

**IN THE GENERAL DIVISION OF THE HIGH COURT OF THE REPUBLIC
OF SINGAPORE**

[2021] SGHC 206

Suit No 882 of 2019

Between

Lee Hsien Loong

... Plaintiff

And

Xu Yuan Chen

... Defendant

Suit No 1136 of 2019

Between

Lee Hsien Loong

... Plaintiff

And

Rubaashini Shunmuganathan

... Defendant

JUDGMENT

[Tort] — [Defamation] — [Defamatory statements]
[Tort] — [Defamation] — [Justification]

[Tort] — [Defamation] — [Damages] — [Damage to reputation] — [Lack of adverse comments to defamatory publication]

[Tort] — [Defamation] — [Damages] — [Aggravated damages] — [Whether separate awards can be made against two defendants sued separately for the same publication]

TABLE OF CONTENTS

INTRODUCTION.....	1
BACKGROUND	2
SUIT 882 IN RELATION TO XU	7
PARTIES RESPECTIVE CASES	7
LEGAL PRINCIPLES	8
WHETHER THE PARAGRAPHS HAD THE CLAIMED MEANINGS.....	10
WHETHER THE PARAGRAPHS MEAN THAT IT WAS IRONIC FOR HO TO SHARE A POST ABOUT CUTTING FAMILY TIES	12
EFFECT OF THE AMENDED ARTICLE ON THE MEANING OF THE PARAGRAPHS	13
WHETHER THE CLAIMED MEANINGS ARE DEFAMATORY.....	15
JUSTIFICATION	17
<i>1st Claimed Meaning: LHL misleading LKY into thinking that the House had been gazetted.....</i>	<i>17</i>
<i>2nd Claimed Meaning: The reason for bequeathing the House to LHL and considering alternatives to its demolition.....</i>	<i>23</i>
<i>3rd Claimed Meaning: Removal of LHL as executor after LKY discovered the House had not been gazetted</i>	<i>26</i>
<i>Miscellaneous matters.....</i>	<i>27</i>
DAMAGES	28
<i>Nature and gravity of the defamation</i>	<i>29</i>
<i>The parties' standing and damage to reputation</i>	<i>29</i>
<i>Mode and extent of publication.....</i>	<i>35</i>
<i>Malice.....</i>	<i>37</i>

<i>Failure to apologise</i>	<i>40</i>
<i>Reckless justification defence.....</i>	<i>41</i>
<i>Xu’s conduct from the time the Paragraphs were published</i>	<i>43</i>
<i>Quantum of damages and other remedies.....</i>	<i>49</i>
SUIT 1136 – DAMAGES IN RELATION TO RS	55
AGGRAVATED DAMAGES AND WHETHER SEPARATE AWARDS CAN BE MADE AGAINST XU AND RS ON SUCH DAMAGES	56
CONCLUSION.....	59

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Lee Hsien Loong
v
Xu Yuan Chen and another suit

[2020] SGHC 206

General Division of the High Court — Suit No 882 of 2019 and Suit No 1136 of 2019

Audrey Lim J

30 November, 1–4 December 2020, 15 February, 1 March, 31 May, 21 June 2021

1 September 2021

Judgment reserved.

Audrey Lim J:

Introduction

1 Suit 882 of 2019 (“Suit 882”) was commenced by Mr Lee Hsien Loong (“LHL”), the Prime Minister of Singapore (“PM”), against Mr Xu Yuan Chen (“Xu”), the Chief Editor of the website The Online Citizen (“TOC”) (now called The Online Citizen Asia). LHL claims that Xu defamed him in an article that Xu had published on 15 August 2019 entitled “PM Lee’s wife, Ho Ching weirdly shares article on cutting ties with family members” (“the Article”). Suit 1136 of 2019 (“Suit 1136”) is LHL’s defamation suit against Ms Rubaashini Shunmuganathan (“RS”), the writer of the Article. RS did not enter an appearance and judgment in default of appearance was granted in favour of LHL

with damages to be assessed.

2 Although the two suits are not consolidated, they pertain to the same Article and any damages awarded against one defendant might have a bearing on the other defendant. Hence, the parties in Suit 882 and the plaintiff in Suit 1136 agreed that I render a single decision to deal with the issues of liability and damages in Suit 882 and the issue of damages in Suit 1136.¹ I will deal first with the issues in Suit 882 before dealing with the issue of damages in Suit 1136.

Background

3 A few years ago, a family dispute arose between LHL and his siblings Mr Lee Hsien Yang (“LHY”) and Ms Lee Wei Ling (“LWL”) (“the siblings”) in relation to a property, 38 Oxley Road (“the House”), owned by their late father, Mr Lee Kuan Yew (“LKY”). The siblings made allegations against LHL on various occasions, including in a joint statement on 14 June 2017 (“June Statement”), a joint statement on 4 July 2017 (“July Statement”) and in various Facebook (“FB”) posts.² The allegations included the following:

- (a) LHL and his wife, Mdm Ho Ching (“Ho”), had opposed LKY’s wishes to demolish the House, even while LKY was alive;
- (b) LHL wanted to move into and/or preserve the House to strengthen his political mandate and capital;
- (c) LHL had misrepresented to LKY that the House had been gazetted, or that gazetting was inevitable; and

¹ Pre-trial conference on 1 March 2021 in Suit 1136; Emails from defence counsel dated 8 and 11 March 2021 in Suit 882.

² 3AB 1959–1964, 1971–1974; Xu’s AEIC at [9]–[10], [13], [17], [20]; 1/12/20 NE 152–153.

(d) LKY inserted a clause in his will to demolish the House, to make it difficult for LHL to misuse the Cabinet to preserve it, and also removed LHL as an executor and a trustee (“executor”) of his will.

4 By way of background, LKY made a will on 7 December 1995. This was succeeded by six wills (“the Wills”) prepared by Ms Kwa Kim Li (“Kwa”), dated 20 August 2011, 21 December 2011, 6 September 2012, 20 September 2012, 4 October 2012 and 2 November 2012 respectively (called the “2nd to 7th Will” respectively). LKY’s last will dated 17 December 2013 was not prepared by Kwa.³

5 LHL treated the allegations (at [3]) very seriously and, in July 2017, brought the matter to Parliament to “[a]ir fully all the accusations against [him]”, and issued various statements to rebut the allegations. He also explained why he chose not to commence legal action against the siblings.⁴

6 On 14 August 2019, Ho shared an article titled “Here’s why sometimes it is okay to cut ties with toxic family members” (“Ho’s Post”), on her FB page.⁵

7 On 15 August 2019 at about 8.52am, Xu told RS that he “need[ed] some creative writing” on Ho’s Post, based on certain pointers that Xu listed for her. RS replied at 12.39pm with a draft. Xu read through this and, around 12.47pm on the same day, he published it (*ie*, the Article) on the TOC website without making any edits. A staff of TOC then shared the Article on TOC’s FB page (“TOC Post”) on the same day.⁶

³ 1AB 90–92; 3AB 2247–2282; 1/12/20 NE 59–60; 3/12/20 NE 3.

⁴ 1AB 110; 3AB 2127–2152; 30/11/20 NE 6–7, 29–31.

⁵ 1AB 806; Xu’s AEIC at [21].

⁶ Xu’s AEIC at [24]–[27]; 1AB 810–812; 3AB 1899; 2/12/20 NE 7.

8 The relevant extract of the Article states as follows:

The Lee family feud

For those who is not aware of the whole family dispute, it became public news in 2017 following a Facebook post where LHY and LWL issued a joint-statement reiterating their father’s wish for the family house at Oxley Road to be demolished immediately after his death, and alleged that their brother, PM Lee, wanted to keep the house ‘to inherit (Lee Kuan Yew’s) credibility’.

Just this May, LWL also stressed in a Facebook post that her late father was misled by PM Lee into thinking that [the House] had been gazetted by the Singapore government, causing him to change his will to bestow the house to LHL.

Dr Lee also claimed that LHL eventually persuaded LKY that since [the House] had been ‘gazetted’, it was futile to keep LKY’s direction to demolish [the House] in his will.

Due to this misrepresentation, LKY, who had originally wanted to demolish the house, has considered ‘alternatives’ to demolition, said the siblings.

However, according to Dr Lee, LKY began to doubt the truth that [the House] had been ‘gazetted’ in late 2013, and it was subsequently revealed to late LKY that the house wasn’t gazetted.

If that is not all, the late LKY also removed PM Lee as an executor and trustee of his will, making only the other two siblings, LHY and LWL as the executors. ...

I will refer to the second to sixth paragraphs in the above extract as Para 1, Para 2, Para 3, Para 4 and Para 5 respectively and collectively as “the Paragraphs”.

9 The Paragraphs are not reflected in the TOC Post. The TOC Post merely shares a uniform resource locator (“URL”) of the Article along with the first six

paragraphs of it, whereas the Paragraphs only appear from the seventh paragraph of the Article.⁷

10 On 1 September 2019, LHL (as PM) wrote to Xu through his Press Secretary to inform him that the Article and TOC Post have made false and defamatory allegations against him, and requested Xu to remove them, publish a full and unconditional apology and undertake not to publish any similar allegations. The undertaking and apology were to be published on the TOC website and TOC FB page. If these were not complied with, LHL would sue Xu to enforce his legal rights (“PMO Letter”). On the same day, the Prime Minister’s Office (“PMO”) issued a press release which included the PMO Letter. This was reported by various media channels.⁸ The Article was removed from public view the same day, shortly after the PMO Letter was issued, but the TOC Post containing the Article’s URL was not removed.⁹

11 On 4 September 2019, Xu sent a letter to LHL addressed to the PMO (“Reply Letter”), stating that the Article is not defamatory and that its contents constitutes fair comment. In the Reply Letter, Xu also stated that he did not intend to suggest that LHL was removed as an executor of LKY’s will because of the issue concerning the gazetting of the House, and also apologised since the Article could possibly be misinterpreted in that way. Around the same time, Xu published the Reply Letter on the TOC website, TOC FB page and his personal FB page.¹⁰

⁷ Statement of Claim (“SOC”) at [6]; LHL’s 1st AEIC (“LHL’s 1AEIC”) at [13]; 2AB 891.

⁸ LHL’s 1AEIC at [60]–[61] and exhibit LHL-17; 2AB 1124–1126; 3AB 2170–2187, 2192–2207; 30/11/20 NE 52; 2/12/20 NE 61–62.

⁹ LHL’s 1AEIC at [62]; Xu’s AEIC at [28]–[29].

¹⁰ SOC at [18]–[19]; LHL’s 1AEIC at [63]–[64]; 2AB 1135–1136, 1138–1139, 1150, 1174–1177.

12 On the same day, Xu made the Article accessible again on the TOC website.¹¹ The Article was amended (“Amended Article”) to include in Para 5 of the Paragraphs the last sentence in bold in the Article (“the Qualifier”):

If that is not all, the late LKY also removed PM Lee as an executor and trustee of his will, making only the other two siblings, LHY and LWL as the executors. **(Note that this is not related to the prior alleged event mentioned before this sentence)**

13 Xu also included an additional paragraph at the end of the Amended Article which states as follows:

PMO issues letter of demand on behalf of Prime Minister Lee Hsien Loong

On 1 Sept, TOC received a letter of demand from the Prime Minister’s Office, claiming that this article contained defamatory allegations and demanded for this article to be taken down along with a letter of apology. While we have rejected the demands set out in the letter, we will, nevertheless, [include] the letter in this article for the [arguments] of PM Lee to be viewed together with the article.

Xu then attached the PMO letter at the end of the Amended Article, but did not attach the Reply Letter in the Amended Article.¹²

14 LHL commenced Suit 882 against Xu on 5 September 2019 and commenced Suit 1136 against RS on 5 November 2019.

¹¹ Xu’s AEIC at [30]; LHL’s 1AEIC at [65]; 2 AB 829–833; 30/11/20 NE 65; 2/12/20 NE 46.

¹² 1/12/20 NE 168–169; 2/12/20 NE 52.

