation by virtue of their identity with a group which is the subject of defamation. [note: 11]

17 It seems to us that the Defendant's submission is not borne out by the authorities. In the earlier case of *Booth v Briscoe* (1877) 2 QBD 496 ("*Booth*"), Bramwell J held at 497-498 :

> Here *there is no joint damage*. Each man's character, if there is a libel, has been separately libelled... But although they might all join, I think, as their damages are several, *their damages ought to have been severally assessed*, instead of which, 40s. has been given to the whole of them. [emphasis added]

Booth concerned eight trustees of a charity who had been libelled by a letter written and published by the defendant in a newsletter commenting on the improper management of the charity by the trustees. The court held that the damage was inflicted on each trustee separately, although the libel attacked them jointly as trustees. Likewise in the present case, notwithstanding the defamatory statements harmed the Plaintiffs jointly as members of the previous MC, damage was inflicted to their *individual* reputations.

18 Our case law has shown that where several persons in an unincorporated group are defamed, the correct approach as regards assessment of damages would be to assess the award due to each plaintiff separately: see for instance *A Balakrishnan and others v Nirumalan K Pillay* and others [1999] 2 SLR(R) 462 ("*Balakrishnan*") which concerned the defamation of a committee of persons and *TJ System (S) Pte Ltd and Others v Ngow Kheong Shen (No 2)* [2003] SGHC 217 ("*TJ System*") which concerned a group of employees being defamed. The same approach has also been adopted in other common law jurisdictions like Australia (see *Vlasic and Others v Federal Capital Press of Australia Pty Ltd and John Fairfax and Sons Ltd* (1976) 9 ACTR 1 and *Nikolopoulos v Greek Herald Pty Ltd* [2003] NSWSC 1060)); and Canada (see *Alberta Union of Provincial Employees et al v Edmonton Sun et al* [1986] CarswellAlta 269)).

19 The Defendant seeks to rely on *Bou Malhab v Diffusion Métromédia CMR inc* [2011] 1 SCR 214 as authority for the proposition that where several persons are defamed as a group, the assessment of damages due to each of the plaintiffs should be carried out on a group basis. [note: 12] However, we find that this case does not support the Defendant's contention. First, it does not deal with the

assessment of damages but with the threshold question of whether the claim in defamation was actionable. The impugned remark targeted taxi drivers in Montreal whose mother tongue was Arabic or Creole. Second, where the court at [55] referred to "choosing the appropriate recovery method, whether individual or collective", the collective recovery method it was referring to was a class (representative) action and not an assessment of damages on a group basis as argued by the Defendant. The court in fact emphasised at [48] and [53] that even for a class action, proof of injury in respect of each member of the group must be established.

20 The Defendant also seeks to distinguish *Tang Liang Hong v Lee Kuan Yew and another and other appeals* [1997] 3 SLR(R) 576 ("*Tang Liang Hong*") where this court assessed damages individually, on the basis that the reference there to "the PAP leaders" would be understood as a reference to the individual leaders and not a collective group. [note: 13] We think, however, that this distinction drawn by the Defendant is wholly artificial. According to the Defendant's own argument, had the defamatory statements in the present case referred to "members of the previous MC" instead of just "the previous MC", it would have been different and damages could be assessed separately for each plaintiff. In our opinion, it should not matter how the individuals comprising the group are referred to— this is purely a matter of semantics. Reference to the previous MC would naturally refer to the members of the previous MC. After all, the previous MC was not a separate entity in law.

21 Further, we accept the Plaintiffs' contention that the assessment of damages as a group might lead to difficulties in quantification and absurd results. There is no law which compels all members of a group who have been defamed to sue in the same action or at the same time. In fact, another two members of the previous MC have since commenced a defamation action based on the same defamatory statements following the delivery of the Merits Judgment by this court. [note: 14] If damages were to be collectively assessed and a single award granted to the previous MC as a group, other members of the previous MC could be precluded from commencing any future actions based on the same statements given that the damages have already been assessed for the whole of the previous MC and distributed to the existing Plaintiffs. [note: 15] Moreover, an award made based on a group of eleven persons may lead to an unfair result of a windfall if distributed only amongst the four Plaintiffs. [note: 16]

22 In the light of the authorities and for the aforementioned reasons, we find that the harm caused to the previous MC should not be collectively assessed as a group with the award being apportioned between the Plaintiffs. The basic principle as elucidated in *Tang Liang Hong* at [188] applies— *each* claimant who has proven that he has been defamed is entitled to a sum which would sufficiently compensate him for the harm done to his reputation, as well as to console him for the distress he suffered from the publication of the statements.

General damages

23 In *Peter Lim* this court at [7] enunciated that the following circumstances are relevant to the determination of the appropriate quantum of general damages:

a) the nature and gravity of the defamation;

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

c) the mode and extent of publication;

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

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

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

g) the presence of malice.

24 This court also held in *Peter Lim* at [8] (citing Lord Hoffman's words in *The Gleaner Co Ltd v Abraham* [2004] 1 AC 628 at 646) that another relevant consideration is the intended deterrent effect of the award:

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

The Nature and Gravity of the Defamation

25 Regarding the gravity of a defamatory statement, it was held by Sir Thomas Bingham MR in *John v MGN Ltd* [1997] QB 586 ("*John v MGN*") at 607 that:

> …the more closely it touches the plaintiff's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be.

Both the Plaintiffs and Defendant argued that the Judge erred in her assessment of the nature and gravity of the defamatory statements. We will consider the Plaintiffs' arguments first.

26 The Plaintiffs submitted that the Judge erred in finding that the dishonesty imputed by the sting of the libel was less serious as it did not relate to the taking of funds for the Plaintiffs' own direct financial benefit or the commission of a criminal offence. They argued that the dishonesty imputed by the Statements did in fact allege the commission of a criminal offence and implied that the Plaintiffs had practised deception on the Club members in order to obtain the benefit of securing their own re-election as office bearers. [note: 17]

27 In this regard, it is pertinent to turn to our Merits Judgment, where we found that the sting of the libel lay in the imputation of *dishonesty and misconduct* on the part of the Plaintiffs (at [45]):

> In the present case, the sting of the charge is essentially that the Previous MC had *deliberately misrepresented* the circumstances relating to the expenditure on the TWC Package *with the aim of deceiving the Club members into ratifying the expenditure*. [emphasis in original]

And at [50]:

> ...However, the sting which the defendant has to justify (see [45] above) is not so much that there were errors in the Annual Report or its Appendix, but that *the Plaintiffs had uttered the erroneous statements deliberately, knowing that they were false and that by such falsehood, the Plaintiffs had hoped to hoodwink the AGM into ratifying the expenditure*. [emphasis added]

28 We were further cognizant of a paragraph in the Minutes of the meeting of the current MC held on 26 November 2008 meeting which stated [note: 18] :

(e) President suggested that the discrepancies discovered by the Treasurer be documented in an addendum to the Special Audit Report to be released to the general membership. *Should there be findings of any irregularities in contract award and payment, the matter ought to be reported to the authorities*. [emphasis added]

We thus held that a reasonably interested member would get the impression that the previous MC was suspected of wrongdoing and that the Defendant was prepared to "report them to the authorities if the relevant evidence was found". [note: 19] Indeed it transpired that a report to the Corrupt Practices Investigation Bureau was filed against Michael Ho. [note: 20]

29 It is clear that the defamatory statements struck at the Plaintiffs' competence and integrity as leaders of the Club and questioned their fitness for office by implying that the Plaintiffs had set out to deliberately deceive Club members into ratifying an improper use of Club funds. Further, we observe that the statements, when read holistically with the aforementioned background facts, insinuate that the alleged dishonesty verges on some criminal misconduct on the part of the Plaintiffs. Hence, the Judge was not entirely correct in holding that the dishonesty imputed did not relate to "criminal offence".

