

**IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR**

**CIVIL DIVISION**

**CIVIL SUIT NO. S-23-126-2008**

**BETWEEN**

**CHIA LOONG THYE**

**.....PLAINTIFF**

**AND**

**1. NEIL KHOR JIN KEONG**

**2. KHOO KAY PENG**

**3. TRAFALGAR PUBLISHING HOUSE SDN BHD**

**4. SETIAKAWAN PRINTERS SDN BHD**

**.....DEFENDANT**

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**GROUND OF JUDGMENT**

Enclosure 21 is the Plaintiff's application to strike out the Defence filed by the Defendant on 8.9.2008 under O 18 r 19 (1) (b) or (c) or (d) RHC 1980.

## **Background Facts**

This is a defamation action against the Defendants. The subject matter of the defamatory action is in respect of a statement made in a book entitled “Non Sectarian Politics in Malaysia: The case of Parti Gerakan Rakyat Malaysia” (the book). The Book was authored by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants published and printed by the 3<sup>rd</sup> and 4<sup>th</sup> Defendants respectively.

The alleged defamatory words is at page 145 of the Book which reads as follows:

“ Chia’s credibility took a severe beating when his brother Chia Loong Thye was nominated for the “safe” seat of Tanong Bungah. Both Chia brothers were regarded as “Boh Chee Gee” (lack of integrity) for having sold-out and compromised the party.”

The elements that are necessary for a cause in defamation to arise are that the words:

- a) are defamatory;
- b) refer to the Plaintiff; and
- c) were published to persons other than the Plaintiff.

Refer to ***Soh Chun Seng v CTOS-EMR Sdn Bhd*** [2003] 4 MLJ 180.

It is trite law that for the purposes of defamation, a defamatory statement is one that lowers the Plaintiff's esteem in the eyes of a reasonable minded member of the public generally. Refer to ***Ahmad bin Said v Zulkifli bin Bakar & Yang Lain*** [1997] 5 MLJ 542 at page 547; ***Drummond Jackson v British Medical Association*** [1970] 1 WLR 688 at page 692.

In our case here the impugned statement said that the Chia brothers lack integrity for having sold-out and compromised the party. The word "sold-out" in its ordinary meaning means "having taken a bribe/bribes". If it is to be taken in the context of a politician, then it carries the meaning of a corrupt (lacking in integrity) politician. The word "compromised" means "to put (oneself or another) in a dishonorable position."

The test used is an objective one in construing the words.

I am of the view that the words certainly describe the Chia brothers in a bad light, in that they are corrupted, lack integrity and tarnish the image of the party concerned. It certainly tends to lower the plaintiff's esteem in the eyes of a reasonable minded member of the public. Thus the impugned words are certainly defamatory.

There is no dispute that the words refer to the Plaintiff and it was published to third persons.

The law presumes that once a publication is shown to be defamatory, the burden is on the Defendant to show it is not defamatory. (refer ***Drummond Jackson v British medical Association*** [1970] 1 WLR 688 at page 694.

The Defence raised by the Defendants is that of fair comment and justification.

It is trite that Order 78 r 3 RHC 1980 requires that where the Defendant alleges that the words complained of are true in substance and in fact or where the opinions expressed are fair comment on a matter of public interest, particulars must be given by the Defendant in the statement of defence as to the facts and matters relied on in support of the allegation being true.

This principle has been considered, referred to and applied in ***Dato' Seri S.Samy Vellu v Penerbitan Sahabat (M) Sdn Bhd & Anor No (3)*** [2005] 5 MLJ 561 at page 588,589:

“..That where the plaintiff has selected certain words from a publication and pleaded that in their natural meaning and ordinary meaning they re defamatory of him, the defendant is entitled to look at the whole of the publication in order to aver that in their context the words bear a meaning different from that alleged by the plaintiff and to plead that in that meaning the words are true. It is germane to mention that the Polly Peck and Lucas-Box principles have been received and

applied vigorously by the Court of Appeal in Singapore in the case of *Goh Chok Tong v Jeyaretnam Joshua Benjamin & Another* action [1988] 3 SLR 337 where Yong Pung How CJ delivering the judgment of the Court of Appeal aptly said at pp 359 to 360 of the report:

*Thus it was said that, unless the plaintiff is pinned to the meaning that he has pleaded, it would be impossible for the defendant to decide how to justify the alleged defamatory words. However, since the decision of the Court of Appeal in England in *Lucas-Box v News Group Newspaper Ltd* (1986) 1 WLR 147 the law governing the practice of pleading the defence of justification has changed. It was there, held inter alia, that the defendant in pleading justification has to plead the meaning he seeks to justify. *Lucas-Box* has been considered, clarified and applied in subsequent cases:.....The position was summed up by May LJ in *Morell* at pp 737-738: In any event I think the position now is that a defendant who pleads justification must do so in such a way as quite clearly, without circumlocution or obfuscation, to inform the plaintiff and the court of precisely what meaning or meanings the defendant may seek to justify. Although this may be done in the particulars of justification, there is then a substantial risk that the precise meaning will be lost in words. I see no reason why the meaning or meanings should not be set out directly, briefly and at the start of the plea.”*

This principle has been most recently considered in the case of ***Cruise and Another v Express Newspapers Plc & Another [1999] 2 W.L.R. 327*** where the court held that a breach of this rule or failure to condescend to particulars would render the defence to be struck out.