Suit 882 in relation to Xu

Parties respective cases

15 LHL claims that the Paragraphs are defamatory as their natural and ordinary meaning mean and are understood to mean as follows (collectively “the Claimed Meanings”):¹³

(a) LHL had misled his father, LKY, into thinking that the House had been gazetted by the Singapore Government and that it was futile for LKY to keep his direction to demolish it (“1st Claimed Meaning”);

(b) LHL thereby caused LKY, who had originally wanted to demolish the House, to consider alternatives to demolition, and to change his will to bequeath the House to LHL (“2nd Claimed Meaning”);

(c) After it was revealed to LKY in late 2013 that the House had in fact not been gazetted, he removed LHL as an executor of his will (“3rd Claimed Meaning”).

16 LHL alleges that, by causing the Paragraphs to be published, Xu had acted with malice, acted recklessly, and not cared as to whether they were true or false.¹⁴

17 Xu denies that the Paragraphs bear, are understood to bear, or are capable of bearing, the Claimed Meanings, or that they are defamatory. He also denies that they were actuated by malice. Alternatively, the Paragraphs, read in

¹³ SOC at [8].

¹⁴ LHL’s 1AEIC at [48], [50].

context of the Article, mean and/or are understood to mean that it was ironic for Ho to share a post about cutting ties with toxic family members given the publicised poor relationship between Ho/LHL and the siblings. Xu claims that the Claimed Meanings are true in substance and in fact.¹⁵

Legal principles

18 The test for determining the natural and ordinary meaning of offending words in a defamation action is well settled. It is an objective test. The court determines what meaning the words would convey to an ordinary reasonable person, not unduly suspicious or avid for scandal, using his general knowledge and common sense. The natural and ordinary meaning is not confined to the literal or strict meaning of the words but includes inferences or implications that the ordinary reasonable person may draw from those words in the light of his general knowledge, common sense and experience. It is irrelevant what meaning was intended by the maker or publisher of the statement or what meaning was actually understood by the plaintiff: see *Review Publishing Co Ltd and another v Lee Hsien Loong and another appeal* [2010] 1 SLR 52 (“*Review Publishing*”) at [27] to [28]. Hence, a defendant is not allowed to defend himself by showing that he did not intend to defame (*Low Tuck Kwong v Sukanto Sia* [2014] 1 SLR 639 (“*Low Tuck Kwong*”) at [36]). Ultimately, the court must determine a single meaning and consider whether that meaning is defamatory (*Stocker v Stocker* [2019] 3 All ER 647 at [34], [37]; *Goh Chok Tong v Tang Liang Hong* [1997] 1 SLR(R) 811 at [59]).¹⁶

¹⁵ Defence (Amendment No. 1) (“Defence”) at [8]–[10]; Xu’s AEIC at [45]–[46], [48]–[52]; 2/12/20 NE 16.

¹⁶ Plaintiff’s Closing Submissions dated 8 January 2021 (“PCS”) at [15]; Defendant’s Closing Submissions dated 8 January 2021 (“DCS”) at [26], [39], [40], [43].

19 In addition, each republication of the offending words constitutes a new and separate instance of defamation (the “repetition rule”) because “repeating someone else’s libellous statement is just as bad as making the statement directly” (*Review Publishing* at [212]). As Lord Devlin held in *Rubber Improvement Ltd v Daily Telegraph Ltd* [1964] AC 234 at 283–284:

... you cannot escape liability for defamation by putting the libel behind a prefix such as ‘I have been told that ...’ or ‘It is rumoured that...’, and then asserting that it was true that you had been told or that it was in fact being rumoured. You have ... ‘to prove that the subject-matter of the rumour was true.’ ... For the purpose of the law of libel a hearsay statement is the same as a direct statement ...

Lord Hodson also observed in the same case (at 275) that, “If one repeats a rumour one adds one’s own authority to it and implies that it is well founded, that is to say, that it is true”.

20 The rationale for the repetition rule was explained in *Mark v Associated Newspapers Ltd* [2002] All ER (D) 471 at [29]:

... If A says to B that C says that D is a scoundrel, B will think just as ill of D as if he had heard the statement directly from C. If, moreover, A is a respectable newspaper, D’s position will be worse than if B had merely heard the statement directly from C. It will be worse in part because there will be many more Bs, and in part because **responsible newspapers do not generally repeat serious allegations unless they think there is something in them so that the very fact of publication carries a certain weight.** ...

[emphasis added]

21 However, the repetition rule takes its place alongside all the other matters to which the court must have regard when determining meaning. Ultimately, the court must consider what the offending words would convey to the reader, viewed in the context of the publication as a whole (*Brown v Bower and another* [2017] 4 WLR 197 at [28]–[29]).

22 Therefore, the repetition of defamatory words will be considered to have defamatory meaning if it is adopted or endorsed. The use of a qualifier such as “claimed” or “alleged” is unlikely, in itself, to insulate a publisher from the effect of the repetition rule. If the impact of the repetition rule on the meaning of allegations repeated by others are to be mitigated or avoided, they must be mitigated or neutralised by material that is found within the same publication, eg, by presenting both sides of the dispute or refuting the allegation being repeated (*Hewson v Times Newspapers Ltd and another* [2019] All ER (D) 120 at [41]–[42]; *Yoon Shin Lee v Bob Chae-Sang Cha* [2005] NSWCA 279 at [6]).

Whether the Paragraphs had the Claimed Meanings

23 I find that an ordinary reasonable person would understand the Claimed Meanings to be the natural and ordinary meaning of the Paragraphs.

24 An ordinary reasonable reader would understand who the abbreviations referred to. The Article specifically referred to “PM Lee’s wife, Ho Ching” and used the abbreviations of “LHL”, “LHY” and “LWL” beside the names Lee Hsien Loong, Lee Hsien Yang and Lee Wei Ling respectively. The Article also referred to “Lee Kuan Yew” before using the abbreviation “LKY”. Singaporeans are familiar with LKY who was the first PM, LHL who is the current PM, and the siblings who are also well-known.

25 The 1st Claimed Meaning and the 2nd Claimed Meaning are expressly stated in Paras 1, 2 and 3 of the Paragraphs (see [8] above). Xu agreed to this during cross-examination.¹⁷ I also accept that the 3rd Claimed Meaning is made out from Para 4 read with Para 5 of the Paragraphs. The reasonable interpretation of these paragraphs is that LKY removed LHL as an executor

¹⁷ 1/12/20 NE 179–180.

because it was revealed to LKY in late 2013 that the House had in fact not been gazetted. Xu agreed in cross-examination that the “revelation” mentioned in Para 4 would be reasonably understood to have occurred in late 2013 onwards.¹⁸

26 However, Xu disagrees that the 3rd Claimed Meaning is made out. He argues that Para 5 does not follow chronologically from Para 4 and is thus not linked to Para 4. Instead, the “that” in the words “If that is not all” in Para 5 referred to the family feud and how bad the relationship was between LHL and the siblings.¹⁹

27 I disagree with Xu. The ordinary reasonable reader would understand the “that” in “If that is not all” to refer to the matter in the immediately preceding paragraphs. These paragraphs allege that *LHL misled LKY* into thinking that the House had been gazetted which *then caused* LKY to change his will and bestow the House to LHL and to consider alternatives to demolition, and that LKY was *subsequently* told that the House was not gazetted. Further, the subject of Para 5 is LKY but he was not involved in the family feud or LHL’s relationship with the siblings. Indeed, Xu later explained that Para 5 was derived from a passage in the July Statement which stated that LKY had removed LHL as executor of his will because he believed he had been played out by LHL.²⁰ In fact, Xu stated in the Reply Letter that he “recognise[d] the possibility of the misinterpretation” that Para 5 could be read to mean that LHL was removed as executor because of the issue of gazetting of the House, and he offered his apologies. In court, Xu admitted that the event in Para 5 could be read as flowing from the events in

¹⁸ 1/12/20 NE 156.

¹⁹ 1/12/20 NE 124, 132–134.

²⁰ 1/12/20 NE 148–149.

Para 4 (which supposedly occurred in late 2013), which was why he added the Qualifier to the Amended Article (see [12] above).²¹

28 Xu next argues that he was merely recounting the siblings' allegations. He used the words "alleged", "claimed" and "stressed" in the Article, and had not suggested that the allegations were true.²² Although Xu attributed the allegations to LWL and/or LHY in Paras 1 to 4 of the Paragraphs, this does not change the Claimed Meanings, which remain as the natural and ordinary meanings of the Paragraphs by virtue of the repetition rule. Furthermore, the Article does not present LHL's version of events although Xu knew that LHL had made ministerial statements denying the allegations.²³

Whether the Paragraphs mean that it was ironic for Ho to share a post about cutting family ties

29 I reject Xu's pleaded claim that the Paragraphs mean or are understood to mean that it was ironic for Ho to share Ho's Post about cutting ties with toxic family members given the publicised poor relationship between her/LHL and the siblings. This cannot be ironic. That Ho shared such a post is consistent with the allegation that she/LHL have a poor relationship with the siblings.²⁴ In court, Xu then claimed that the "irony" is that Ho shared a post about cutting ties with toxic family members *although she was the toxic family member*. However, I find that an ordinary reasonable reader would not have understood it in that way. Xu admitted that the Article does not mention that Ho herself was the toxic family member or that this is the irony. He conceded that this interpretation of

²¹ 1/12/20 NE 170–171.

²² DCS at [55] and [62].

²³ 2/12/20 NE 27–29.

²⁴ 2/12/20 NE 15.

the irony is unsupported by the Article and that a person who is unaware of the saga or feud in the Lee family would be unable to perceive the irony.²⁵

30 In any event, any “irony” concerning Ho’s publication of Ho’s Post would not change the ordinary meaning of the Paragraphs nor the allegations which are made against LHL in the Article, which are reasonably understood as the Claimed Meanings. The bulk of the section with the Paragraphs (sub-titled “The Lee family feud”) contains assertions against LHL but does not mention Ho or her poor relationship with the siblings except in the last paragraph. Hence, I find that the Paragraphs do not bear the meaning that Xu claims they do.

Effect of the Amended Article on the meaning of the Paragraphs

31 The Amended Article published on 4 September 2019 includes the Qualifier in Para 5 of the Paragraphs and the PMO Letter. Xu’s counsel, Mr Lim Tean (“Mr Lim”), submits that the Article is thus no longer defamatory.²⁶ LHL’s counsel, Mr Davinder Singh SC (“Mr Singh SC”), argues that Xu’s submission should not be considered as Xu did not plead that the amendments changed the meaning of the Paragraphs. In any event, the amendments do not change the natural and ordinary meaning of the Paragraphs.²⁷

32 Although parties are bound by their pleadings and the court is precluded from deciding on a matter that parties have not put into issue, the court is not required to adopt an overly formalistic and inflexibly rule-bound approach. It may consider unpleaded claims where no prejudice is caused to the other party or where it would be clearly unjust for the court not to do so (*V Nithia (co-*

²⁵ 2/12/20 NE 15–18, 22, 27.

²⁶ DCS at [69].

²⁷ PCS at [31]–[38].

administratrix of the estate of Ponnusamy Sivapakiam, deceased) v Buthmanaban s/o Vaithilingam and another [2015] 5 SLR 1422 at [38]–[40]). Evidence given at trial, where appropriate, can overcome defects in the pleadings provided that the other party is not taken by surprise or irreparably prejudiced (*OMG Holdings Pte Ltd v Pos Ad Sdn Bhd* [2012] 4 SLR 231 at [18]).

33 Xu pleaded that the Amended Article published together with the Qualifier and PMO Letter showed that he had not acted with malice, and attested similarly in his AEIC.²⁸ While he did not plead that the Qualifier or PMO Letter rendered the Article no longer defamatory, Mr Lim had raised this in his opening statement²⁹ and parties were cross-examined on the Amended Article. Thus, there is no prejudice to LHL if I consider this issue in relation to liability.

