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

**[2025] SGHC 54**

Suit No 510 of 2021

Between

Diana Foo

… *Plaintiff*

And

Woo Mui Chan

… *Defendant*

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# JUDGMENT

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[Tort — Defamation — Damages — Whether loss of earnings, business and clientele falls under general damages or special damages]
[Tort — Defamation — Damages — Assessment of damages]

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# v
# Woo Mui Chan

**[2025] SGHC 54**

General Division of the High Court — Suit No 510 of 2021
S Mohan J
29 October 2024, 20 January 2025

28 March 2025 Judgment reserved.

**S Mohan J:**

## Introduction

1 A claim for damages is not, contrary to what an optimistic litigant may think, akin to a lottery. In many cases, there is a degree of uncertainty involved in the process of assessing a plaintiff's loss and what award of damages would be commensurate to set that right. But that uncertainty does not change the basic premise that a court of law is required to assess damages based on principle, precedent and proof.

2 In my earlier decision in *Foo Diana v Woo Mui Chan* [2023] SGHC 221 ("*Foo Diana (Liability)*"), I held that the defendant, Ms Woo Mui Chan, was liable for defaming the plaintiff, Ms Diana Foo, in respect of two statements published by the defendant. Before me now is the issue of the assessment of damages payable by the defendant to the plaintiff. Reflective of the acrimony

that these proceedings have been steeped in, the parties have adopted widely divergent positions on the appropriate quantum of damages to set right the wrong suffered by the plaintiff. The plaintiff claims that her losses are "at least $500,000" but seeks a total award of at least $350,000.[1] The amount the plaintiff hopes for is more than ten times greater than what the defendant submits the plaintiff is entitled to.[2]

3 Having taken some time to consider carefully the evidence led and the parties' submissions, I find that the defendant has considerably the better of the argument. In short, based on how the plaintiff's case has been advanced and the evidence that was before the court in support, the plaintiff's case, in my view, largely comes down to bare assertions, surmise and hyperbole.

4 An award of damages, at least as far as this case is concerned, is compensatory. Thus, while I appreciate that the plaintiff takes the utmost umbrage at the defendant's conduct, and the law of defamation does take cognisance of this to some extent, it can only carry the plaintiff so far. However, it comes nowhere near the very substantial figures that she has suggested. Having given the matter mature consideration, I assess and fix the damages payable by the defendant to the plaintiff in the total sum of $41,250. I explain the reasons for my decision below.

## Background facts

5 I have set out the background facts to this case in *Foo Diana (Liability)*. It suffices to say for present purposes that the plaintiff is an advocate and

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1 Plaintiff's Closing Submissions dated 10 January 2025 ("PCS") at paras 38–39, 114–115 and 117.

2 Defendant's Closing Submissions dated 20 December 2024 ("DCS") at para 71.

solicitor who was called to the Singapore Bar in or around February 2005 and has been in practice since. The plaintiff and the defendant became acquainted with one another sometime in 2015 and became friends. However, their relationship subsequently took a downturn due to disputes over moneys allegedly owed by the defendant to the plaintiff. This bad blood culminated in the defendant later publishing two defamatory statements of the plaintiff.

6 First, in or around 2018, the defendant published a public review on the Google page of the Law Society of Singapore ("LSS") which alleged that the plaintiff had "bullied" her and forced her into doing "illegal deals" ("Statement 1"):

> I really desperately asking for help I was being bullied by a lady lawyer, Name Diana Foo from Tan See Swan & Co.
>
> She force me to do illegal deals with her, I have recorded how I was being bullied by her.
>
> I am very Helpless.
>
> Woo mui chan

7 Second, on 3 March 2020, the defendant lodged a written complaint to the LSS in which she alleged various improprieties against the plaintiff ("Statement 2"):

> 14. On a few occasions, the dates of which I cannot recall precisely now, the Lawyer handed me a stack of Singapore currency notes, saying that she would lend me money.
>
> 15. As I was in need, and due to what I felt was the Lawyer's kindness, I reciprocated by accepting the money but agreed with her that it was only a loan, though not a "friendly" loan. The Lawyer, despite my request to the contrary, insisted that the details of the loans should not be written or captured in any written agreement.
>
> …
>
> 18. The Lawyer also began to ask me about assisting her in a deal in Vietnam, to move "money"; the details of which I found

> too complicated to understand and which I cannot describe sufficiently here, and thus declined.
>
> …
>
> 20. All the time that I have known the Lawyer, she seemed to talk to me like a close confidant and like someone who had a sexual relationship with her; for example, she would refer to me as "darling" or "dear" in front of other people that we met, and she would try to establish physical contact.
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> 21. I rebuffed these advances as politely as I could, particularly, in view that she had been so kind to me before in lending me money.
>
> …
>
> 30. The issues which I raise for the Council are as follows:-
>
> (i) Is it permissible for the Lawyer to lend money to a client?
>
> (ii) Is it permissible for the Lawyer to make sexual advances towards the client?
>
> (iii) I am surprised that a Lawyer should be allowed to use vulgarities in the course of legal work …

8 In *Foo Diana (Liability)*, I held that both Statement 1 and Statement 2 were defamatory of the plaintiff. In arriving at my decision, I rejected the defendant's plea of justification in respect of Statement 1 as she was unable to prove the truth of the statement. I also rejected the defendant's invocation of qualified privilege in respect of Statement 2 and found that, while a statement outlining alleged misconduct by an advocate and solicitor to the LSS could in principle attract qualified privilege, the defendant had been actuated by malice.

## The parties' cases

### *The plaintiff's arguments*

9 The plaintiff seeks general damages of $300,000 and aggravated damages of at least $50,000.[3]

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[3] PCS at paras 115 and 117.

10 Broadly, the plaintiff lays great emphasis in her submissions on the importance of her reputation to her profession as a lawyer and argues that "all is at stake when a lawyer's reputation is tainted".[4] This is principally because her reputation as a lawyer would affect her ability to attract and obtain clients, who may be repulsed from engaging her services based on the taint to her reputation caused by the defendant. In this regard, the plaintiff relies on the evidence of witnesses who consist of persons who apparently stopped referring work to her after catching wind of the defendant's allegation that the plaintiff had been involved in "illegal deals".[5] The plaintiff also argues that defamation against a lawyer is "worse than defaming a politician", as while a politician is able to clear his or her name in the public domain, a lawyer does not have the benefit of doing so.[6]

11 Although the plaintiff claims that she is unable to quantify the actual loss that she has suffered, she maintains that her loss is "in the region of hundreds of thousands of dollars, if not millions".[7] This assertion is largely premised on the inherent ease of transmitting information through the Internet: since Statement 1 was posted on the Internet in the form of a Google Review, it could have been seen by any client or potential client using the Internet to search for legal assistance or conduct due diligence on her with a view to enlisting her services.[8]

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4 PCS at para 12.

5 PCS at paras 29–30.

6 PCS at para 36.

7 PCS at para 31.

8 PCS at paras 27 and 32.

12 To arrive at her quantification of $300,000 in general damages, the plaintiff primarily adopts an approach of reciting the facts and awards made in earlier cases before scaling them to the present day based on inflation.[9] After this exercise is repeated for a number of precedent cases, the plaintiff roundly stakes her claim for a "maximum quantum in general damages" in the sum of $300,000.[10]

13 In so far as her claim for aggravated damages is concerned, the plaintiff appears to rely on four factors as supporting an award of aggravated damages in this case. First, my rejection of the defendant's defence of justification in respect of Statement 1 in *Foo Diana (Liability)*. Second, my finding that the defendant had been actuated by malice in respect of Statement 2 in *Foo Diana (Liability)*. Third, the fact that she had been subjected to humiliating and embarrassing questions in cross-examination.[11] Fourth, a lack of an apology from the defendant and the defendant's refusal to settle the plaintiff's claim when given the opportunity to do so.[12]

***The defendant's arguments***

14 The defendant submits that the award of damages and costs should be limited to $30,000.[13]

15 As a starting point, the defendant emphasises that the plaintiff is not a person of public prominence, and thus derives no support from awards of

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9 PCS at paras 69–88.

10 PCS at para 115.

11 PCS at para 92.

12 PCS at paras 96, 102 and 106.

13 DCS at para 71.

general damages that have been made to public persons such as political leaders. The defendant argues that, based on recent case law, the upper limit for general damages in cases that do not involve political leaders is $45,000 (as compared to $160,000 in cases that do involve political leaders). From this starting point, the defendant urges a downward adjustment to $30,000 in general damages based on various factors including: (a) the vague nature of the defendant's defamatory statements; (b) the plaintiff and the defendant not being well-known public figures; and (c) the extent of publication of the defamatory statements not being wide.[14]

16 The defendant also submits that no further award of aggravated damages is warranted in this case.[15]

**The applicable legal framework**

17 The applicable legal principles to damages for defamation are well-established. However, for reasons that will become shortly apparent in the course of my analysis below, I propose a brief return to first principles and consider things from the perspective of the distinction between general damages and special damages.

18 An award of general damages addresses the damage which the law *presumes* as the natural and probable consequence of the wrong suffered. For this reason, a claim for general damages does not need to be specifically pleaded and a general pleading that "the plaintiff claims damages" would suffice (*Noor Azlin bte Abdul Rahman and another v Changi General Hospital Pte Ltd* [2022] 1 SLR 689 ("*Noor Azlin*") at [253]).

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14 DCS at paras 54–56.

15 DCS at paras 43, 51 and 56.

19 In the specific context of the law of defamation, it is trite that the law presumes that some damage would flow in the ordinary course of things from the mere invasion of a plaintiff's absolute right to reputation, and a plaintiff therefore need not establish actual loss or that any person actually thought lower of her as a result of the defamatory statement in order to be entitled to substantial damages (*Ratcliffe v Evans* [1892] 2 QB 524 at 528; *Arul Chandran v Chew Chin Aik Victor* [2001] 1 SLR(R) 86 ("*Arul Chandran*") at [54]; *Lee Hsien Loong v Singapore Democratic Party and others and another suit* [2009] 1 SLR(R) 642 ("*LHL v SDP*") at [151]). An award of general damages for defamation serves three purposes which correspond to three presumed heads of injury: (a) first, it repairs the injury to the plaintiff's reputation; (b) second, it serves to vindicate the plaintiff's reputation; and (c) third, it acts as a consolation to the plaintiff's hurt feelings (*Arul Chandran* at [53]; *Lim Eng Hock Peter v Lin Jian Wei and another and another appeal* [2010] 4 SLR 357 ("*Lim Eng Hock Peter*") at [4]). The upshot of this, as Audrey Lim J explained in *Lee Hsien Loong v Xu Yuan Chen and another suit* [2022] 3 SLR 924 ("*LHL v XYC*"), is that (at [76]):

> … even if a plaintiff has not in any objective sense suffered damage (*eg*, he has 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 …
>
> [emphasis in original]

20 In determining the quantum of general damages for defamation, the court will usually consider the following factors (*Shanmugam Kasiviswanathan v Lee Hsien Yang and another matter* [2024] 5 SLR 194 ("*Shanmugam*") at [28]):

(a) the nature and gravity of the defamation;

(b) the conduct, position and standing of the claimant and the defendant;

(c) the mode and extent of the publication;

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

(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.

21 An award of special damages, on the other hand, addresses damage which the law will not presume to be the ordinary consequence of the defendant's wrongful act but which arises as a result of the special circumstances of the particular case. Given this, they should be specifically pleaded so as to give the defendant fair notice that such a claim is being made (*Noor Azlin* at [258]).

22 It is established that special damages may be awarded in respect of defamation. A clear example of special damages in the context of defamation is an award of aggravated damages, which are granted in order to compensate the plaintiff for loss suffered from the defendant's conduct before and during the trial which has aggravated the hurt to the claimant's feelings (*LHL v XYC* at [68]; *Shanmugam* at [29]). As the existence and extent of aggravation is necessarily particular to the facts of each case, it is not something that the law

can presume in every case, and thus aggravated damages have to be pleaded with specificity and particularity (*Noor Azlin* at [261]; *Shee See Kuen v Sugiono Wiyono Sugialam and others and another suit* [2023] 3 SLR 1301 at [30]–[32]).

23 In assessing whether aggravated damages should be awarded and the quantum thereof, the court will consider if there are circumstances such as, among other things, a plea of justification that is bound to fail, persistence by way of prolonged or hostile cross-examination of the plaintiff, a failure to make any or any sufficient apology and withdrawal, conduct of the preliminaries or the trial in a manner calculated to attract wide publicity, persecution of the plaintiff by other means, and malice (*LHL v XYC* at [68]).

## My decision

### *Whether the plaintiff can claim for her loss of earnings, business and clientele*

24 A preliminary but fundamental issue that arises in relation to the plaintiff's claim is the plaintiff's reference to her losses of earnings, business and clientele in arriving at her quantification of damages that ought to be payable by the defendant. The question that arises is whether the plaintiff may mount such a claim and, if so, how this claim should be assessed.