The Defendant in our case at paragraph 24 of the Statement of Defence states that the words complained of meant that there were reasonable grounds for suspecting that the Plaintiff had compromised his moral and ethical principles, they are true in substance and in fact having regard to the following:

- a) It was public knowledge that Chia Kwang Chye was the most likely candidate to be chosen to succeed Koh Tsu Koon as Chief Minister of Penang at the start of the election campaign in 2008;
- b) Chia Kwang Chye was completely and expressly dropped by Gerakan leaders as a candidate for the Chief Minister's post;
- c) After being dropped, it was announced that Chia Kwang Chye and the Plaintiff were nominated by the party as candidates for the parliamentary and state assembly seats of Bukit Bendera and Tanjong Bungah respectively;

- d) The Plaintiff had not ever stood for elections as long as some other senior members and thus is implied that due to his relationship with Chia Kwang Chye, there was no other reason why the Plaintiff was allocated the party's safest and most prestigious seat;
- e) Save for the compensatory gesture to Chia Kwang Chye for expressly ruling him out as a candidate for the Chief Minister's post, there was no other reason to allocate one of the party's safest and most prestigious seat to the Plaintiff;
- f) Many members of the public were not impressed with the Chia brother's acceptance of the nominations;
- g) Many members of the public were of the view that it was not honourable to accept the said nominations.

With due respect to the Defendant, these particulars which are set out above are not facts which are shown to be true in substance and in fact. Where are the true facts that shows that the Plaintiff had sold out or compromised the party or that the Plaintiff have been corrupted. These particulars which are set out by the defendants in paragraphs 23 are deductions, inferences and conclusions made by the Defendants. These are evidenced by the statement of the defendants that states in para 24 "*.... the words complained of meant that there were reasonable grounds for suspecting that the Plaintiff had compromised his moral and ethical principles, they are true in*

*substance and in fact.....*” . There is no factual basis relied on by the defendants in making the impugned statements.

As for the defence of fair comment, the said defence is maintainable only where the comment is on primary facts proven to be true. Fair comment fails to be a defence if there is a defamatory sting in any of the statements of fact on which the comment is based. The defendant cannot invent facts and then comment on the said facts. A failure to identify and to particularized the primary facts said to be true is fatal to the Defendants’ defence. Refer to:

- ***Joshua Benjamin Jeyaretnam v Goh Chok Tong*** [1989] 3 MLJ 1 at page 3;
- ***The Institute of Commercial management United Kingdom v The New Straits Times Press (M) Bhd*** [1993] 2 CLJ 365 at page 378

Applying this principle to our case, there is no reference by the Defendant in the defence as to any primary facts showing that the allegations are true. Therefore how could there be any comment on the primary facts which are not particularized at all in the Defence.

The Defendants further avers in paragraph 25 that the Plaintiff’s integrity has been in question since he was nominated for the state constituency of Tanjung Bungah. The Defendants further quoted an article which had been published in the New Straits Times on 6 March 2008 which reads:

“As to the inevitable question on whether he [the Plaintiff] was riding on the coat-tails of his brother Kwang Chye during the campaign...”

and states that the said article is a reflection of public sentiment at the material time there was a compromise of principles on the part of the Plaintiff when he accepted the nomination to be the party’s candidate for the same constituency of Tanjung Bungah. I do not find that this article is the primary facts which is proven as true. The article does not state anything about the integrity issue of the Plaintiff.

None of the facts as alleged in the defence as forming the basis for the defence of justification or fair comment.

The fact that the Plaintiff is a politician does not justify the defendants from making the impugned statements of the Plaintiff and it is irrelevant that the Plaintiff’s brother who was also mentioned in the book had not initiated any legal action against the Defendants.

Therefore based on the above the defence of Justification and fair comment fails and I hereby allowed the application of the Plaintiff to strike out the Defence of the Defendants’ with costs.

Datin Zabariah Mohd Yusof  
Tarikh : 12.6.2009

Bagi Pihak Plaintiff : Dato' D.P Naban & R Sharmila  
Tetuan Lee Hishamuddin

Bagi Pihak Defendant : Cik Daphne Choy  
Tetuan Choy & Associates