

No. 4 of 1980

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL
ON APPEAL FROM THE COURT OF APPEAL
IN SINGAPORE

B E T W E E N :

JOSHUA BENJAMIN JEYARETNAM Appellant/

Defendant

and

LEE KUAN YEW Respondent/

Plaintiff

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RESPONDENT'S CASE

1. This is an appeal, by leave of the Court of Appeal in Singapore, by the Defendant in the action, Mr. Jeyaretnam, from the decision of the Court of Appeal in Singapore (Chief Justice Wee Chong Jin, Mr. Justice Kulasekaram, Mr. Justice D'Cotta) dated 5 September 1979 dismissing the Defendant's appeal against the judgment for the Plaintiff in an action for damages for slander against the Defendant and against the award of damages of \$130,000 (Singapore) to the Plaintiff made by Mr. Justice Chua on 9 January 1979.

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The Issues

2. In the Court of Appeal the Appellant contested the judgment on both liability and quantum. The Respondent therefore deals with both main issues in this written case. The principal submissions of the Respondent are:-

- (i) That the learned Judge and the Court of Appeal were right to hold the words defamatory.
- (ii) That the learned Judge and the Court of Appeal were right to reject the defences of fair comment and qualified privilege and, in any event, to conclude that the Appellant was actuated by express malice. 10
- (iii) That the learned Judge and the Court of Appeal were entitled to make such findings and they should be upheld, having regard (in so far as may be necessary) to the fact that both courts in the Republic of Singapore made such findings in respect of each issue. 20
- (iv) That the learned Judge and the Court of Appeal were right to consider the award of damages fair and reasonable compensation for the said slander.
- (v) That the learned Judge and the Court of Appeal were entitled to make and uphold the said award, having regard in

particular (so far as may be necessary)
to the advantage enjoyed by the trial
Judge in assessing the evidence and the
knowledge of the local courts of the
effect of such slander and the proper
measure of damages within the
jurisdiction and to the fact that both
courts reached the same conclusion.

10 (vi) That accordingly there are no grounds
for interfering with the judgment on
either liability or damages.

The principles on which the Privy Council
will interfere with the judgments of
Commonwealth courts are well known. It is
submitted that unless the trial Judge
misdirected himself in law, the judgment will
be upheld unless the very rare situation
exists in which it is right to overturn the
view of both courts below as to the
20 appropriate findings of fact and the measure
of damages. This is not such a case, as a
summary of the history of the action and the
judgments demonstrate. The Respondent
accordingly sets out the facts and the
judgments, respectfully adopting the
conclusions and findings of the courts below
together with their reasoning.

3. The Cause of Action

(a) The Plaintiff, Mr. Lee Kuan Yew, is and

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was at all material times Prime Minister of Singapore and Secretary General of the People's Action Party, the party in government in Singapore. The Defendant, Mr. Jeyaretnam, is an Advocate and Solicitor and is and was at all material times the Secretary General of the Workers' Party, a political party which contested the Parliamentary General Elections held in Singapore on 23rd 10 December, 1976, in respect of which both the Plaintiff and Defendant were candidates.

- (b) At an election rally of the Workers' Party held at Fullerton Square, Singapore, on 18th December, 1976, the Defendant made a speech in the presence of a large number of people including representatives of the Press, Radio and Television, in the course of which he 20 spoke the words complained of in the action. The Defendant said:
- "I'm not very good in the management of my own personal fortune but Mr. Lee Kuan Yew had managed his personal fortune very well. He is the Prime Minister of Singapore. His wife is the senior partner of Lee and Lee and his brother is the Director of several companies,

including Tat Lee Bank in Market Street,
the bank which was given a permit with
alacrity, a banking permit licence when
other banks were having difficulties
getting their licence, so Mr. Lee Kuan
Yew is very adept in managing his own
personal fortune but I am not. I am a
fool for your sake and I tell you this,
my dear friends, that if I should become
10 the Prime Minister of Singapore, I am
not saying I will, Mr. Lee Kuan Yew
keeps talking as though he is going to
remain for the next twenty years. I know
it's left to the people; the people will
decide who will form the government and
then the people in Parliament will
decide who will be Prime Minister; all I
am saying is, if I become Prime Minister
there will be no firm of J.B. Jeyaretnam
20 and Company in Singapore because I
wouldn't know how to manage my own
personal fortune".