#### *Whether a claim for loss of earnings, business and clientele falls within the ambit of general damage or special damage*

25 The plaintiff has *explicitly* stated in her closing submissions that she *does not* make any claim for special damages. This is consistent with her Statement of Claim (Amendment No 1) dated 29 June 2022 ("SOC"), where she

simply claims "[d]amages to be assessed".[16] The distinction between general damages and special damages which I have outlined above is therefore not lost on the plaintiff. In her closing submissions, it is stated, quite unequivocally, that "[the plaintiff] is not claiming for special damages", but the court is urged to consider the fact that she had lost various referrals in assessing the (general) damages that she should be awarded.[17] The plaintiff then goes on to say, in the conclusion of her closing submissions, that "her losses (usually translated as special damages) in terms of her being defamed and posted on the world wide web and open to the general public at large are at least $500,000.00", but she has opted only to make a claim for general damages in the sum of $300,000.[18] Likewise, in her pleadings, the plaintiff has not made any reference to a specific claim for losses taking the form of her loss of earnings, business and clientele.

26 The issue of whether a claim for general damages can encompass a plaintiff's loss of business, earnings and clientele appears to not be fully settled under Singapore law. In *Continental Steel Pte Ltd v Nippon Steel & Sumitomo Metal Southeast Asia Pte Ltd and another* [2023] 5 SLR 445 ("*Continental Steel*"), Dedar Singh Gill J observed that there were authorities either way, but that it was not necessary for him to resolve this issue as the claimant in that case had advanced its claim for loss of profits under special damages and the first defendant did not contest that characterisation (at [269]). In the absence of clear authority on this issue, I propose to consider it afresh in this case.

27 On the one hand, authorities of some vintage have seemingly allowed loss of business to be claimed as general damage. In *McGregor on Damages*

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16 SOC at reliefs (i)–(ii).

17 PCS at para 87.

18 PCS at paras 114–115.

(James Edelman, Jason Varuhas & Andrew Higgins eds) (Sweet & Maxwell, 22nd Ed, 2024) ("*McGregor*"), the learned editors note that "general loss of business as a result of a defamatory statement actionable per se has been taken to be general damage in a number of cases" and cite the following two examples in support (at para 52-035).

28 First, in *Evans v Harries* (1856) 1 H & N 251 ("*Evans*"), the plaintiff innkeeper was the victim of slander and sought to recover damages reflecting the loss in custom and profits from persons abstaining from being guests and customers of the plaintiff in consequence of the slander. At the trial, the plaintiff's counsel proposed to ask the plaintiff if there had been any difference in the profits of his business since the uttering of the slander. This question was objected to by the defendant's counsel, but overruled by the judge, and the plaintiff answered that "his business was less, and that many customers had ceased to come to his house". The defendant argued that general evidence of the loss of custom was not admissible. The court disagreed and held that the evidence of the loss of business had not been improperly received.

29 Second, in *Harrison v Pearce* (1859) 32 LT OS 298 ("*Harrison*"), the plaintiff, who was a proprietor of certain newspapers, sued the defendant for a libelous publication in the defendant's newspaper that "charged the plaintiff with endeavouring to grind down his workmen by improperly reducing their wages" and "stated that his papers were almost defunct, and that the greater portion of the advertisements were fictitious" (at 298). At trial, the judge admitted evidence of the injury suffered by the plaintiff in the form of a falling off of the circulation of his paper, and directed the jury that the defendant was liable in general damages for the natural consequence of his publication. The defendant objected to this on the basis that such loss was special damage which

had not been alleged. Pollock CB disagreed and made the following observations which I set out *in extenso* (at 298):

> The supposed objection was, that evidence had been received of the diminished success of the paper, without any allegation of special damage, which, indeed, could hardly have been made consistently, for the action was brought the day after the publication of the libel. I am of opinion that the evidence that was received was properly received. In a case of this description the plaintiff has a right to claim general damages for the consequence of the libel, and if a period has elapsed between the commencement of the action and the trial of the cause, which has disclosed circumstances calculated to throw light upon the question of general damage, the plaintiff in my opinion has a right to give it in evidence, in order that the jury may be able more correctly and satisfactorily to judge; and we must not confound here the question of special damage and general damage. Suppose, to put a case, a person who carries on business entirely on ready money, by supplying the public with articles, as, to give an instance, the case of a confectioner or pastrycook, whose business chiefly consists, in a great thoroughfare, in supplying for ready money the wants of those who pass by in the street, a libel is published of him, or some imputation is cast upon him, as by somebody standing at the door with a placard proclaiming something either prejudicial in respect of his business, or prejudicial to him in a grave and dangerous matter concerned with his personal character. He brings an action – and why should he not bring it instantly – the very day after. *What is the consequence that is likely to result from such an information the jury may prospectively judge, and unquestionably they may give damages with reference to what a man carrying on a business of that description is likely to suffer; and it is impossible in a case of that sort to allege special damage. A man does not know who are his customers, but he finds that his business has fallen off very much; and any person might anticipate, if a libel of that sort got into circulation, that a man's personal acceptation in society, or his character with reference either to his general moral station, or with reference to the conduct of his business – every one might anticipate that his business would fall off, and his character suffer, and he would sustain general damage; but if the interval between the libel and the trial was such as to afford an opportunity of giving to the jury some evidence of what the loss has been, and what the general damage has been, why should not that be received in evidence? I think it is very properly received; but especially with this caution, that the jury must judge for themselves, and must not take it for granted that the whole of it was attributable to this libel*; I speak of it with reference to there being a separate

> publication of the same libel by other persons, or by the same persons in a different mode. It seems to me that the case may be compared to a severe bodily injury by a railway accident, or by any of those mischances of life for which somebody else is responsible, and the man brings his action instantly. *It is not special damages. He is so disabled that he is unable to carry on his business, or he is impaired in the general efficiency he would have in society; that is not special damage – it is general damage resulting from the kind of injury he has sustained. It would be special damage if he had lost a particular situation of great benefit to him, and in respect of which he claimed – that would be special damage; but the general efficiency of a man who has lost a limb, or whose understanding is impaired, or who is in any way less capable of conducting the affairs of life – that is general damage, not special damage.* The jury, no doubt, might receive evidence prospectively, as we constantly hear in actions against railway companies, "Are you of opinion that he will ever get well?" A medical man says, "No, he may get a little better; but he will ever be subject to occasional affections of the head, or having his limbs less capable of motion; or the joint may never recover its capacity to move again," and so on. And then the jury are to judge of that, what is the damage. That is not special damage; that is general damage. …
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> [emphasis added]

30 It can be seen from this extract that the crux of Pollock CB's decision was how his Lordship drew the distinction between general damage and special damage. More specifically, his Lordship contrasted a general loss of custom in the form of the falling off in the circulation of the plaintiff's paper, which he thought to be general damage, with particular instances of loss (*ie*, "a particular situation of great benefit to [the plaintiff]"), which he considered to be special damage.

31 However, more recent authority has questioned the correctness of the distinction drawn in *Harrison*. In the decision of the House of Lords in *Associated Newspapers Ltd and others v Dingle* [1964] AC 371 ("*Dingle*"), Lord Radcliffe commented that *Harrison* "can be rather a misleading guide to the assessment of general damages for defamation" as "it is best understood in relation to what we should today characterise as an item of special damage

(though it was not so regarded then), and that it does not contain a full expression of any general rule for the ascertainment of libel damages where they are at large" (at 397–398). Similarly, Lord Morris of Borth-y-Gest stated that *Harrison* "is somewhat too short to be helpful in declaring general principle" and "[t]hough only general damages were claimed the ruling was concerned with what would today seem like an item of special damage" (at 417).

32 A similar approach was taken in the earlier decision of the English Court of Appeal in *Calvet v Tomkies and others* [1963] 1 WLR 1397 ("*Calvet*"). In that case, an actress brought an action in libel and slander against a journalist who had reported in an article that she had said that "Hollywood was 'vicious, corrupt and cruel'." No allegation of special damage was made. In an application for discovery, the defendants sought that the plaintiff produce documents showing, *inter alia*, her earnings from her professional employment before and after the publication of the article. The English Court of Appeal held that these were not relevant as the plaintiff had not alleged special damage. Lord Denning MR explained thus (at 1399):

> The argument before us depends entirely on what is relevant in these pleadings. Undoubtedly the plaintiff must disclose all documents which relate to the matters in question. If she had charged special damage, as, for instance, if she had charged loss of actual earnings, if she had charged loss of actual contracts, or indeed an actual decline in her income by reason of loss of business, then it seems to me that those would be allegations of which particulars would have had to be given; … It is always open to a plaintiff in such an action as this … to allege if he wishes, special damage, in which case he must particularise it and he must give discovery. But, as I read these pleadings, there is no allegation of special damage at all. There is no allegation of any specific loss of earnings or of income or indeed of any general loss of business such as to call for particulars or discovery. In those circumstances it seems to me that the judge below was right in not ordering the plaintiff to produce the various accounts, receipts and other documents relating to the income she was receiving before this publication in July, 1960. …

Russell LJ (as he then was) took the same view. His Lordship said that "if evidence of actual loss of earnings or decline in business, even without any figures mentioned, is to be put forward in a case such as this, as at present advised, I for my part am inclined to think that it should be pleaded with consequential discovery" (at 1400).

33 In my judgment, the modern view stated in *Dingle* and *Calvet* ought to be preferred. Loss of earnings, business and clientele is properly within the ambit of special damage. Thus, a plaintiff who does not throw down the gauntlet by properly pleading and particularising such loss, and more importantly, adducing sufficient evidence in support of such loss, cannot collaterally introduce a claim for such loss within his or her claim for general damages.

34 This seems to me to be the right conclusion as a matter of principle. The three heads of damages that underpin general damages in defamation – *viz*, loss of reputation, vindication and hurt feelings – are not pecuniary or financial loss. A claim for loss in a plaintiff's custom, business, earnings or clientele is paradigmatic pecuniary loss and is therefore of a different kind from what the law of defamation takes to be general damage. This was recognised by Sir Wilfrid Greene MR (as he then was) in *Rook v Fairrie* [1941] 1 KB 507 ("*Rook*") when he said that "in a libel action the damages awarded are, for the most part and often entirely, without any real connection with any pecuniary loss at all", and "when you are dealing with damages in a libel case you are endeavouring to express in terms of money several different things which are not really susceptible of a money valuation in any true sense" (at 515–516). In *ATU and others v ATY* [2015] 4 SLR 1159, Lee Seiu Kin J (as he then was) said, citing Greene MR's statement in *Rook*, that pecuniary losses allegedly suffered as a consequence of defamatory statements fall within the category of special damages (at [26]). I respectfully agree.

35 Like the law lords in *Dingle*, I am not convinced that the distinction drawn by Pollock CB in *Harrison* between general loss of custom (as general damages) and particular instances of loss (as special damages) is workable, at least in the modern context. The *nature* of the loss in both of these is the same – it is pecuniary loss arising from a defamatory statement. As such, I see no reason why a claimant should be able to shoehorn such a claim into the ambit of general damages, and thereby cut corners around the usual requirements of particularised pleading and proof, by the device of pleading the claim in a vague manner such that she professes to claim only "general" loss. There is no magic in employing the word "general" to describe one's claim *per se*; what matters is the substance, or the nature, of the loss claimed. Loss that is special damage by nature does not cease to be so simply by generalising it or putting a different label on it.

36 The decision of the Court of Appeal in *Low Tuck Kwong v Sukamto Sia* [2014] 1 SLR 639 ("*Sukamto Sia*") is instructive. In that case, the court made clear that only financial loss that is referable to the damage to reputation (which is the interest protected by the law of defamation) can be claimed as special damage. It is useful to consider the following explanation by V K Rajah JA (at [98]–[99]):

> 98 … The tort of defamation is not one which protects all kinds of interests and so not all kinds of losses are recoverable. By their nature, certain kinds of losses are, as a matter of policy, simply too remote to be recovered in an action for defamation. The tort of defamation primarily protects a person's reputation … and so grants relief for damage to a plaintiff's reputation, the injury to his feelings and also provides a vindicatory effect. Where therefore the loss resulting from a publication of the words complained of is not referable to such protected interests, such loss is not claimable even if the publication was factually causative of it; it therefore does not include *all* consequential pecuniary loss.

> 99 In the present case, the Judge had found, and we agree, that given the Publications and Republications held the meanings they were found to hold, they would tend to lower the Appellant in the estimation of right-thinking members of society generally or impute a lack of integrity. It was not this lowering of the Appellant in the estimation of right-thinking members of society generally or the imputation of a lack of integrity, *ie*, the damage to his reputation, which caused the Appellant not to be able to sell his vendor shares in the IPO. Rather, it was because of the concerns which the capital markets regulators had with the allegations found in the Third Letter which led to the Appellant having to, he says, remove his vendor shares from the sale. This is not a loss, even if it can be proven, which is protected by the tort of defamation. *It would be a different matter in a case where defamatory materials were published calling a trader dishonest (whether in the way of his trade or otherwise). He may as a result suffer a fall in custom because of customer shunning him having heard of his reputation of being dishonest. In such a case,* ***the plaintiff may either claim for a loss of reputation generally, or, if he can specifically prove so, the fall in custom resulting from the damaged reputation as special damages, such loss being the particular loss he suffered in his circumstances***. …
>
> [emphasis in original omitted; emphasis added in italics and bold italics]

It is telling that the Court of Appeal distinguished "loss of reputation *generally*" from "fall in custom resulting from the damaged reputation as *special damages*", and did not perceive any distinction within fall in custom itself as between general and specific instances of loss of custom.