30 Nonetheless, we are of the view that the allegation of dishonesty here does not rise to the level of "extremely dangerous and vicious fraud" as in the case of *Arul Chandran*, or "a conspiracy to misappropriate funds amounting to fraud and gross misconduct" as in the case of *Ei-Nets Ltd v Yeo Nai Meng* [2004] 1 SLR 153 ("*Ei-Nets Ltd*") (at [67]). Nor was there an allegation of bribery as in the case of *Ng Koo Kay Benedict & anor v Zim Integrated Shipping Services Ltd* [2010] 2 SLR 860 ("*Ng Koo Kay*") (at [23]). Moreover, there was also no suggestion of any *financial* benefit to the Plaintiffs in this case unlike that in *Peter Lim*. In *Peter Lim* this Court held at [28] that although there was no allegation of fraud, the statements nonetheless did suggest that the appellant there had caused the company's financial losses through mismanagement for his own financial gain in the form of excessive dividends. Even if the Plaintiffs' allegation that the defamatory statements imputed benefit to the Plaintiffs in the form of securing their re-election as office bearers was correct, [note: 21] we find that this still falls below the level of seriousness of obtaining a direct *financial* benefit.

31 Statements do not exist *in vacuo*. The nature and gravity of the statements should also be considered against the context in which they were made. In this regard, we agree with the approach taken by Belinda Ang J in *Segar Ashok v Koh Fon Lynn Veronica and another suit* [2010] SGHC 168 ("*Segar Ashok*"), at [100] (citing *Halsbury's Laws of Singapore*, Vol 18, (LexisNexis, 2009 Reissue) at para 240.245):

> Where there is common knowledge that the relationship between the plaintiff and the defendant is acrimonious, a reasonable reader would be more likely to be sceptical about what was stated in the offending publication and to discount what is said disparagingly of the plaintiff when he knows that the words were said by his enemy [see *Chiam See Tong v Ling How Doong* [1997] 1 SLR 648 at [78]].

32 The Defendant contended that the nature and gravity of the defamation was diluted in the context of "factional interest" and "considerable politicking" in the Club, wherein a "certain amount of excessive rhetoric and personal attacks and bad mouthing" were rife. [note: 22] Further, he argued that it was "common knowledge" that there were two competing camps within the club and that their relationship after the hotly contested May 2008 Elections was somewhat "less than cordial". [note: 23] As such, the reasonable reader would have taken it as "part and parcel of club politics" and would

have been "sceptical about what was said". [note: 24]

33 The parties are on common ground that the TWC expenditure was at the time of the 2008 AGM a highly contentious matter. However, we think it significant that the Statements were made in MC meetings held 5 to 6 months *after* the May 2008 Elections. In particular, the Second Statement was made during a discussion about the findings of the Special Ad-Hoc Audit Committee tasked with carrying out an independent review of the TWC expenditure. Significantly, these statements were not emotional, off-the-cuff statements made in the heat of battle. On the contrary, it was likely that the Club members would in the circumstances have accorded the Statements more weight, thus arguably *compounding* the gravity of the sting. Further, we find that common knowledge is not made out here. Unlike in *Segar Ashok* where the defamation was made to a small number of close associates who were privy to the plaintiff's and defendant's acrimonious relationship and their ongoing heated exchanges, dissemination here was to a group of recipients to whom cannot be imputed an intimate knowledge of the relationship between the Defendant and Plaintiffs. Thus, we find that there is no basis for the Defendant's contention that such an adverse statement would be "taken with a pinch of salt" [note: 25] by the general membership.

34 For the reasons given above, we reject both the Plaintiffs' and Defendant's submissions that the Judge erred in assessing the nature and gravity of the defamatory statements.

The Standing, Position and Conduct of the Plaintiffs and Defendant

35 A preliminary issue arose here as regards whether this court should consider the Plaintiffs' standing within their individual professions in its assessment of damages. We note that in *Peter Lim* the plaintiff claimed that the libel attacked his professional reputation as a prominent and reputable businessman. This court agreed and found at [26] that the libel called into question his competence, integrity and business acumen which damaged his reputation and standing in his profession.

36 The present case, however, is distinguishable from *Peter Lim*. First, as the learned Judge below noted at [24] of her judgment, the Plaintiffs did not ask to be differentiated on the basis of their individual professions. Indeed the Plaintiffs' own Statement of Claim appears to have limited their claims to damage to their reputation and standing in the Club *as members of the previous MC*. [note: 26] Second, we made no finding in the Merits Judgment as regards the effect of the libel on the reputation and standing of the Plaintiffs in their respective professions. On the contrary, we appeared to limit the sting of the libel to the Plaintiffs' position as former office bearers in the Club. [note: 27] Thus, we are of the view that for the purposes of assessment of damages, we should only take into account the Plaintiffs' standing and reputation *in the Club*.

37 It is well established that the higher the standing and reputation of the plaintiff in the community prior to the libel, the greater the measure of damages that should be awarded. Correspondingly, the word of a defendant in a high position socially is likely to be accorded more weight, and thus be more injurious to a plaintiff, than that of a person of humbler status:see Harvey McGregor, *McGregor on Damages* (Sweet & Maxwell, 2009, 18th Ed) at para 39-064 and *Peter Lim* at [11]. The courts have differentiated between categories of plaintiffs for the purpose of determining the amount of damages to be awarded for defamation. As observed by this court in *Peter Lim* at [12]:

> Singapore courts have consistently awarded higher damages to public leaders than other personalities for similar types of defamation because of the greater damage done not only to them personally, but also to the reputation of the institution of which they are members. The expression "public leaders" in this context would be a reference to political and non-political

leaders in the Government and public sector and private sector leaders who devote their careers and lives to serving the State and the public.

38 Evidently, and the Plaintiffs conceded this, damages awards in cases involving public leaders such as politicians are inapplicable here. [note: 28] Nevertheless, the Plaintiffs argued that as well-known personalities in the Club and former office bearers, they are effectively "public figures" in the eyes of the Club members. [note: 29] Accordingly, it follows that the Defendant is also effectively a "public figure" in the Club.

39 The Defendant argues, however, that being an office bearer in the Club was not indicative of status and standing in the Club. Rather, status and standing in the Club was best measured by the daily interaction between members of the Club and the conduct of the individual. [note: 30] He further alleges that the fact that the Plaintiffs were not re-elected at the 2008 AGM indicated that they did not have a high standing in the Club at the material time. [note: 31]

40 In our judgment, the contention of the Plaintiffs is more in line with reason and logic. Given that office bearers, both past and present, are persons elected by Club members to be leaders and decision-makers of the Club, the logical conclusion to draw is that they are persons of higher status and standing in the Club. We would reiterate that the Plaintiffs' competence and integrity as leaders in the Club were essentially what the Statements struck at. Although the Plaintiffs were not re-elected at the 2008 AGM, their status as former office bearers and long-standing members of the Club remained unchanged. Needless to say, the Club members would have accorded substantial weight to the statements of the Defendant, who as President was the highest authority in the Club at the material time.

