

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Suit No. 569 of 2014

Between

LEE HSIEN LOONG
(NRIC No. S0016646D)

...Plaintiff

And

ROY NGERNG YI LING
(NRIC No. S8113784F)

...Defendant

**DEFENDANT'S WRITTEN SUBMISSIONS IN RELATION TO THE
PLAINTIFF'S APPLICATION FOR THE DETERMINATION OF MEANING OF
THE DEFAMATORY WORDS AND FOR SUMMARY JUDGMENT AGAINST
THE DEFENDANT**

A. INTRODUCTION**REFERENCE****(i) Parties**

1. The Plaintiff is the Prime Minister of the Republic of Singapore and the Chairman of GIC Private Limited (“GIC”). The Defendant was a healthcare worker who owns and is the writer of the blog “*The Heart Truths Keep Singapore Thinking by Roy Ngerng*” (the “Blog”).

Paragraph 5 & 6 of the Plaintiff's Affidavit dated 10 July 2014 (“P's Affidavit”)

(ii) Other Relevant Persons

2. Mr Tharman Shanmugaratnam (“Mr Shanmugaratnam”) is the Deputy Prime Minister of the Republic of Singapore. He is also Minister for Finance and Chairman of the Monetary Authority of Singapore (“MAS”). Ms Ho Ching (“Ms Ho”) is the Chief Executive Officer of Temasek Holdings. The shareholder of Temasek Holdings is the Minister for Finance. Ms Ho is also the wife of the Plaintiff.

(iii) The Offending Words and Images

3. On or around 15 May 2014, the Defendant published the article entitled “*Where your CPF Money is Going: Learning from the City Harvest Trial*” (the “**Article**”) on the Blog. The full text of the Article is at pages 65 to 81 of the Plaintiff's 1st Affidavit dated 10 July 2014.

Paragraph 13 of P's Affidavit

4. The Article makes the following points:

- i. The founder of City Harvest Church and his five deputies had been accused of misusing millions of dollars of monies belonging to the church building fund.

Page 65 of P's Affidavit (1st paragraph on this page of the Article)
- ii. The Court trying the founder and his deputies had found that there was evidence to show that monies were moved from the church to other companies to generate the false appearance that the church's investments had been redeemed and that the founder and his deputies had been dishonest in the use of the monies belonging to the church building fund.

Page 65 of P's Affidavit (2nd paragraph on this page of the Article)
- iii. The founder of the church, Mr Kong Hee ("Mr Kong") is married to Ms Sun Ho ("Ms Sun") who is a singer and co-founder of the church (described in picture).

Page 65 of P's Affidavit (picture on this page of the Article)
- iv. The founder and his deputies are accused of channelling SGD 24 Million into two companies, Xtron and Firma, in order to

Page 66 of P's Affidavit (picture on this page of the Article)

boost Ms Sun's music career and thereafter misappropriating the sum of SGD 26 Million to redeem this SGD 24 Million when the sum of SGD 24 Million had been lost in trying to boost Ms Sun's music career (described in picture).

- v. Something bears an uncanny resemblance to how the money is being misappropriated. This is a lead in to points being made in relation to how the Government of Singapore treats Central Provident Fund ("CPF") Monies.

Page 67 of P's Affidavit (1st paragraph on this page of the Article)

- vi. The Plaintiff is responsible for SGD 253 billion dollars of Central Provident Fund ("CPF") monies to be channelled by way of Singapore Government Securities ("SGS") to various companies owned by Temasek Holdings, of which the Finance Minister is the shareholder and Ms Ho is the Chief Executive Officer, to MAS, of which Mr Shanmugaratnam, the Finance Minister is the Chairman and to the GIC, of which the Plaintiff is the Chairman. The three entities,

Page 67 & 68 of P's Affidavit (picture on these pages of the Article)

Temasek Holdings, MAS and GIC hold assets of SGD 1,000 billion (described in picture).