37 In my view, it is clear that only financial loss that is referable to, or caused by, the loss of reputation may be claimed by a claimant in the tort of defamation. Thus, it stands to reason that such financial loss must be special damage. Only then would a claimant be required to plead and prove the requisite causal nexus between the loss of reputation and the financial loss he claims to have suffered, and thereby establish that it is loss that is actionable under the tort of defamation (*Gatley on Libel and Slander* (Richard Parkes QC & Godwin Busuttil eds) (Sweet & Maxwell, 13th Ed, 2022) at para 28-032).

38 Following from this, I do not think that the reference to "general" loss of custom should be understood as a head of loss under general damage. Instead, general loss of custom remains *special damage* by nature, but is a type of financial loss or, perhaps more precisely, a means of establishing financial loss. As observed by the learned authors of Richard Rampton QC *et al*, *Duncan and Neill on Defamation and Other Media and Communications Claims* (LexisNexis, 5th Ed, 2020), "special damage can include the loss not only of a specific contract or of any specific customers but also a general loss of business" (at para 25.32). A claimant who claims to have suffered financial loss can therefore prove his loss at a general level – by showing a general fall in income or profits – rather than having to prove, on a specific level, individual customers or contracts that have been lost (*Continental Steel* at [238]). This is accurately stated by the learned editors of *McGregor* as follows (at para 47-022):

> Special damage must be pleaded by the claimant in order to entitle the claimant to prove it. Normally the pleading and also the evidence in proof must be of particular instances of loss, so that where specific instances are not pleaded they may be produced in proof, and where pleaded they may be proved only by evidence of the specific losses. *Where, however, the facts do not admit of particularising specific instances of loss, then the courts are prepared to accept a generalised statement of special damage in pleading and general evidence of special damage in proof. This is particularly so where the slander is followed by general falling off of business and the claimant's customers are a fluctuating body whose names are unknown to the claimant, as with the clientele of many shops or with the audiences of theatres. …*
>
> [emphasis added]

A general loss of custom is thus special damage, albeit it is, to use the words of *McGregor*, constituted by "a generalised statement of special damage in pleading and general evidence of special damage in proof".

39 *McGregor* (at para 47-022) cites, as an example of this, the case of *Hartley v Herring* (1799) 101 ER 1305 ("*Hartley*"). There, the plaintiff was a clergyman who preached to a certain congregation of persons and, by reason of this, received considerable profits and emoluments. As a result of the defendant's slander of him amongst persons who frequented his chapel, the plaintiff fell into disgrace with the members of his congregation who refused to permit him to preach at their chapel, ceased giving him their support and thereby caused him financial loss. The issue before the court was whether the plaintiff could establish special damage without having to identify with precision the persons who, in consequence of the defendant's slander, had withdrawn their support of him. Lord Kenyon CJ answered this in the negative (at 133):

> … Where a plaintiff brings an action for slander, by which he lost his customers in trade, he ought, in his declaration, to state the names of the customers, in order that the defendant may be enabled to meet the charge if it be false: but here the plaintiff was in possession of his office; and we are to conclude upon this record, that he was properly licensed. *But how could he have stated the names of all his congregation? He has stated, that in consequence of the words spoken of by the defendant, he was removed from his office, and lost the emoluments of it, which, I think, is sufficient.*
>
> [emphasis added]

40 I am of the view that this is also the better explanation in modern times for the decisions in *Evans* and *Harrison* which I have referred to at [28] and [29] above. It bears recalling that the specific issue that was considered by the courts was not really one of pleading, but whether a court could receive evidence of a plaintiff's financial loss in the form of a general loss of business or custom, and this was answered in the affirmative in both cases. In this regard, both cases are entirely consistent with *Hartley*, and indeed, Pollock CB's statement in *Harrison* that it was "impossible [for the plaintiff] to allege special damage" as "[a] man does not know who are his customers" but may see "that his business

has fallen off very much", is strikingly similar to the point made by Lord Kenyon CJ in *Hartley vis-à-vis* the clergyman's inability to state all the names of his congregation. Moreover, given that Pollock CB in *Harrison* made clear that a general loss of business was acceptable evidence subject to the caveat that the court "must not take it for granted that the whole of it was attributable to [the] libel", it is apparent that his Lordship was alive to the need to prove a *causal link* between the defamatory statement and the general loss of business. This tracks exactly the point made by the Court of Appeal in *Sukamto Sia* on the need to prove the causal nexus between the alleged financial loss and the defamatory statement.

41 Given this, I consider that *Evans* and *Harrison*, when properly viewed in the context of the modern law, are not authorities that sustain a claim for general damages for general loss of custom. Instead, despite the perhaps infelicitous use of "general damage" and "special damage" therein, *Evans* and *Harrison* are consistent with, and thus ought in my view to be viewed as, early analogues for what is currently understood as a claim for special damages taking the form of general loss of custom. It is thus clear, to my mind, that loss of earnings, business and clientele is a claim for special damage which must be pleaded with particularity and proven by evidence.

*The plaintiff's claim for loss of earnings, business and clientele must be advanced as a claim for special damage*

42 Returning to the present case, the direct consequence of my conclusion above is that the plaintiff cannot indirectly mount a claim for her loss of earnings, business and clientele under the guise of her claim for general damages. It is not permissible because, as explained above, such loss is conceptually not part of the damage that the law of defamation presumes as

general damage flowing from a defamatory statement. Any claim for such loss must be advanced as a claim for special damages distinct and independent of the plaintiff's claim for general damages. I thus reject the plaintiff's invitation to take into account her supposed loss of earnings, business and clientele when assessing her entitlement to general damages.[19]

43 To be clear, I do not mean to say that the plaintiff's claim for loss in earnings, business and clientele is doomed to fail on the basis that she has not uttered the words "special damage" anywhere in her pleadings *per se*. That is not what the law of pleading requires. It is well-established that pleadings should not be approached in a mechanistic or rigid manner; it is the substance rather than the form which matters. As Sundaresh Menon CJ explained in *How Weng Fan and others v Sengkang Town Council and other appeals* [2023] 2 SLR 235 ("*How Weng Fan*"), only material facts need to be pleaded, and the particular legal result flowing from the material facts need not always be pleaded (at [19]). The same ought to apply *vis-à-vis* the legal characterisation of material facts as to whether they relate to general damage or special damage. This emerges from the Court of Appeal's decision in *Lee Chee Wei v Tan Hor Peow Victor* [2007] 3 SLR(R) 537, in which the court referred to the Malaysian case of *Lim Eng Kay v Jaafar bin Mohamed Said* [1982] 2 MLJ 156, where the Malaysian court awarded special damages despite the claimant having incorrectly pleaded them as general damages. The Court of Appeal commended this as "amply illustrating the pragmatic judicial approach that eschews refusal of a claim purely on account of a technical error of pleading" (at [63]). A similar point was made in the decision of the English High Court in *Arroyo and others*

19 PCS at para 87.

*v Equion Energia Ltd* [2013] EWHC 3150 (TCC), where Stuart-Smith J (as he then was) said (at [14]):

> … In my judgment, the level of precision that is required when pleading an issue or case, including a particular head of damages, should be determined by the need to provide a fair and sufficient indication to the Court and the opposing party of the case that is being brought and that the opposing party has to meet. Although I am not aware of specific authority on the point, modern pleading practice should not be and is not constrained by whether the label "general" or "special" damages is given to a particular item of claim. …

44 It would thus not be correct to disregard the plaintiff's reference to her loss of earnings, business and clientele simply on account of her disavowal of special damages in her closing submissions or the mere claim for "damages" in the SOC if, despite this, the *material facts* supporting the existence of such loss are adequately pleaded. Indeed, the flexible approach to pleadings manifests in respect of another aspect of the plaintiff's case, namely, her claim for aggravated damages. As I have explained above, aggravated damages are, strictly speaking, an example of special damages which must also be specifically pleaded (see [22] above). There is therefore an internal inconsistency in the plaintiff's submissions by her mounting a claim for aggravated damages while also disavowing any claim for special damages. But, seeing as to how the claim for aggravated damages and the material facts relevant to aggravation have been pleaded,[20] there would be no basis to use the plaintiff's disclaimer of a claim for special damages to override her pleadings and submissions on aggravated damages.

45 Nor am I saying that, even if the plaintiff has not properly pleaded or particularised her claim for loss of earnings, business and clientele as a claim

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[20] SOC at paras 13, 32 and 39

for special damage, that in and of itself would be fatal to such a claim. It is well-established that, as a narrow exception to the rule requiring proper pleading, the court may allow an unpleaded point to be raised and determined if there is no irreparable prejudice caused to the other party in the trial that cannot be compensated by costs or where it would be clearly unjust for the court not to do so (*How Weng Fan* at [20]). Thus, it is well-established that, in some cases, evidence given at trial can overcome defects in the parties' pleadings (*OMG Holdings Pte Ltd v Pos Ad Sdn Bhd* [2012] 4 SLR 231 at [18]; *Tiger Pictures Entertainment Ltd v Encore Films Pte Ltd* [2024] 5 SLR 316 at [47]). If the material facts of the particular claim have not been pleaded, but the unpleaded point has been put into issue (whether through the parties' opening statements, submissions, or the evidence) such that it is clear to the opposing party that the unpleaded issue was a case it had to meet, the court may allow the unpleaded claim to be advanced as there would be no irreparable prejudice occasioned to the opposing party (the "Prejudice Principle") (*How Weng Fan* at [28]).

46 With these principles in mind, I come to the facts of the present case. As mentioned at [42] above, I do not accept the plaintiff's invitation to factor in her alleged loss of earnings, business and clientele in the assessment of her general damages. However, while the plaintiff has expressly disavowed a claim for this loss under the banner of special damages, I will, for her benefit, assess if a claim of this nature for her alleged loss of earnings, business and clientele is nonetheless made out. This is because, applying the Prejudice Principle, I am satisfied having regard to the evidence that was led both at the liability and assessment of damages phases that it was appreciated by the defendant and her counsel that the plaintiff was alleging such loss.

47 Among other things, this is clear from how the plaintiff had already stated in her affidavit of evidence-in-chief ("AEIC") dated 11 March 2022 for

the trial on liability ("Plaintiff's AEIC (Liability)") that she had "lost up to a million dollars of potential clients of legal works from 2018 posting till today",[21] before elaborating as follows:[22]

> 74 I will never know the unknown damage but the taint can spread, word of mouth, life [*sic*] wildfire and the taint remains for a long time. I would have lost the business for good, especially since mine is not corporate clients who have a lot of work flowing. For a small firm lawyer, their work is their reputation and their reputation is everything. For me, the lost is unspeakable and huge. …
>
> 75 Hence, I would state that my losses are at least $500,000.00 plus legal costs of up to $150,000.00 exclusive of disbursements.

48 Further, in the cross-examination of the plaintiff by the defendant's counsel at the liability stage, the defendant's counsel referred to these aspects of the Plaintiff's AEIC (Liability) and questioned the plaintiff on her quantification of her loss as "up to a million dollars of potential clients" and "$500,000" at some length.[23] Subsequently, at the trial on assessment of damages, the defendant's counsel also questioned the plaintiff on her supposed loss of clients and indeed, put to the plaintiff that her quantification was speculative. Given all of this, it is indisputable that the defendant had sufficient notice of, and did in fact address, the plaintiff's allegation of her loss of earnings, business and clientele. Accordingly, in my judgment, no irreparable prejudice would be caused to the defendant if the court were to consider the plaintiff's claim for such loss.

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21 Plaintiff's AEIC (Liability) at para 33.

22 Plaintiff's AEIC (Liability) at paras 74–75.

23 Transcript (29 June 2022) at pp 7:8–12:31.

***The plaintiff's claim for loss of earnings, business and clientele is not made out***

49 However, while I am willing to proceed on the basis that the plaintiff is entitled to make a claim for special damages in respect of her loss of earnings, business and clientele, I find that the evidence before the court falls woefully short of establishing such a claim.

50 The plaintiff seems to have taken the approach that, because she has no way of knowing the specific identities or numbers of potential clients that have decided against engaging her services due to the defamatory statements, she need not, or at least cannot, lead *any* evidence to support her quantification of her loss. Thus, in her AEIC dated 26 June 2024 for the trial on assessment of damages ("Plaintiff's AEIC (AD)"), she makes much of this uncertainty and states that:[24]

> 16 The actual damage that I suffered can never be fully quantified save to say that the damages are in the region of hundreds of thousands of dollars if not millions.
>
> …
>
> 18 I can state categorically that I have lost countless potential clients through the defamation posting. During the trial for liability I have testified that I did enbloc deals before the posting. Each enbloc deal is worth tens or hundreds of thousands of dollars in fees. Many divorce cases have been lost too. It is unimaginable how much clients and potential income I have lost through the malicious posting.
>
> 19 I can never fully quantify the losses that I have suffered from the fallout from the vicious defamatory posting by the Defendant.

51 I reject this approach. I do not doubt that, logically, it is difficult if not impossible for one to know the identities and numbers of persons who have

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[24] Plaintiff's AEIC (AD) at paras 16 and 18–19.

chosen not to engage her services as these are, in a sense, "unknown unknowns". But it does not follow that because the plaintiff is unable to identify specific potential clients that she has lost, it is impossible for her to adduce *any* evidence to quantify the actual loss that she has suffered.