41 We thus conclude that the Judge's finding on this issue should not be disturbed.

The Mode and Extent of Publication

42 It is trite law that the wider the extent of publication, the greater would be the harm caused to the plaintiff. The award of damages for defamation should therefore reflect this. This court in *Peter Lim* at [33] endorsed the decision in *Lee Kuan Yew v Vinocur John and others* [1996] 1 SLR(R) 840 where the amount of damages awarded was increased as the defamatory statements were published in a publication with wide circulation and of high standing, which rendered the libellous allegations more likely to be believed.

43 In *Al Amoudi v Brisard and another* [2007] 1 WLR 113 ("*Al Amoudi*") at [33] it was held that there is no presumption in law that substantial publication has taken place even where the defamatory statements were placed on a generally accessible Internet website. The extent of publication is proved either by direct proof or by establishing a "platform of facts" from which the court could properly infer that substantial publication has taken place. This proposition was adopted in *Ng Koo Kay* at [27]. Both the Plaintiffs and Defendant agreed that the principles elucidated above apply to the present case and that the burden of proving the extent of publication would fall on the Plaintiffs.

44 The Plaintiffs rely on several factual findings made in the Merits Judgment to establish a "platform of facts":

(a) The unbudgeted TWC expenditure and its subsequent non-ratification was "widely publicised and hotly debated within the Club". [note: 32] It is not disputed that over 2,000

members attended the 2008 AGM, although the Defendant claims that by the time the vote was taken on the motion to appoint the Audit Committee only 307 members remained.

(b) Following the 2008 AGM, members were kept updated of the appointment and work of the Audit Committee investigating the TWC expenditure as well as of the current MC's further discussions on the issue through the Minutes. Information about a dispute between the parties concerning a water system, which the Merits Judgment referred to as "the NWS Dispute", was also available through the Splash magazine distributed to all Club members. [note: 33] In any event, it was clear that the TWC expenditure remained a live issue up until the two MC meetings where the Statements were made. [note: 34]

(c) The Minutes that contained the defamatory statements were displayed on the Club's notice board and library, where Club members, staff and visitors, could access them. [note: 35] The Plaintiffs thus claimed that around 10,000 Club members could form the pool of "general viewership".

(d) As acknowledged by the Defendant, the Club's notice board was meant to "inform members and staff of the Club on issues, discussions and decisions of the MC affecting or relevant to the Club". [note: 36] A "reasonably interested member" would thus have been generally aware of information disseminated on the Club's notice boards, including minutes of MC meetings. [note: 37]

45 Although the Plaintiffs did not lead evidence on the length of time the Minutes remained posted on the board, the learned Trial Judge held in her Damages Judgment at [25] that:

> …generally, minutes posted on the board would be removed when the next set of minutes was ready. Since MC meetings took place once a month, it is likely that the minutes did not remain on the board for more than a month.

She further noted at [26], correctly in our view, that "some of those persons [who had read the minutes] may have informed others of the contents of the minutes."

46 While the Plaintiffs assert that the dissemination of the Statements was wide and that it was similar to what had transpired in *Peter Lim*, we are not persuaded that that was so in the present case. What is critically different is that the main mode of publication in the present case was *via* posting the Minutes on the Club's notice board. The publication of the Statements remained in a single, fixed location which has to be physically accessed by the viewer. The same applies to the Minutes left in the Club's library. Therefore, this is a far more passive mode of dissemination as compared to the sending of and/or circulation of defamatory statements directly to member recipients. The present case is clearly distinguishable from that of *Peter Lim* where the defamatory statements were sent *directly* to over 17,000 club members.

47 Further, we must also stress that in order to read the Statements which were contained in the Minutes, a Club member would have to leaf through the document posted on the notice board. This, coupled with the inconvenience of physically accessing the notice board, made it all the more likely that most of the Club members would have obtained information about the TWC dispute through other media like the Club's website or the Splash magazine.

48 We thus find that it could not be properly inferred that substantial publication had taken place and concur with the Judge's finding that whilst publication was wider in this case than in *Arul Chandran* where it was limited to the committee of the club concerned, it was definitely far below the

17,000 figure in *Peter Lim*. [note: 38] We would imagine that in the nature of things it is likely that only a modest percentage of the members would have taken the trouble to leaf through and peruse the Minutes which were posted on the Club's notice board.

Vindication

49 A prior narrative judgment rejecting a defence of justification and so holding the libel to be established is capable of providing some vindication of a claimant's reputation. This principle was set out in *Purnell v BusinessF1 Magazine Ltd and another* [2008] 1 WLR 1 where the Court held at [29]:

> …The effect of such an earlier judgment no doubt depends on all the circumstances and, generally speaking, the effect in relation to vindication will I think most likely be marginal. Where there has been a fiercely contested trial on the facts, perhaps attended with much publicity, and the defendant's witnesses have been roundly disbelieved and there is a positive and unequivocal finding in the claimant's favour on the merits, those circumstances will be relevant as amounting to some vindication.

50 We agree with the Defendant that in the light of the findings in our Merits Judgment there is some vindication for the Plaintiffs. But it does not follow that just because the court has vindicated the plaintiff in a defamatory action that therefore the damages should be substantially reduced. Otherwise the law will unduly favour the defendant – if the defendant wins he pays no damages and if he loses he need not have to pay substantial damages.

Aggravated Damages

51 The factors to be taken into account for the purposes of determining aggravated damages are well established. It suffices for us to refer to *Arul Chandran* at [55] where this court endorsed the following passage from *Gatley on Libel and Slander* where some of the circumstances warranting the award of aggravated damages are set out:

> The conduct of a defendant which may often be regarded as aggravating the injury to the plaintiff's feelings so as to support a claim for 'aggravated' damages includes a failure to make any or any sufficient apology and withdrawal, a repetition of the libel; conduct calculated to deter the plaintiff from proceeding, persistence by way of a prolonged or hostile cross-examination of the plaintiff... a plea of justification which is bound to fail; the general conduct either of the preliminaries or of the trial itself calculated to attract wide publicity; and persecution of the plaintiff by other means.

52 We reject the Defendant's contention that an award of aggravated damages is not made out [note: 39] as being wholly without merit. Even if the NWS Dispute was not created by the Defendant, it was nonetheless kept alive by his conducting of a "witch hunt" for the purpose of injuring the Plaintiffs and "soiling their reputation in the Club". [note: 40] Following from that we cannot see how it could be asserted that the Defendant had no quarrel with the Plaintiffs. Everything shows that he had an agenda of sorts. Furthermore, it is also untrue that at the trial on liability the Defendant did not accuse the Plaintiffs of dishonesty. To substantiate this contention, the Defendant cited his own evidence in cross-examination, where he stated that he had no reason to believe at the material time that the Plaintiffs had made deliberate misrepresentations. [note: 41] We note, however, that his evidence was given in response to queries about his genuine or honest belief in the truth of the Statements. In this regard, we refer to our findings at [91] of our Merits Judgment concerning the Defendant's malice. Finally, the notes of evidence of the trial show that the Plaintiffs were accused of

being on a "campaign of disinformation", "massaging the facts" and called "liars" by Defendant's counsel. [note: 42] It is thus disingenuous of the Defendant to now seek to distance himself from the words of his counsel who took instructions from him.