34 I accept that the Qualifier added to Para 5 of the Paragraphs has negated the 3rd Claimed Meaning in the Amended Article, as an ordinary reasonable reader would now understand that LKY’s removal of LHL as an executor was not due to the matters alleged in the preceding paragraphs of the Amended Article. The amended Para 5 (and the Paragraphs) must be read in context of the Amended Article in which they are set out (see *Microsoft Corp and others v SM Summit Holdings Ltd and another and other appeals* [1999] 3 SLR(R) 465 at [53] endorsed in *Review Publishing* at [27]) which now includes the PMO Letter which expresses LHL’s position that LKY had not included LHL as an executor from 2011 onwards.

²⁸ Defence at [6] and [16]; Xu’s AEIC at [52].

²⁹ Defendant’s Opening Statement at [54]–[58].

35 Nevertheless, the inclusion of the PMO Letter and Qualifier do not change or negate the 1st or 2nd Claimed Meanings. Xu explicitly states in the Amended Article that he rejects the demands in the PMO Letter (see [13] above), and the ordinary reasonable reader would understand that Xu is still standing by and affirming the Paragraphs, subject to the Qualifier.

36 In any event, the Amended Article was only published on 4 September 2019 and does not affect the meaning of the Paragraphs in the Article, which remained published from 15 August 2019 until 1 September 2019. Hence, if I find the Article to be defamatory, the removal and republication of it with amendments would not change the fact that Xu had published a defamatory article from 15 August 2019 to 1 September 2019.

Whether the Claimed Meanings are defamatory

37 Mr Singh SC submitted in court that the sting of the libel is that LHL had misled LKY into believing that the House had been gazetted, and this caused LKY to consider alternatives to demolition and to change his will to bequeath the House to LHL.³⁰ In his closing submissions, Mr Singh SC further argues that if the Claimed Meanings are upheld, the libel is that “[LHL] as Prime Minister dishonestly misled [LKY] for personal gain, who lost all trust in him by removing him as an executor and trustee of his will”. Mr Singh SC also argues that even if the 3rd Claimed Meaning is not made out, the 1st and 2nd Claimed Meanings remain defamatory as they nevertheless impute that LHL was dishonest and lacked integrity.³¹

³⁰ 1/12/20 NE 139–140.

³¹ PCS at [39], [43]–[45].

38 Mr Lim accepts that if all the Claimed Meanings are made out, they are defamatory of LHL. He further accepts that the 1st and 2nd Claimed Meanings are defamatory if they are made out (whether or not the 3rd Claimed Meaning is also made out), but argues that this is not LHL’s pleaded position.³²

39 In my view, the sting of the libel in the Article is the Claimed Meanings, which can be summarised as such: LHL had dishonestly misled LKY into thinking that the House had been gazetted and caused LKY to bequeath the House to him; LKY subsequently lost trust in LHL when LKY found out that the House had not been gazetted and thus removed LHL as an executor (“original sting”). It essentially imputes that LHL had been dishonest with LKY.

40 The libel ceased on 1 September when the Article was removed. When the Amended Article was published, the libel takes on a different sting, as the 3rd Claimed Meaning is no longer made out. Instead, the sting is now limited to the 1st and 2nd Claimed Meanings (“revised sting”), and which no longer imputes that LKY had lost trust in LHL which led LKY to remove LHL as an executor. While LHL did not plead what the sting of the libel would be in the event that the 3rd Claimed Meaning is not made out, this is because Xu did not plead that the Amended Article has changed the meaning of the Article such that the Article is no longer defamatory (see [33] above). In any event, the court may find a lesser defamatory meaning than that pleaded by the plaintiff (*Goh Chok Tong v Jeyaretnam Joshua Benjamin and another action* [1998] 2 SLR(R) 971 (“*GCT v JBJ*”) at [43]–[46]). This was conceded by Mr Lim.³³

³² DCS at [77]–[78].

³³ 1/12/20 NE 138–139.

41 Nevertheless, both the original sting and revised sting, which impute dishonesty to LHL, are defamatory (see also [42]–[65] below). I reiterate, the Amended Article does not affect the meaning of the Paragraphs in the Article which was published until 1 September 2019 (see [36] above).

Justification

42 LHL argues that the Claimed Meanings are false.³⁴ On the other hand, Xu pleads and asserts that even if the Paragraphs bear the Claimed Meanings, they are true in substance and in fact. In cross-examination, Xu conceded that the 3rd Claimed Meaning is false. Nevertheless, he submits that he can justify it by relying on s 8 of the Defamation Act (Cap 75, 2014 Rev Ed) (“Defamation Act”) or by meeting the sting of the libel.³⁵

43 I find that the Claimed Meanings are false and baseless, and that Xu’s defence of justification fails.

1st Claimed Meaning: LHL misleading LKY into thinking that the House had been gazetted

44 Parties do not dispute that around September 2012 at the very latest, LKY had been under a misimpression that the House had been gazetted. In an email of 6 September 2012 to Kwa, LKY states: “Although [the House] has been gazetted as a Heritage house it is still mine as owner”.³⁶

45 Xu claims that only LHL could have told LKY that the House would be or had been gazetted because LHL, as the PM, would have had the knowledge

³⁴ PCS at [46].

³⁵ Defence at [10]; Xu’s AEIC at [46]; 1/12/20 NE 110–111; DCS at [84]–[86].

³⁶ DCS at [93(b)]; 1/12/20 NE 42; 1AB 56.

to that effect. Furthermore, LHL had a motive to mislead LKY because LHL wanted to inherit and live in the house of the former PM (LKY), and wanted to resolve the political conflict between LKY and the Cabinet, with the former wanting to demolish the House and the latter wanting to preserve it.³⁷

46 I find that the 1st Claimed Meaning is unsupported by any evidence. I accept that LHL never informed LKY that the House had been gazetted, and Xu admitted that there are no emails to prove otherwise.³⁸ LKY's email of 6 September 2012 to Kwa (at [44] above) was not copied to LHL, but to LWL, and I accept that LHL only saw the email after LKY had passed on.³⁹

47 I am also unable to accept Xu's inference that LHL had, with an ulterior motive, misled LKY into believing that the House had been gazetted. On the contrary, the evidence shows that LHL had supported LKY's wishes to demolish the House as he wanted to respect his father's wishes. The evidence also shows that LHL was at the same time concerned that the family should not profit financially from the redevelopment of the site to avoid the perception that the House was being demolished and the site redeveloped for financial gain. Hence, LHL had proposed that the proceeds from any redevelopment should be donated away.⁴⁰ In court, LHL attested to the same and explained that to profit from the redevelopment of the site if the House were demolished would have been politically untenable for him (as PM) and also embarrassing for the family.⁴¹ LHL had also suggested to LKY to include in his will that the House

³⁷ Xu's AEIC at [35]; 1/12/20 NE 71–72; DCS at [97]–[98], [104]–[105].

³⁸ LHL's Supplementary AEIC ("LHL's 2AEIC") at [30]; 1/12/20 NE 15, 54–56; 2/12/20 NE 137.

³⁹ 1/12/20 NE 42, 55.

⁴⁰ LHL's 2AEIC at [9]–[24]; 1/12/20 NE 70.

⁴¹ 30/11/20 NE 85–86; 1/12/20 NE 3–4, 70, 91.

be demolished, and to put the House in *LHY*'s name for *LHY* to oversee any redevelopment and sale.⁴² This disproves that *LHL* was eager to have the House in his name for his benefit.

48 The emails, of which I set out some examples, show that there was an open discussion between *LKY* and his children on this issue.

(a) On 18 March 2011, *LHL* informed *LKY*, the siblings, *Ho* and *LHY*'s wife, Mrs Lee Suet Fern ("LSF"), that *LKY*, having decided to demolish the House, should inform the "editors" of his decision. *LHL* attested that this was in response to *LKY* having consulted the editors of the Singapore Press Holdings who wanted to preserve the House after his death, given its historical importance and heritage value.⁴³

(b) On 18 April 2011, *LHL* informed the siblings that if they wanted the House torn down and the site redeveloped, the heirs to the House should not benefit financially from its redevelopment, and should instead announce that the demolition was to be in accordance with *LKY*'s wishes, and donate the proceeds away.⁴⁴

(c) On 18 July 2011, *LHL* emailed *LKY* (copied to the siblings, *Ho* and *LSF*) and proposed that the House be put in *LHY*'s name so that *LHY* could oversee the redevelopment and sale, and reiterated that the proceeds from the redevelopment should be donated to charity.⁴⁵

⁴² *LHL*'s 2AEIC at [12].

⁴³ *LHL*'s 2AEIC at [8]; 1AB 407.

⁴⁴ 1AB 413. 30/11/20 NE 85–86.

⁴⁵ 1AB 18.

(d) On 19 July 2011, LHL emailed LKY (copied to the siblings) to propose that LKY state in his will that the House be torn down and the site redeveloped and sold, and the proceeds given away.⁴⁶

(e) On 2 January 2012, Ho emailed the siblings (copied to LKY, LHL and LSF) setting out a proposal to renovate or “renew” the House, but also stating that “As [LHL] mentioned, the first preference is to demolish [the House] and build afresh.” This was even after LKY had, on 14 August 2011, said to Ho (copying his children and LSF) that the House should be willed to LHL, and after LKY had informed Kwa on 10 December 2011 (copying his children, Ho and LSF) to change the will to bequeath the House to LHL without any encumbrance.⁴⁷

49 Hence, I find that LHL did not and had no reason to mislead LKY or inform him that the House had been gazetted. However, he had informed LKY that it was likely that Cabinet would wish to preserve the House if the matter came before it.⁴⁸ For instance, on 19 July 2011, LHL told LKY (in an email copied to the siblings) that it would be safer to redevelop the site while LKY was still alive, because the government would later come under great pressure to compulsorily acquire the House and turn it into a national monument and that many Cabinet ministers would support this.⁴⁹ Nevertheless, the email showed that LHL was supportive of LKY tearing down the House and had encouraged LKY to redevelop the site while he was still alive. On 20 July 2011, LKY wrote to Cabinet to repeat his wish to have the House demolished when he was no longer alive and met with Cabinet on 21 July 2011 to express his wish. LHL

⁴⁶ 1AB 29.

⁴⁷ 1AB 53–54; 480, 509–510.

⁴⁸ 1/12/20 NE 71.

⁴⁹ 1AB 417.

attested that at that meeting, Cabinet was unanimously against the idea, but he did not participate in Cabinet's decision as he was conflicted. He wanted to carry out LKY's wishes as his son, but as the PM, he had to take into account the Cabinet's views. LHL further attested that after that meeting, he did inform LKY that if Cabinet decided to preserve the House, it would be very hard for him to override Cabinet's wishes, and he would have to agree to it being gazetted; however, he did not inform LKY that the House had been gazetted.⁵⁰

50 Thus, even if LKY had formed the impression that the House had been gazetted or felt that this would be inevitable, this did not mean that LHL had misled him into believing that the House *had been* gazetted. I accept LHL's testimony that whilst Cabinet was in favour of preserving the House (which was also evident from LKY's letter to Cabinet on 27 December 2011 ("LKY's 27/12/11 Letter to Cabinet")),⁵¹ LHL did not participate in Cabinet's decision as he was in a position of conflict.

51 Mr Lim relies on various correspondence to show that LHL did nothing to correct LKY's impression that the House would be gazetted, to show that LHL had informed LKY that the House would be gazetted. On 11 August 2011 ("LKY's 11/8/11 Email"), LKY informed his children and Kwa that he had asked LHL if he intended to retain the House as a heritage site; LKY further stated that "[LHL] replied inevitably so given the strong view in [Cabinet]". Then, on 3 October 2011, LKY informed Ho (copied to his children) "But [LHL] as PM has indicated that he will declare [the House] as a heritage site. That will put an end to any rebuilding." ("LKY's 3/10/11 Email").⁵²

⁵⁰ LHL's 2AEIC at [25]–[30] and exhibit LHL-44; 30/11/20 NE 11–14; 1/12/20 NE 22; 1AB 36–37.

⁵¹ 1AB 502.

⁵² DCS at [112]–[116]; 3AB 1971, 2064; 1/12/20 NE 43–44, 49–50.