52 In my view, the plaintiff's position is indistinguishable from that of the plaintiff clergyman in *Hartley*. It would be recalled that the court in that case agreed that it was impossible, if not at least impracticable, to require the clergyman to state all the members of his congregation who had been repulsed by him following the defendant's defamation. The solution to this was not to dispense with the need for any evidence of the plaintiff's loss altogether. Rather, the court held that general evidence of the plaintiff's loss of his station, as well as the profits and emoluments he had earlier received, would suffice to establish his loss. So, too, was the position of the plaintiffs in *Evans* and *Harrison*. The innkeeper in *Evans* could not sensibly be expected to list the names of persons who had decided not to patronise his establishment after the defamation. Thus, it sufficed to lead evidence of the change in level of profits before and after the defamation. And in *Harrison*, the plaintiff was held to be able to establish the loss he had suffered by showing the falling off in circulation of his newspaper. These are all instances of what I have referred to above (citing *McGregor*) as special damage – *viz*, financial loss – proved by "a generalised statement of special damage in pleading and general evidence of special damage in proof" (see [38] above).

53 In the present case, while the plaintiff may be unable to name with specificity the potential clients and business streams that she may have lost, she could have established her loss of earnings, business and clientele by leading *general* evidence of a change in her earnings before and after the defamation by the defendant. For instance, the plaintiff could have adduced evidence of her

invoices to clients or her accounts to show that there had been an overall falling-off in her earnings and the amount of work that she had been able to procure after the defamatory statements were published by the defendant. These are easily conceivable examples of information that were either known or at least readily obtainable by the plaintiff, which could have been produced before the court to provide an evidential foundation for the court to quantify the financial loss that she may have suffered. However, the plaintiff has put nothing of this sort before the court. Instead, what the court has before it are general statements and sweeping assertions of a loss of potential clients. This alleged loss is then said to be to the tune of figures which, with respect, appear to have been pulled out of thin air without any evidential basis or rationalisation as to how they have been derived.

54 Even where the plaintiff has led some evidence that vaguely pointed towards financial loss, I find that this has also not furnished any satisfactory evidential basis for the court to assess the quantum of financial loss that she has suffered.

55 Three witnesses gave evidence for the plaintiff during the trial on liability. In my judgment, none of them assist the plaintiff as far as her claim for loss of earnings, business and clientele is concerned.

56 The first witness, Ms Ng Shu Yi ("Ms Ng"), was at the material time a client of the plaintiff. She gave evidence of how she had come across Statement 1 online and stated that "if [she] had chanced upon the posting … then or just prior to engaging [the plaintiff], [she] would not have engaged [the plaintiff] as the words relayed in that posting … portrays a very damning image of [the

plaintiff].”[25] This may establish the possibility or propensity of Statement 1 to operate on the mind of a potential client, but it does not say anything about the *amount of loss* that may be suffered by the plaintiff as a result of a client being repulsed by her.

57 While Ms Ng stated that the plaintiff stood to earn “perhaps legal fees of $30K to $50K” from handling Ms Ng’s case, it is not clear to me why, in the first place, this has been stated in tentative terms when it could easily have been said with relative exactitude how much the plaintiff has charged Ms Ng, at least as at the time Ms Ng deposed her AEIC.[26] This introduced (unnecessary) uncertainty that can only work against the plaintiff. In any event, Ms Ng is unable to speak to the amount of loss that the plaintiff may have suffered from other potential clients not engaging her services. Even if the plaintiff may have earned “perhaps legal fees of $30K to $50K” from Ms Ng, there is no basis for supposing that legal fees for all engagements with the plaintiff are in this region. And even if it is assumed, *arguendo*, that this may be used as a general range of legal fees that the plaintiff may earn from clients, it would only supply a multiplicand for quantifying the financial loss suffered by the plaintiff from a loss of potential clients; the multiplier remains unknown given that Ms Ng did not, and is not able to, give evidence on the plaintiff’s deal flow or client uptake before and after the publication of the defamatory statements. Indeed, Ms Ng conceded in cross-examination that anything she said about the plaintiff’s loss of potential clients was her own opinion.[27]

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25 Ms Ng’s AEIC dated 11 March 2022 (“Ms Ng’s AEIC”) at para 4.

26 MS Ng’s AEIC at para 7.

27 Transcript (27 June 2022) at pp 23:29–24:5.

58 The second and third witnesses who gave evidence for the plaintiff may be taken together as they are related. They are Mr Moh Kang San ("Mr Moh"), a real estate agent, and his "working partner",[28] Ms Zhang Mei Ling ("Ms Zhang"). Both Mr Moh and Ms Zhang had referred legal work to the plaintiff in areas such as conveyancing, divorce and succession and, according to them, they had ceased to refer work to the plaintiff for around a year after Statement 1 came to their attention.[29]

59 However, both Mr Moh and Ms Zhang said little to nothing in terms of the amount of financial loss that the plaintiff suffered because of them ceasing to make referrals to her. As far as Ms Zhang was concerned, she did not provide any examples or averages of amounts that the plaintiff could earn from referrals by Ms Zhang. During cross-examination, while Ms Zhang stated that the work she and Mr Moh referred to the plaintiff was "a lot of cases" and "very substantial cases" that "range[d] from HDB to private to commercial, even land" and "involve[d] large sums of money which would have benefitted [the plaintiff]",[30] she did not specify what sums the plaintiff could have earned from such referrals.

60 On the other hand, Mr Moh did, in fairness, attempt to provide some idea of the plaintiff's earnings from his referrals, as he said in his AEIC that:[31]

> … I used to refer at least 25 cases a year, and I trust that the legal fees for each of this case will average $2,500.00 for conveyance, and about $3,500.00 for uncontested divorce and

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28 Ms Zhang's AEIC dated 11 March 2022 ("Ms Zhang's AEIC") at para 11; Transcript (27 June 2022) at p 42:31.

29 Mr Moh's AEIC dated 11 March 2022 ("Mr Moh's AEIC") at paras 5–6; Ms Zhang's AEIC at para 10.

30 Transcript (27 June 2022) at p 50:2–9.

31 Mr Moh's AEIC at para 5.

> perhaps up to $15,000.00 for contested, and if heavily contested it could be about $30,000.00. I also refer Wills, POA, Probate, letters of Administration matters. So, I would state that perhaps she would earn about, going by a conservative amount of say $5,000.00 per case, she would earn about $125k per year from my referrals.

61 However, there are various problems with the plaintiff's reliance on Mr Moh's evidence, chief among which is that the figures provided by Mr Moh constitute his opinion on, or perception of, what the plaintiff stood to earn in legal fees from different types of cases. As Mr Moh conceded in cross-examination, he did not know the actual amounts that the plaintiff charged and earned as he "would tell [his] client that for the actual figure, it is best that they discuss it with the lawyer" and, indeed, he "[did] not want to get involved".[32] The figures provided in his AEIC were, by his own admission, "estimated figures".[33] It was well within the plaintiff's ability to provide evidence on the fees she charged her clients for various types of work. Indeed, as far as her alleged loss of referrals from Mr Moh and Ms Zhang are concerned, it is entirely reasonable to expect that she would be able to show how much she had earned from referrals from Mr Moh and Ms Zhang over the years prior to the publication of Statement 1, and how this stream of revenue completely stopped after Statement 1 was published by the defendant, given that Mr Moh's and Ms Zhang's evidence was that they stopped referring work to her for a year. There is no reason why the court should accept Mr Moh's *opinions or assumptions* on the plaintiff's alleged financial losses from lost potential clients in substitution of more concrete evidence that the plaintiff could readily have procured and put before the court.

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[32] Transcript (27 June 2022) at p 61:29–62:2.

[33] Transcript (27 June 2022) at p 62:15–18.

62 The plaintiff's own evidence fares no better. In cross-examination during the trial on liability, the plaintiff was questioned on how she had come to the figure of "at least $500,000" as the quantum of her losses. Her response was that she had done research into case law and the awards that had been made in precedent cases, from which she did a "simple extrapolation" to arrive at "a conservative figure of 500,000".[34] Similarly, during the trial on assessment of damages, when it was suggested to the plaintiff that her quantification was purely speculative, the plaintiff responded that it was trite law (citing the High Court's decision in *LHL v SDP*) that once a person's reputation was defamed, there was no need to show the exact amount of losses incurred and she did not have to show special damages.

63 The plaintiff's stance clearly reveals a misapprehension on her part as to the distinction between general damages and special damages and the fact that her alleged loss in earnings, business and clientele fall within the ambit of the latter rather than the former. Notwithstanding the Prejudice Principle, in practice, a party's pleadings would inevitably have a knock-on effect on the evidence that she decides to lead at trial such that it is unlikely that evidence would be led in respect of a point that she has omitted to plead. Thus, if a party is mistaken in law that an item of loss constitutes general damage when it is in fact special damage, it is unlikely that evidence would have been led in respect of such loss. It seems to me that this is precisely what has transpired in this case. The "trite" proposition that the plaintiff referred to in *LHL v SDP* related to *general damage* and not special damage. Indeed, *LHL v SDP* did not concern special damages at all given that no such claim was ever advanced in that case. Accordingly, *LHL v SDP* does not assist the plaintiff given that she is seeking

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[34] Transcript (29 June 2022) at pp 9:10–10:5.

damages in respect of financial loss – special damage – that she has suffered. It appears that the plaintiff has conflated this distinction and thus took a calculated decision not to lead any specific evidence on her loss of earnings, business and clientele due to her erroneous belief that such loss is presumed as general damage.

64 For the same reason, the plaintiff's reliance on precedent cases in quantifying her loss is also misconceived. The awards made in precedent cases can say nothing about the *actual* financial loss that the plaintiff has suffered *in this case*. Although awards of general damages in precedent cases may be instructive, the same cannot be said in respect of special damages. Whatever financial loss a businessman, or even a lawyer, suffered in an earlier case has no connection to the lost clients and business that the plaintiff may have suffered in the present case. As I have explained above, special damage is damage that is caused by the special circumstances of the plaintiff's own case – that being so, it is damage that is proved by evidence rather than presumption or extrapolation from case law (see [22] above).

65 For the above reasons, I find that the plaintiff's alleged loss of earnings, business and clientele is not made out for the simple reason that there is simply no evidence before the court on which the court may confirm the existence of such loss, let alone: (a) quantify the loss; and (b) enter into the question of whether the loss is causally linked to the defendant's defamation. The plaintiff's claim for this head of loss thus falls at this threshold hurdle.

***General damages***

66 I come to the plaintiff's claim for general damages.

67 As a preliminary point, it has not been suggested by the defendant that the plaintiff should be limited to nominal damages. I consider this to be correct in any event. Given that it is trite that the law of defamation presumes the good reputation of the plaintiff (*LHL v SDP* at [102]), the starting point is that an award of general damages would be more than nominal. The quantum of such damages, however, is a different matter which I now turn to consider.

68 Some of the relevant factors for this assessment have been set out at [20] above and I will take them in order, but before I do so, I should first clarify the approach I have taken. Although the plaintiff has not clearly distinguished between Statement 1 and Statement 2 in her submissions, I consider it appropriate to assess the general damages for each statement *separately*. This is for two reasons. First, as a matter of principle, the publication of Statement 1 and Statement 2 constitutes two *separate* torts giving rise to two different causes of action. Second, certain factors may apply in a statement-specific manner, that is to say, they can lead to different results and analysis depending on whether one approaches it with Statement 1 or Statement 2 in mind. However, where the factor is one that is not statement-specific, I consider it holistically without distinguishing between Statement 1 and Statement 2.

*Nature and gravity of the defamation*

69 I begin with the nature and gravity of the defamation. The general principle is that "the more closely [a defamatory statement] touches the plaintiff's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be" (*John v MGN Ltd* [1997] QB 586 ("*John v MGN*") at 607, cited with approval by the Court of Appeal in *Koh Sin Chong Freddie v Chan Cheng Wah Bernard and others and another appeal* [2013] 4 SLR 629 ("*Freddie Koh*") at [25]).

(1) Statement 1

70 In my view, Statement 1 is of moderate severity. In *Foo Diana (Liability)*, I found the defamatory sting of Statement 1 to be the allegation that the plaintiff was knowingly involved in illegal dealings and had forced the defendant to participate in such illegal dealings (at [19]). I accept that, in principle, a statement that accuses a person of committing a crime is quite serious.

71 However, I also accept the defendant's submission that Statement 1 was "vague and unspecific in its description".[35] In my view, this attenuates the gravity of the defamation.

72 In *Lee Hsien Loong v Ngerng Yi Ling Roy* [2016] 1 SLR 1321 ("*LHL v Roy Ngerng*"), Lee J held that the context in which a defamatory remark is made is a relevant factor in the assessment of damages (at [53]). Although the learned judge made this observation in the specific context of assessing the mode and extent of the publication, I see no reason why the credibility of a statement on its face and set in its context cannot be factored into the assessment of the nature and gravity of the defamation. In the decision of the Hong Kong Court of Final Appeal in *Oriental Daily Publisher Ltd and another v Ming Pao Holdings Ltd and others* (2012) 15 HKCFAR 299, the court held that the low credence that would be attributed to a statement would be a relevant factor in assessing compensatory damages for a defamatory statement. Ma CJ said that "in order to compensate the injured party for a defamatory statement, the effect and extent of the relevant statement must be considered", and in this regard, "principle (as well as common sense) dictate that where a low credence is to be attributed to a

[35] DCS at paras 11–16.

statement, the damaging effect of it on the injured party must obviously be less than a case where the opposite is true" (at [2]). Lord Neuberger of Abbotsbury NPJ went on to elucidate the point as follows (at [145]–[147]):

> 145 In a defamation case, having decided, what the statement in issue means, the court must then decide if it is defamatory of the plaintiff. If so, liability for defamation is established, and the court must then go on to decide what damages the plaintiff is entitled to. It is at that stage that the issue of credibility, or credence, comes into play.
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> 146 It seems to me that it would be contrary to principle if, when assessing those damages, the court could not take into account the degree of credence which readers of an article would give, and would be appreciated by the plaintiff to give, to the accuracy of any defamatory statement it contained. As in any case of tort, it is a fundamental principle that (subject to any question of exemplary damages, which do not arise here) damages are meant to be compensatory, and that principle would be breached if this factor had to be ignored.
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> 147 When engaged on the relatively objective exercise of interpreting the article, it is clear that the court is bound to take into account any relevant factual circumstances which existed at the time of the publication. It would therefore be very strange if the court could not take into account any relevant factual circumstances when considering the more subjective question of the extent, if any, to which any statement in the article would have been believed. …

I respectfully agree. If the circumstances of a defamatory statement are such that it would not be easily believed, it is entirely sensible to infer that the damage that it could do to the plaintiff's reputation would be less. As both Ma CJ and Lord Neuberger NPJ emphasised, omitting to take this into account may result in overcompensation.