53 Thus, we see no ground to disturb the Trial Judge's finding that a clear case for aggravated damages has been made out for the reasons set out at [30] of the Damages Judgment.

54 We also reject the Defendant's contention that the Plaintiffs' provocative conduct, in particular that of Robin Tan, should mitigate the quantum of aggravated damages awarded. [note: 43] Amongst several things, the Defendant alleged that Robin Tan spearheaded a no-confidence motion against him whilst he was still new in office. This motion was defeated. Undeterred, Robin Tan also filed criminal defamation charges against the Defendant and some members of the MC led by the Defendant. The Attorney General eventually had to intervene to have the cases withdrawn. There was, as the Defendant describes, a constant "nibbling at the heels". [note: 44]

55 Damages may be significantly reduced to take into account the claimant's conduct, see generally *Campbell v News Group Newspapers Ltd* [2002] EWCA Civ 1143. However, we observe that neither this court nor the Judge on the merits had found provocation on the part of the Plaintiffs. As for the other conduct raised by the Defendant, namely the no confidence motion and criminal defamation charges, they do not relate to the subject of the Statements and are therefore not relevant to mitigation. In *Segar Ashok* it was held at [101] that "the expressions relied on to show the provocation must relate to the same subject as the words complained of". We thus find that the Defendant has failed to make out a case for reducing aggravated damages on account of the Plaintiffs' conduct.

56 It is appropriate at this juncture for us to turn to the Plaintiff's contention that the Judge had erred in finding that the Defendant's plea of justification was not bound to fail [note: 45], and in failing to take into account the republication of the First and Second Statements in February 2012. [note: 46] In the Plaintiffs' submission these should also be regarded as aggravated factors.

57 A reckless plea of justification that is bound to fail is a classic aggravating factor as held by this Court in *Peter Lim* at [38] and in *Arul Chandran* at [56]. In fact this appeared to be the main reason for an award of aggravated damages of $50,000 in *Arul Chandran* (at [57]).

58 Some guidance as to the circumstances where it could reasonably be said that a justification plea is bound to fail can be obtained from *Bonnard v Perryman* [1891] 2 Ch 269. In that case, it was held at 284 that the defence of justification which is bound to fail is one which, "on the facts which may be before them, the jury may find to be wholly unfounded". To put it another way (at 288), "there must be strong *prima facie* evidence that the statement is untrue". These propositions have been applied by our High Court in *Kwek Juan Bok Lawrence v Lim Han Yong* [1989] 1 SLR(R) 675 at [4].

59 We are conscious that in the Merits Judgment this court had said that the Defendant had:

> …effectively admitted that he *did not know of any basis* to allege that the erroneous statements were deliberately made with that aim in mind. In the circumstances, we could not see how it can be said that the sting in the two defamatory statements has been justified. [note: 47] [emphasis added]

and further:

> …[t]his explains why the Defendant fought so hard to urge the Judge to find that the two Statements did not bear the defamatory sense attributed by the Judge to them. [note: 48]

60 Nonetheless, we are of the view that this finding must be balanced against the fact that there was a long trial on the merits and the Defendant succeeded in making out the defence of justification at the first instance. Subsequently, we also had to deal with the arguments pertaining to the defence of justification at length in the Merits Judgment. We therefore do not think it fair to say that the defence was one that is "wholly unfounded" or to adopt the language of striking out applications, "plainly and obviously legally and factually unsustainable": see *The "Bunga Melati 5"* [2012] 4 SLR 546 at [42]. We thus do not find that the Judge was wrong in refusing to regard the failed plea of justification as a factor to be taken into account when assessing aggravated damages.

61 We now move to consider the Plaintiffs' contention in relation to the republication of the defamatory statements. Evidence may be led of subsequent publications in respect of which no separate action has been brought where they substantially repeat the same imputation and help to prove the existence of a malicious motive or establish the existence of malice: see *Collins Stewart Ltd v The Financial Times (No 2)* [2005] EWHC 262 (QB) ("*Collins Stewart Ltd*") and *Clarke (t/a Elumina Iberica UK) v Bain* [2008] EWHC 2636 (QB).

62 However, we are not persuaded that this particular republication is evidence of the Defendant's "unrepentant persecution" [note: 49] of the Plaintiffs in light of the *context* in which republication was made. As observed earlier at [7] above, the defamatory statements were republished in a Facts Sheet as part of a narration of events surrounding the unbudgeted expenditure starting from 2007 up to this court's decision on the merits of the suit. It was essentially a historical account of events. At most, the lack of apology included in the publication shows a lack of remorse which the Judge had already taken into account. We are thus of the view that the Judge's findings on this issue cannot be faulted.

Proportionality

63 The English Court of Appeal recently reiterated in *Cairns v Modi* [2013] 1 WLR 1015 at [24], that "[t]he process of assessing damages [for defamation] is not quasi-scientific and there is rarely a single "right" answer." Be that as it may, we think it is worth repeating the dictum of this court in *Tang Liang Hong* at [158]:

> However, we wish to stress that damages, even for defamation, should fall within a reasonable bracket so that what is awarded represents *a fair and reasonable sum which is proportionate to the harm and injury occasioned to the victim who has been unjustly defamed* [emphasis added]

This court further expressed the need to guard against the trend of allowing defamation damages to rise with each successive case and stressed that damages awarded should fall within a reasonable bracket.With this in mind, we turn now to consider the question of proportionality in the context where a group is being defamed.

Where the plaintiffs are part of a collective group

64 We have previously held at [15]-[22] above that damages should be severally assessed even where the plaintiff is part of a collective group defamed. A further question which arises in this group context is *whether the harm and injury occasioned to each claimant should be moderated by virtue of the fact that the sting of the libel had affected them as a group*. The Defendant submits that that

should be the case, as a multiplicity of individual actions for group defamation could potentially expose a defendant to liability severely out of proportion to the harm that has actually been inflicted on each claimant.

65 The above question has not been expressly addressed by our courts. In *Tang Liang Hong*, this court noted at [188] that the multiplicity of victims defamed by a single defamatory statement *would not in itself* justify the moderation or lowering of damages. The question was also not considered in *Balakrishnan*. Jurisprudence on the point from other jurisdictions is also lacking; no explicit consideration was given to the size of the group in the award of damages in the abovementioned group defamation cases cited at [18]. [note: 50]

66 Gary Chan in "A Tort Analysis of Group Defamation: Defining and Refining *Knuppfer* [*sic*]" (2006) 14(2) TLJ 176 observed at para 3 that "the adverse impact on the reputation of the individual member may be 'diluted' or 'submerged' where a large group is targeted by the defamatory publication". In this regard, it is settled law that the size of the group is a relevant consideration in determining whether the threshold requirement that the defamatory words against a group complained of can reasonably be understood as being published "of and concerning the plaintiff" has been met in order to be actionable at the instance of the individual: see *Knupffer v London Express Newspaper Ltd* [1944] AC 116 ("*Knupffer*") at 124 *per* Lord Porter. *Knupffer* has been endorsed locally in the case of *DHKW Marketing and another v Nature's Farm Pte Ltd* [1998] 3 SLR(R) 774 at [18].