- vii. GIC claimed that it manages the Government's reserves, but as to how the funds from CPF flow into the reserves which could then be managed by wither MAS, GIC or Temasek Holdings, that is not made explicit to GIC. This was despite the fact that the Plaintiff, Mr Shanmugaratnam (who is Deputy Prime Minister, Finance Minister, Chairman of MAS and by virtue of being Finance Minister, the shareholder of Temasek Holdings), the other Deputy Prime Minister and the Ministers for Trade and Industry and Education sitting on the board of directors of GIC, coupled with the fact that the Plaintiff is the Chairman of GIC and his father, Mr Lee Kuan Yew, who is a former Prime Minister of Singapore is the Senior Advisor of GIC.
- Page 68 of P's Affidavit (3rd paragraph on this page of the Article)**
- viii. CPF is the 8th largest pension fund in the world.
- Page 69 of P's Affidavit (1st paragraph on this page of the Article)**
- Page 69 of P's Affidavit (3rd paragraph on this page of the Article)**

- ix. GIC and Temasek Holdings have used CPF monies to become the 8th and 9th largest sovereign wealth funds in the world. **Page 70 of P's Affidavit (1st paragraph on this page of the Article)**
- x. Despite CPF being the 8th largest pension fund in the world, and GIC and Temasek which used CPF monies to become the 8th and 9th largest sovereign wealth funds in the world, Singaporeans have the least adequate retirement funds in the world. **Page 71 of P's Affidavit (1st paragraph on this page of the Article)**
- xi. Nearly 90 percent of Singaporeans are not able to meet the CPF Minimum Sum and hence unable to take out any monies from their CPF accounts and retire, despite having saved a massive SGD 253 billion in their CPF accounts. **Page 73 of P's Affidavit (1st paragraph on this page of the Article)**
- xii. The Government of Singapore made Singaporeans set aside SGD 253 billion in their CPF accounts to enable the Government to earn SGD 1 trillion for the reserves of Singapore. **Page 73 of P's Affidavit (2nd paragraph on this page of the Article)**

- xiii. Something is amiss if despite Singaporeans having saved SGD 253 billion in their CPF accounts, which were then used by GIC and Temasek Holdings, which in turn became the 8th and 9th largest sovereign wealth funds in the world yet, almost 90 percent of Singaporeans cannot make withdrawals from their CPF accounts (not having met the minimum sum imposed by law) and retire. **Pages 73 of P's Affidavit (3rd paragraph on this page of the Article)**
- xiv. SMRT which is a subsidiary of Temasek Holdings is only able to generate profits because the Singapore Government injects tax payer monies into SMRT. Temasek Holdings which owns SMRT therefore appears to be more profitable than it actually is. **Page 74 of P's Affidavit (Balding's 2nd article as cited on this page of the Article)**
- xv. The reason why 90 percent of Singaporeans cannot make withdrawals from their CPF accounts (not having met the minimum sum imposed by law) and retire is as follows. GIC and Temasek pay Singaporeans interest of between 2.5 – 4 percent for their use of CPF monies. Profits in excess of this 2.5 – 4

percent are legally retained by GIC and Temasek. If GIC and Temasek had not retained profits in excess of the 2.5 – 4 percent which are paid to Singaporeans, the average Singaporean will be able to retire with SGD 300,000 more than the amount that the average Singaporean now retires on.

Page 74 of P's Affidavit (Balding's 2nd article as cited on this page of the Article)

xvi. The Government of Singapore, through GIC and Temasek therefore legally makes money off the retirement savings of Singaporeans.

Page 75 of P's Affidavit (Balding's article as cited on this page of the Article)

5. The gist of the Article therefore is that the church leader and five deputies had been accused of criminal breach of trust in relation to the channelling of monies to various companies and that the Singapore Government channels CPF monies to various entities (Temasek Holdings, GIC and MAS) and invests the CPF monies and makes profits from these investments and enriches itself and its reserves by not returning all profits made from the use of CPF monies to CPF account holders, but **legally** retaining part of the profits instead.

