

DALAM MAHKAMAH TINGGI MALAYA D1 KUALA LUMPUR

BAHAGIAN SIVIL

GUAMAN NO. S3-23-106-2008

ANTARA

YEH ENG KONG

.....PLAINTIF

DAN

**1. THE EDGE
2. JOSE BARROCK**

.....DEFENDAN

GROUND OF JUDGMENT

This is the Defendants' application pursuant to 0 14A and 0 33 RHC for :

- a) For an Order determining the question of whether or not the words complained of at paragraphs 6 and 9 of the Statement of Claim are capable of bearing the meanings attributed to them in paragraphs 7 and 10 of the Statement of Claim dated 17.6.2008 or any other meaning defamatory of the Plaintiff;
- b) If not so capable for a consequential Order to be made that the

Plaintiff's Writ of Summons dated 18.6.2008 and Statement of Claim be dismissed and judgment entered for the Defendants with costs;

Brief Facts

The Plaintiff was a substantial shareholder of Liqua Health Corporation Berhad, a public company listed under Bursa Malaysia ("Liqua Corporation") and was and currently is a director of the Liqua Corporation.

The 1st Defendant was and is the publisher of a daily financial newspaper titled "The Edge Financial Daily" and its website portal counterpart www.theledgedaily.com ("The Edge Website").

The 2nd Defendant was and is a journalist employed by the 1st Defendant.

On or about 25.3.2008, the 1st and/or 2nd Defendant wrote and published and/ or caused to be written and published the following words contained in an article in The Edge Financial Daily captioned "New Shareholders at Liqua Health?" (the 1st Article) which the Plaintiff alleged are defamatory of the Plaintiff. The 1st Article is in para 6 of the Statement of Claim which reads:

"KUALA LUMPUR: Liqua Health Corp Bhd, the most actively traded stock on Bursa yesterday, is expected to see a new set of shareholders sources say.

Yesterday, the company's shares were actively traded, with about 38.6 million shares or 13.4% of the company's stock changing hands. Last Friday, the company's shares gained some six sen closing at 15 sen. Liqa Health added an additional 10 sen yesterday to end trading at 25 sen, on the back of heavy volume as well.

Sources do not discount the possibility of some of the shareholders being linked to former corporate figure Datuk Soh Chee Wen. Soh was at one time one of the biggest names in corporate Malaysia in the 1990s until he was charged in court for allegedly being involved in the financial troubles of Omega Securities, a brokerage that has since closed down.

Soh was charged with defrauding Omega Securities of RM 500 million which subsequently caused the brokerage to close down. After a lengthy trial, the courts did not find him guilty in the downfall of Omega but instead fined him RM 6 million for a lesser charge of providing false information.

Liqua has seen a slew of new appointments and shifting of directorships from non-executive to executive in the past few weeks, fuelling speculation of a new shareholder coming in.

Some of the changes are also puzzling. For instance, Rohaya Hashim and Yeoh Eng Kong were appointed executive directors of the company on March 14 but were re-designated to non-executive roles a mere three days later.

Other new appointments include lawyers Yoganathan Paramasivam and Saaran Nadarajah who are both non executive directors, and Low Donald Han as chairman. Low was previously a director of MP Technology Resources Bhd, another company linked to Soh. Previously Yoganathan had resigned as managing director of Liqua end February.

Notable appointments are that of Khoo Boo Wooi and Andrew Soo Meng Kit who were appointed executive directors late last month.

It is also noteworthy that Peter Chen Hing Woon who is a director of Omega Holdings stepped down late last year from the board of Liqua Health.

Both Rohaya and Yeoh are substantial shareholders of Liqua Health. Rohaya has a 15.6% stake or 41.5 million shares both directly and indirectly, while Yeah has 7.4% equity at 19.6 million shares. It should be noted that Yeoh has been steadily divesting his equity and has hived off some seven million shares over the past few months. He had about 10% equity or 26.6 million shares in early August last year but has since sold some of his equity.

Liqua Health has its mainstay in selling spirulina-based products. Its fortunes have dwindled since its listing in 2003. For the financial year ended December 2007, Liqua Health suffered a net loss of RM 11.1 million from RM 1.4 million in revenue.”

On or about 10.4.2008, the 1st Defendant wrote and published and/or caused to be written and published the following words contained in an article in The Edge Financial Daily captioned “Liqua Appoints Firm to Probe Financials” (the 2nd Article) which the Plaintiff alleged are defamatory of the Plaintiff. The 2nd Article is in para 9 of the Statement of Claim which reads:

“KUALA LUMPUR: Health food marketing firm Liqua Health Corporation Bhd has appointed chartered accounting firm Baker Tilly Monteiro Heong to conduct an investigative audit of certain transactions disclosed in the company’s fourth-quarter results for the period ended Dec 31,2007.

The accounting firm has been roped in to look at a transaction amounting to RM 15 million paid by Liqua’s wholly owned subsidiary Liqua Health Marketing, (M) San Bhd to an exclusive supplier of health care products.

“The investigative audit is still ongoing and upon completion, any material findings will be announce in due course” Liqua told Bursa Malaysia Securities yesterday.

According to the notes to the accounts for the financial results for the financial year ended Dec 31, 2007, Liqua stated that the money was paid to supplier of nine core products.