52 Even so, the correspondence or LHL’s silence does not lead to the conclusion that LHL had misled LKY into thinking that the House *had been* gazetted and that it was futile to keep his direction to demolish it, nor show that LKY considered alternatives to demolition and changed his will to bequeath the House to LHL *because* he was misled by LHL. LHL had explained that LKY’s statements in LKY’s 11/8/11 Email and LKY’s 3/10/11 Email accurately represented the status then, *ie*, that if the matter came before Cabinet, the most likely outcome would be that the House would be gazetted. This was already conveyed to LKY on 21 July 2011 (see [49] above).⁵³ LKY’s 27/12/11 Letter to Cabinet also showed that he recognised Cabinet’s wish not to demolish the House and was aware that the House had not been gazetted. Further, although LKY had in another email of 11 August 2011 stated that he could not “call the shots” and that “[LHL] as PM has the final word”, this is equivocal and does not prove that LHL had led LKY to believe that the House had been gazetted. I accept that LHL had merely explained to LKY that if Cabinet decided to preserve the House, he would not be able to fulfil LKY’s wish (to demolish the House) as it would go against the government’s decision.⁵⁴

53 It should also be noted that by the time LKY had the impression (around September 2012) that the House *had been* gazetted, he had already on 14 August 2011 emailed his children, Ho and LSF to state that the House should be willed to LHL, and had already in his 2nd Will of 20 August 2011 willed it to LHL.⁵⁵

⁵³ 30/11/20 NE 12; 1/12/20 NE 43–44.

⁵⁴ 1/12/20 NE 17, 21–22.

⁵⁵ 1AB 480.

54 Mr Lim next submits that LHL may have misled LKY *after* LKY willed the House to LHL.⁵⁶ It is unclear how this assists Xu’s defence. Para 1 of the Paragraphs clearly states that LKY changed his will to bestow the House to LHL *because* he was misled by LHL. An ordinary reasonable reader would thus understand this to mean that LHL misled LKY *before* LKY changed his will.

2nd Claimed Meaning: The reason for bequeathing the House to LHL and considering alternatives to its demolition

55 Mr Lim claims that the will mentioned in Para 1 of the Paragraphs and 2nd Claimed Meaning is the 2nd Will, and that the 2nd Claimed Meaning is true, namely, that LKY had willed the House to LHL in the 2nd Will after having been misled by LHL that the House had been gazetted.⁵⁷ As I had found no evidence to show that LHL had misled LKY into thinking that the House had been gazetted, it follows that it could not be the result of any such misrepresentation that LKY considered alternatives to demolition and changed his will to bequeath the House to LHL. Hence, the 2nd Claimed meaning is also not true in substance and in fact. I make some further points for completeness.

56 LHL was first bequeathed the House in the 2nd Will in August 2011 and remained the beneficiary of it in all of LKY’s subsequent wills. The contemporaneous documents show, on balance, that LKY knew that the House had not been gazetted at the time he first decided to will it to LHL and even after the execution of the 2nd Will, even if he may have assumed that that would be the inevitable outcome in the future. In LKY’s 11/8/11 Email, only a few days before the 2nd Will was executed, LKY said that he had asked LHL “if he intend[ed] to” retain the House as a heritage site. LKY thus understood that

⁵⁶ DCS at [94].

⁵⁷ 1/12/20 NE 76–78.

there was at most an intention to gazette the House. Likewise, the tenor of LKY's 3/10/11 Email after the 2nd Will was executed, and of LKY's 27/12/11 Letter to Cabinet, showed LKY was aware that the House had not been gazetted.

57 Mr Lim impliedly accepted during trial that even until 27 December 2011, LKY did not think that the House had been gazetted. This can be seen from excerpts of Mr Lim's cross-examination of LHL:⁵⁸

Lim Tean: Now, some time between 27 December 2011 when [LKY] wrote that memo to Cabinet, and 4 October 2012 when he made his fifth will with [Kwa], he came to the conclusion that the house had been gazetted which was why he removed the demolition clause in the fifth will?

PM: We, firstly, I am glad the counsel acknowledges that on 27 December [LKY] did not believe the house had been gazetted ...

Lim Tean: I am suggesting to you, Mr Lee, that it was because of what you had told your father between this period of 27 December 2011 [until] 6 September 2012 that he came to the conclusion that [the House] had been gazetted?

58 In any case, the earliest evidence of LKY having the impression that the House had been gazetted was around 6 September 2012, as revealed in his email to Kwa (see [44] above). Even when LKY was subsequently informed by Kwa on two occasions around September/October 2012 that she was unable to find the gazette for the House (as attested to by Kwa and shown by her records),⁵⁹ LKY continued to bequeath the House to LHL.

59 Instead, it was more likely than not that LKY had bequeathed the House to LHL for LHL to manage any political or public issues pertaining to it, after LKY knew of Cabinet's and his children's views on the matter. In LKY's 11/8/11 Email, LKY informed his children that LHL had proposed to include

⁵⁸ 1/12/20 NE 73–74.

⁵⁹ 3/12/20 NE 6–9; 1AB 56, 63, 91.

the House within his one-third share of LKY's estate because it was untenable for him as PM to have the government pay him and the siblings the value of the House, and that LHL "will carry the burden as PM".⁶⁰ LKY's 11/8/11 Email was sent after he had discussed this issue with his children in July 2011 (shortly before the 2nd Will), where LHL had informed the siblings and LKY that the family should not gain financially from any redevelopment of the House, and that LHL was prepared to donate the proceeds of any financial gain in redeveloping the site. Further, it was known by then that the siblings did not want to be involved in donating the proceeds away, and LWL had even suggested to apportion the estate into three thirds and for LHL to be given the House as part of his one-third share of the estate.⁶¹ These discussions culminated on 14 August 2011 where LKY emailed Ho (copied to his children and LSF) stating "Will [the House] to [LHL]".⁶²

60 That this was the reason why LKY bequeathed the House to LHL can also be gleaned from Kwa's record of her conversation with LKY around 1 or 2 October 2012, whereby LKY informed Kwa to amend the 4th Will to insert a clause to allow LWL to reside at the House, and to remove the "demolition clause" (*ie*, the clause stipulating that the House be demolished after his death). LKY had also informed Kwa that LHL should have free reign over the House, that LHL could handle Cabinet, and that LHL would take the "heat and hit".⁶³ In a letter from Kwa to LHL and the siblings on 4 June 2015 after LKY's

⁶⁰ 1AB 657; 30/11/20 NE 15.

⁶¹ 1AB 21; LHL's 2AEIC at exhibit LHL-37 to LHL-40.

⁶² 1AB 480.

⁶³ 1AB 61; 3/12/20 NE 8–9.

passing, Kwa explained to them LKY's instructions to her given around 1 October 2012 regarding the changing of his will and the "heat and hit" as such:⁶⁴

... [LKY] said [LHL] to have free reign over [the House], and also, [LHL] would take the "hit and the heat". By this, I took it to mean the "hit" as the property value would be affected by the gazette, and the "heat" from the Cabinet. [LKY] told me that [LHL] would be the best person to handle the Cabinet pressure. I told him that I can't find the gazette on Oxley. He seemed sure that it is/will be gazetted so he wanted [LHL] to bear the brunt.

3rd Claimed Meaning: Removal of LHL as executor after LKY discovered the House had not been gazetted

61 Xu conceded during cross-examination that the 3rd Claimed Meaning is not true in substance or in fact and stated that he had apologised in the Reply Letter.⁶⁵ In any event, there is no evidence to show that it was revealed to LKY only in *late 2013* (or thereafter) that the House had not been gazetted. Although Xu claimed that this was based on the July Statement and LKY's email to Kwa of 6 September 2012 exhibited therein,⁶⁶ the July Statement instead stated that LKY was told in *September 2012* that the House had not been gazetted. In court, Xu admitted that the revelation to LKY (that the House had not been gazetted) was in 2012, and he had no evidence that the revelation to LKY was in late 2013 or thereafter.⁶⁷ There is also no evidence to prove that LHL was removed as executor because LKY had found out that the House had not been gazetted. In fact, LHL was no longer an executor when LKY executed the 2nd Will in August 2011, before LKY's email to Kwa of 6 September 2012 (at [44] above).

⁶⁴ 1AB 90–92.

⁶⁵ Xu's AEIC at [46]; 1/12/20 NE 109–111, 115.

⁶⁶ 1/12/20 NE 154–155; 2/12/20 NE 5, 10; 3AB 1971–1972.

⁶⁷ 1/12/20 NE 148–151; 2/12/20 NE 6.

Miscellaneous matters

62 Mr Lim submits that an adverse inference should be drawn against LHL for failing to disclose email correspondence between the family members which would show the discussions on the matter and the siblings' belief that LKY was misled by LHL. He argues that they should have been disclosed in the discovery process but were not.⁶⁸ I disagree that an adverse inference should be drawn. As Mr Lim himself notes,⁶⁹ the emails were eventually disclosed and are part of the evidence before the court. Furthermore, I have found that the emails do not justify the Claimed Meanings.

63 Next, Xu submits that if at least one of the Claimed Meanings are met, s 8 of the Defamation Act would apply as a defence to defamation.⁷⁰ Section 8 states:

Justification

8. In an action for libel or slander in respect of words containing 2 or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges.

64 As Xu has failed to justify the Claimed Meanings (in relation to the Article) or the 1st and 2nd Claimed Meanings (in relation to the Amended Article), Xu's reliance on s 8 of the Defamation Act fails. In any event, s 8 is not applicable as I find that LHL's reputation was materially injured by the falsehoods in the Article and Amended Article.

⁶⁸ DCS at [126].

⁶⁹ DCS at [128].

⁷⁰ DCS at [88].

65 As such, I find Xu liable for defamation.

Damages

66 I now turn to consider the damages to be awarded against Xu.

67 General damages are compensatory in nature and serve to console the plaintiff for the distress he has suffered from the publication of the statement, to repair the harm to his reputation and to vindicate his reputation (*Arul Chandran v Chew Chin Aik Victor* [2001] 1 SLR(R) 86 (“*Arul Chandran*”) at [53]; *Lim Eng Hock Peter v Lin Jian Wei and another and another appeal* [2010] 4 SLR 357 (“*Peter Lim*”) at [4]). In determining the appropriate quantum of general damages, the following circumstances are relevant (*Koh Sin Chong Freddie v Chan Cheng Wah Bernard and others and another appeal* [2013] 4 SLR 629 (“*Freddie Koh*”) at [23]–[24]; *Peter Lim* at [7] to [8]):

- (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;
- (g) the presence of malice; and
- (h) the intended deterrent effect of the damages.

68 Aggravated damages may also be awarded against a defendant. This constitutes a component of the compensatory damages and are awarded when the defendant's conduct before and during trial has aggravated the hurt to the plaintiff's feelings (*GCT v JBJ* at [51]; *Peter Lim* at [39]). Examples of such conduct include a plea of justification that is bound to fail, persistence by way of a prolonged or hostile cross-examination of the plaintiff, a failure to make any or any sufficient apology and withdrawal, conduct of the preliminaries or of the trial calculated to attract wide publicity, persecution of the plaintiff by other means, and malice (*Arul Chandran* at [55]–[56]; *Freddie Koh* at [51]).⁷¹

Nature and gravity of the defamation

69 The libel against LHL is grave and serious. The original sting, and even the revised sting, alleges dishonesty on LHL's part. An allegation of dishonesty is a serious one. Such an accusation is grave and strikes at the heart of the plaintiff's integrity. The more closely the defamatory statement touches the plaintiff's personal integrity, professional reputation, honour and core attributes of his personality, the more serious it is likely to be (*Freddie Koh* at [25]).

The parties' standing and damage to reputation

70 The courts have consistently awarded higher damages to public leaders (including political leaders), due to the greater damage done to them personally and to the reputation of the institution of which they are members (*Peter Lim* at [12]). LHL is the PM of Singapore, the highest political office in the country. The defamatory remarks do not merely attack his personal integrity, character and reputation, but that of the PM, and damage his moral authority to lead Singapore.

