

IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR

IN WILAYAH PERSEKUTUAN

CIVIL SUIT NO. : S2-23-66-2007

BETWEEN

BADRULSHAH BIN DAUD

... PLAINTIF

AND

LEONARD NATHAN & 11 YG LAIN

...DEFENDAN

GROUND OF JUDGMENT

This is an application by the Defendants i.e.:

- vide Enclosure 21 – Defendant 1 until Defendant 4 and defendant 11;
- vide Enclosure 23 – Defendant 5, 8, 9 and defendant 12;
- vide Enclosure 25 – defendant 3, Defendant 6 and defendant 7;

to strike out the Plaintiff's Writ and Statement of Claim on grounds that it is frivolous, vexatious and under the inherent jurisdiction of the court. I allowed the application in Enclosure 21 with costs. Parties have agreed that the decision in Enclosure 21 would bind the decisions in Enclosures 23 and 25. The Plaintiff appealed against the decision.

Background Facts

The Plaintiff was a committee member of an association called Puncak Damansara Owners & Residents Association (Association)

The Defendants are the President, deputy President, Vice President 11, Secretary, Assistant Secretary, Treasurer, and the executive committee of the said association.

The 1st and 2nd Defendants are sued on behalf of themselves and in their capacity as members of the committee of the said association. Whereas the 3rd till the 12th defendants are sued in their capacity as members of the committee of the said association.

By a letter dated 23.10.2006, written and signed by the 1st and 2nd defendants (on behalf of all the defendants) and addressed and sent through AR registered post to Plaintiff, the defendants wrote and published serious allegations of the Plaintiff in relation to his conduct therein(the letter).

Below are the alleged defamatory letter which the Plaintiff's claim is premised upon:

" ... The Developer i. e. Puncakdana Development Sdn Bhd and the Property Management Company i. e. Khong & Jaafar Sdn Bhd, have also informed the Association that they view this matter with seriousness and that they do not condone such doing by your goodself.

In fact, they as lawful Proprietors of this complex parcel and as a company contracted to manage the complex parcel, have informed us that they will not hesitate to lodge a police report against you under the Seditious Act (dibawah Akta Hasutan) for bring disharmony and disunity to the peaceful living environment of all those who are residing in Pangsapuri Puncak Damansara.

Please be further advised that PUNDORA will also not hesitate to lodge a police report against you for acting in a manner unbecoming of a member of the Association and whose conduct in the opinion of the Executive Committee is detrimental to the interest and well being of the Association; acting in a manner to bring disharmony and disrepute upon the Association or its Members; subverting or undermining the objectives of the Association and by your words or actions prove to be prejudicial to the unity and better relationship between the Members and the Association.

...Finally but not the least, PUNDORA would like to know what are your actual intentions and personal agenda in pursuing your cause in all these matters, which is considered unproductive and a sheer waste of time, which at the end of the day, does not bring any benefit at all to you; neither to the Association, to its Exco, to its Ordinary Members and to all the owners and Residents of Pangsapuri Puncak Damansara.

We, the Association, would appreciate however, if you could kindly make known your true intentions, whether it is for you own self-motivated interest and propaganda or is it purely for the benefit and welfare of all the owners and residents of Pangsapuri Puncak Damansara, which you claim to be championing for?"

The issues that were raised by the Plaintiff:

- a) The pleadings failed to satisfy firstly, the procedural rules (Order 78 r 2 of the RHC) in respect of defamation suits and in respect of the endorsement and secondly, failed satisfy the requirement of 0 78 r3 RHC.
- b) Plaintiff has no locus to maintain the action herein as at the time of filing of this writ he was no longer a member of the said association;
- c) Plaintiff has no proof to substantiate his claim and his allegations are baseless;
- d) The Writ and Statement of Claim does not disclose a reasonable cause of action.

The Court's Findings

1st Issue: failure to comply with requirement of 0 78 r 2

RHC

0 78 r 2 RHC states that:

“ Before a writ in an action for liable is issued it must be endorsed with a statement giving sufficient particulars of the publications in respect of which the action is brought to enable them to be identified”.

Thus on this alone, the claim by the Plaintiff can be struck off

2nd Issue: Plaintiff has no locus to maintain the action

I disagree with the defendant;s contention that the fact that the Plaintiff was not a member of the association at the time of filing of this Writ does not give hin the locus to bring this action. It does not matter whether the Plaintiff is still a member of the association to qualify to bring this action against the defendants, as the case is for alleged defamatory remarks contained in a letter.

Thus, this is a non issue.

3rd & 4th Issues:

Plaintiff has no proof to substantiate his claim and his allegations are baseless

The Writ and Statement of Claim does not disclose a reasonable cause of action.

For these issues, the court needs to determine in a defamation action:

- a) whether the words are defamatory;
- b) Whether the words refers to the Plaintiff;
- c) Whether there was publication.

Whether the words are defamatory

A plain reading of the excerpts of the letter as reproduced in paragraph 18 of the Statement of Claim does not show what the letter is meant to be. That is not surprising, as the 1st 3 paragraphs of the original letter was left out by the Plaintiff when he reproduced the letter in the Statement of Claim. The full version of the original letter has been reproduced in exhibit "LN-7" of the Defendants' affidavit in Enclosure 21.

Therefore upon reading the whole letter in exhibit LN-7, I do not find from the contents imputations that would put the Plaintiff into ridicule or contempt or render him low in the mind of the right thinking society. This letter was written (after the 1st defendant have received numerous complaints/grievances from Exco Members and residents of the Apartments,) as an advise to the Plaintiff to stop distributing leaflets, petitions in the letter boxes of the residents or under the door of residents' of the Apartments, as this is consider a sheer waste of time.

Since the words are not defamatory of the Plaintiff. I will not go into the merits of the other ingredients. The Plaintiff does have a cause of action against all the Defendants. With that I allowed the application in Enclosure 21 with costs.

t.t. Datin Zabariah Mohd Yusof

Tarikh : 5.6.2009

Bagi pihak Plaintiff : Encik Mohamad Rhiza Ghazi

Tetuan Rhiza & Richard

Bagi Defendan-Defendan : Encik P.Selvaraj

Tetuan Raj & Co.