- (c) On 8th January 1977 solicitors for the
Plaintiff wrote complaining of the said
speech and the said words and alleging
that the words were understood to mean
that Mr. Lee Kuan Yew was wanting in
honesty and integrity as the Prime
Minister of Singapore in that he had,

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allegedly, abused his office as the Prime Minister of Singapore by unlawfully or wrongfully managing or accumulating his personal fortune through his wife's legal practice as the senior partner of the firm of Messrs. Lee and Lee, and had, allegedly, abused his office by unlawfully or wrongfully managing and accumulating his personal fortune through his brother, Mr. Denis Lee Kim Yew, by procuring or causing to be issued with alacrity a banking licence to Tat Lee Bank Limited. By his reply dated 18th January 1977, written by the Defendant's firm, J.B. Jeyaretnam and Co., on behalf of the Defendant, the Defendant denied that his words meant that he was suggesting that Mr. Lee Kuan Yew had procured or caused to be issued with alacrity a banking licence to Tat Lee Bank Limited, declined to apologise to the Plaintiff and sought to excuse his remarks by reference to a speech which the Plaintiff had made on 14th December 1976.

4. The Pleadings and Interlocutory Matters

- (a) The proceedings were begun by Writ of Summons issued in the High Court of the Republic of Singapore on 22nd January

1977. The words complained of, as set out in paragraph 3(b) above, are pleaded in paragraph 3 of the Statement of Claim. In paragraph 4 of the Statement of Claim it is alleged that the said words in their natural and ordinary meaning meant and were understood to mean that the Plaintiff had procured preferential treatment for his brother and/or wife to his own and/or their personal financial advantage, had thereby abused and would continue to abuse the office of Prime Minister of Singapore, is wanting in honesty and integrity and is unfit to hold the said office. It was alleged in the Statement of Claim that the words complained of were calculated to disparage the Plaintiff in his office of Prime Minister of Singapore. The said words, if defamatory, were therefore actionable without proof of special damage under Section 5 of the Defamation Act, Singapore, 1965.

- (b) By his Amended Defence the Defendant denied that the words complained of were capable of bearing the meanings alleged in the Statement of Claim or any defamatory meaning, especially in the

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context of the Defendant's entire speech. Alternatively, the Defendant alleged that the occasion of making the speech was an occasion of qualified privilege being, so the Defendant alleged, a reply by the Defendant to an alleged attack on his financial integrity made by the Plaintiff in a speech in Singapore on 13th December 1976. A further ground upon which the Defendant alleged that the occasion was one of qualified privilege was by reason of an alleged "public, moral or social duty" of the Defendant "as a candidate in the 1976 Parliamentary Elections to communicate the said words to the electors who had an interest to receive the said communication". In the further alternative the Defendant alleged that the words complained of were fair comment upon a matter of public interest, namely the comparative financial abilities of the Plaintiff and himself. 10 20

- (c) By his Amended Reply the Plaintiff put in issue the defences of qualified privilege and fair comment and alleged that the Defendant was actuated by express malice in speaking the words

complained of. Particulars of the facts and matters relied upon in support of the allegation of express malice were pleaded in the Reply.

(d) By order dated 23rd August 1977 the Defendant obtained leave to serve interrogatories on the Plaintiff. The said interrogatories, to which reference is made below, purported to relate to the particulars of facts under the defence of fair comment but were of a character calculated to exacerbate the injury to the Plaintiff's feelings caused by the words complained of and to embarrass him.