Liqua had said the products did not arrive as scheduled, leading to the cancellation of the orders

and sought repayment of the amount paid. A written confirmation and commitment to repay was given by the supplier. Notwithstanding this commitment from the supplier and pending finalization of the proposed settlement, Liqua has made a provision for RM8 million in doubtful debts.

The announcement did not state the scope of the investigative audit. However, it is believed that the probe could be to ascertain if Liqua would be required to make additional provisions and who the supplier is.

Liqua which posted over RM 11 million in net losses on the back of RM41 million revenue for the financial year ended Dec 31, 2007, has seen significant changes to the board last month.

It appointed Low Donald Han as chairman in mid-March and also redesignated executive directors Rohaya Hashim and Yeoh Eng Kong to non executive positions.

Liqua's closing share price on Bursa yesterday was 20 sen, a 4.76% drop from Tuesday's close."

Both the 1st Article and/ or the 2nd Article were reproduced on The Edge Website from the date of its production to be sometime on or before 5.5.2008.

The law:

Under 0 14 A RHC/033 RHC the court may determine any question of law or construction of a document where:

- a) Such question is suitable for determination without full trial of the action;
- b) Such determination will finally determine the entire cause or matter or any claim or issue therein.

Upon such determination the court may dismiss the cause or matter or make such order or judgment as it thinks fit.

The Court's Findings

Whether the Articles are defamatory of the Plaintiff

The question of whether words which are complained of are capable of conveying a defamatory meaning is a question of law which the court can determine.

a) The 1st Article

Plaintiff alleges that in their natural and ordinary meaning, the words in the 1st Article meant and were understood to mean as follows:

- (a) That as a shareholder of Liqua Corporation, the Plaintiff is linked to a corporate figure who has previously been charged with fraud;

(b) That the Plaintiff is of a suspicious, shady or untrustworthy character.

The test to be applied is an objective one i.e. the natural and ordinary meaning of the words as understood by a reasonable right thinking public who is not averse to scandal or unduly suspicious. This is fortified by *Gatley on Libel and Slander* 8th Edition at page 89 which further states:

“The test according to the authorities is whether, under the circumstances in which the writing was published, reasonable men to whom the publication was made would be likely to understand it in a libelous sense. The imputation conveyed is not to be determined by the meaning intended by the man who published the words, nor is it necessarily determined by the meaning which those to whom the words were published in fact attached to them.”

In this case no extrinsic evidence is admissible in construing the words.

From the 1st Article it states “ Sources do not discount the possibility of some of the shareholders being linked to former corporate figure Datuk Soh Chee Wen.” But nowhere in the articles does it specifically refer to the Plaintiff. There are other shareholders in Ligua Health Corporation Bhd.

A further point to note, I do not see how the 1st Article, besides not referring to the Plaintiff specifically as having connection with Soh Chee Wen, is also capable of giving the imputation that the Plaintiff is of a suspicious, shady or untrustworthy character. By no stretch of imagination can those words be interpreted to be defamatory of the Plaintiff.

Refer to the case of ***JB Jeyaretnam v Lee Kuan Yew*** [1979] 2 MLJ 282 where the Court states that:

“ In deciding whether words are capable of conveying a defamatory meaning the court will reject those meanings which can only emerge as the product of some strained or forced or utterly unreasonable interpretation..”

Therefore the words do not refer to the Plaintiff and is not defamatory of the Plaintiff.

b) The 2nd Article

Plaintiff alleges that in their natural and ordinary meaning, the words in the 2nd Article meant and were understood to mean as follows:

- (a) That in redesignating the Plaintiff from an executive to nonexecutive director, Liqua Corporation had done so due to the investigative audit to be carried out by chartered accounting firm Baker Tilly Monteiro Heong to investigate certain transactions disclosed in Liqua Corporation's fourth-quarter results for the period ended 31.12.2007;

(b) That the Plaintiff was culpable in the event that brought about to the appointment of chartered accounting firm Baker Tilly Monteiro Heong to investigate into certain transactions disclosed in Liqa Corporation's fourth-quarter results for the period ended 31.12.2007.

The words in the 2nd Article mention does refer to the Plaintiff as follows:

“It appointed Low Donald Han as chairman in mid-March and also redesignated executive directors Rohaya Hashim and Yeoh Eng Kong to non executive positions.”

Similarly, from the reading of the whole of the 2nd Article, by no stretch of the imagination can the words be inferred to mean that because of the investigation by an accounting firm the Plaintiff had been redesignated to a non executive positions. No where in the article does it says or can it be imputed that the Plaintiff was the cause that leads to the appointment of the accounting firm to investigate into certain transactions of Liqa Health Corporation Berhad.

Therefore based on the above reasonings, the questions that was set out in paragraph 1 of Enclosure 7 is in the negative.

Defendant's application is hereby allowed with costs and the Plaintiff's claim is dismissed with costs.

Datin Zabariah Mohd Yusof

Tarikh 26.6.2009

Bagi pihak Plaintiff : Encik Mohd Izral Khairy
Encik Mohd Faifuz
(Tetuan Izral Partnership)

Bagi pihak Defendan : Puan Raja Eileen Soraya
Encik Dorothy Goh
(Tetuan Raja Darryl & Loh.)