⁷¹ PCS at [155].

71 In addition, the higher the standing and reputation of the defendant, the greater the weight which would be accorded to his words, and thus the greater the damage done to the plaintiff (*Freddie Koh* at [37]). Here, Xu is the Chief Editor of TOC. The Article was published on the TOC website, which is considerably widely followed, as shown by how its FB page had over 121,000 followers and over 117,000 likes even as at 4 September 2019.⁷² TOC is not a mere individual's blog or personal page. It is intended to be a news publication website and, according to Xu, publishes stories primarily revolving around current affairs in Singapore and Asia.⁷³ TOC's wide viewership and role lends credence to the publication, thereby rendering it more believable to the ordinary reader. This factor hence weighs in favour of higher damages.

72 Mr Lim submits as follows. Damages may be reduced if it is proven that there is minimal or no damage to LHL's reputation, and the court may consider comments made by readers of the Article/Amended Article to determine if there was damage to reputation. No damage was caused to LHL's reputation from the publication, as the comments from readers show that they are not concerned with the Paragraphs but about Ho. The Article must also be seen in light of the surrounding context, namely, that the allegations against LHL which had been first made by the siblings have been widely republished in Singapore and in the world and "there cannot be anyone in the country who does not know about the allegations or of [LHL's] denials"; and "[t]he lack of damage is also obvious given how well known this story is to the people of Singapore".⁷⁴

⁷² 2AB 1150.

⁷³ Xu's AEIC at [7].

⁷⁴ DCS at [6]–[12], [14], [131], [135] and [149]; Defendant's Response Closing Submissions dated 29 January 2021 ("DRCS") at [69]; Defence's Further Submissions dated 1 March 2021 at [3]–[5], [7]–[11].

73 Mr Singh SC however submits that LHL need not allege actual damage from the defamation and is entitled to rely on the inherent tendency of the words to cause harm and on the “irrebuttable presumption of damage”. A defendant cannot argue that the quantum of damages should be reduced because there has been no damage to a plaintiff’s reputation, as the function of damages is to vindicate the plaintiff and console him for the wrong done to him. Mr Singh SC further argues that readers’ comments can only be relied on to mitigate damages where *none* of the readers believed the defamatory words, relying on *Lachaux v Independent Print Ltd* [2019] 3 WLR 18 (“*Lachaux*”), *ABU v MGN Ltd* [2003] 1 WLR 2201 (“*ABU*”), *Brown v Marron* [2001] WASC 100 (“*Brown*”) and *Clover Bond Pty Ltd v Carroll* [2004] WASC 216 (“*Clover Bond*”). In any event, Xu’s points cannot be considered as they were not pleaded.⁷⁵

74 I find that Xu has sufficiently pleaded the matter and set out particulars that he was relying on “in reduction or extinction of damages”.⁷⁶ This includes that the public knew of the ongoing dispute among LKY’s children pertaining to the House; that allegations in the Paragraphs have all been made by LWL and LHY which the public were aware of; and that consequently, no damage could have been caused to LHL’s reputation from the repetition of the allegations in the Paragraphs. LHL was also cross-examined on the matter.

75 A plaintiff is presumed to have suffered damage to his reputation by reason of the defamation and does not have to prove that he has suffered financial loss or that any particular person has thought the worse of him as a result of the defamatory publication (*Alastair Mullis et al, Gatley on Libel and Slander* (Sweet and Maxwell, 12th Ed, 2013) at para 26.28; *Lee Hsien Loong v*

⁷⁵ PCS at [191]–[202]; PFS at [32]–[35], [47]–[52].

⁷⁶ Defence at [16A].

Singapore Democratic Party and others and another suit [2009] 1 SLR(R) 642 (“*LHL v SDP*”) at [151]). The law also presumes that some damage will flow in the ordinary course of things from the mere invasion of the plaintiff’s absolute right to reputation (*Arul Chandran* at [54]). The burden is on the defendant to rebut this presumption (*LHL v SDP* at [151]) and, contrary to Mr Singh SC’s submissions, it is not an irrebuttable presumption.

76 That the damage to the plaintiff’s reputation was not serious is a factor to consider in assessing damages (*Arul Chandran* at [54] and [59]). In this regard, even if a plaintiff has not in any objective sense suffered damage (eg, as he retained his office, job, family and friends), this does not therefore mean that no damages should be awarded, as the compensatory objectives of damages for defamation includes vindicating the injured reputation of the plaintiff and consoling him for the wrong done to him. Hence, the sum awarded must be at least the minimum necessary to signal to the public the vindication of the plaintiff’s reputation (*Tang Liang Hong v Lee Kuan Yew and another and other appeals* [1997] 3 SLR(R) 576 (“*TLH v LKY*”) at [110]–[111]).

77 I agree with Mr Lim that the court can rely on adverse comments by readers of the defamatory publication to prove harm done by the publication. While there does not seem to be any local case dealing with this issue, the English authorities have established this proposition. In *Turley v Unite the Union and another* [2019] EWHC 3547 (QB) at [114(ii)], the court held that the adverse reactions to the publication expressed on social media was evidence that the publication had caused serious harm to the plaintiff’s reputation. In *Suttle v Walker* [2019] EWHC 396 (QB) at [8], [50], [51] and [53], the court observed that the libellous posts were followed by a large number of aggressive and threatening comments directed at the plaintiff and that this aggravated the damage done by the publication. In *Lisle-Mainwaring v Associated Newspapers*

Ltd and another [2017] All ER (D) 209 (Mar) at [31], the court considered the cruel, ignorant and vindictive comments of the readers to the article and accepted that these comments must have been very upsetting to the plaintiff.

78 The above cases show that *adverse* comments can be evidence of damage *done* to the plaintiff. The logical corollary of this proposition is that comments can be evidence to show that the harm to the plaintiff is not severe, for example, where all or a majority of the readers of a defamatory post comment that it is “unbelievable” or “ridiculous”, showing that they do not believe the allegation therein.

79 I do not accept Mr Singh SC’s submission that readers’ comments can only be relied on to mitigate damages where *none* of the readers believed the defamatory words. The cases cited by Mr Singh SC do not exclude other instances in which comments can be relied on to mitigate damages, *eg*, where the comments show that few (as opposed to no) readers believed in the defamatory publication. In *ABU*, the court accepted that a defendant was fully entitled to rely on *all* matters in mitigation of damages, “for example”, where no one believed the defamatory words (at [10]). In *Brown*, the court held that damages may be reduced if none of the persons to whom it was published believed in the truth of the material *in the context where the publication was to a very small number of persons* (at [291]); likewise, *Lachaux* referred to an example of a small number of readers (at [16]). In *Clover Bond*, the court stated that where the publication was to a handful of persons, damages would be modest and may be further reduced if none of them believed in its truth (at [40]). In so finding, the court relied on the decision of the House of Lords in *Morgan v Odhams Press Ltd* [1971] 1 WLR 1239 (“*Morgan*”). Pertinently, Lord Guest stated in *Morgan* that the quantum of damages had to be examined in light of

the fact that “few, if any” of the readers had believed in the defamatory matter (at 1262), and not that none of them had believed it.

80 Hence, whilst the *presence* of comments or reactions from readers of a publication may go towards showing the severity of harm to a plaintiff’s reputation and affect the damages to be awarded, the *absence* of comments or reactions, in particular adverse ones, does not necessarily show that there is no or little damage to reputation. Such absence could merely mean that the readers did not bother to respond to what they have read.

81 In the present case, I find that Xu has failed to discharge the burden of rebutting the presumption of damage.

82 I accept that the majority of the comments to the Article (or Amended Article) did not relate to the allegations in the Paragraphs (which Mr Singh SC also conceded), but to Ho’s act in sharing Ho’s Post. LHL did not dispute this.⁷⁷ Nevertheless, the comments were only made by a small fraction of the readers. The web statistics showed that the Article was viewed 98,338 times in August 2019, and the Article and Amended Article were viewed a total of 114,263 times between August to November 2019.⁷⁸ In contrast, as of 1 September 2019, there were about 115 comments to the Article on the TOC website, and even as of 21 September 2020, there were only a few hundred comments to the TOC Post on TOC’s FB page.⁷⁹ This constituted less than 1% of the viewership of the Article and Amended Article and is hardly probative of how the majority of viewers felt about the Article/Amended Article.

⁷⁷ 1AB 814–827; 3AB 1823–1846; 1/12/20 NE 84–85; 15/2/21 NE 36.

⁷⁸ LHL’s AEIC at [27] and Tab 8.

⁷⁹ 1AB 814–827; LHL’s AEIC at [33]–[34].

83 Moreover, that the comments did not pertain to the Paragraphs does not prove that the commentators disbelieved its contents. At best, this shows that they were more concerned with Ho's publication of Ho's Post, than the Paragraphs. They also do not show that the readers of the Article (particularly the vast majority who did not comment) disbelieved the Paragraphs or took no notice of the Claimed Meanings. It might have been different if a large majority of readers had expressed that the Paragraphs (and Claimed Meanings) were ridiculous or unbelievable as this would show that they did not believe the defamatory material. But this is not the case here.

84 Although the allegations against LHL were previously widely published, this does not prove that the Article did not further damage LHL's reputation or harm him. By repeating the allegations (and adding his own), Xu magnified the reach of the allegations, and further added the weight of his own authority to them (see also [19]–[20] above). Hence, the publication of the Article had damaged LHL's integrity and undermined his reputation and standing. The Amended Article did not change that, although it might have reduced the severity of the original sting by negating the 3rd Claimed Meaning.

Mode and extent of publication

85 It is trite law that the wider the extent of the publication, the greater the award of damages for defamation (*Peter Lim* at [33]). The publication of the Article was made on the TOC website, which was easily accessible by anyone in Singapore or worldwide through a few simple clicks on an Internet-enabled device. It is not disputed that the web statistics of the Article show that it was viewed 98,338 times in August 2019 (aside from the fact that there were nearly

16,000 further views until November 2019 (see [82] above)).⁸⁰ The substantial viewing of the Article points towards higher damages. To the extent that the TOC Post increased viewership of the Article by directing readers of the TOC Post (on the TOC FB) to click on the hyperlink to access the Article, this would have already been reflected in the viewership count of the Article.⁸¹

86 I note that the 3rd Claimed Meaning was negated after the Qualifier was inserted into the Amended Article published on 4 September 2019. This reduced the severity of the original sting but did not change the fact that there had already been around 98,338 views of the original Article before it was removed.

87 Additionally, LHL had pleaded and attested that the Article was republished and/or shared on the Internet or various blogs by “friends” or “followers” of the TOC FB page, which Xu admitted to.⁸² Such republication increased the reach of the defamation and magnified the damage done to LHL’s reputation, and thus higher damages should be awarded for this because such republication was the natural and probable consequence of the publication of the Article (*Low Tuck Kwong* at [38], endorsing *Goh Chok Tong v Jeyaretnam Joshua Benjamin* [1997] 3 SLR(R) 46 at [127]), especially given the interest in the Lee family feud. Such republication is also patently foreseeable due to the “percolation phenomenon” where, as a consequence of modern technology and communication systems, a story has the capacity to “go viral” more widely and quickly than ever before; and which is especially the case for a plaintiff who is already in the public eye (*Cairns v Modi* [2013] 1 WLR 1015 at [27]).

⁸⁰ 30/11/20 NE 29, 32, 53.

⁸¹ 2/12/20 NE 105.

⁸² SOC at [12]; Defence at [13]; LHL’s AEIC at [47].

Malice

88 Malice in defamation refers to ill-will, spite or some wrong or improper motive (*Lee Kuan Yew v Davies Derek Gwyn and others* [1989] 2 SLR(R) 544 (“*LKY v Davies*”) at [112]). Where a defendant publishes the defamatory material recklessly, without considering or caring whether it was true, he is treated as if he knew it to be false, and is taken to have acted in malice (*GCT v JBJ* at [53]; *LKY v Davies* at [118] and [128]). Malice may be proven in two ways: (a) the defendant’s knowledge of falsity, recklessness, or lack of belief in the defamatory statement; and (b) where the defendant has a genuine or an honest belief in the truth of the statement, but his dominant motive is to injure the plaintiff or some other improper motive (see *Chan Cheng Wah Bernard and others v Koh Sin Chong Freddie and another appeal* [2012] 1 SLR 506 at [90]).