73 In this regard, I consider that a defamatory statement that is vague and lacking in particularisation would appear less credible than one that levels very specific allegations against the plaintiff. As a matter of logic, a specific allegation that is replete with detail is more likely to be believed than a vague

allegation: a bare allegation can be answered more readily with a bare denial, but a bare denial is unlikely to suffice in respect of a specific allegation that is textured and nuanced because the specificity imbues the allegation with the appearance of credibility – it suggests that the statement-maker is in the know of details that are not ordinarily known to others.

74 In this case, while Statement 1 alleged that the plaintiff was involved in "illegal deals" and had "bullied" the defendant, these were put forward as the barest of assertions, bereft of any details as to what the "illegal deals" constituted and how the "bullying" had occurred. In contrast, if the defendant had stated that the plaintiff had, for example, asked her to open a bank account and to use it to help launder money, the added specificity of such an allegation would render it more believable and harder to deny. Similarly, if the defendant did not merely state that she had been "bullied" but that the plaintiff had, for example, shouted at her threateningly or physically assaulted her, that would give texture to her allegation of "bullying" that would, on its face, be more believable. Compared to these examples, I am of the view that the defendant's unsubstantiated allegations of "illegal deals" and "bullying", while no doubt still defamatory, are less grave.

75 The plaintiff claims that the use of the word "illegal" defeats the defendant's argument that Statement 1 was vague, as it "provided a key detail: that the deals were against the law".[36] With respect, this misses the point. There are gradations of illegal conduct – an allegation that a person is a habitual jaywalker would raise less of an eyebrow from the ordinary right-thinking man as compared to an allegation that a person has murdered another person. Similarly, "bullying" comes in various shades. The point is not that a bare

[36] Plaintiff's Reply Submissions dated 20 January 2025 ("PRS") at para 6.

allegation of involvement in "illegal deals" and "bullying" is *not* serious in an absolute sense; it is that it is, on a *relative* basis, *less* serious than if it had been specific since specificity would have made the allegation appear more credible and in turn, the defamation more grave.

(2) Statement 2

76 Turning to Statement 2, I held in *Foo Diana (Liability)* that the defamatory sting of this statement was the suggestion that "the plaintiff was engaged in illicit or unlawful financial activities, made unwanted sexual advances towards the defendant, and did not conduct herself professionally" (at [50]). In my judgment, Statement 2 is more serious than Statement 1, and is more properly described as being of high, rather than moderate, severity.

77 Unlike Statement 1, which was a bare allegation, the defendant purported to clothe herself with credibility in making the allegations against the plaintiff to the LSS in Statement 2. I highlight three points:

(a) First, the defendant had declared the truth of Statement 2 by way of a statutory declaration dated 3 March 2020. In the declaration, the defendant confirmed her awareness that a false declaration was a punishable offence and could expose her to penalties including imprisonment of up to seven years under the Oaths and Declarations Act (Cap 211, 2001 Rev Ed).[37] A statement made under such circumstances – where the statement-maker is willing to swear to or affirm the truth of the statement and expose herself to the risk of criminal penalties – is clearly more likely to be believed (see, for example, *Jiangsu New*

[37] Plaintiff's AEIC (Liability) at p 53.

*Huaming International Co Ltd v PT Musim Mas and another* [2024] SGHC 81 at [56]).

(b) Second, the defendant had clothed herself with legitimacy to comment on the plaintiff by representing herself to the LSS as a client of the plaintiff, and had also set out in some detail the circumstances in which she had come to be acquainted with the plaintiff (paras 5–13 of Statement 2).[38] Allegations made by persons in a solicitor-client relationship would, of course, be taken more seriously by the LSS as compared to an allegation made by a third party with no connection to the plaintiff.

(c) Third, unlike Statement 1 where the defendant merely made bare allegations of "illegal deals" and "bullying", the defendant did set out the details of such "illegal deals" and "bullying" in Statement 2. Among other things, she specifically alleged that the plaintiff had: (a) asked her to assist in a deal in Vietnam to "move 'money'" (para 18 of Statement 2), which I have previously noted in *Foo Diana (Liability)* to be suggestive of money laundering (at [49(b)]); and (b) treated her as if they were in a sexual relationship, including trying to establish physical contact (para 20 of Statement 2).[39]

*Position and standing of the plaintiff and the defendant*

78 Turning to the position and standing of the parties, it is well-established that the higher the plaintiff's standing, the higher the damages that will be awarded (*Shanmugam* at [36]). This manifests most clearly in the local

[38] Plaintiff's AEIC (Liability) at pp 55–56.

[39] Plaintiff's AEIC (Liability) at p 56.

jurisprudence in the consistently higher awards that our courts have made for public and political leaders (*Lim Eng Hock Peter* at [12]). Similarly, the standing of the defendant is also relevant because it goes to the impact of the defamation and the injury caused (*Lee Hsien Loong v Leong Sze Hian* [2021] 4 SLR 1128 ("*LHL v LSH*") at [90], citing *Lee Kuan Yew v Jeyaretnam Joshua Benjamin* [1979–1980] SLR(R) 24 at [70]). Simply put, the words of a well-known individual are not only more likely to be heard, but also given weight to, as compared to a person of less renown.

79 This is an appropriate juncture for me to address the plaintiff's argument that defamation against her as a professional "is worse than defaming a politician".[40]

80 This argument threatens to upend the settled understanding under our law that defamation of public figures should generally sound in greater damages than defamation of individuals, and I reject it. The gist of the plaintiff's argument is that higher, or at least comparable, damages ought to be awarded to her as a private individual because a public figure has a greater capacity to vindicate his name among the public as compared to a private individual.[41] I do not follow the logic in this argument and how it translates to putting the plaintiff on the same footing as – if not a greater one than – a public figure. I should say that by "public" figure, I do not refer only to political leaders – I accept that, in principle, an individual with considerable social media influence could have a reputation on par with that of a political leader. For example, in *Liew Wei Yen Ashley v Soh Rui Yong* [2021] SGDC 206, the plaintiff, who was described as "the best marathon runner in Singapore during the material time and presently"

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40 PCS at para 36.

41 PCS at para 36.

(at [115]), was awarded damages of $180,000 (at [156]) which is in broadly in the same ballpark as sums that have been awarded to political leaders in recent cases such as *Shanmugam* and *LHL v LSH*.

81 The plaintiff's argument, in my view, fails to appreciate that the mirror image of the opportunity to vindicate one's name on a public scale that may be of greater availability to public figures is that their reputation can suffer much greater harm in the first place. If the reputation of a private individual is not susceptible to harm of a comparable scale and magnitude as that of a public figure, the lack of a comparable opportunity for the former to vindicate her name publicly does not somehow amplify the already limited damage to reputation she may suffer in the first place.

82 In this case, I accept the defendant's submission that the relatively low standing of both the plaintiff and the defendant is a factor that points significantly in favour of a lower award in damages.[42]

83 Although the plaintiff is a lawyer with some seniority, there is no evidence that she is of any general renown among the legal profession and I mean this in the most neutral sense possible. Put differently, there is no evidence that the plaintiff possesses a greater than ordinary reputation among the body of advocates and solicitors in Singapore. It is unlikely that a mention of or reference to the plaintiff's name in a defamatory statement would leave much of an impression on the ordinary and right-thinking member of our society.

84 On this last point, the decision of the English High Court in *Dhir v Saddler* [2018] 4 WLR 1 is instructive. In that case, Nicklin J observed, in the

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[42] DCS at paras 22–24.

context of deciding whether there was "serious harm" to the claimant's reputation so as to establish that a statement was defamatory for the purposes of s 1 of the Defamation Act 2013 (c 26) (UK), that a significant factor was "whether the defamatory words really connect with the claimant in the mind of the publishee". His Lordship elaborated on this as follows (at [55(iii)]):

> It is one thing to be slandered (even seriously) in front of an unknown passer-by (eg in front of C, A says to B, 'you stole that item from the shop'), it is quite another for a person to be slandered to his/her employer. *In the first example, if the passer-by does not know the claimant, even though, in the circumstances, s/he has been sufficiently identified, then the harm caused to reputation will be limited because of anonymity.* Importantly, it would usually be impossible for there to be any grapevine effect, because the publishee cannot pass on the information in a way that has any damaging effect on the claimant.
>
> [emphasis added]

85 In my judgment, notwithstanding that the plaintiff was identified with some specificity in Statement 1, the fact that she is not, generally speaking, a renowned member of the legal profession means that there is still ultimately a measure of anonymity that would mitigate the damage to her reputation. It is unlikely that the defamatory sting of Statement 1 would hold much, if any, "sticking power" in the minds of the ordinary reader. Put another way, an average Internet user comes across comments on people – both good and bad – on a regular basis. Unless the subject of the comment is an individual who is of some level of repute or infamy, it is not likely that even a scathing attack levelled against that person would mean much, if anything, to the reader.

86 Turning to the defendant's standing, I consider that the same can also be said of her. The defendant holds no office or position in society over that of the ordinary citizen. For example, she stands in stark contrast to the defendant in *Shanmugam*, who regularly published posts on his Facebook profile page that

had 89,000 followers and described himself on the page as a "[p]ublic figure" (at [40]). Quite unlike such an individual, there is no evidence that the defendant in the present case has *any* following, let alone a significant one, that may indicate that her words carry a certain gravitas, influence or authority among any group(s) of person(s). Her words are thus also unlikely to have any particular "sticking power" or to leave a mark on an ordinary reader.

*Mode and extent of publication*

87 It is axiomatic that a greater award of damages is warranted where the extent of publication of the defamatory statement is wider (*Lim Eng Hock Peter* at [33]; *Freddie Koh* at [42]). It is not relevant whether the defendant subjectively intended or knew that the defamatory statement would be distributed to the extent that it was; rather, this factor is concerned with the objective *fact* of the distribution of the defamatory material, with the simple premise being that the wider the distribution, the greater the harm of the defamatory material, and the greater the damages to be awarded (*Shanmugam* at [45]).

(1) Statement 1

88 The plaintiff appears to submit that the extent of publication of Statement 1 was very wide by virtue of it being posted on the Internet and being available for viewing by the public or indeed, the world at large.[43] The defendant, on the other hand, argues that there is no presumption that substantial publication occurs simply by virtue of the defamatory statement being published on the Internet. The defendant also submits that the court should factor in the

[43] PCS at paras 56–58.

informal manner in which Statement 1 was written, as this made it less credible and less likely to leave an impact on a reader.[44]

89 I broadly agree with the defendant's submissions.

90 I deal first with the extent of publication. The plaintiff's reliance on the fact of publication on the Internet as, in and of itself, establishing substantial publication runs contrary to the weight of authority that has rejected this as too simplistic an assumption (*Al Amoudi v Brisard and another* [2007] 1 WLR 113 at [37], affirmed in *Ng Koo Kay Benedict and another v Zim Integrated Shipping Services Ltd* [2010] 2 SLR 860 at [27], *Freddie Koh* at [43] and *Qingdao Bohai Construction Group Co, Ltd and others v Goh Teck Beng and another* [2016] 4 SLR 977 at [40]). I see no reason to doubt the correctness of this as a matter of principle. It is of course true that the ease and speed of transmission of information on the Internet has increased the potential and capability of defamatory material achieving "viral" status and spreading like wildfire. But that is only one side of the coin. The other side of the coin is that, given how vast the Internet is, material that is posted and uploaded there may well also go unnoticed, akin to a raindrop falling into the ocean. There is thus no warrant for assuming, in every case, that a defamatory statement published on the Internet falls within the former rather than the latter category.

91 The plaintiff must thus prove the wide extent of publication she claims either by direct proof or by establishing a "platform of facts" from which the court can properly infer that substantial publication has taken place (*Freddie Koh* at [43]).

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[44] DCS at paras 25–30.

92 In this case, the plaintiff sought to introduce, as an annex to her closing submissions, an "expert report" of one Mr Krishna Agarwal ("Mr Agarwal"),[45] ostensibly for the purpose of proving the number of persons who would have seen Statement 1. I have no hesitation rejecting the plaintiff's belated attempt to place reliance on this report and disregard it entirely. Although the defendant did not object to the introduction of this evidence in her reply submissions, it is clearly improper to introduce *evidence*, let alone *expert* evidence, in this way. The evidentiary hearing for the assessment of damages was heard and concluded on 29 October 2024. At no time did the plaintiff give any notice to the defendant or even the court of her intention to rely on or adduce any expert evidence. It is potentially unfair for the plaintiff to seek to introduce expert evidence via the backdoor with the defendant having no opportunity to test the plaintiff's expert's opinions in cross-examination or, if she thinks fit, call her own expert.