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5. The Trial

The action came on for trial in November 1978 before Mr. Justice Chua. Both the Plaintiff and the Defendant were represented by leading and junior Counsel. The trial lasted seven working days at the end of which judgment was reserved. On 9th January 1979 the learned Judge gave judgment for the Plaintiff for \$130,000 (Singapore) damages and costs. An injunction was granted to the Plaintiff restraining the Defendant from repeating the words complained of in the action or from uttering any similar slanders upon the Plaintiff.

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6. Judgment of Mr. Justice Chua

(a) The issues at trial were:-

- (i) whether the words complained of were defamatory of the Plaintiff;
- (ii) whether the occasion of speaking the words was an occasion of qualified privilege;
- (iii) whether the words constituted fair comment upon a matter of public interest and upon facts accurately stated; 10
- (iv) whether the Defendant was actuated by express malice in speaking the words;
- (v) damages.

(b) (i) Meaning

It is submitted that the trial Judge directed himself correctly and in accordance with the relevant authorities as referred to in his judgment, on the test to be applied in determining whether the words were reasonably capable of bearing the meanings alleged in the Statement of Claim. The trial Judge found that 'the clear suggestion was made that the Plaintiff influenced the grant of the licence to the Tat Lee Bank and 20

secured the grant of preference to that Bank. There can be no doubt that the words bear the meaning that the Plaintiff had procured the grant of favours to Lee and Lee and to his family. To put it in blunt terms the words mean that the Plaintiff has been guilty of nepotism and corruption, and this would mean that the Plaintiff is unfit to be Prime Minister'.

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(ii) Qualified Privilege

The main contention of the Defendant was that the words were a reply by the Defendant to an attack upon him by the Plaintiff. The Judge first had to decide whether the words spoken by the Defendant were in fact a reply to criticisms of the Defendant made by the Plaintiff in a speech which the Plaintiff made at a Press Conference on 13th December 1976. At a Press Conference, which was reported in the Straits Times on 14th December 1976, the Plaintiff criticised the competence of the "leaders of the present opposition parties". The trial Judge's

finding was that "Here the
defamatory statement made by the
Defendant is quite unconnected with
and irrelevant to the accusations
made against him by the Plaintiff
and they were not published bona
fide. The charge of nepotism and
corruption made against the
Plaintiff was in no sense a defence
by the Defendant against a charge 10
of incompetence. The Defendant
made an unwarranted and
unjustifiable attack on the
Plaintiff's honesty and integrity."
In so far as the plea of qualified
privilege was based on a right of
reply to an attack the Defendant
thus failed to establish the
essential factual basis. The
second plea was that the Defendant 20
had a duty to communicate with the
electorate. The trial Judge on this
issue correctly directed himself in
accordance with the relevant
authorities and in accordance with
Section 14 of the Defamation Act
1965, that the fact that the words
were spoken to members of the
electorate during an election

campaign did not constitute an
occasion of qualified privilege. p. 113

(iii) Fair Comment

It is submitted that the trial
Judge correctly directed himself on
the essential ingredients of the
defence of fair comment, namely p. 115

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that the words complained of must
be comment, as opposed to
statements of fact; that the words
must be comment upon facts which
are accurate and upon a
subject-matter of public interest;
and that the comment must be within
the objective limits of fair
comment and must be the honest

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opinion of the Defendant. On the
primary issue, namely whether the
words complained of were comments
or statements of fact, the trial
Judge found, correctly it is
submitted, that "the imputations in
the present case are undoubtedly
imputations of fact". The defence p. 115
of fair comment therefore failed in
limine. The trial Judge further
held that the facts on which the
alleged comments were based were
not accurate, that the words

contained imputations of corrupt or dishonest motive and were not the honest expressions of the Defendant's opinion. The trial Judge therefore found that the defence of fair comment also failed on these grounds.

(iv) Express Malice

The defences of qualified privilege and fair comment, if established, 10 would in any event fail if the Defendant was actuated by express malice in speaking the words.