89 LHL argues that Xu had acted recklessly as he published the Paragraphs without caring whether they were true or false, and that Xu had no personal knowledge of and did not take steps to verify the truth of the allegations in the Paragraphs.⁸³ Mr Lim however, submits that LHL did not plead the particulars to support a claim of malice and that in any event Xu’s actions were not malicious as he had published the Amended Article with the PMO Letter for the readers to read LHL’s complaint. Instead, Xu was covering an ongoing story of public interest and had produced a fair account of what LWL had been saying.⁸⁴

90 I find that malice was sufficiently pleaded. LHL had pleaded that he would rely on malice to recover aggravated damages and had set out particulars of malice, including the fact that the PMO Letter was sent to Xu before he replied via the Reply Letter, that Xu published the Reply Letter on the TOC

⁸³ LHL’s AEIC at [48], [50]; PCS at [137], [143]–[145].

⁸⁴ DCS at [144]–[146], [151]–[155].

website and FB page, that Xu had made the Article accessible again on 4 September 2019, and that Xu had made a reckless plea of justification.⁸⁵ The issues (*eg*, whether Xu had been reckless and failed to verify the truth) were also canvassed at trial.

91 I also find that Xu was reckless and indifferent to the truth. When he published the Article, he knew that the public was already aware of the Lee family dispute, that the siblings had made allegations against LHL, and that LHL had responded to state that the allegations were false, and hence that there were two sides to the story.⁸⁶ Yet, Xu did not bother to carefully check the Article for its veracity before it was published, although RS had only spent less than four hours to draft it. This can be seen by how Xu spent *less than 10 minutes* checking the draft before uploading the Article on the TOC website, without making any edits whatsoever (see [7] above). Xu acted hastily although there was no urgency (which he admitted to) in publishing the Article regarding the Lee family feud, which had transpired two years prior and which the public had knowledge of.⁸⁷

92 Xu also admitted that he did not conduct any independent verification of the allegations made by LWL (as quoted in the Article), that none of the allegations were based on any underlying source documents (apart from what LWL or LHY had disclosed in the June or July Statements or social media posts), that he had no personal knowledge of the matters, and that he believed the allegations simply based on the siblings' statements and posts.⁸⁸ Xu did not

⁸⁵ SOC at [20]; Reply at [23].

⁸⁶ 1/12/20 NE 96, 98; 2/12/20 NE 29, 48.

⁸⁷ PCS at [141]; 2/12/20 NE 33–34, 36.

⁸⁸ 1/12/20 NE 121, 174–177, 182–183; 2/12/20 NE 120–121, 142.

approach the siblings to verify their allegations and, even after receiving the PMO Letter, he did not contact them or revisit the source documents to verify the allegations they had made before he published the Amended Article.⁸⁹

93 Xu had thus approved the Article without checking the facts and without any concrete evidence. While Xu claimed in the Reply Letter that he was “merely republishing the words uttered by [LHY and LWL]”, this was not entirely true. For example, he could not point to any of the siblings’ statements to support the allegation that LKY discovered in *late 2013* that the House had not been gazetted (see [61] above) and he accepted that the allegation that LKY had removed LHL as an executor in *late 2013* was erroneous (see [27] above).

94 I find Xu’s conduct to be reckless and irresponsible. A publisher of such grave allegations should exercise due diligence and responsibility in verifying the veracity of the facts and assertions in the Article. This is all the more so as Xu is the Chief Editor of TOC, which holds itself out as a news organisation. Yet, he did not. On the contrary, he instructed RS to do some “creative writing” containing one-sided allegations against LHL and uploaded the draft within 10 minutes of receiving it without any edits.

95 In my view, the above demonstrates Xu’s ill-will towards LHL. I agree with Mr Singh SC that Xu had used Ho’s Post as a peg to attack LHL. If, as Xu claimed, the purpose of the Article was to show the irony of Ho sharing an article about cutting ties with toxic family members when she was the toxic one, there was no reason for the Article to mention the siblings’ allegations about LHL misleading LKY.⁹⁰ Yet, Xu had instructed RS to include such content in

⁸⁹ 2/12/20 NE 34–35, 45.

⁹⁰ 2/12/20 NE 25–27.

the draft, including “allegations by [LHY] and [LWL] on how their father was gaslighted to think that [the House] was gazette[d]”. Xu had deliberately told RS to include these one-sided allegations, without asking her to include LHL’s response to these allegations, although he knew beforehand that LHL had refuted these allegations in a ministerial statement made in July 2017.⁹¹

96 Overall, I find that Xu had acted recklessly, with indifference to the truth and with ill-will towards LHL, which aggravated the injury to LHL.

Failure to apologise

97 Mr Singh SC submits that it can be inferred that Xu was malicious as he had no basis for believing in the truth of the allegations in the Paragraphs, and yet refused to apologise. Instead, he made the libel accessible again from 4 September 2019.⁹²

98 An apology and a withdrawal of the defamatory material can constitute a mitigating factor. However, there was no mitigation in the present case as Xu had refused to apologise for his defamation. Although Xu conceded in his Reply Letter that the 3rd Claimed Meaning can be derived from the Paragraphs, offered his apologies with regards to this, and published the Amended Article with the Qualifier and PMO Letter, he nevertheless maintained in the Reply Letter that “the contents of the Article are not defamatory” and went on to state that the focus of the Article was “on the bigger picture relating to the allegations of abuse of power and the state of the relationship between the late [LKY] and [LHL]”. He also stated that he would not comply with the demands in the PMO Letter (*ie*, to remove the Article, publish an apology and undertake not to

⁹¹ 2/12/20 NE 27–32; 1AB 110.

⁹² PCS at [148]–[150].

publish any similar allegations). On the same day that he issued the Reply Letter, Xu published the Amended Article, which continues to be defamatory, and further maintained therein that he (and TOC) had rejected LHL's demands. Hence, any "apology" rendered in the Reply Letter in respect of the 3rd Claimed Meaning is limited only to that allegation, and for which I accord some weight. However, Xu's conduct in maintaining that the Article is not defamatory shows that he is not contrite particularly in respect of the rest of his defamation, which constitutes the main sting of the libel.

99 Xu claimed that he did not apologise and permanently remove the Article when LHL gave him the chance to do so as he did not believe LHL would refrain from taking legal action even if he complied with LHL's demands. This was because LHL had "deviated from the norm" by sending the PMO Letter through the PMO rather than through a lawyer, and publicised the PMO Letter even before he had time to respond.⁹³ I find Xu's explanation to be unconvincing. In any case, regardless of his reasons for not apologising, I find that his conduct was not mitigated for the reasons above.

Reckless justification defence

100 I accept that Xu was reckless in raising the justification defence, and this constituted an aggravating factor. Xu did not have personal knowledge of whether the allegations in the Paragraphs were true and did not undertake any independent verification of the allegations before he published the Article. After the Article was published, Xu obtained various contemporaneous documents which would have alerted him to the fact that the three Claimed Meanings are baseless. As I have examined earlier, the correspondence did not support the

⁹³ 2/12/20 NE 56, 58, 61, 64–66.

allegations in the Paragraphs. Xu had these documents since March 2020 and claimed to have read them in September or October 2020.⁹⁴ Hence, about two months before the trial commenced, he would have known that the documents did not support his case. Yet, he pursued the justification defence and even amended his Defence to include further details in support of this plea.⁹⁵ It was in cross-examination that Xu admitted that none of the documents show that LHL had told LKY that the House had been gazetted (see [46] above). The recklessness of Xu's justification defence is made even more apparent by the fact that his case was based on speculation, and he could have subpoenaed LHY and LWL to testify on the matter but he did not.

101 In addition, Xu admitted that he had tried to justify the 3rd Claimed Meaning in his AEIC although he knew, by the time he filed his AEIC, that the 3rd Claimed Meaning is false. The PMO Letter had expressly stated that LHL had not been included as an executor of LKY's will since 2011. Xu claimed that he had sought to justify the allegation in the 3rd Claimed Meaning because his lawyer advised him to do so. Even if this is to be believed, it is not an excuse because Xu has the ultimate say on how to conduct his case.⁹⁶

102 Given these circumstances, I find that Xu had been reckless in raising a justification defence that was bound to fail. While Xu argues that there is no evidence that this aggravated the injury to LHL,⁹⁷ I find that this had needlessly prolonged the conduct of the trial, including the cross-examination of LHL.

⁹⁴ 2/12/20 NE 125–127.

⁹⁵ 2/12/20 NE 124; Defence at [10].

⁹⁶ 1/12/20 NE 110–114, 116–117.

⁹⁷ DRCS at [56], [65(c)].

Xu's conduct from the time the Paragraphs were published

103 Mr Singh SC submits that Xu aggravated the injury to LHL's feelings by drawing attention to the Article and Suit 882 and conducting the trial in a way calculated to attract wide publicity.⁹⁸ On the other hand, Mr Lim submits that these points were not expressly pleaded.⁹⁹

104 A plaintiff must give full particulars in the statement of claim of the facts and matters on which he relies in support of his claim for damages, including details of the defendant's conduct which has increased the loss suffered (Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("Rules of Court") O 78 r 3(3A)).

105 LHL had pleaded that aggravated damages should be awarded for Xu's post-publication conduct of republishing the (Amended) Article, and which Xu had also responded to in his Defence.¹⁰⁰ While LHL did not plead that aggravated damages should be awarded for Xu's conduct of drawing attention to the suit and subsequent to the commencement of the suit, these could *not* have been pleaded at the time of filing the writ and Statement of Claim ("SOC") *since they only occurred subsequent to it*. There is no prejudice to Xu and he was not taken by surprise. He was given adequate notice of these matters as they were raised in LHL's AEIC and Opening Statement, and Xu was cross-examined on them at trial.¹⁰¹ Further, that Xu had made various publications which drew attention to the trial is undisputed, as are the contents of these publications. As for his conduct from the commencement of trial until the time of the verdict,

⁹⁸ PCS at [155]–[156], [166]–[180].

⁹⁹ DCS at [138]; DRCS at [65(c)].

¹⁰⁰ SOC at [19]–[20]; Defence at [15]; Reply at [23].

¹⁰¹ LHL's AEIC at [69]–[80]; Plaintiff's Opening Statement at [81]; Plaintiff's Reply Closing Submissions at [63]–[65].

this could not have been pleaded in any event. Pertinently, it is Xu's own conduct, of which he is in full control, which is being considered.

106 On 5 September 2019, Xu published on the TOC FB page that LHL had served him a writ and SOC. Xu explained during cross-examination that he did this to bring Suit 882 to the attention of TOC's readers, as it was news.¹⁰² I accept that this in itself was neutral and not aggravating. After all, that LHL had commenced Suit 882 was a matter in the public domain and LHL had also caused the PMO Letter to be circulated to the media.

107 However, the aggravation arises because Xu continued with a series of conduct calculated to publicise and draw attention to Suit 882 and paint LHL in a bad light. On the same day, Xu stated on his FB page that "It has begun. 😊", together with the same update of the suit published on the TOC FB page. Xu admitted in cross-examination that he intended to continue to convey to his readers that LHL's suit against him was yet another attempt to stoke a "climate of fear", as he had described earlier in the Reply Letter that he had brought to his readers' attention by publishing it on TOC's FB page and his FB page.¹⁰³

108 On 6 September 2019, Xu published an article on the TOC website (and shared this link on TOC's FB page) with the title "PM Lee serves TOC editor in chief writ of summons, following his refusal to abide demands to take down article and issue apology". Xu also highlighted that the "civil suit against [Xu] is the latest in the series of lawsuits concerning alleged defamation against [LHL]" and further highlighted "Recent and on-going defamation cases filed by [LHL]", naming two persons that LHL had sued for defamation, and ending the

¹⁰² 2AB 1186; 2/12/20 NE 75–76.