93 The plaintiff's "expert report" also fails to comply with almost every conceivable rule of procedure and substance governing expert evidence. Thus, even if it was admitted into evidence, it would be of no probative value.

94 For a start, expert evidence must be given in a written report signed by the expert and exhibited in an affidavit sworn to or affirmed by him testifying that the report is his and that he accepts full responsibility for it (O 40A r 3(1) of the Rules of Court (2014 Rev Ed) ("ROC 2014")). The report of Mr Agarwal was not produced as part of any affidavit of his but attached as an annex to the plaintiff's closing submissions.

95 Next, under O 40A r 3(2)(*a*) of the ROC 2014, an expert's report must contain details of the expert's qualifications. This requires, at the minimum a

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[45] PCS at pp 36–39.

*curriculum vitae* detailing the expert's relevant experience, with special regard to the issue on which the expert's opinion is sought (*Pacific Recreation Pte Ltd v S Y Technology Inc and another appeal* [2008] 2 SLR(R) 491 ("*Pacific Recreation*") at [67]). Although the report contains a snapshot of Mr Agarwal's educational and professional experience, it is not clear from the information that has been provided what expertise he possesses that renders him a person with especial skill to assist the court. As the Court of Appeal observed in *Pacific Recreation*, "the expert's report should state the precise manner, and not merely the general area of inquiry, in which the witness would be of use to the court" (at [67]). It is not apparent how Mr Agarwal's past experience and his current position as a director of a marketing agency – "Mister Marketeer" – bears on any issue before the court.

96 Further, and no less importantly, O 40A r 2 of the ROC 2014 spells out an expert's overriding duty to the court. This is of central importance given that O 40A r 3(2)(*h*) of the ROC 2014 makes it a requirement that an expert's report "contain[s] a statement that the expert understands that in giving his report, his duty is to the Court and that he complies with that duty". No such statement is contained in Mr Agrawal's report; and since the report has not been exhibited to an affidavit of Mr Agrawal, he has not made such a statement by way of affidavit either. There is no evidence that, in instructing Mr Agarwal, the plaintiff or her counsel ever made known to Mr Agarwal what his obligations as an expert were.

97 Finally, as to the other contents of an expert's report, O 40 rr 3(2)(*b*) to 3(2)(*g*) of the ROC 2014 provides that:

> (2) An expert's report must —
>
> …

> (*b*) give details of any literature or other material which the expert witness has relied on in making the report;
>
> (*c*) contain a statement setting out the issues which he has been asked to consider and the basis upon which the evidence was given;
>
> (*d*) if applicable, state the name and qualifications of the person who carried out any test or experiment which the expert has used for the report and whether or not such test or experiment has been carried out under the expert's supervision;
>
> (*e*) where there is a range of opinion on the matters dealt with in the report —
>
> (i) summarise the range of opinion; and
>
> (ii) give reasons for his opinion;
>
> (f) contain a summary of the conclusions reached;
>
> (*g*) contain a statement of belief of correctness of the expert's opinion;
>
> …

98 It suffices to say that Mr Agrawal's report contains almost none of the above. There is a disconnect between the purpose for which the report is supposedly adduced – to show the viewership of Statement 1 – and its contents. According to Mr Agarwal, his "[o]bjective" is to "estimate the volume of clicks for selected keywords and come up with a media value of these clicks". In this regard, he sets out the number of clicks on the Google search engine for the keywords "Lawyer", "Diana Foo" and "Law Society Singapore". No explanation as to the choice of these keywords has been given. I could understand using the plaintiff's name, but "lawyer" and "Law Society Singapore" are so generic that there is no clear link as to how they relate to Statement 1. More generally, it is also not evident how the number of clicks on a search engine demonstrates the viewership of Statement 1 specifically. Relying on this report, the plaintiff submits that "there is at least 123,500 searches for lawyer and that means a segment would have accessed LSS website

or search and looked at [Statement 1]".[46] No explanation is given, by the plaintiff or Mr Agarwal himself, as to how and why this inference can or should be drawn.

99 In *Public Prosecutor v Chia Kee Chen and another appeal* [2018] 2 SLR 249, the Court of Appeal emphasised the importance of an expert providing the reasoning behind his conclusions, as a report that states conclusions without reasons and which cannot be probed or evaluated is of no use (at [118]). In this case, an even more fundamental defect than a lack of reasoning afflicts Mr Agarwal's report. It is that, in the first place, it is unknown what his *conclusions* are as it is not clear what issue his report is intended to relate to or what his report is purposed towards establishing. Even if the panoply of procedural irregularities I have highlighted above were to be disregarded, Mr Agarwal's report is so lacking in substance that it possesses nil utility as far as the issues before the court are concerned.

100 The plaintiff has not pointed to any other evidence that supplies a "platform of facts" to infer that Statement 1 has been published extensively. In my judgment, on the balance of probabilities, the extent of publication of Statement 1 is low. Case law relating to online defamation has generally looked at the level of interaction that the defamatory post has received as a gauge of the extent and reach of publication:

(a) In *LHL v LSH*, the learned judge noted that the defamatory post had been available for less than three days, during which it attracted only 22 "reactions", five comments and 18 "shares". The defendant's Facebook page had around 5,000 friends and 149 followers. On the

[46] PCS at para 58.

premise that around 2,060 of the defendant's 5,000 friends and followers were based in Singapore, and estimating that around 10% to 20% of them would have accessed the post, the judge concluded that the defamatory post was published to at most 400 persons (at [105]–[106]).

(b) In *LHL v XYC*, the defamatory article was published on The Online Citizen website and shared on its Facebook page. The Facebook page had over 121,000 followers and 117,000 "likes", and the Facebook post specifically had attracted "a few hundred comments". There was specific evidence before the court that established that the defamatory article had received 114,263 views (at [71] and [82]).

(c) In *Shanmugam*, the court there concluded that there had been substantial publication based on the fact that: (i) the defamatory post had received 2,765 "reactions", 489 comments and 402 "shares"; (ii) the defendant's Facebook page had a substantial "89K followers"; and (iii) the privacy setting of the defamatory post was set to "public", meaning that it was accessible to all Facebook users, including the public in Singapore at large (at [48]).

101 In the present case, it appears that Statement 1 was accessible online for over a year. I derive this conclusion from the fact that it was posted sometime in 2018 and, according to the defendant, it was taken down after she received a letter of demand from the plaintiff.[47] Although the defendant did not specify when exactly this demand was made since the plaintiff sent multiple letters to the defendant, it appears to me that the relevant letter of demand is most likely the one dated 23 June 2020, although I should say that it is not apparent from

[47] Defence (Amendment No. 2) dated 29 June 2022 at para 61.

the contents of the letter that it contained an unequivocal demand for Statement 1 to be removed.[48]

102 Although Statement 1 was available online for over a year, which is a much longer period than the three days during which the post in *LHL v LSH* was available, there is no doubt in my mind that the extent of the publication of the post in *LHL v LSH* in those three days dwarfs the extent of publication of Statement 1 in this case. Indeed, the extent of publication of Statement 1 appears to have been *de minimis*. The only interactions that Statement 1 received was a single "thumbs up" reaction as well as a comment from one "Yew Woo" that stated "go report her lah".[49] This suggests that it is more likely than not that Statement 1 was a drop in the ocean rather than an eruption causing a tidal wave. By any stretch of the imagination, based on the dearth of evidence before the court, the extent of publication was negligible relative to cases such as *LHL v LSH*, *LHL v XYC* and *Shanmugam* which I have referenced above.

103 While the plaintiff did not plead and rely on it specifically, for her benefit, I have also considered the possible application of what has been referred to as the "grapevine effect". As Gill J explained in *Continental Steel*, this is the possibility that "a defamatory statement may be repeated to persons other than those to whom the defendant communicates the defamatory words" (at [176]). In other words, it is the possibility that Statement 1 or its substance may have been repeated to persons who may not have themselves seen Statement 1 in its native form online. This phenomenon was referenced by Bingham LJ (as he then was) in the decision of the English Court of Appeal in *Slipper v British Broadcasting Corporation* [1991] 1 QB 283 as the "propensity [of a defamatory

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48 Plaintiff's AEIC (Liability) at pp 313–315

49 Plaintiff's AEIC (Liability) at pp 47–48.

statement] to percolate through underground channels and contaminate hidden springs" (at 300).

104 I accept that, in principle, there is a greater potential for repetition where the defamatory statement is posted on the Internet due to the ease of access and transmission. In *LHL v Roy Ngerng*, the High Court cited with approval (at [49]) the following observations in the decision of the English Court of Appeal in *Cairns v Modi* [2013] 1 WLR 1015 (at [27]):

> … Dealing with it generally, we recognise that as a consequence of modern technology and communication systems any such stories will have the capacity to 'go viral' more widely and more quickly than ever before. Indeed, it is obvious that today, with the ready availability of the world wide web and of social networking sites, the scale of this problem has been immeasurably enhanced, especially for libel claimants who are already, for whatever reason, in the public eye. In our judgment, in agreement with the judge, this percolation phenomenon is a legitimate factor to be taken into account in the assessment of damages.

105 However, consistent with the baseline proposition that there is no presumption of substantial publication, the grapevine effect is not a doctrine that operates independent of evidence or of general application in every case. Instead, as Gill J cautioned in *Continental Steel*, being an inference of fact – *viz*, an inference of republication – it must ultimately be grounded in an evidential basis that is capable of sustaining the inference (at [176]–[177]).

106 In my judgment, giving the plaintiff the benefit of the doubt, I would accept that the grapevine effect does operate in the present case, albeit only to a limited degree. There is some evidence of the republication of Statement 1 to persons who may not have seen it themselves. An example of this is the position of Mr Moh, who gave evidence that he had not himself seen Statement 1 in its native format on the Internet but had been shown a video (or picture) of it by

Ms Zhang.[50] The plaintiff also gave evidence of how her former colleagues from her previous career in accountancy informed her that they heard rumours about her being involved in "illegal deals", and how fellow members of the legal profession had teased her about the "illegal deals" in the Bar Room of the State Courts and the High Court.[51] While this was, to an extent, a bare assertion that could give rise to the concern that it was self-serving, I am willing to give the plaintiff the benefit of the doubt and accept that, as a whole, the defamatory sting of Statement 1 has reached the ears of persons who did not see Statement 1 themselves. That said, the extent of republication to me seemed insubstantial, as it appeared that these persons to whom republication may have occurred were persons who were already acquainted with the plaintiff, which would explain why the reference to the plaintiff in Statement 1 left an impression on them. There was otherwise no evidence that Statement 1 had reached the ears of, and left a similar impression on, the ordinary and right-thinking member of our society. For example, apart from Mr Moh and Ms Zhang, the plaintiff did not lead evidence that suggested that real estate agents *generally*, including those whom she was not personally acquainted with, had caught wind of Statement 1.

107 For the foregoing reasons, weighing the negligible extent of publication of Statement 1 alongside the evidence of some minor republication in the form of the grapevine effect, I assess the extent of publication of Statement 1 to be low to mild at best.

108 In so far as the defendant has relied on the informality of Statement 1, I have already taken that into account as making Statement 1 appear less credible when assessing the nature and gravity of the defamation above (see [71]–[75]

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50 Transcript (27 June 2022) at pp 57:23–58:7.

51 Plaintiff's AEIC (AD) at paras 21–22.

above). I do not think it necessary to consider it again when assessing its implications on the mode and extent of publication as this may give rise to a concern of double counting.

(2) Statement 2

109 Turning to Statement 2, I find that the mode and extent of publication is a factor that weighs heavily against any significant award of damages for Statement 2.

110 There is objective evidence that demonstrates that the extent of publication of Statement 2 was low. Indeed, it is probable that the specific number and identities of every person who came across Statement 2 can be identified. As a complaint that was filed against the plaintiff by the defendant to the LSS, the only persons who would have received Statement 2 are the members of the Council of the LSS, the Inquiry Panel and the two-man Review Committee that was appointed to investigate the complaint. Save for these persons and perhaps some administrative or clerical staff tasked with dealing with the complaint, it is unlikely that anyone else would have caught wind of Statement 2.

111 The mode of publication for Statement 2 is also significant. As a complaint against an advocate and solicitor, the allegations were investigated and subsequently dismissed by the Review Committee. In my view, the upshot of this is that the decision of the Review Committee substantially cleared most, if not all, of the taint to the plaintiff's name among persons to whom Statement 2 had ever been published. This is especially because all persons to whom Statement 2 were published were either themselves members of the legal profession or, at the least, members of the staff of the LSS familiar with the

inner workings of the legal profession, and therefore the decision of the Review Committee would have carried especial weight in their minds. It would not be an exaggeration to say that, if there was to be any constituent group of society that would respect the decision of the Review Committee, it would be the legal profession itself and those involved with it. And even if there remained any lingering doubt or suspicion against the plaintiff after the Review Committee's decision, these would have been substantially dispelled by my published decision on liability in *Foo Diana (Liability)*, which made clear that Statement 2 was defamatory.