Whether the Defendant was so actuated was also relevant to the question of damages. The trial Judge found that the Defendant spoke the words "....recklessly without an honest belief in their truth with the intention of 20

denigrating and insulting the Plaintiff and in speaking and publishing those words the

Defendant was actuated by malice". This conclusion was based upon the Judge's findings that:

- (a) the Defendant's speech was not an answer to criticisms made by the Plaintiff of the

Defendant but was spoken

because the Defendant "even

before he read the Plaintiff's

Press Conference had

decided to make the honesty of

government one of his election

themes";

p. 108

(b) the Defendant did not believe

that the allegations of

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nepotism and corruption

against the Plaintiff were

true;

pp. 114,116

(c) the Defendant intended to

denigrate and insult the

Plaintiff.

p. 114

The Judge's finding at (b) above

was based on his findings that the pp. 108-109

statement that the Tat Lee Bank had

obtained its licence "with

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alacrity" was untrue; that the

Defendant acknowledged after

evidence had been given by the

Plaintiff that the grant of the

licence was made in the normal

course of business and that the

Defendant had admitted in his

evidence that he never believed

otherwise than that the Monetary

Authority of Singapore acted with

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pp. 78-79

complete propriety and that the Prime Minister had nothing to do with the licence.

The trial Judge made findings of fact on other matters relevant to the issue of malice. These findings were recorded by him on the question of damages. It was not necessary to record the findings to rebut the defences of qualified privilege and fair comment, the Judge having found against the Defendant on the primary issue that the Defendant had no belief in the truth of the allegations of nepotism and corruption contained in the words complained of. In so far as may be necessary, however, the Respondent will rely on these other findings of malice to rebut any such defences. 10 20

(v) Damages

By his Statement of Claim the Plaintiff claimed compensatory damages. It was submitted at trial, and the trial Judge held, that the Plaintiff was also entitled to aggravated damages for

the additional hurt to his
reputation and feelings caused by
the Defendant's conduct in speaking
the words complained of and by the
Defendant's subsequent conduct.

The trial Judge held that the
following matters were relevant to
the assessment of damages:

- (i) the nature of the words
10 complained of; p. 119
- (ii) the standing of the Plaintiff; p. 119
- (iii) the standing of the Defendant; p. 119
- (iv) the likelihood of repetition; p. 119
- (v) the absence of a retraction
 or apology; p. 119
- (vi) aggravation of the hurt to the
 Plaintiff's reputation and
 feelings namely: p. 119
 - (a) the Defendant's
20 dishonesty in pretending
 that the words do not
 constitute allegations of
 nepotism and corruption
 when he intended the
 words should convey such
 meanings; p. 119
 - (b) the Defendant's
 dishonesty in persisting
 in a defence of fair

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p. 119

comment when he had no
belief in the truth of
the allegations;

p. 120

- (c) the Defendant's conduct
in serving
interrogatories on the
Plaintiff "of a kind
designed to convey a
smear";

p. 120

- (d) the Defendant's approval 10
of the name "Save
Democracy Trust Fund";

p. 120

- (e) the Defendant's attack on
the Plaintiff's motive
for bringing the action.

p. 120

The trial Judge rejected the
contention made in correspondence
(letter from Plaintiff's Solicitors
to Defendant's Solicitors 24th
November 1977) and at trial that an 20
article published in the Financial
Times on 1st November 1977 also
aggravated damages.

The Defendant did not rely in his
pleading or at trial on the
provisions of Section 16 of the
Defamation Act 1965 (evidence of
other damages recovered by the
Plaintiff). It is submitted that

reliance on Section 16 is
inapplicable to the circumstances
of this action, there being no
evidence that the injury to the
Plaintiff's reputation and feelings
caused by the words spoken by the
Defendant did not flow exclusively
from those words and the
Defendant's subsequent conduct.

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It is submitted that the trial
Judge directed himself correctly on
the matters relevant to
compensatory and/or aggravated
damages and that in so far as the
above matters required a finding of
fact, the evidence entitled the
trial Judge to make such findings.