¹⁰³ 2AB 1224; 2/12/20 NE 87–89.

article by citing from another news source that “both [LHL] and the late [LKY] have ‘never lost a single lawsuit in 35 years since 1984’”.¹⁰⁴ Whilst Xu claimed during cross-examination that this post merely gives “reasonable background ... of [LHL’s] history of suing individuals”, he agreed that the story regarding LHL’s defamation suits against others were irrelevant to Suit 882. The same day, Xu stated on his FB page that it was the PMO who had made the lawsuit a media event by forwarding the PMO Letter to the press after it was sent to him (“6 Sept 2019 FB Post”), and this was also shared on TOC’s FB page.¹⁰⁵

109 On 10 September 2019, Xu posted on his FB page that he had filed a Memorandum of Appearance to Suit 882. This post was shared on TOC’s FB page.¹⁰⁶ In the post, Xu stated that he had decided to represent himself because of the costs of engaging a lawyer. He added the following (“the Quote”):

While I am fighting an up-mountain battle since I do not have near-infinite resources like what the world’s highest paid politician would have. I am willing to take that chance so as to stand my ground against such uncalled-for intimidation, especially when it is from a public servant.

110 The same day, Xu published an article on the TOC website of having filed the Memorandum of Appearance and his decision to represent himself in court,¹⁰⁷ and repeated the Quote.

111 Xu claimed that the purpose of the 10 September 2019 post (at [109] above) was to appeal to the public to financially support the TOC website to keep it afloat, as he would have to devote more time to fighting the lawsuit and

¹⁰⁴ 2AB 1230–1232, 1239.

¹⁰⁵ 2/12/20 NE 92–93; 2AB 1227, 1252.

¹⁰⁶ 2AB 1264–1265, 1268–1269.

¹⁰⁷ 2AB 1280–1282.

would have little time to manage the website.¹⁰⁸ Even if that were true, it was unnecessary for him to add the Quote and assert that LHL was intimidating him. I find that the real reason Xu did so was to attack LHL and paint him in a bad light. In cross-examination, Xu admitted that a public servant who sued Xu deserved such allegations made in public against him and that Xu had “venom” for LHL’s action in suing him.¹⁰⁹

112 Xu’s act of publishing the Quote in the 10 September 2019 post did not sit with his explanation for the 6 Sept 2019 FB Post. Xu claimed that the 6 Sept 2019 FB Post was to address journalists who had been asking him for details on Suit 882 and that to deflect attention, he had told them that he would not comment on the suit because he wanted to “prevent escalation on the matter” and he would “just keep quiet on the matter until the case ... conclude[d]”. Xu also claimed that he did not want to comment on the suit or to say that he was “being bullied”, because he did not want LHL to use his comments against him.¹¹⁰ The Quote disproves this explanation because Xu had painted himself as being victimised by the “world’s highest paid politician” and also drew further attention to the suit and to himself.

113 I reiterate that there would have been nothing wrong if Xu had reported about the suit in a neutral fashion. As Xu explained, TOC is a news outlet,¹¹¹ and it would be natural for it to publish news of the matter. It was of public interest and would generate viewership for TOC. But Xu’s conduct went further and was calculated to portray LHL in a bad light and impugn his motive for bringing

¹⁰⁸ 2/12/20 NE 97.

¹⁰⁹ 2/12/20 NE 99–101.

¹¹⁰ 2/12/20 NE 81–82.

¹¹¹ 2/12/20 NE 86, 91.

Suit 882. This aggravated the injury to LHL. By referring to LHL's action as "uncalled-for intimidation", Xu was standing by his libel and criticising the lawsuit as being baseless. As Xu stated, he was running a "climate of fear" narrative. Xu had also made sure that his comments would garner as much coverage as possible by putting them on various platforms such as the TOC website, TOC FB page and his FB page. He admitted that all the articles published on the TOC website would be shared on social media platforms, as only a small number of TOC's readers would go to the TOC website whereas more readers would rely on the TOC FB page to receive information.¹¹² Even if LHL had made the Article a "media event" by issuing a press release with the PMO Letter, it should be noted that his response came about because Xu had first published the Article on TOC which itself was a public news website.

114 Hence, far from keeping quiet about the suit until it was concluded, as he claimed to have wanted to do, Xu used various social media and news platforms to put forth his assertions against LHL, to paint a narrative of how LHL uses his position and resources to bring libel suits to intimidate and silence his opponents.

115 Even during the trial, Xu continued to make allegations against LHL to paint him in a bad light. He argued in his Opening Statement that LHL used Suit 882 to "attack" him and that it was "another attempt to bully a critic and to try to shut down discussion of this subject".¹¹³ He asserted in his AEIC that LHL had filed a separate action against RS instead of making RS a defendant in Suit 882 because LHL wanted to obtain an admission from or a judgment against her to be used against Xu in Suit 882. This assertion was unsubstantiated. Xu

¹¹² 2/12/20 NE 95–96, 110.

¹¹³ Defendant's Opening Statement at [10].

admitted in cross-examination that LHL had not obtained any admission or judgment against RS for that purpose.¹¹⁴ When asked why he thought that LHL would still sue him even if he were to apologise for the defamatory statements and undertake to remove the Article, Xu claimed that “as the Head of the State [LHL] would have in his powers influence over the Ministry of Home Affairs, Ministry of Communication and Information” and that Xu might thus still face other forms of consequences through these government bodies.¹¹⁵ By this, Xu was implying that LHL would use his position of power to influence government bodies to take action against Xu. This allegation was again, baseless. Xu had thus used the courtroom as a platform to cast further aspersions on LHL’s character.

116 Mr Singh SC also argues that Mr Lim had asked LHL irrelevant questions during cross-examination to embarrass and annoy LHL, such as why LHL did not invite the siblings for Chinese New Year after LKY had passed on, when LHL last spoke to the siblings in person, and whether he believed in the principle of filial piety.¹¹⁶ Whilst I agree that these questions were irrelevant to the determination of the issues in Suit 882 and were intended to annoy and embarrass LHL, I give little weight to this in determining the award of damages as I do not think that it substantially aggravated the injury to LHL.

117 As such, I find that Xu’s manner of conduct after the defamatory statements were published was calculated to attract publicity and paint LHL in a bad light, to show that Suit 882 was commenced by LHL to intimidate and silence his opponents. This further aggravated the hurt to LHL.

¹¹⁴ Xu’s AEIC at [55]; 2/12/20 NE 146.

¹¹⁵ 2/12/20 NE 68.

¹¹⁶ PCS at [178]; 30/11/20 NE 4–5, 41, 43.

Quantum of damages and other remedies

118 Mr Singh SC submits that the courts have awarded damages in the range of \$300,000 to \$330,000 where a PM has been accused of dishonesty or misleading others. He argues that the present case is more severe due to the extent of publication and Xu’s malice and aggravating conduct.¹¹⁷ Xu did not submit on the quantum of damages.

119 The cases show that substantial damages have been awarded where the PM of Singapore is defamed. For example, the following cases show that the courts have awarded damages ranging from \$230,000 to well over \$300,000 to a plaintiff (“P”) who was the then PM against a defendant (“D”).

(a) In *LKY v Davies* (at [88] above), the *Far Eastern Economic Review* (“FEER”), a reputable and an influential international publication, published a defamatory article essentially alleging that P was anti-Catholic Church and had caused the arrest and detention of various persons as scapegoats for four priests who were the real targets. There was no apology or retraction of the offending words and they were repeated in the FEER subsequently. The court had also found D to have acted with malice. The court awarded P \$230,000.

(b) In *Lee Kuan Yew v Seow Khee Leng* [1988] 2 SLR(R) 252, D was the Secretary-General of an opposition political party. During an election rally, he made certain remarks against P, which amounted to allegations of corrupt and criminal conduct. D admitted to liability. The court found that D was actuated by malice, he persisted in his unmeritorious defence of accord and satisfaction until two weeks before

¹¹⁷ PCS at [206].

the date fixed for trial resulting in P having to wait three and a half years to vindicate his reputation, and D's apologies were insincere. The court awarded P \$250,000.

(c) In *Lee Kuan Yew v Jeyaretnam Joshua Benjamin* [1990] 1 SLR(R) 709 (“*LKY v JBJ*”), D, the Secretary-General of the Workers’ Party, had at a general election rally (attended by some 7,000 persons) defamed P as being involved in the unlawful taking of a human life for a sinister purpose. The court found that the allegation had grievously wounded P, and that D’s motive in bearing “false witness” against P was to hit him below the belt at the general elections. Further, D had not corrected or apologised for the defamation and had instead inflicted further hurt on P in a subsequent speech, made defiantly to give the impression that he was reaffirming the original slander. The court awarded P \$260,000.

(d) In *Lee Kuan Yew and another v Vinocur John and others and another suit* [1995] 3 SLR(R) 38, the first plaintiff (“P1”) was the Senior Minister (and previously PM), the second plaintiff (“P2”) was the Deputy PM, and the third plaintiff (“P3”) was the PM. The defamatory publication was made in the *International Herald Tribune* (“IHT”), a reputable and an influential newspaper with a circulation of about 4,000 copies daily in Singapore, in which reference was made to “dynastic politics” in Singapore. It alleged that P2 was appointed to his various posts in government not on the basis of merit but because he was the son of P1, that P1 had caused P2 to be appointed on the basis of nepotism, and that P3 aided and abetted the practise of this nepotism. The court found that to accuse the plaintiffs of nepotism or corruption or the aiding/abetting of it, was an attack that would cause grievous harm to

them in the discharge of the functions of their office and indignation on their part as it was an attack on the very core of their political credo. The publication was also actuated by malice, and because of the standing of the IHT, the allegations were more likely to be believed by its readers. The court awarded P1 and P2 \$300,000 each and awarded P3 \$350,000.

(e) In *Goh Chok Tong v Chee Soon Juan* [2005] 1 SLR(R) 573, D was the Secretary-General of the Singapore Democratic Party (“SDP”) and had made certain remarks to the public and news media in the course of campaigning during the general elections, to the effect that P had concealed from Parliament and the public information pertaining to a \$17 billion loan made to Indonesia. The court found that D had acted in bad faith as he knew the allegations were false but refused to admit to it and instead tried to delay the legal proceedings against him; his apology was insincere; his claim of justification was made without adducing evidence in support and he treated the court proceedings as a continuation of his confrontation with P; and there was wide republication of the statements on television news broadcasts and newspapers. The court awarded P \$300,000.

(f) In *LHL v SDP* (at [75] above), the SDP and members of its Central Executive Committee made defamatory publications in the SDP’s newspapers which highlighted the commonality between the PAP-led Government and the National Kidney Foundation, which carried the natural and ordinary meaning that P was, among other things, “guilty of corruption, nepotism, criminal conduct, a cover-up and of advancing the interests of the Lee family at the expense of the needs of Singapore”. There were some 5,000 copies of the newspapers sold, and the publication was also posted on the SDP website. The court found (at

[74]) that “All in all, the aggravating features present, taken as a whole, put this case in a class of its own”. The court thus awarded P \$330,000, taking into account that he had already been paid \$170,000 by other defendants and persons who were not sued (at [154]).

120 Next, I note two recent cases against the PM, which involve publications on the Internet.

(a) In *Lee Hsien Loong v Ngerng Yi Ling Roy* [2016] 1 SLR 1321 (“*Roy Ngerng*”), D had published the defamatory article on his blog, with a link to the article posted on his FB page. The publication conveyed the meaning that P was guilty of criminal misappropriation of moneys paid by citizens to a state-administered pension fund, and the court found that this was “one of the gravest that can be made against any individual, let alone a head of government” (at [29]). About 95,443 persons had visited the home page of D’s blog and the publication was republished or linked to 11 other blogs and websites. The court found that D had acted out of malice and the mode of publication (on a website) was aggravating. However, D was of “modest standing” and the manner in which his views were presented were not sufficient to “elevate his credibility to that of a leading opposition politician ... or to imbue his words with the gravitas that they would have had had they been in a publication with an international circulation” (at [41] and [116]). The court thus awarded P \$100,000 as general damages and \$50,000 as aggravated damages.