112 In these circumstances, I do not think that Statement 2 can be said to have caused the plaintiff any real loss of reputation. Furthermore, the decision of the Review Committee and my judgment in *Foo Diana (Liability)* would have substantially vindicated the plaintiff's reputation among the persons to whom Statement 2 was published (*Purnell v BusinessF1 Magazine Ltd and another* [2008] 1 WLR 1 at [27]; *Freddie Koh* at [49]). Given this, of the three purposes that an award of general damages serves, the only purpose of any significant weight as far as Statement 2 is concerned is the soothing of the plaintiff's hurt feelings.

113 For the avoidance of doubt, I am cognisant that the Court of Appeal in *Freddie Koh* cautioned against giving undue weight to the vindicatory effect of the court's judgment as it could create a situation of "heads I win, tails I don't lose" for the defendant: if she wins, she pays no damages; and if she loses, she can refer to the court's judgment finding her liable for defamation to reduce her liability to pay substantial damages (at [50]). I do not mean to lay down any general proposition that a reasoned judgment of the court finding the defendant liable would achieve full vindication in every case. Instead, my point is that, in the particular circumstances of this case, the decision of the Review Committee

and my decision in *Foo Diana (Liability)* would have achieved a much greater vindicatory effect than in most cases as the class of persons to whom Statement 2 was published is the segment of society – the legal profession – who would accord the greatest deference and weight to such decisions.

*Natural indignation of the court and deterrence*

114 Turning to the factor of the natural indignation of the court at the injury caused to the plaintiff, I do not propose to consider this as a discrete factor. In the recent case of *Shanmugam*, Goh Yihan J opined that it was not necessary to consider this as a separate factor in the assessment of damages as it was already taken into account in the court's assessment of the nature and gravity of the defamation (at [57]). Goh J noted that, in *LHL v LSH* (at [122]), the High Court had taken a similar view that it was not clear what this factor added to the analysis, and also raised concerns of double counting.

115 I respectfully agree with and join in these observations. I would go further to say that, quite apart from a lack of utility (as highlighted by Goh J in *Shanmugam*) and a risk of double counting (as highlighted by Xu J in *LHL v LSH*), there is a danger that the court might err by taking this factor into account as it could result in the court straying from the compensatory aim of general damages. As the Court of Appeal explained in *ACB v Thompson Medical Pte Ltd and others* [2017] 1 SLR 918 ("*ACB*"), punitive (or exemplary) damages are intended to "punish, deter, and condemn" and may be awarded "where the totality of the defendant's conduct is so outrageous that it warrants punishment, deterrence and condemnation" (at [156] and [176]). It seems to me that an award that is *intended* to reflect the court's indignation and disapproval of the defendant's conduct would not be primarily compensatory but punitive in nature.

116 I consider that the same can broadly be said *vis-à-vis* the factor of deterrence. The Court of Appeal's decision in *ACB* listed deterrence as one of the purposes of punitive damages. In the specific context of defamation, Lee J commented in *LHL v Roy Ngerng* that "[o]ne might observe that considerations of deterrence do not sit comfortably with the compensatory nature of damages in a civil action" (at [23]). I respectfully agree. Based on first principles, it is difficult to see how deterrence really fits within the ambit of a compensatory award since it is completely detached from the *loss* that the plaintiff has suffered.

117 Indeed, a review of the relevant case law does not lend clear support for the view that the court should give deterrence separate consideration when assessing compensatory damages. The leading case on the point is the decision of the Privy Council in *The Gleaner Co Ltd and another v Abrahams* [2004] 1 AC 628 (*"The Gleaner Co"*), which has been endorsed by our courts (*Lim Eng Hock Peter* at [8]):

> Another consideration relevant to the determination of the quantum of general damages to be awarded is its intended deterrent effect. In *The Gleaner Co Ltd v Abrahams* [2004] 1 AC 628, the Privy Council (*per* Lord Hoffman[n]) said (at 646):
>
> > [D]efamation cases have important features not shared by personal injury claims. *The damages often serve not only as compensation but also as an effective and necessary deterrent.* The deterrent is effective because the damages are paid either by the defendant himself or under a policy of insurance which is likely to be sensitive to the incidence of such claims.
>
> [emphasis in original]

118 It was argued in *The Gleaner Co* that the court below had erred in law by conflating punitive and compensatory damages when it held that the award was "sufficient to achieve the purpose of punishing the appellants and deterring others from behaving in the manner in which the appellants acted in this case"

(at [40]). The Privy Council rejected this submission. Lord Hoffmann, delivering the Privy Council's unanimous judgment, said the following (at [41]–[42]):

> 41 Lord Lester complains that this passage indicates that Forte P did not understand the distinction between punitive and compensatory damages and wrongly introduced a punitive element into his substituted award of J$35m. Their Lordships reject this submission. In their opinion Forte P's observation *reflects an entirely orthodox view of the* ***dual function of compensatory damages***. Ever since the distinction between compensatory and exemplary damages was formulated by Lord Devlin in *Rookes v Barnard* [1964] AC 1129 it has been recognised that ***compensatory damages may also have a punitive, deterrent or exemplary function.*** *What distinguishes exemplary damages for the purpose of the* Rookes v Barnard *dichotomy is that they do not have a compensatory function. …*
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> 42 … In the case of any tort, *liability to pay damages* ***as compensation for loss or harm is capable of having some deterrent or exemplary effect and this is particularly true of defamation****; first because it is an intentional tort and secondly because the conduct of the defendant is capable of aggravating the damages*. It is true that in *Broome v Cassell & Co Ltd* [1972] AC 1027, 1077 Lord Hailsham of St Marylebone LC said that compensatory and exemplary damages were "as incompatible as oil and vinegar" but most judges have accepted that *in many cases the two purposes are inextricably mixed.* The monetary value which a society places upon reputation and freedom from unjustified shame and humiliation is bound to be a conventional figure. The higher it is set, the greater the deterrence.
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> [emphasis added in italics and bold italics]

In my view, a close reading of Lord Hoffmann's reasoning does not support any proposition that the court should *distinctly* consider deterrence (and, by extension, any indignation it may feel towards the defendant) when assessing *compensatory* damages. Rather, the point that Lord Hoffmann was making was that compensatory damages served a "dual function" as they were inherently "capable of having deterrent or exemplary effect". In other words, the compensatory award, in and of itself, could have deterrent or exemplary effect.

119 Or put in a different way, even though deterrence is not its purpose, a compensatory award for defamation may *incidentally* also achieve a deterrent function. That, to my mind, is a different thing altogether from saying that a court must ensure that its compensatory award of general damages *serves* a deterrent function and therefore it must factor in deterrence as a separate consideration. As Lord Hoffmann alluded to, it has been settled since the House of Lords decision in *Rookes v Barnard* [1964] AC 1129 that it is only "if and only if" a compensatory award does not adequately achieve a punitive function that an additional award of punitive damages would be warranted (*ACB* at [179]; *Li Shu Lin v Looi Kok Poh and another* [2015] 4 SLR 667 at [213]). Since ensuring an adequate punitive or deterrent element is the very purpose of an award of punitive or exemplary damages and thus within its proper remit, I think that it would be wrong in principle for a court assessing compensatory damages to allow this extraneous consideration to influence it. I do not read the Court of Appeal's observations at [8] of *Lim Eng Hock Peter* (reproduced at [117] above) as requiring deterrence to be taken into account as a *distinct* factor in assessing compensatory damages. In my view, the passage from *The Gleaner Co* cited by the Court of Appeal must be read in the context of Lord Hoffmann's elucidation of the "dual function" of compensatory damages which I have referred to at [118] above; taking the two together, the Court of Appeal should be understood as making the point that Lord Hoffmann was really driving at in *The Gleaner Co – ie*, that it was wrong to assume that a compensatory award could not serve *any* deterrent or exemplary function as, ordinarily, an award of compensatory damages would have a deterrent or exemplary element built into it.

*Malice, the conduct of the defendant and the defendant's failure to apologise*

120 As for the last three factors of (a) malice, (b) the conduct of the defendant, and (c) the defendant's failure to apologise, I take these together.

Although these factors (like the court's indignation and deterrence above) have commonly been recited as part of the list of factors that the court should take into account when assessing general damages, I would prefer to deal with them outside the rubric of *general* damages as I consider them better attuned to the assessment of aggravated damages instead.

121 The common thread between these factors is that they have the effect of compounding the damage to the plaintiff's reputation and/or the hurt to the plaintiff's feelings. That being the case, they seem to me to fit better within the ambit of aggravated damages which, according to the Court of Appeal in *Noor Azlin*, are intended (at [235]):

> … to *augment* a sum awarded in general damages to compensate for the enhanced hurt suffered by the plaintiff due to the aggravation of the injury by the manner in which the defendant committed the wrong or by his motive in so doing, either or both of which might have caused further injury to the plaintiff's dignity and pride …
>
> [emphasis in original]

122 The obvious peril of considering these three factors within *both* general damages and aggravated damages is double counting (*Lee Kok Choy v Leong Keng Woo* [2022] 4 SLR 1253 at [166]). The current preferred approach is to arrive at separate figures for general damages and aggravated damages (*Lim Eng Hock Peter* at [40]; *Basil Anthony Herman v Premier Security Co-operative Ltd and others* [2010] 3 SLR 110 at [65]). Adopting such an approach, it seems wrong in principle to: (a) inflate an award of *general* damages by taking into account the defendant's malice, conduct and lack of apology; and (b) subsequently award *aggravated* damages based on those very same factors.

123 For this reason, I consider that it is consistent with the modern practice of separating general damages from aggravated damages for the court to draw

a clean separation in the factors that are considered under each inquiry. I will thus consider the applicability and effect of these three factors below in the context of my assessment of the plaintiff's claim for aggravated damages (and the quantum thereof).

***Aggravated damages***

124 I come to the plaintiff's claim for aggravated damages. In my judgment, the plaintiff has established that an award of aggravated damages is warranted on the facts of this case.

*Malice*

125 I begin with the factor of malice. It is well-established that malice in the context of defamation broadly encompasses "any ill-will, spite, or some wrong or improper motive" (*Lee Kuan Yew v Davies Derek Gwyn and others* [1989] 2 SLR(R) 544 at [112]). 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 honest belief in the truth of the statement, but acts with the dominant motive of injuring the plaintiff or some other improper motive (*LHL v XYC* at [88], citing *Chan Cheng Wah Bernard and others v Koh Sin Chong Freddie and another appeal* [2012] 1 SLR 506 at [90]; *Shanmugam* at [65]).

126 The plaintiff rightly highlights that in *Foo Diana (Liability)*, I had already found that the defendant acted with malice in relation to Statement 2 specifically, as this was the factor that disentitled the defendant from relying on the defence of qualified privilege (*Foo Diana (Liability)* at [61]). The defendant, on the other hand, appears to treat my prior finding of malice (at least in relation

to Statement 2) as non-existent and submits that "there was no malice behind the publication of Statements 1 and 2".[52]

127 To the extent that the defendant disputes the existence of malice *vis-à-vis* Statement 2, as I pointed out to her counsel at the trial on the assessment of damages, that issue is *res judicata*. The defendant is estopped from denying the existence of malice as regards Statement 2 by reason of an issue estoppel (*Goh Nellie v Goh Lian Teck and others* [2007] 1 SLR(R) 453 at [26]; *The Royal Bank of Scotland NV (formerly known as ABN Amro Bank NV) and others v TT International Ltd (nTan Corporate Advisory Pte Ltd and others, other parties) and another appeal* [2015] 5 SLR 1104 at [100]).

128 I accept that the issue of malice *vis-à-vis* Statement 1 is not strictly *res judicata* as a result of my decision in *Foo Diana (Liability)*. However, I consider that there are nonetheless insurmountable difficulties arising out of my findings in *Foo Diana (Liability)* to the defendant's attempt at warding off a finding of malice in the publication of Statement 1. The defendant submits that no finding of malice should be made in respect of Statement 1 as: (a) she had genuinely believed in the truth of Statement 1; and (b) her predominant motive was not to injure the plaintiff, but to "protect herself from the [p]laintiff's incessant demands for deals" as she believed that the plaintiff "had underworld connections and could therefore maim or kill her if she did not do her bidding".[53] I have little hesitation in rejecting these arguments.

129 I do not accept that the defendant carried any genuine belief that Statement 1 was true. In *Foo Diana (Liability)*, I found, *inter alia,* that the

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52 DCS at para 49.

53 DCS at para 48.

defendant had been the one who had initiated and introduced one of the deals she alleged to be illegal to the plaintiff (at [32]), and in cross-examination, the defendant conceded that this deal was not illegal (at [28]). As for another deal, I found also that the defendant had failed to prove its illegality (at [40]–[41]). In these premises, I do not see how it is possible for the defendant to maintain that she genuinely believed in the truth of Statement 1. She admitted before me that one of the "illegal deals" she referred to was in fact not illegal, and she did not lead an iota of cogent evidence to demonstrate the illegality of the other. This by itself suffices to sustain a finding of malice in relation to Statement 1.

*The defendant's conduct and a lack of apology*

130 Finally, I consider the conduct of the defendant generally. In *John v MGN*, the court observed that additional injury to the plaintiff's feelings may be caused by "the defendant's conduct of the action, as when he persists in an unfounded assertion that the publication was true, or refuses to apologise, or cross-examines the plaintiff in a wounding or insulting way" (at 607–608).

131 The plaintiff relies on the following factors:[54]

(a) First, the defendant's failure to take up the plaintiff's offers to settle the matter.