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The learned Judge also considered
the amount of other awards of
damages in four actions for Supplemental
defamation by other persons on
other occasions brought by the
Plaintiff. The awards, in respect
of which no money has in fact been
recovered by or on behalf of the
Plaintiff, were relied on by the
Judge as a guide as to the level of
damages which might be appropriate
in this case. It is submitted that

the trial Judge correctly directed himself on the matters relevant to damages and that the sum awarded was appropriate to the injury inflicted and can in no way be described as "wholly erroneous".

7. The Judgment of the Court of Appeal in Singapore

(i) Petition of Appeal

The Appellant appealed to the Court of Appeal on all issues, but abandoned the defence of fair comment at the hearing. The Court of Appeal in Singapore (Chief Justice Wee Chong Jin, Mr. Justice Kulasekaram, Mr. Justice D'Cotta) unanimously, and it is submitted correctly, upheld the trial Judge's findings: 10

(i) as to the meaning of the words spoken by the Defendant, holding that reasonable persons would be likely to understand the words to mean that the Plaintiff "had managed his fortune very well by using his position as the Prime Minister of Singapore to procure preferential treatment for his wife and his brother to his own and their personal advantage. The 20

implication or inference which a reasonable person would be likely to draw on hearing the words is that Mr. Lee Kuan Yew had used his position as Prime Minister for personal and family financial gain by corrupt means by acts of nepotism";

p. 132

10 (ii) as to qualified privilege, holding that the words spoken by the Defendant "were.... not a defence against a charge of incompetence" p. 132 and amounted to "... a counter-attack which exceeds the bounds of legitimate defence"; p. 133

20 (iii) as to express malice, holding that the Defendant ".... admitted that he never believed otherwise than that the Monetary Authority of Singapore acted with complete propriety and that the Prime Minister had nothing to do with the granting of a banking licence to the Tat Lee Bank. Furthermore, Chua J. found, clearly on his own assessment of the credibility of Mr. Jeyaretnam, that Mr. Jeyaretnam published the words without an

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honest belief in their truth and
with the intention of denigrating
and insulting the Prime Minister.
These findings, which we accept,
were open to Chua J. on the
evidence before him";

p. 133

(iv) as to damages, holding that the
trial Judge correctly took into
account all the matters referred to
in his Judgment, and holding that
"In our judgment, there was no
misdirection by Chua J. in arriving
at the award of \$130,000. We are
also of the opinion that the award
is not only not excessive but is
reasonable having regard to all the
circumstances of the case. It was
a grave slander perpetrated
deliberately and not only without
regard to the truth but knowing it
was untrue. It was perpetrated for
political gain not caring what
distress it would cause and what
harm it would inflict on the
personal and political reputation
of an incumbent Prime Minister."
The Court of Appeal also rejected
the appeal based on Section 16 of

pp. 133-136,
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pp. 137-138

the Defamation Act 1965, holding that no evidence was given in mitigation of damages as required by Section 16 and that Section 16 had not been raised on behalf of the Defendant at trial.

pp.137-138

8. It is submitted that this appeal from the Court of Appeal in Singapore should be dismissed for the following, amongst other,

R E A S O N S

1. Because the Court of Appeal correctly rejected the Appellant's appeal from the judgment of, and award of damages by, Mr. Justice Chua;
2. Because there was no misdirection on matters of law by the trial Judge;
3. Because the findings of facts made by the trial Judge were supported by the evidence and were correct;
4. Because the award of damages was reasonable having regard to all the relevant factors considered by the trial Judge;
5. Because the learned Judge was entitled to make the said award of damages;
6. Because, having regard to the decisions of both courts below, the judgment should be upheld.

JOHN PREVITE

No.4 of 1980

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APPEAL IN SINGAPORE

BETWEEN:

JOSHUA BENJAMIN JEYARETNAM

Appellant/Defendant

and

LEE KUAN YEW Respondent/Plaintiff

RESPONDENT'S CASE

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