6. It is pertinent to state upfront here that there was absolutely no allegation against the Plaintiff or the Government of Singapore that the Plaintiff or the Government of Singapore was doing anything unlawful or that the Plaintiff had personally benefitted in any way from this arrangement. Neither were any similar allegations made against Mr Shanmugaratnam and Ms Ho. The allegation that the Singapore Government channels CPF monies to Temasek and GIC, which in turn makes a profit above what is returned to Singaporeans is against the Singapore Government, and not the Plaintiff. This is something that the Singapore Government is legally entitled to do.
- Paragraph 17 of
D's Affidavit**

(iv) The Subsequent Correspondence

7. On 18 May 2014, the Plaintiff's solicitors issued a letter of demand claiming that the meaning conveyed by the Article was that the Plaintiff was guilty of criminal misappropriation of the monies paid by Singaporeans to the CPF and demanding that the Defendant:
- Paragraph 26 of
P's Affidavit**
- i. Immediately remove the Offending Words and Images from the Blog;

- ii. Immediately remove the links to the Offending Words and Images on the Defendant's Facebook page and on the Heart Truths' Facebook page;

- iii. Publish, at his own expense, within 3 days of the date of the letter of demand, an apology and an undertaking in terms of a draft which was enclosed to the letter of demand. The apology and undertaking were to be published without any amendment, and with prominence, on the homepage of the Blog. The apology and undertaking were also to remain on the Blog for the same number of days that the Offending Words and Images remained on it;

- iv. Compensate the Plaintiff by way of damages; and

- v. Agree to indemnify the Plaintiff in respect of the costs and expenses that would have been incurred in connection with the matter.

8. The letter of demand required the Defendant's written confirmation that he would comply with the above demands and provide an offer for damages and costs within 3 days.

9. The Defendant had admitted by way of a letter dated 23 May 2014 that he recognised that the offending Article means and is understood to mean that the Plaintiff, the Prime Minister of Singapore and Chairman of GIC is guilty of criminal misappropriation of the monies paid by Singaporeans to the Central Provident Fund. **Paragraph 28 of P's Affidavit**

10. The Defendant has also made clear in that the above allegation is false and completely without foundation. The Defendant also apologised to the Plaintiff for the distress and embarrassment caused to the Plaintiff by the allegation, removed the Article from the Blog and undertook not to make any further allegations to the same or similar effect. **Paragraph 28 of P's Affidavit**
Paragraphs 31 & 32 of P's Affidavit

11. The matter has not been settled or compromised as there has been no agreement that the Defendant will compensate the Plaintiff by way of damages or indemnify the Plaintiff in respect of the costs and

expenses that would have been incurred in connection with the matter.

12. Neither Mr Shanmugaratnam nor Ms Ho sent letters of demand to the Defendant.

13. As the matter was not compromised or settled by the Defendant, the Plaintiff on 29 May 2014 commenced proceedings for defamation (“the Claim”). Neither Mr Shanmugaratnam nor Ms Ho have commenced proceedings.

(v) The Court Proceedings

14. The Plaintiff pleaded only one meaning to the offending Words and Images. The Plaintiff’s case is that the offending Words and Images, in their natural and ordinary meaning, meant and were understood to mean that the Plaintiff, the Prime Minister of Singapore and Chairman of GIC, is guilty of criminal misappropriation of the monies paid by Singaporeans to the Central Provident Fund (“the pleaded meaning”).
Paragraph 12 of the Statement of Claim dated 29 May 2014 (“SOC”)

15. The Defendant in his pleaded defence disputes this meaning.
Paragraph 11 of the Defence dated 17 June 2014 (“Defence”)

16. The Plaintiff therefore brings this application for the natural and ordinary meaning of the words and images contained in the Article to be determined pursuant to Order 14, Rule 12 of the Rules of Court (R5, Rev Ed 2006) (“**ROC**”). The Defendant agrees that the issue of meaning can be determined by this Court and sets out his full arguments below on why the pleaded meaning is untenable. **Tab A of the Defendant's Bundle of Authorities (“BOA”)**
17. It is to be noted that it is not the Plaintiff’s case that the Defendant is precluded under Order 27, Rule 3 of the ROC from disputing the pleaded meaning, as he had previously admitted to the pleaded meaning. **Tab B of the BOA**
18. For completeness, even though this is not the Plaintiff’s case, it must be pointed out that it is trite law that save where a defendant has compromised the action (hence bound by a settlement agreement), a plaintiff cannot rely on an admission by the defendant that what the defendant has published is defamatory of the Plaintiff. Order 27, Rule 3 of the ROC deals with judgment on admissions of fact only. If the matter involves questions of law, Order 27, Rule 3 of the ROC has no application. The law is clear that the question of whether words which are complained of convey a **Tab B of the BOA**