67 Several American cases like *Brady v Ottoway Newspapers* 445 NYS (2d) 786 have held that a determination of the threshold question would require an assessment of the "intensity of suspicion" that the defamatory statements could reasonably be thought to create in the mind of a person that the words refer to the plaintiff. In *Butler v Southam Inc* [2001] NSCA 121 ("*Butler*"), a Canadian case, the Court of Appeal of Nova Scotia considered the "intensity of suspicion" approach. Pertinently, it observed at [68] that:

> …Assessing the intensity of this suspicion is helpful because it tends to focus the analysis on *the strength of the link between the allegedly defamatory words and the individual plaintiff's reputation*. This, in turn, helps ensure that as the judge rules on the outer limits of permissible recovery in defamation, the analysis is rooted firmly in the law's fundamental purpose, the protection of the plaintiff's personal reputation. [emphasis added]

68 As the court in *Butler* pointed out, this inquiry is consistent with the decision in *Knupffer*. There, Lord Porter provided a list of relevant considerations to guide the determination of whether a statement about a group libels an individual member of it (*Knupffer* at 124). The considerations, which include the size of the group and the generality and extravagance of the allegations, relate to the strength of the link between the allegedly defamatory words and the individual plaintiff's reputation. Contrary to the Plaintiffs' assertion, [note: 51] such an inquiry would not contradict the principle that the law of defamation focuses on the individual's hurt and damaged reputation.

69 The pertinent issue in *Butler* and *Knupffer* was whether the strength of the link between the defamatory statement and the plaintiffs' reputation was so weak that any adverse impact on the individual's reputation was so diluted as to fall below the threshold of legal recognition. We see no reason why, even where legal recognition has been established, those same factors should not be taken into account at the assessment of damages stage. On the contrary, it seems to us that a court can only properly assess the harm and injury occasioned to the individual plaintiff (and by extension the appropriate quantum of damages to award) when it takes those factors into account. In this regard, we are not persuaded by the Plaintiffs' contention that the reduced effect of a group defamation, if any, would be achieved in their words "by limiting the number of claimants for a single

libel, [and that] this would have adequately addressed the issue of proportionality of damages to the harm done by the libel." [note: 52] We see two real problems with this contention or approach. First, it seems to completely disregard the fact that where a group is defamed, each plaintiff must still fulfil the legal recognition requirement and only when he has done so will the court turn to the question of assessment of damages. Second, we do not see how a court can deprive an individual, who is not a party before the court, from later suing for defamation arising from the same statement, so long as he can satisfy the threshold legal recognition requirement. This will run counter to all principles of justice.

70 We think it pertinent to emphasise Lord Porter's observation in *Knupffer* at 124 that, "[e]ach case must be considered according to its own circumstances". The size of the group is just one of several considerations or factors and is hardly conclusive. For example, the sting and damage to the reputation of persons from a defamatory statement that a committee were all child-sex offenders would not be diluted in any way by reason of the allegation being made against a group. Conversely, the sting of a defamatory statement that a committee was slipshod in reviewing a tender because they were pre-occupied with getting re-elected might well be diluted because the reasonable reader knows that a statement was made about the quality of the claimants' work as a group, and that there are likely to be different degrees to which the statement applies to each member. It is the nature of the sting which will be critical.

71 Applying the abovementioned principle to the facts of the present case, we concur with the Judge's decision that given that the size of the group cannot be said to be small, and the fact that no member of the previous MC was singled out for attack by the statements, it should follow that the harm occasioned to each plaintiff would have been less than if the statements had only defamed one specific plaintiff.

In the assessment of aggravated damages

72 We next consider whether the principle of proportionality should apply to the assessment of aggravated damages.

73 In their further submissions, the Plaintiffs cited damages awards from various common law jurisdictions in support of the proposition that there is no requirement that aggravated damages should be a fixed proportion of general damages: [note: 53]

(a) Singapore: In *Arul Chandran* and *Peter Lim*, aggravated damages constituted 50% of the general damages. However, in *Ng Koo Kay*, aggravated damages were fixed at 40% of the general damages.

(b) Canada: In *Myers v Canadian Broadcasting Corp* 2001 CarswellOnt 2037, the amount of aggravated damages awarded amounted to 75% of the general damages awarded. In *Leenen v Canadian Broadcasting Corp* 2001 CarswellOnt 2011, the amount of aggravated damages awarded was 87.5% of general damages.

(c) Hong Kong: It was expressly stated in *Sin Cho Chiu v Tin Tin Publication Development Ltd & Another* [2002] HKEC 50 (at [11]) that there is no fixed proportion between general and aggravated damages. Other cases demonstrate a varying proportion. In *Au Yee Ming Ivan v Ng Fei Tip* [2010] HKEC 1319, the aggravated damages awarded were 67% that of general damages. In *Lee Ching v Lau May Ming* [2007] HKCU 714, the amount of aggravated and general damages awarded were similar.

74 It is clear from the above authorities that courts in Singapore and various other common law

jurisdictions do not subscribe to any rule that aggravated damages must be a fixed proportion of general damages. Be that as it may, we are nonetheless of the view that there should be some semblance of *proportionality* between the quantum of general damages and aggravated damages awarded.

75 Aggravated damages, like general damages, are also compensatory in nature. In the Australian case of *Buckley v Herald & Weekly Times Pty Ltd* [2009] VSCA 118, the court stated at [10]:

> …any amount of aggravated damages awarded would to some extent be informed by the base level of any compensatory damages awarded; for, in principle, *aggravated damages are damages to compensate for the aggravation of loss to the plaintiff*. [emphasis added]

This appears to suggest that aggravated damages are awarded in order to compensate the enhanced hurt suffered by the plaintiff: see also *Gatley on Libel and Slander* at para 9.15. Caution, therefore, has to be exercised against double counting or otherwise over-compensating the plaintiff because the distress, humiliation and injury to feelings for which aggravated damages are awarded to compensate the plaintiff, are matters that may also properly be taken into account in awarding basic compensatory damages: see *Carter-Ruck on Libel and Privacy* (Alastair Mullis gen ed) (Butterworths, 6th Ed, 2010) at para 15.36.

76 Courts in both the United Kingdom and in Australia appear to have taken this to heart. See for example *Collins Stewart Ltd*, per Gray J at [24] and *Habib v Radio 2UE Sydney Pte Ltd (No 4)* [2012] NSWDC 12 ("*Habib*"). In *Habib*, the court observed at [430]:

> In assessing this amount for aggravated damages I am mindful of the need to take care to avoid overlap of general compensatory damages and aggravated damages, both being forms of compensatory damages, as that could lead to over-compensation. Were it not for that factor, my assessments of the separate amounts for aggravated damages would have been significantly increased in this case.

77 We endorse the view articulated in *Habib* that our courts should tread cautiously when determining the appropriate amount of aggravated damages to award. Ultimately, even where aggravated damages are appropriate, the total figure for both general and aggravated damages should not exceed fair compensation for the injury suffered by the claimant, see *Thompson v Metropolitan Police Commissioner* [1998] QB 498. Aggravated damages are meant to compensate for the aggravation of the injury; they are not an arbitrary top-up unrelated to the desire of the court to compensate the plaintiff for the aggravation.

