

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL DIVISION

CIVIL SUIT NO. S-23-96-2008

BETWEEN

DATO' CHEE KOK WING

.....PLAINTIFFS

AND

DATO' LIM KIM MING

.....DEFENDANT

GROUND OF JUDGMENT

This is an application by the defendant to strike out the Plaintiff's claim under 0 18 r 19 (1) (b) & (c) RHC.

Brief Facts

At Bukit Aman on 31.10.2007 at the Commercial Crimes Unit Kuala Lumpur with ACP Rosli bin Che, ASP Abdul Malek bin Abdul Ghani, Hazli bin Ibrahim, the Plaintiff and the Defendant, the Defendant had uttered the following words:

" He [Dato' Chee] approached me and asked me to pay RM3 million to pay the SC (Securities Commission). He said it is the culture in SC in order to get a company listed."

"He kept calling me to pay up the RM3M. Later as payments I were made in small portions he asked for RM4.2 million and also because the investigation has gone too far."

"He said he has strong cable and network with SC and if I don't pay I wont be selamat." .

"He called me to inform me of the listing approval even before my merchant bankers knew of it, and demanded money. He claimed to know a lot of things will happen if I don't pay, like investigation".

"Kris Azman called me and asked me for money. "

"Wong Tze Yen cashed out my cheque for RM 600,000.00 and handed it to Dato' Chee's secretary to pay to SC."

"Dato' Chee also wanted RM 400,000 to be paid to his account to be paid to SC."

The Plaintiff alleges that the said words in their ordinary meaning were understood mean that the Plaintiff is engaged in corrupt practices with officials of the Securities Commission and is of low moral and integrity.

By reason of the publication of the said words, the Plaintiff has been gravely injured in his character and reputation and has been brought into public scandal, odium and contempt, and hurt in his feelings and has suffered damage.

The Defendant's slanderous imputations were maliciously calculated to disparage the Plaintiff both in his professional and personal status and standing in the business community and society.

Wherefore the Plaintiff prays for:

- i) damages for slander in the sum of RM100 million against the Defendant;
- ii) an injunction restraining the Defendant by himself, his servants or his agents or otherwise from further publishing the said or any similar defamatory words upon the Plaintiff;
- iii) Costs.

The Defendant's defence

The Defendant's defence is that around 2006, G.P. Ocean Food Sdn Bhd, in which Defendant is one of the director was in the process of going into public listing on the main board of KLSE. The application was forwarded to the Securities Commission and on 22.3.2006 the approval by SC was granted. At that time Datuk Ali Kadir was the Chairman of SC.

Around 10.5.2006, SC received an anonymous letter alleging that the Defendant had made use of the influence of the Plaintiff and various others including Datuk Ali Kadir, Dato Azman Yahya (Former Chairman of Danaharta Urus Sdn Bhd) to guarantee the approval of the Defendant's company application for public listing.

Pursuant to that incident SC had decided to review its approval. Consequently the Directors of G.P. Ocean Food Sdn Bhd decided to withdraw the application pending investigation by the SC.

After completing its investigation, the SC charged several persons including the Defendant for giving misleading information to the SC for the purpose of public listing and this case is pending.

Further, the Defendant was called to the Commercial Crimes Bukit Aman by ACP Rosli bin Che and ASP Abdul Malek Abd Ghani for investigation whereby he uttered the alleged defamatory words to the investigating team, which resulted in the Plaintiff being charged by the Anti Corruption Agency in the Sessions Court Petaling Jaya and Kuala Lumpur. Defendant was made to understand that he would be called as a witness in the 2 cases.

The action of the Plaintiff would in effect stifle the Defendant from carrying out its legal duties in giving the required information. In other words the Defendant is invoking the defence of qualified privilege.

The Court's Findings

On the face of it, the words which was uttered is certainly defamatory of the Plaintiff. It was uttered to various third parties. However the occasion that it was uttered was in the Commercial Crimes Unit, Bukit Aman before police officers who were investigating an alleged crime. The defendant pleads the defence of qualified privilege. For the defence of qualified privilege, the defendant has to allude to facts that shows that the defendant was under a moral, legal or social duty to communicate the defamatory matter to the recipient. There is also the requirement of reciprocity in that the recipient must be under a duty or have an interest in receiving the publication.

In the case of ***S. Packianathan v Jenni Ibrahim*** [1988] 1 CLJ (Rep) 233 Wan Hamzah SCJ has this to say in his judgment as he delivers the judgement of the Supreme Court at that time:

“...there are occasions upon which on grounds of public policy and convenience ,a person may, without incurring legal liability, make statements about another which are defamatory and in fact untrue: Watt v. Longsdon. These occasions are called occasions of qualified privilege. A communication made bona fide upon any subject matter in which the party communicating has an interest, or in reference to which he has a duty, is privileged, if made to a person having a corresponding interest or duty although it contains a criminary matter which, without this

privilege, would be slanderous and actionable: Harrison v. Bush . The duty may be legal, social or moral, and the person to whom the communication is made must have a corresponding interest or duty to receive it. The reciprocity is essential: Adam v. Ward”.

There are 3 elements necessary to establish the defence of qualified privilege:

- a) The occasion must be fit;
- b) The matter must have reference to the occasion;
- c) It must be published from right and honest motives.

In the present case, the defamatory words were uttered when the Defendant was called by the police to the Commercial Crime Unit in Bukit Aman for questioning for the purpose of investigation in relation to the anonymous letter and the public listing of G.P. Ocean Sdn Bhd. These defamatory words were uttered in a privileged occasion and therefore constituted a defence of qualified privilege.

It is the obligation of the Defendant and it is his duty to the public to give cooperation to the police when he was enquired, especially during police investigation to give whatever answers to the queries that is within his knowledge to meet the ends of justice. In this instance the police officers, ASP Rosli bin Che and ASP Abdul Malek bin Abd Ghani had a corresponding duty to receive the information from the Defendant for purposes of investigation and bringing criminals to book. The police would then decide as to the next course

of action after completing investigations based on statements received from witnesses. Therefore, such statements made to the police by the Defendant could not be the basis of a defamatory action.

Thus the defamatory statements were uttered in a fit occasion when the situation warrants it i.e during enquiry by the police for purposes of investigation into an alleged crime. It has not been shown by the Plaintiff that the Defendant have uttered the words from an indirect motive.

Therefore the action by the Plaintiff is clearly a vexatious and a frivolous move on his part against the Defendant.

Thus, based on the above reasonings, the application by the Defendant to strike out the Plaintiff's Writ and Statement of Claim is allowed with costs.

Datin Zabariah Mohd Yusof

Tarikh 25.6.2009