defamatory meaning is a question of law. See the cases of ***Shunmugam Jayakumar v Jeyaretnam JM*** Tab I of the BOA [1997] 2 SLR 172 (“***Shunmugam Jayakumar***”) and ***Jones v Skelton*** [1963] 1 WLR 1362. Tab F of the BOA

19. As the Defendant has not compromised the action, but merely admitted that the words convey the defamatory meaning alleged by the Plaintiff, the Plaintiff cannot rely on the admission in obtaining summary judgment. The Plaintiff has to satisfy the Court that as a matter of law, the words complained of convey the meaning that he asserts.

B. The Law

20. Before proceeding to argue that the natural and ordinary meaning of the Article is not that the Plaintiff, as Prime Minister of Singapore and Chairman of GIC is guilty of criminal misappropriation of the monies paid by Singaporeans to the CPF, but rather that the Government of Singapore legally enriches itself and its reserves from profits derived from the CPF monies of Singaporeans, it is useful to set out the law in relation to how the Court determines the natural and ordinary meaning of an article.

21. Where a judge has to determine meaning it has been said that the correct approach is to ask himself what overall impression the material made on him and then to check that against the detailed textual arguments put forward by the parties. Hence in ***Armstrong v Times Newspapers*** [2006] EWHC 1614 (QB) at [31], Gray J deliberately read the article complained of before reading the parties' respective statements of case or the rival skeleton arguments. Tab C of the BOA
22. The same judge also opined in ***Charman v Orion Publishing Group Ltd*** [2005] EWHC 2187 (QB) at [11]: Tab E of the BOA

*“It appears to me to be particularly important where, as here, a judge is providing written reasons for his conclusion as to the meaning to be attributed to the words sued on that **he should not fall into the trap of conducting an over-elaborate analysis of the various passages relied on by the respective protagonists.** The parties are entitled to a reasoned judgment but that does not mean that the court should overlook the fact that it is ultimately a question of the meaning which would be put on the words of the book by the ordinary reasonable reader. Such a hypothetical reader is assumed not to be a lawyer. **He or she is very unlikely to read the whole book in a single sitting or to compare one passage with another or to focus on particular phrases.** The exercise is essentially one of **ascertaining the broad impression made on the hypothetical reader by the book taken as a whole**”.*

[emphasis added in bold and underline ours]

23. It is necessary in construing the Article to consider not only the actual words used, but the context of the words. See the case of ***Neville v Fine Arts Co*** [1897] 1 A.C. 68 at 72, 78 as cited in ***Gatley on Libel and Slander*** (Sweet & Maxwell, 12th Ed, 2013) (“***Gatley***”) at page 147. Words in themselves apparently innocent may be shown to have a defamatory meaning when they are read with reference to the circumstances in which they were uttered or written, and with reference to the context in which they appear. However, the context in which the words appear may also have the effect of negating any defamatory meaning. See ***Gatley*** at Page 148.
24. It follows from the fact that the context and circumstances of the publication must be taken into account, that the plaintiff cannot pick and choose parts of the publication which, standing alone would be defamatory. See ***Monks v Warwick*** DC [2009] EWHC 959 (QB), as cited by ***Gatley*** at page 151. This or that sentence may be considered defamatory, but there may be other passages which take away their sting.

Tab H of the
BOA
Tab K of the
BOA

Tab G of the
BOA
Tab K of the
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See **Gatley** at page 151. In this regard, the reasonable reader is assumed to have read the whole article complained of. See **Gatley** at page 151. If “in one part of the publication something disreputable to the plaintiff is stated, but that is removed by the conclusion, the bane and the antidote must be taken together.” See **Gatley** from pages 151 to 152 and **Chalmers v Payne** (1835) 2 Cr. M. & R. 156 at 159; **Sykes v Southam** [1991] CanLII 5811 (AB QB).