Different Awards to Multiple Plaintiffs

78 We now consider the contention raised by the Defendant that the Plaintiffs should not each be awarded the same amount of damages since the evidence showed that Bernard Chan, the first Plaintiff and the President of the previous MC, had borne the brunt of the remarks. [note: 54] The Defendant relies on *Tang Liang Hong* where this court held at [171]:

> As found by the learned judge (at [112] of his judgment), and we agree, all the utterances made by Mr Tang were mainly directed at Mr Goh and Mr Lee. Thus, in so far as these plaintiffs are concerned, we do not think that there was very much aggravation of the defamations in question, and the element of aggravated damages would not be considerable. For this reason and on the basis of what we have held in [132]–[143], we are of the opinion that the awards to them should in each case be moderated.

79 As has been reiterated throughout this judgment, damages awarded to each of the Plaintiffs would have to be proportionate to the harm and injury actually occasioned to him. It logically follows from this that different awards of damages may be made to multiple plaintiffs. However, we find that the Defendant has not proven his contention that Bernard Chan bore the brunt of the defamatory statements. On the contrary, the Defendant admitted that the defamatory remarks did not single out any member of the previous MC since the defamatory statements targeted the MC as a whole. [note: 55] It is irrelevant that Bernard Chan was the most active in defending the libellous allegations since the issue is really whether the sting of the libel could be equally imputed to all of them, which is the case here. Thus we find that no case has been made out for different awards for the different claimants.

Conclusion on assessment of damages

80 The general principle guiding an appellate court in varying the damages awarded by the judge below was set out in *Arul Chandran* at [51], citing *Associated Newspapers Ltd v Dingle* [1964] AC 371 at 393:

> An appeal court rejects his figure only in "very special" or "very exceptional" cases. Such cases are embraced by the formula that the judge must be shown to have arrived at his figure either by applying a wrong principle of law or through a misapprehension of the facts or for some other reason to have made a wholly erroneous estimate of the damage suffered…

The question, therefore, is whether this was a very special or exceptional case or the Judge had arrived at a wholly erroneous estimate of the damages suffered by the Plaintiffs.

81 It is further trite law that when assessing damages, the court should have sufficient regard to precedents as they provide a broad guideline for the exercise: see *Goh Chok Tong v Jeyaretnam Joshua Benjamin and another action* [1998] 2 SLR(R) 971 at [57] ("*Goh Chok Tong*"). As was observed by Belinda Ang J in *Lee Hsien Loong v Singapore Democratic Party and others and another suit* [2009] 1 SLR(R) 642 at [73]:

> Broadly appropriate comparable cases can, if used with discretion, provide some guidance on the appropriate amount of damages to award in a particular case. This approach is especially useful in promoting a rationally sustainable and coherent regime for damages for libel, and, as a corollary, in avoiding "the grossly exorbitant awards so often made by juries in other jurisdictions" (*per* Thean JA in [*Tang Liang Hong*]... at [158]).

82 The Judge found that the precedents of *Peter Lim* and *Arul Chandran* were the "most relevant" in her assessment of the appropriate amount of damages for the present case. While we note that it is true that there is a common factor between *Peter Lim* and *Arul Chandran* on the one hand and the present case on the other in the sense that they all concerned squabbles that occurred in clubs, it seems to us that she did not give sufficient weight to the differentiating factors which she herself recognised, namely, the limited extent of publication, the fact that no attack was made on the plaintiffs' professional reputations, and the fact that the Statements referred to the MC as a whole and did not ascribe specific blame to the individual Plaintiffs.

83 In *Peter Lim*, this court awarded damages totalling $210,000 to the plaintiff, comprising $140,000 as general damages and $70,000 as aggravated damages. Emphasis was placed on the extensive publication of the defamatory statements and the fact that the statements attacked his professional reputation as a prominent and reputable businessman. These were factors that were

clearly absent in our case.

84 In *Arul Chandran*, the plaintiff was awarded $100,000 as general damages and $50,000 as aggravated damages. Here, although the publication of the defamatory statements was extremely limited, the statements were extremely grave and had attacked the claimant's professional reputation as a lawyer and imputed criminal conduct on his part. Moreover, the attacks in both *Peter Lim* and *Arul Chandran* were not in relation to a group in general but in relation to the specific plaintiff. Furthermore, the defendant in each of those cases had recklessly raised a plea of justification. These circumstances explain why relatively large general and aggravated damages were awarded in each case although the extent of dissemination was very limited.

85 Instead, we are of the view that the awards in *Ng Koo Kay* and *Goh Chok Tong* are more appropriate precedents for this court to consider. As in the present case, the gravity of the defamation in *Ng Koo Kay* whilst fairly serious had not been extensively disseminated. The court awarded the plaintiff $25,000 in general damages and $10,000 in aggravated damages. In *Goh Chok Tong*, we observe that the plaintiffwas a political figure of far higher standing than the Plaintiffs in the present case and yet the court only awarded a sum of $100,000 by way of general damages and another $10,000 in aggravated damages. Nonetheless we do think that a larger quantum of aggravated damages than those awarded in these two cases would be justified in the present case on account of the Defendant's clear malice.

86 In our judgment, the Judge has come to a "wholly erroneous" estimate of the damages to be awarded. For the reasons given above and bearing in mind the need to guard against over-compensation, we find that an award of $50,000 to each Plaintiff, comprising $35,000 as general damages and $15,000 as aggravated damages would be fair and adequate. To this extent, the Defendant's appeal is allowed. Accordingly the Plaintiffs' appeal is dismissed.

Costs

87 The final award of damages in this judgment in favour of the Plaintiffs, was $50,000 each, well within the jurisdiction of the Subordinate Courts. The question that follows is whether the individual amounts recovered by joint plaintiffs should be aggregated to determine the scale of costs applicable in the present case. Several authorities suggest that that should not be done. In *Gallivan v Warman* [1930] WN 96 ("*Gallivan*"), the plaintiffs, who were husband and wife, sued the defendant in the High Court for damages for negligence following a motor accident where the wife was injured. The action was transferred to the county court and the defendant paid into court 45 pounds to meet the claim of the wife and 5 pounds for the husband. The plaintiffs accepted the payments. The county court judge refused to grant High Court costs because the plaintiffs each recovered less than 50 pounds.

8 8 *Gallivan* was followed in *Haile & Others v West* [1940] 1 KB 250, where the English Court of Appeal held that in respect of the claims of co- plaintiffs, even though they arose from the same transaction, the amount recovered by each should not be aggregated to determine the appropriate costs order to be made because each of the plaintiffs had a separate cause of action. In the circumstances, the appropriate scale of costs was to be, in the words of Scrutton LJ, "upon the footing that each individual ha[d] brought a separate action" (at 256). The court did not accept the co-plaintiffs' contention that an action by the co-plaintiffs was a single action resulting in one judgment, and there should therefore be one order as to costs. *Gallivan* was also followed by the Supreme Court of Victoria, Australia in the case of *Brien v Watts* [1964] VR 673.

89 In the light of these authorities, and in accordance with the spirit that a party should not have to incur costs other than what is warranted by the substance or magnitude of the claim, we hold that

each of the Plaintiffs would, in principle, only be entitled to costs on the Subordinate Courts scale appropriate to the quantum of damages awarded to him in the present judgment.