(b) Second, the defendant having taken the matter to trial in which she subjected the plaintiff to many accusations in cross-examination.

[54] PCS at paras 96–102.

(c) Third, the defendant maintaining the truth of the defamatory statements and making various allegations against the plaintiff in her evidence at trial.

(d) Fourth, the defendant's failure to apologise until the very end of the trial on the assessment of damages.

132 I broadly accept the plaintiff's submissions. In my judgment, the main factors at play are: (a) the defendant's unsuccessful plea of justification in which she maintained the truth of Statement 1; and (b) the defendant's failure to apologise.

133 The first factor weighs relatively heavy against the defendant. A reckless plea of justification is a classic aggravating factor (*Freddie Koh* at [57]). A plea of justification can reasonably be said to be bound to fail, and therefore ought not to have been made, if it is "wholly unfounded" or there is "strong *prima facie* evidence that the statement is untrue" (*Bonnard v Perryman* [1891] 2 Ch 269 at 284 and 288, affirmed in *Freddie Koh* at [58]). In my view, the defendant's attempt at running a justification defence in relation to Statement 1 during the trial on liability was thoroughly misconceived. My deconstruction of the defence in *Foo Diana (Liability)* illustrates that there was no prospect of the defence succeeding, not least because the defendant did not even plead or particularise the alleged illegality of the deals (at [26] and [40]) and did not adduce anything coming close to a cogent evidential basis to prove the truth of Statement 1. Indeed, I had even made a brief remark on the defendant's (lack of) integrity and credibility as a witness when giving evidence to support her case on justification (at [34]–[38]), which I reproduce for ease of reference:

> 34 The defendant states in her affidavit of evidence-in-chief ("AEIC") that "the [p]laintiff had prepared a fake contract between the Filipino and Mr Liao" and that "a copy of the said

contract … is … exhibited at [pp] 32–36 of [the defendant's exhibit]". Page 36 of the defendant's exhibit contains signatures of one Mr Kok Chiew Leong ("Mr Kok") and Mr Liao. During cross-examination, the defendant was referred to pages 32–36 of her AEIC and confirmed repeatedly that the Gold Deal agreement was signed at page 36.

35 However, page 36 of the defendant's exhibit is identical to page 523 of the plaintiff's exhibit in her AEIC, which is the signature page to a *different* agreement, namely, a Joint Venture Agreement between Oasis Realtors & Consultants Pte Ltd and Super Nice Co Ltd. The identical signature pages contain the signatures of Mr Kok, on behalf of Oasis Realtors & Consultants Pte Ltd, and Mr Liao on the other hand, for and on behalf of Super Nice Co Ltd. At the bottom of page 36 of the defendant's AEIC exhibit, it even states "Joint Venture Agreement" and carries the page number "5", in contrast to the earlier pages of the Gold Deal agreement which were not numbered. In my view, it is apparent that the defendant's assertion that page 36 of her AEIC exhibit contains the signatures for the Gold Deal agreement is false.

36 In response to my questions raised during the trial, the defendant insisted that page 36 contained the signatures for the Gold Deal agreement. She adapted her evidence to state that they were simultaneously signatures for *both* the Joint Venture Agreement and the Gold Deal agreement. She confirmed that they were signed on the same day at the same time at the same location. In my view, the defendant was spinning another falsehood to cover her earlier one. Her explanation simply does not stack up against the documentary evidence. The parties to both agreements are plainly different. The Joint Venture Agreement, which the signature page was taken from, is between Oasis Realtors & Consultants Pte Ltd and Super Nice Co Ltd. The Gold Deal agreement is between Ms Cornelia and Mr Liao. The signature page only refers to one "Agreement".

37 The defendant also stated during the trial that she gave a copy of the signed Gold Deal agreement to her present counsel. Both Mr Tan Hiang Teck Simon, lead counsel for the defendant, and Ms Tan-Goh Song Gek Alice (Mr Tan's instructing solicitor) confirmed that they have never received or seen such a document. In my view, this was yet another falsehood by the defendant and speaks volumes of the defendant's lack of integrity and credibility as a witness.

38 Recognising that her purported explanations hold no water, the defendant then sought to *retract* all her assertions some seven months later by way of her application for leave to adduce further evidence after the close of the trial and after parties had exchanged closing submissions. In her affidavit

> supporting the application, the defendant alleged that the signature page was "wrongly attached to the Gold Agreement instead of being inserted after the F1 (Terminal 5 Agreement)". After hearing arguments, I had little hesitation dismissing that application.
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> [emphasis in original]

In sum, the defendant's case on justification at trial essentially involved her constructing stories on the fly; as one account failed, she moved on to another, and ultimately, she tied herself up in knots until she sought to walk back on them entirely at the end of trial. This is clearly an aggravating factor that must count against the defendant.

134 The second factor is the lack of apology. Although the plaintiff goes as far as to suggest that the apologies which the defendant proffered during her evidence at the trial on assessment of damages were not genuine, I do not think it necessary to go so far. In my view, it suffices to say that, even if the defendant came around to be genuinely remorseful at the end of the road, the defendant did not show any serious inkling of remorse from the publication of the defamatory statements until the tail end of these proceedings. The clearest example of this was the fact that, in her AEIC dated 3 June 2024 for the assessment of damages trial ("Defendant's AEIC (AD)"), the defendant saw fit to put up a myriad of excuses and attacks against the plaintiff. This included allegations that I had already found to be false in my judgment on liability, chief among which was the defendant's persistence in asserting that "[t]he contents [of Statement 1] are true; but [she] posted it wrongly"[55] on the LSS's Google page despite my rejection of her plea of justification in *Foo Diana (Liability)*. The defendant's recalcitrance in asserting that she was in the right and had done

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55 Defendant's AEIC (AD) at para 14.

nothing wrong negates the mitigating effect of any apology that she may have offered at the end of the proceedings.

***The appropriate quantum of damages to be awarded***

135 Having considered the relevant factors above, I turn now to the issue of the appropriate quantum of damages that the plaintiff should be awarded.

136 As a preliminary point, I address the methodology adopted by the plaintiff. As I have mentioned at [12] above, the plaintiff has taken the approach of scaling historical awards based on inflation to arrive at what she submits are the present-day values of the awards made in past cases. I accept that, in principle, this is not wrong *per se*. There are local authorities (at least in the context of wrongful death and personal injury claims) that have cautioned that, when considering damages awards in precedent cases, appropriate allowances should be made for inflation and a decrease in the value of money (*Noor Azlin* at [136]; *Lee Sim Leng v SMRT Buses Ltd* [2025] SGHC 11 at [93]).

137 With respect, however, I do not think that this is the right approach in assessing damages for defamation. In the context of defamation, I think that more dated precedents should be treated with care and, as a general rule, the court should focus on more recent cases rather than looking to scale up the awards in older precedents. In *Tang Liang Hong v Lee Kuan Yew and another and other appeals* [1997] 3 SLR(R) 576 ("*Tang Liang Hong*"), the Court of Appeal made clear that the courts should guard against allowing awards in defamation cases to continuously increase and creep up over the years (at [158]):

> *… there appears to be a trend of such damages rising steadily and significantly over the past few years, and in a few recent cases, each successive award appeared to overtop the preceding*

> *one. Such a trend should be discouraged; otherwise, damages for defamation would mount and eventually become extremely high, ranking almost with the grossly exorbitant awards so often made by juries in other jurisdictions.* Lest it be misunderstood, we are not suggesting in any way that there should be a cap placed on quantum of damages for defamation. … Each case depends on its own facts and there is a great deal of factual diversity in defamation cases. However, we wish to stress that damages, even for defamation, should fall within a reasonable bracket so that what is awarded represents a fair and reasonable sum which is proportionate to the harm and injury occasioned to the victim who has been unjustly defamed. …
>
> [emphasis added]

138 A survey of the case law before and after the Court of Appeal's decision in *Tang Liang Hong* reveals that the message was clearly received. The learned author of Doris Chia, *Defamation: Principles and Procedure in Singapore and Malaysia* (LexisNexis, 2016) identifies a "downward trend" in damages after *Tang Liang Hong* (at para 21.3), and recent case law in the current decade involving public leaders clearly indicates that the trend has continued:

(a) In *LHL v LSH*, the Prime Minister of Singapore was awarded damages of $133,000 (comprising general damages of $100,000 and aggravated damages of $33,000) (at [126]).

(b) In *LHL v XYC*, the Prime Minister of Singapore was awarded damages of $210,000 (comprising general damages of $160,000 and aggravated damages of $50,000) (at [138]).

(c) In *Shanmugam*, the Minister for Law and Home Affairs and the Minister for Foreign Affairs were each awarded damages of $200,000 (comprising general damages of $150,000 and aggravated damages of $50,000) (at [89]).

139 To illustrate the folly of relying on dated case law, I consider the case of *Arul Chandran* relied on by the plaintiff, which also involved the defamation of a lawyer. In *Arul Chandran,* the plaintiff was awarded $100,000 in general damages and $50,000 in aggravated damages. According to the plaintiff's calculation, scaling that award to take into account inflationary pressures, the award in *Arul Chandran* would have a present-day value of $211,800.[56] This is a larger sum than *any* of the awards made in the cases referred to at [138] above, all of which involved individuals who are of considerably greater standing and repute than the plaintiff in *Arul Chandran*. The case of *Shanmugam* is a particularly striking example given it was decided less than a year ago. I thus prefer to use more recent cases as benchmarks.

140 Beginning with Statement 1, I think it stands to reason that the award for Statement 1 should be far lower than the sums awarded in *Shanmugam*. Taking a broad-brushed approach, I consider that the plaintiff should be awarded no more than 20% of the general damages awarded to each claimant in *Shanmugam*. This sets the upper limit at $30,000.

141 I would thereafter adjust this starting figure downwards to $25,000. In *Yeow Khim Seng Mark v Phan Ying Sheng* [2021] SGHC 145 ("*Mark Yeow*"), the plaintiff was a described as "professional social media personality with [an] extensive number of followers" (at [83]). The defendant posted various defamatory statements on Facebook alleging that the plaintiff was, among other things, an evil person with ill intentions, a cyber bully and a cheat. The plaintiff was awarded general damages of $25,000 and aggravated damages of $15,000 (at [89] and [95]). In my view, the general damages in the present case should be at around the same level as that in *Mark Yeow*. The greater importance that

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[56] PCS at para 73.

the plaintiff's reputation may have to her as a lawyer is offset by the comparably greater extent of publication in *Mark Yeow*.

142 As for Statement 2, I have found above that the main purpose of an award of general damages here would be as solatium for the plaintiff's hurt feelings (see [112] above). In my judgment, the extent of publication of Statement 1 and Statement 2 is likely to be similar overall given that both do not appear to have achieved any substantial publication. While Statement 1 was published on the Internet and could, therefore, have been more easily accessed, the available evidence very much shows that Statement 1 went largely unnoticed. In these circumstances, taking a rough-and-ready approach and proceeding on the premise that the award for Statement 2 only need reflect one of the three aims of general damages (as compared to all three purposes being in play for Statement 1), I would fix the general damages for Statement 2 at around 33% of the award for Statement 1. This comes up to a sum of approximately $8,000.

143 Finally, as for aggravated damages, I have found that aggravated damages are warranted in respect of both Statement 1 and Statement 2 (see [124] above). In my judgment, an uplift of 25% of the award of general damages would be suitable in this case to reflect the aggravation that the defendant's malice, conduct and lack of apology has caused to the plaintiff.

144 I therefore award the following damages to the plaintiff:

(a) for Statement 1, general damages of $25,000 and aggravated damages of $6,250; and

(b) for Statement 2, general damages of $8,000 and aggravated damages of $2,000.

145 The total award of damages payable by the defendant to the plaintiff is thus $41,250. Cross-checking this against the recent cases of *LHL v LSH*, *LHL v XYC* and *Shanmugam*, the damages I have decided to award the plaintiff are, in my judgment, a fair and reasonable sum, given in particular: (a) the lower standing of the plaintiff in this case as compared to political leaders in the three cases; (b) the lower profile of the defendant in this case relative to the defendants in the three cases; and (c) the significantly lower extent of publication in the present case for both Statement 1 and Statement 2 as compared to the three cases.

***Injunction***

146 I note that the plaintiff has also sought an injunction "restraining the [d]efendant, whether by herself or her servants, agents, or otherwise howsoever, repeat [*sic*] the words or any other words to the same or any similar effect, in any manner whatsoever, in the future".[57]

147 I do not think it necessary to make such an order as the defendant has removed Statement 1, and further, has not shown any propensity or likelihood to repeat the defamatory statements against the plaintiff (see *Shanmugam Kasiviswanathan v Lee Hsien Yang and another matter* [2024] 4 SLR 580 at [27]–[28]). The plaintiff has not adduced any evidence to show that the defendant has republished either Statement 1 or Statement 2 or the defamatory sting thereof since these proceedings began. Accordingly, I decline to grant the injunction sought.

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57 SOC at relief (v).

**Conclusion**

148 For the reasons above, judgment is granted in favour of the plaintiff against the defendant for a total sum of $41,250 in general and aggravated damages.

149 I will hear the parties separately on costs.

S Mohan
Judge of the High Court

Alfred Dodwell (Dodwell & Co LLC) for the plaintiff;
Tan-Goh Song Gek Alice and Tan Yu Poh Susan (A C Fergusson Law Corporation) for the defendant.