

**DALAM MAHKAMAH TINGGI MALAYA KUALA LUMPUR  
(BAHAGIAN SIVIL)**

**GUAMAN NO: S6-23-2-2007**

**ANTARA**

**THE NEW STRAITS TIMES PRESS (M)**

**BERHAD & 4 ORS**

**.....PLAINTIF**

**DAN**

**AHIRUDIN BIN ATTAN**

**..... DEFENDAN**

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**GROUND OF JUDGMENT**

This is the Defendant's appeal against the decision of the SAR's dismissing the application of the Defendant to strike out the Plaintiffs' claim under 0 18 R 19 (1) (c).

The Defendant's application is premised upon the following grounds that the Amended Statement of Claim:

- (a) failed to plead whether the purported defamatory imputations which have been given rise to by the various

publications refers to each of the Plaintiffs or refers to all the Plaintiffs when read cumulatively; and

- (b) failed to indicate whether the offending publications are intended to be read together and that whether the imputations flow from the offending publications when read cumulatively;
- (c) failed to show the exact nature of the Plaintiffs' case against the Defendant.

#### The Contention of the Defendant

- a) the Plaintiffs' Amended Statement of Claim is embarrassing. in the Defendant does not know the exact nature of the Plaintiffs' case against the Defendant;
- b) The Statement of Claim fails to state precisely which publications or comments which had been published by the defendant are defamatory and to which Plaintiff. The Defendant is also left in an uncertainty as to which imputations flow from each of the offending publications and/or comments;
- c) The Plaintiffs in so pleading failed to state which meaning is imputed to which exact Plaintiff;
- d) This left the Defendant with the uncertainty as to the exact claim against him and the impossibility to frame a proper defence against the Plaintiffs' claim.

## **The Court's Findings:**

To determine whether the defendant have a basis to strike out the Plaintiff's Amended Statement of Claim it is necessary to look at the Statement of Claim.

Paragraphs 10 to 13 of the Amended Statement of Claim explains how the alleged defamatory statements came about i.e. via Rocky's Bru weblog which was set up by the Defendant.

The alleged libelous statements/comments occurred after the Defendant had left the employment of the 1<sup>st</sup> Plaintiff's. The Plaintiff had pleaded malice in the Reply in that it was the defendant's dissatisfaction of the 1<sup>st</sup> Plaintiff in taking disciplinary action against the Defendant which resulted in the defendant leaving the 1<sup>st</sup> plaintiff's employment after accepting the voluntary separation scheme.

### **a) Alleged Defamatory Articles and Comments**

From the Amended Statement of Claim:

- paragraph 14 refers to the articles and comments with regards to the 1<sup>st</sup> Plaintiff. The Defamatory statements in the article have been highlighted.
- Similarly, paragraphs 15 refers to the articles and comments with regards to the 2<sup>nd</sup> Plaintiff.
- Paragraphs 16 refers to the articles and comments with regards to the 3<sup>rd</sup> Plaintiff.

- Paragraphs 17 refers to the articles and comments with regards to the 4<sup>th</sup> Plaintiff.
- and paragraph 18 refers to the articles and comments with regards to the 5<sup>th</sup> Plaintiff.

Thus, it is clear which statements or comments refers to which Plaintiff.

b) the articles and comments to be read together

Paragraph 20 of the Amended Statement of Claim states that all the defamatory articles (as defined in paragraph 19) should be read alongside each other...” to show the consistent conduct of the Defendant continuously posting the purported defamatory postings of the Plaintiffs and each of them, in the said weblog. This method of pleading is acceptable and Gatley on Libel and Slander 10<sup>th</sup> Edition at para 26.12 states:

“Where the matter of which the claimant complains consists of related material published by the defendant on different occasions, and where there is apparent, on the face of the matter complained of itself, either an intention on the part of the Defendant that it be read together or direct references internally one to the other so that the reader may reasonably be expected to read it together, it has been held to be an acceptable practice to plead all the material in the one the one paragraph of the particulars of claim and to identify the imputations said to have been conveyed by the material as a whole.’

This principle was adopted from the decision in ***Burrows v Knightley*** [1987] 10 NSWLR 651 where the Defendant argued that a Plaintiff must plead a separate allegation of publication in relation to each of the 4 separate publications together with a statement of separate imputations for each publication, taken in isolation from the other publications complained of. The Defendant maintained that the failure of the plaintiff to plead as argued by the Defendant, should render the claim to be struck out. The Supreme Court of Australia disagreed with the contention of the Defendant in that case and stated at page 655 and 656:

“ ...Where there are two separate publications by the defendant, the plaintiff is entitled to (or may be obliged to) have them considered together in order to determine the sense in which either was understood, provided that they are sufficiently connected and identified with each other.”

Therefore the Plaintiffs' mode of pleading the articles to be read together as stated in paragraph 20 is supported by *Burrows v Knightley*. However the Defendant have not shown his basis for objecting to this mode of pleadings.

c) The natural and ordinary meaning of the articles and comments

In the Amended Statement of Claim paragraphs 23 to 27 refers to specific articles with regards to specific Plaintiff as follows:

For the 1<sup>st</sup> Plaintiff:

the articles set out in paragraph 14 of the Amended Statement of Claim is given its ordinary and natural meanings in paragraph 23 of the Amended Statement of Claim.

For the 2<sup>nd</sup> Plaintiff:

the articles set out in paragraph 15 of the Amended Statement of Claim is given its ordinary and natural meanings in paragraph 24 of the Amended Statement of Claim.

For the 3<sup>rd</sup> Plaintiff:

the articles set out in paragraph 16 is given its ordinary and natural meanings in paragraph 25 of the Amended Statement of Claim.

For the 4<sup>th</sup> Plaintiff:

the articles set out in paragraph 17 of the Amended Statement of Claim is given its ordinary and natural meanings in paragraph 26 of the Amended Statement of Claim.

For the 5<sup>th</sup> Plaintiff:

the articles set out in paragraph 18 of the Amended Statement of Claim is given its ordinary and natural meanings in paragraph 27 of the Amended Statement of Claim.

From the above, the Defendant's contention that the claim does not state whether the defamatory imputations refers to each of the Plaintiff or to all of the plaintiff if read cumulatively is misconceived.

The Defendant brought up the issue of whether “butcher” refers to the 3<sup>rd</sup> or the 5<sup>th</sup> Plaintiffs. The article, if read in its entirety seems to suggest that the Plaintiffs (or any of them) have “butchered” Brenda’s article. This fact has to be proven by the Plaintiff at the trial, and cannot be decided at this stage.

What is not disputed is that the articles and comments in its natural and ordinary meaning is defamatory and if they are read fairly and objectively, the meanings of the articles are clearly expressed in the pleadings. The claims of the Plaintiff is not an obvious case of being unsustainable.

Therefore the appeal by the Defendant is dismissed with costs.

Datin Zabariah Mohd Yusof

Tarikh 29.6.2009