At the liability stage

90 It will be recalled that in the Merits Judgment this court granted costs to the Plaintiffs as regards the appeal and the trial on liability. Following that judgment, the Plaintiffs proceeded to raise their bills of costs and have them taxed without waiting for the assessment of damages. In *Lin Jian Wei v Lim Eng Hock Peter* [2011] 3 SLR 1052 ("*Lin Jian Wei*") this court clearly expressed the view that trial costs in claims for unliquidated damages should ordinarily not be assessed before damages have been agreed or determined. The rationale for this practice is apparent from Appendix 1 to O 59 of the Rules of Court (R5, 2006 Rev Ed) ("Rules of Court") which provides that the taxing registrar in determining the proper amount to be allowed as costs "shall have regard to the principle of proportionality" as well as, inter alia, "where money or property is involved, its amount or value". This provision clearly suggests that there is an incontrovertible link between the costs to be awarded and the judgment amount. This point was also underscored in *Lin Jian Wei* at [76]:

> Further, though this is not an absolute rule, the concept of proportionality requires that there ordinarily be some correlation between the quantum of damages awarded and the costs taxed.

91 Here, before the assessment of damages was heard, the Plaintiffs drew up their bills of costs in respect of the trial and appeal relating to liability ("liability stage") and had them taxed. Before the Assistant Registrar, the plaintiffs were awarded $802,500 for the trial and $102,500 for the appeal. On review, the Judge reduced the costs for trial to $602,500 and left undisturbed the amount awarded for the appeal. Thus the taxed costs came up to a total of $705,000. The Defendant has paid up the total amount of the taxed costs to the Plaintiffs.

92 The question which we now need to address is whether we should allow the taxed costs for the liability stage (already paid) to remain in the light of the quantum of damages which we have awarded to each of the Plaintiffs and the views which we have expressed above at [89] that each of the Plaintiffs should only be entitled to costs according to the Subordinate Courts scale appropriate to damages awarded to each. We note that sometime in January 2012 when the Plaintiffs raised their bills of costs in respect of the liability stage and sought to have the bills taxed, the solicitors for the Defendant requested that the taxing of the bills be deferred until damages had been assessed, stating that it would be "premature" and also drew the Plaintiffs' attention to what was said in *Lin Jian Wei*. Nevertheless, the Plaintiffs insisted on proceeding with the taxation. In the circumstances, we had some concerns and requested the parties to make further submissions on the issue.

93 While recognising that he had already paid the taxed costs for the liability stage, the Defendant submitted that the question of costs was still open for review by this court in the light of its decision in the present appeal as to the appropriate quantum of damages which each of the Plaintiffs was entitled to. He advanced two bases for making this submission. The first was pursuant to s 37(5) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA") and the second was the inherent jurisdiction of the court under O 92 r 4 of the Rules of Court.

94 Section 37(5) of the SCJA provides that at the hearing of an appeal, this court may "give any judgment, and make any order which ought to have been given or made, and make such further or other orders as the case requires". Reading this provision in the context of s 37 as a whole it is clear that the powers enumerated in s 37(5) should generally be confined to the issues raised in the appeal. The Defendant argues that the phrase "make such further or other orders as the case requires" in the provision gives this court the power to set aside the two taxed bills of costs if the

circumstances so warrant in the light of the damages awarded by this court to each of the Plaintiffs.

95 Section 37(5) of the SCJA is identical to s 69(4) of the Court of Judicature Act 1964 (Act 91) (Malaysia) ("CJA 1964"). This is because the origin of our SCJA was the CJA 1964. When Singapore was a part of Malaysia, the CJA 1964 also became part of the law of Singapore. In *Tsoi Ping Kwan v Medan Juta Sdn Bhd & Anor* [1996] 3 MLJ 367, the Malaysian Court of Appeal opined that "the power conferred by s 69(4) [of the CJA 1964]is confined to making ancillary orders that would have the effect of completely giving the remedy which this court intends to give when either allowing or dismissing an appeal". In expressing this view, the court relied on the earlier case of *Rama Chandran v The Industrial Court of Malaysia and Anor* [1997] 1 MLJ 145 ("*Rama Chandran*"), where the Malaysian Federal Court, in holding that the dismissal of a workman was wrongful, went on (pursuant to r 51(4) of the Rules of the Supreme Court 1980 (Malaysia), a rule *in pari materia* with s 69(4) of the CJA 1964) to award compensation instead of remitting the case back to the Industrial Court for follow-up action. The court held that "justice demands that to avoid further delay and expense, [it] determine[s] the consequential relief rather than remitting the case to the Industrial Court for that purpose". *Rama Chandran* was also followed in *Harris Solid State (M) Sdn Bhd v Bruno Gentil s/o Pereira & Ors* [1996] 3 MLJ 489, another case involving industrial dispute where the Malaysian Court of Appeal affirmed the decision of the High Court which held that the award of the Industrial Court was wrong in ruling that the dismissal of the workmen by the employers was justified. In dismissing the appeal of the employers, the Malaysian Court of Appeal, unlike the High Court, ordered the workmen's reinstatement instead of remitting the case to the Industrial Court for re-adjudication. In varying the High Court order, the Malaysian Court of Appeal relied on the powers conferred under s 69(4) of the CJA 1964.

96 In the Indian case of *Ganesh Ram v Baikunthesh Prasad Singh And Ors* AIR 1951 Pat 291 ("*Ganesh Ram*") which concerned the then O 41 r 33 of the Indian Civil Procedure Code 1908 (which rule was worded similarly to s 69(4) of the CJA 1964 and our own s 37(5) of the SCJA), the court said (at [10]):

> The rule has been newly introduced in the Code of 1908. Its object is clearly to enable the court to do complete justice between the parties. Its terms are very wide and in a proper case it gives the appellate court ample discretion to pass any decree or make any order to prevent the ends of justice from being defeated. Having regard to the wide language of the rule, it is not expedient to lay down any hard and fast rule regarding its true scope. Involving as it does an exercise of judicial discretion, the question whether the court should exercise the powers in a particular case would no doubt depend upon the special facts and circumstances of the case. It may be conceded that the discretion is not to be exercised in an arbitrary manner nor in such a way as to abrogate the other provisions of the Code with respect to the institution of appeals and cross-objections and the like. But there is ample authority for the view that the power contained in r 33 extends to those cases where as a result of the appellate court`s interference with the decree in favour of the appellant, *further interference is required in order to adjust the rights of the parties in accordance with justice, equity and good conscience* (see, for instance, Jawahar Banu v. Shujaat Hussain Beg, 43 ALL 85 : (A. I. R. (8) 1921 ALL 367) and Gangadhar v. Banabashi, 22 C. L. J. 390: (A. I. R. (1) 1914 cal. 722). [emphasis added]

97 A similarly worded provision to s 37(5) may be found in O 59 r 10(3) of the then English Rules of the Supreme Court (SI 1776 of 1965) ("ERSC") (also similar to O 57 rr 13(3) and (4) of our Rules of Court), which related to the powers of the Court of Appeal when hearing an appeal. It read:

> The Court of Appeal shall have power to draw inferences of fact and to give any judgment and make any order which ought to have been given or made and to make such further or other order

as the case may require.