Tab K of the BOA

Tab K of the BOA

Tab K of the BOA

Tab D of the BOA

Tab J of the BOA

C. Submissions

(i) The Article Read As A Whole Does Not Bear The Pleaded Defamatory Meaning

25. The Plaintiff contends that the defamatory meaning of the Article is that the words and the images, in their natural and ordinary meaning, meant and were understood to mean that the Plaintiff, the Prime Minister of Singapore and Chairman of GIC, is guilty of criminal misappropriation of the monies paid by Singaporeans to the CPF. **Paragraph 12 of the SOC**
26. In his pleadings, the Plaintiff only sets out a portion of the Article. The Plaintiff sets out only the portion of the Article which is from page 65 to the top of page 69 of the Plaintiff’s 1st Affidavit. The Plaintiff ignores the **Paragraph 5 of the SOC**

other 12 pages of the Article which puts in context and elaborates on what the Defendant meant in the first 5 pages which are the only pages referred to in the Plaintiff's pleadings.

27. The Defendant's argument is that if the first 5 pages (as set out in the Plaintiff's 1st Affidavit) of the Article are viewed in isolation, then perhaps the meaning the Plaintiff attributes to the Article may be correct. But this approach completely ignores what the rest of the article states and that is not how the Court approaches the interpretation of the defamatory meaning of an article. As we have seen above, it is not for Plaintiff to pick and choose parts of the article which may, taken in isolation be defamatory, but ignore the other parts of the article which provide the context in which the offending portions were made.

28. In this case, the Plaintiff's complaint is that having pictorially described how Mr Kong and his five deputies are alleged to have misappropriated monies, and then leading into a pictorial illustration of where CPF monies are invested in (which bear the pictures of the Plaintiff, Mr Shanmugaratnam and Ms Ho), with the lead in words, "*meanwhile, something bears and uncanny*

resemblance to how the money is being misappropriated”, will result in the general public forming the view that like Mr Kong and his 5 deputies, the Plaintiff too is being accused of criminal breach of trust, criminal misappropriation and / or criminal wrongdoing in relation to the CPF monies belonging to Singaporeans.

29. Had the Article stopped there, the Plaintiff may have a case to argue that the Article is defamatory of him as it suggests that he too, like Mr Kong and his 5 deputies, is guilty of criminal misappropriation.

30. The Article however does not stop there. The Article goes on to put in context that the allegation being made from the pictures is an allegation against the Singapore Government and a very specific one. The specific allegation being that the Government of Singapore enriches itself and its reserves by only returning a portion of the profits made by GIC and Temasek to CPF account holders and retaining the rest of the profits to grow its portfolio of investments into two of the largest sovereign wealth funds in the world. This is of course something the Government is legally allowed to do. The question the Defendant

raises is really whether it should do so?

31. It is the Defendant's case that it would be absurd to say that any reasonable person reading the whole article would come away with the impression that the Plaintiff has committed criminal breach of trust or had behaved unlawfully in any manner!

D. Conclusion

32. It is the Defendant's case therefore that a fair reading of the Article as a whole does not give rise to the pleaded meaning. While the Article does start off controversially, it becomes clear to the reader having read the whole article that he is not accusing the Plaintiff of any criminal wrongdoing but rather, expressing his opinion that the **legal** retention of profits derived from the investing of CPF monies by GIC and Temasek, by the Government is simply not fair to Singaporeans. That is the true natural and ordinary meaning of the Article taken as a whole. No reasonable reader having read the whole article would go away with the impression that the Plaintiff is stealing monies or behaving in a manner prohibited by law! The Defendant therefore humbly urges the Court to rule against the Plaintiff on the pleaded meaning

and dismiss the Plaintiff's application and action.

Dated this **4** day of **September 2014**

M.RAVI
MESSRS L. F. VIOLET NETTO
SOLICITORS FOR THE DEFENDANT