(b) In *Lee Hsien Loong v Leong Sze Hian* [2021] SGHC 66 (“*Leong Sze Hian*”), D published an article on a website which suggested that P was centrally involved in Malaysia’s 1MDB scandal and that P and the

then Malaysian PM had entered into agreements which were the result of a *quid pro quo*, with P offering the assistance of Singapore banks in laundering stolen money. The article thus bore the meaning that P was corrupt and implicated in the wrongdoing associated with 1MDB. The court found that D did not have an exceptionally substantial following (with only 5,000 friends and 149 followers on FB) and the publication would have been at most to about 400 persons (at [105]). P was awarded \$100,000 as general damages and \$33,000 as aggravated damages.

121 I accept that Xu's allegations impugned LHL's reputation and character by alleging that he was dishonest. This struck at the heart of LHL's personal integrity and could severely undermine his credibility, not just personally but also as the PM, and call into question his fitness to govern with integrity. Nevertheless, the severity of the defamation is lower than in the cases at [119] above. While dishonesty towards one's father is undoubtedly grave and severe, it is not of the scale of the more serious allegations made in the above cases, such as pertaining to corruption and abuse of power, criminal conduct, being complicit in taking a person's life, nepotism, or misleading the public on public funds. Xu's allegations against LHL, whilst they would have undermined LHL's credibility and character as PM, relate primarily to a family feud regarding LKY's property, and not, for instance, to misconduct in his capacity as a public officer pertaining to public funds or serious criminal conduct such as being complicit in taking a life.

122 The cases at [119] above also involved defendants with more prominent standing such as the Secretary-General of the WP and SDP, or related to reputable or influential international publications. Some of them involved defamation made in a much more critical context, such as at an election rally, where damage to the plaintiff's reputation as an office-holder may be more

severe and may affect his chances of winning an election. Xu’s standing cannot be compared to that of those defendants, and there is also no evidence to show, nor was it argued, that TOC is as reputable or influential as the FEER or IHT.

123 In my view, the damages in the present case should be lower than the cases at [119] above, for the reasons above, but higher than in *Leong Sze Hian* and *Roy Ngerng*. Unlike the limited extent of publication in *Leong Sze Hian*, the Article in the present case was viewed some 98,338 times in August 2019 alone (not including subsequent republications), and Xu and TOC had far more readers and/or followers than the defendant in *Leong Sze Hian*. Further, Xu, as the Chief Editor of TOC (an online news publication), had higher standing than the defendant in *Roy Ngerng*. In *Roy Ngerng*, the defendant was “an ordinary citizen writing on his personal blog” and the damages was substantially reduced due to his “low standing” (at [42] and [116]). However, whilst the severity of the defamation is lower than in the cases at [119] above, consideration must be given to the fact that the publication of the Article had a far wider reach.

124 Considering the circumstances of the present case and having regard to the cases cited above, I award LHL \$160,000 as general damages and \$50,000 as aggravated damages, totalling \$210,000. In my view, this is a fair and reasonable sum to compensate him of his injury and vindicate his reputation. It bears repeating that there is a need to guard against the trend of allowing defamation damages to rise with each successive case. Furthermore, the process of assessing damages for defamation is not quasi-scientific and there is rarely a single “right” answer (*Freddie Koh* at [63]; *TLH v LKY* at [158]).

125 In addition, I grant an injunction restraining Xu from further publishing or disseminating or causing to be published or disseminated the false and defamatory allegations in the Paragraphs, or any other words to that effect.

Suit 1136 – Damages in relation to RS

126 I now turn to separately assess damages against RS, as LHL had brought the actions against Xu and RS in two separate suits which are not consolidated.

127 As stated earlier, judgment in default of appearance was entered against RS as she did not enter an appearance nor file a defence. Pursuant to O 18 r 13(1) of the Rules of Court, the facts pleaded in LHL’s SOC are deemed to be admitted by RS. LHL had pleaded in Suit 1136 that RS “published and/or caused and/or authorised and/or was responsible for the publication and republication of the [Paragraphs]”.¹¹⁸ RS was thus equally responsible for causing the publication of the Article, of which liability (*ie*, whether the Paragraphs were defamatory) has not been disputed. However, while a defendant’s failure to file a defence may mean admitting the *facts* which have been pleaded to substantiate damage, where the claim is for an unliquidated amount, the *quantum* of the damages will have to be assessed and cannot automatically follow as a matter of admission (*Toh Wee Ping Benjamin and another v Grande Corp Pte Ltd* [2020] 2 SLR 308 at [40]).

128 I find that the publication of the Article was essentially a joint enterprise between Xu and RS – Xu gave RS instructions on what to write, RS drafted the Article according to the instructions and Xu then published it. RS would have known that the Article was to be published on the TOC website, as she is a writer for the website.¹¹⁹ As such, the factors that I considered in assessing damages against Xu should likewise be considered when assessing damages against RS, *ie*, the nature and gravity of the defamation, the publication of the Article on the TOC website, the mode and extent of publication, and LHL’s

¹¹⁸ SOC in Suit 1136 at [12].

¹¹⁹ LHL’s AEIC in Suit 1136 at [12]–[13] and exhibit LHL-36.

position and standing. LHL had also pleaded that RS acted with malice, in particular, in publishing the Paragraphs recklessly and/or not caring if they were true.¹²⁰ I also find that RS did not verify the truth of the Paragraphs in the Article which she drafted merely based on Xu's instructions and within the span of a few hours. Further, RS failed to apologise despite having been informed by LHL's lawyers on 21 October 2019 that the Article was defamatory.¹²¹

129 Considering all these factors, I award LHL \$160,000 in general damages against RS, being the same amount awarded against Xu. Xu and RS should be jointly and severally liable for this sum as it is in respect of the same article, and LHL should not be doubly compensated. This would accord with s 16 of the Defamation Act, which object is to prevent a plaintiff from being compensated twice for the same loss (*TLH v LKY* at [168]).

Aggravated damages and whether separate awards can be made against Xu and RS on such damages

130 Having considered RS's conduct (including malice) in coming to my award of \$160,000 against her in general damages, I will not make any further award against her for aggravated damages. Unlike Xu, RS did not contest her liability or raise a reckless justification defence, and there is no evidence that she aggravated the injury to LHL through any further conduct on her part after the Article was published. Mr Singh SC also accepts that Xu's aggravating conduct and malice go well beyond RS's.¹²²

¹²⁰ SOC in Suit 1136 at [21(c)].

¹²¹ LHL's AEIC in Suit 1136 at [28]–[30] and exhibit LHL-47.

¹²² Mr Singh SC's letter in Suit 882 dated 12 March 2021 at [39].

131 In relation to aggravated damages, Mr Lim argues that separate awards cannot be made against Xu and RS relating to the same plaintiff and same publication, and that the court should apply the “lowest common denominator” principle which requires it to assess damages by referring only to aggravating circumstances for which all defendants can properly be held responsible, citing *Cassell & Co Ltd v Broome* [1972] AC 1027 (“*Cassell v Broome*”).¹²³

132 Mr Singh SC however submits that where two defendants are sued by the same plaintiff in separate actions pertaining to the same publication, aggravated damages should be assessed separately against each defendant, and the plaintiff can recover against each defendant aggravated damages solely having regard to that defendant’s conduct which aggravated the damages.¹²⁴

133 I agree with Mr Singh SC. On this issue, it may be helpful to first examine s 18 of the Defamation Act which sets out the law concerning separate assessment of damages where multiple defendants are sued in the same suit:

Separate assessment of damages in certain cases in actions for libel

18. Whenever in an action for libel the plaintiff sues more than one defendant, whether jointly, severally, or in the alternative, and evidence is given of malice in one defendant or of any other matter of aggravation which would not be admissible in evidence against any other defendant if he were sued alone, such other defendant may apply to the court to have the damages against himself and his co-defendants separately assessed, and if such application is made, the court shall assess the damages separately against each defendant and no defendant shall be liable nor shall execution issue against him for any further or other damages than those so assessed against him.

¹²³ Mr Lim’s submissions in his letter of 8 March 2021 in Suit 882 at [11].

¹²⁴ PCS in Suit 1136 at [54]; Mr Singh SC’s letter in Suit 882 dated 12 March 2021 at [32].

134 Where a plaintiff sues multiple defendants in the same action for the same publication, s 18 of the Defamation Act allows a defendant to apply for his damages to be assessed separately, where evidence is given of malice or other aggravating acts on the part of a co-defendant which would not be admissible against the defendant if he were sued alone. In such a case, the defendant who makes the application would not be liable for damages other than those assessed against him. The result of this is that defendants in the same suit could be made to pay different quantum of damages depending on their individual conduct in aggravation to the plaintiff. This position accords with common sense and fairness. A defendant who has not engaged in conduct which aggravates the injury to the plaintiff should be allowed to disassociate himself from the aggravating conduct of his co-defendant which he did not contribute to. Conversely, the latter should not be allowed to ride on the mitigating circumstances or reduced culpability of the former to reduce the compensation he owes to the plaintiff due to his aggravating acts.

135 Section 18 of the Defamation Act is not applicable here as there are two *separate actions* against Xu and RS and it must *a fortiori* be the case that their damages are separately assessed. The lowest common denominator rule in *Cassell v Broome* does not apply as there is no need to arrive at a single common sum for which all defendants are jointly liable. This was made clear in *Cassell v Broome* (at 1063) where the House of Lords explained that although the lowest common denominator rule should apply to all defendants (even in relation to aggravated damages) in a single proceeding for a joint tort, *a plaintiff who wishes to differentiate between the defendants can commence separate proceedings against each of them* and then consolidating the proceedings. This was what LHL had done in the present case (save that the two actions were not consolidated). It should also be noted that *Cassell v Broome* concerned the issue of exemplary damages and not aggravated damages.

136 Furthermore, although the lowest common denominator rule seems to be the position in the UK pertaining to joint defendants in the same suit, it should be noted that the High Court in *Chiam See Tong v Ling How Doong* [1996] 3 SLR(R) 942 (“*CST v LHD*”) at [85] has stated, having regard to s 18 of the Defamation Act, that this rule in *Cassell v Broome* is not applicable in Singapore, and that a reading of s 18 is only workable if the starting point is that the defendants are jointly liable for the highest possible sum of damages. Hence, a defendant who wishes to show that he is less culpable than his co-defendants should apply under s 18 for the court to consider this and assess his damages separately. While there is a conflicting decision of the High Court in *LKY v Davies* which endorsed the lowest common denominator rule in *Cassell v Broome* (at [135]), this was decided prior to *CST v LHD* and, pertinently, s 18 of the Defamation Act was not referred to. In any event, this rule is not applicable in the present case, for reasons stated above.

137 Hence, my decision to make no award of aggravated damages against RS does not in any way affect the award of aggravated damages against Xu. I am not precluded from making separate awards in Suit 882 and Suit 1136. The reason for rendering a single judgment for both suits is to ensure that there is no double compensation to LHL for the same loss where the damages overlap.

Conclusion

138 To conclude, I award LHL damages of \$210,000 in Suit 882 (being \$160,000 as general damages and \$50,000 as aggravated damages), and damages of \$160,000 in Suit 1136. Xu and RS are to be jointly and severally liable to the extent of \$160,000. To avoid doubt, the total amount awarded to LHL in damages in both Suits is \$210,000. I also grant the injunction in Suit 882, as prayed for by LHL.

139 I will hear parties on costs in both Suits 882 and 1136.

Audrey Lim
Judge of the High Court

Davinder Singh SC and Pardeep Singh Khosa (Davinder Singh
Chambers LLC) for the plaintiff in Suit 882 of 2019 and Suit 1136 of
2019;
Lim Tean (Carson Law Chambers) for the defendant in Suit 882 of
2019;
Defendant in Suit 1136 of 2019 is unrepresented.