98 In *Nicholls v Nicholls* [1997] 1 WLR 314 ("*Nicholls*"), the English Court of Appeal examined a line of cases concerning defects in the application for a committal order. The Court of Appeal held (at 326) as regards O 59 r 10(3) ERSC, read together with s 13(3) of the Administration of Justice Act 1960, that it:

> …give[s] a court the power to rectify procedural defects both in the procedure leading up to the making of the committal order and after a committal order has been made. Like any other discretion, the discretion provided by the statutory provisions, must be exercised in a way which in all the circumstances best reflects the requirements of justice.

While this statement referred to "procedural defects", it should in no way be taken to mean that O 59 r 10(3) of the ERSC only empowered the rectification of procedural defects. That reference must be read in the context of that case which concerned procedural defects. The important thing to note in that statement is that the discretion conferred by O 59 r 10(3) of the ERSC "must be exercised in a way … best reflects the requirement of justice". This principle uttered in *Nicholls* is very similar to what was expressed in *Ganesh Ram* that "further interference is required in order to adjust the rights of the parties in accordance with justice, equity and good conscience" (see [96] above).

99 As far as our own authorities are concerned, there is the case of *Hoban Steven Maurice Dixon and another v Scanlon Graeme John & others* [2007] 2 SLR(R) 770 which the Defendant also relies on. That was an oppression action under the Companies Act (Cap 50, 1994 Rev Ed) where the court made what was essentially a consent order to enable one party to buy out the shares of the other party ("buy-out order"). The buy-out was not effected due to a dispute as to valuation. When the matter eventually came before this court, it held that the buy-out order could not be implemented and was inoperative and, pursuant to the powers conferred under ss 37(5) and (6) of the SCJA, made the consequential order that the parties were to be "restored to the *status quo ante*" as if the buy-out order "had never been made" (at [46]).

100 The powers conferred on this court under s 37(5) of the SCJA are broad and those powers may be exercised when the justice of the case calls for it. It is a facilitative provision to enable the Court of Appeal to make such consequential orders as the justice of the case requires. We should not seek to circumscribe what those circumstances may be before this court would invoke s 37(5) of the SCJA.

101 Reverting to the present case, we have, at [89] above, ruled that in view of the reduced damages which we have granted to each of the plaintiffs, costs should be awarded to them according to the Subordinate Courts' scale. As we have mentioned before, the two bills, notwithstanding the objection of the Defendant, were proceeded to be taxed at the insistence of the Plaintiffs. In the light of our decision in this judgment, it is clear that the bills were taxed on a wholly erroneous footing. Justice cries for intervention on the part of this court. While setting aside the two taxed bills was not a specific point raised in the appeal, it is clearly a consequential matter on which this court is entitled to make the necessary adjustment following our decision on the appeal on damages. Pursuant to the powers conferred under s 37(5) of the SCJA, we would accordingly set aside the two taxed bills. In view of this decision, we do not think there is any need for us to proceed to examine the second basis advanced by the Defendant to interfere in the two taxed bills *ie*, the inherent jurisdiction of the court under O 92 r 4 of the Rules of Court.

Judgment

102 In the result, the Defendant's appeal in CA 63 of 2012 is allowed to the extent that the

quantum of damages awarded to each Plaintiff is reduced to $50,000; $35,000 being general damages and $15,000, aggravated damages. The Plaintiffs' appeal in CA 68 of 2012 is dismissed. As regards the question of costs of the assessment and this appeal, we note that the Defendant has, to some extent, succeeded in the appeal; on the other hand, the Defendant raised a number of points which were not successful and in any case, he would ordinarily have been liable for some part of the costs of the assessment. In all the circumstances, we think the fairest order would be for each party to bear its own costs for both the present appeals as well as for the assessment of damages before the Judge.

103 As for the two taxed bills which we at [101] have set aside, instead of directing that the bills be re-taxed, we think it more expedient for this court to fix the quantum after hearing the parties. For this purpose, a date will be set for the parties to appear before us. The payment already made by the Defendant pursuant to the two taxed bills shall be regarded as payment towards account. The appropriate refund should be made by the Plaintiffs to the Defendant after this court has fixed the amount of reasonable costs for the liability stage.

[note: 1] [23] Damages Judgment

[note: 2] [24] Damages Judgment

[note: 3] [25]-[26] Damages Judgment

[note: 4] [27] Damages Judgment

[note: 5] [30] Damages Judgment

[note: 6] Ibid.

[note: 7] [31] Damages Judgment

[note: 8] [45] Merits Judgment

[note: 9] [13] Defendant's Further Submissions

[note: 10] [15] Defendant's Further Submissions

[note: 11] [13] Defendant's Further Submissions

[note: 12] [12] Appellant's Further Submissions in CA 63/2012

[note: 13] [8] Appellant's Further Submissions in CA 63/2012

[note: 14] [20] Appellants' Further Submissions in CA 68/2012

[note: 15] [22] Appellants' Further Submissions in CA 68/2012

[note: 16] [20] Appellants' Further Submissions in CA 68/2012

[note: 17] [64]-[78] Appellants' Case ("AC") in CA 68/2012

[note: 18] Appellants' Core Bundle ("ACB") in CA 68/2012 at p 126

[note: 19] [38] Merits Judgment

[note: 20] [92] Merits Judgment

[note: 21] [70] AC in CA 68/2012

[note: 22] [15] Appellant's Case ("AC") in CA 63/2012

[note: 23] [20] AC in CA 63/2012

[note: 24] [21] AC in CA 63/2012

[note: 25] [17] AC in CA 63/2012

[note: 26] [13]-[14] Plaintiffs' Statement of Claim ("SOC")

[note: 27] [45] Merits Judgment

[note: 28] [85] AC in CA 68/2012

[note: 29] Ibid.

[note: 30] [83] AC in CA 63/2012

[note: 31] [85] AC in CA 63/2012

[note: 32] [27] Merits Judgment

[note: 33] [26] Merits Judgment

[note: 34] [27] Merits Judgment

[note: 35] [39] Merits Judgment

[note: 36] [22] Defence Amendment No. 2; [26] Merits Judgment

[note: 37] [26] Merits Judgment

[note: 38] [26] Damages Judgment

[note: 39] [71]-[73] AC in CA 63/2012

[note: 40] See generally [94] and [96] CA Merits Judgment

[note: 41] Notes of Evidence for 16 and 17 March 2010 [see Bundle of Documents and Authorities]

[note: 42] See pp 169-179, Volume 2 Appellant's Core Bundle CA 68 of 2012

[note: 43] [77]-[81] AC in CA 63/2012

[note: 44] [77]-[79] AC in CA 63/2012

[note: 45] [152]-[158] AC in CA 68/2012

[note: 46] [159]-[165] AC in CA 68/2012

[note: 47] [66] Merits Judgment

[note: 48] [84] Merits Judgment

[note: 49] [164] AC in CA 68/2012

[note: 50] [40], [44], [47] and [50] Appellants' Further Submissions in CA 68/2012

[note: 51] [18] Appellants' Further Submissions in CA 68/2012

[note: 52] [13] Appellants' Further Submissions in CA 68/2012

[note: 53] [68]-[72] Appellants' Further Submissions in CA 68/2012

[note: 54] [87]-[93] AC in CA 63/2012

[note: 55] [82] and [88] AC in CA 63/2012