

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

GUAMAN SIVIL NO: S5-23-90-2008

ANTARA

LEE THYE @ LEE SHAN TOOPLAINTIF

DAN

LEE FONG LINGDEFENDANT

GROUND OF JUDGMENT

This is the defendant's application to strike out the Plaintiff's Statement of Claim pursuant to 0 18 r 19 (1) (a) or (b) or (c) or (d) RHC.

Plaintiff's Claim:

The claim by the Plaintiff against the Defendant is for defamation based on a letter dated 22.11.2007 addressed to M/S Atma Singh Veriah & Co wherein it is alleged that the defendant had falsely and with malice has written and published defamatory words about the Plaintiff and his practice as an advocate and solicitor.

The grounds of the defendant's application premised on the following:

- a) The said letter and the statement contained therein was written and issued by M/s Siew under occasion of absolute or qualified privilege;
- b) Mis Siew did not act or has been actuated by malice against the Plaintiff;
- c) The Defendant has never published the said Letter to a third party.

Brief Facts:

Plaintiff is the sole proprietor of a legal firm S.T. Lee and Partners. Plaintiff and one Lee Shin Kuang @ Lee Sen Bin (LSK) i.e. father to the Defendant are registered owners of a shophouse in Kuala Lumpur whereby LSK owns 2/3 share of the property and the Plaintiff owns 1/3 share of the same.

Through a Tenancy Agreement dated 1.5.2001 LSK had let the property to Harian Shoes Sdn Bhd.

Defendant was the solicitor who represented LSK in the preparation of the Tenancy Agreement and practice under the name of Tetuan F.L. Lee & Co.

Following a dispute between the Plaintiff and LSK at or around October 2007 in relation to the property Plaintiff had commenced a civil suit dated 13.11.2007 against LSK claiming for 1/3 of the rental proceeds which had been paid by the tenant to LSK in the amount of

RM 304, 000.00. At the same time solicitors to the Plaintiff issued a letter dated 13.11.2007 to the defendant questioning the defendant's duty in preparing the Tenancy Agreement.

To answer to the query by the Plaintiff's solicitor's letter defendant had appointed Tetuan Siew to act as his solicitor. Following that Tetuan Siew had replied to the said letter. This reply is the subject matter of the present suit.

THE COURT'S FINDING:

Whether the alleged words are defamatory of the Plaintiff

The alleged defamatory words or statements of the Plaintiff contains in a letter which is a reply to the Plaintiff's letter dated 13.11.2007. For purposes of clarity, I reproduced the relevant portion of the said letter from the Plaintiff dated 13.11.2007 which resulted in the defendant replying:

"MADAM LEE FONG LING
c/o FL Lee & Co,
Advocates and Solicitors,
.....

Dear Madam,

RE: Tenancy Agreement dated 1st May 2001
Made between Lee Shin Kuang @ Lee Sen Bin with
Harian Shoes Sdn Bhd for
Premises No. 501, Jalan Tuanku Abdul Rahman,
Kuala Lumpur

We act for Lee Thye @ Lee Shan Too.....

1. We are instructed to write to you as follows:

(i) that you were acting as solicitor for Lee Shin Kuang @ Lee Sen Bin in a tenancy Agreement dated 1st May 2001;

(ii).....

(iii).....

2. Being the solicitor representing Lee Shin Kuang @ Lee Sen Bin as thye Landlord, have you obtained any specific authority from our client and the other co-owner Lee Shuan Chan? Can you show the authority (if any);

3. Have you ever informed our client and the other co-owner that an agreement was signed by Lee Shin Kuang @ Lee Sen Bin with the tenant;

4. Did you give any stamped copy of the tenancy agreement to our client, if any? If not, why not?;

5. We are informed that Lee Shin Kuang @ Lee Sen Bin is your father. Being a solicitor you have misrepresented the facts to the tenant and colluded with your father to defraud our client;

6. Our client has been informed that Lee Shin Kuang @ Lee Sen Bin has collected from the tenant a sum of RM 912, 000.00 from the tenant from 1st may 2001 to 31st August 2007 as rental.

In view of the above, we are instructed by our client to instruct you to show to our client the authority OR to give a satisfactory explanation within seven (7) days

from the date hereof, failing which our client will lodge a complaint to the bar Council on your misconduct.”

Herein below is the relevant portion of the said reply by the defendant which consists of the alleged defamatory words/statement:

“Further, your client’s freshly concocted allegations of misrepresentation fraud and/or misconduct against our client is a knee jerk reaction towards a civil claim and/ or demand and/or complaint by the said Lee Shin Kuang @ Lee Sen Bin (our client’s father) against your client for breach of trust and/or fraud and/or misconduct the facts of which are all well within your client’s knowledge.”

From the words or statements in the reply by the Defendant, I do not see how those words or statement can be defamatory. The reply by the Defendant is just an opinion of why the “concocted allegations of misrepresentation” was made by the Plaintiff i.e. a consequent of the civil suit filed by his client against the Plaintiff’s client. Both parties have not addressed this point in their submissions.

Both the letters by the Plaintiff dated 13.11.2007 and the reply by the Defendant dated 22.11.2007 have to be read together to understand the true intent and purpose of the reply by the Defendant.

Clearly, the words is not defamatory of the Plaintiff within the meaning as stated by the Plaintiff in paragraph 4 of the Statement of Claim.

The words/statement was not published to third parties.

Perusing through the statement of claim, nowhere in the statement of claim does the Plaintiff avers that there is publication to third parties.

Paragraph 5 only states:

“Oleh kerana penyiaran perkataan-perkataan tersebut
Plaintiff telah tercedera dalam kelakuan,
kebolehpercayaan dan reputasinya.”

Publication is an essential ingredient for the tort of defamation action. The Plaintiff’s claim for defamation certainly fails as to this specific ingredient.

In any event, it was a communication between the solicitors in the ordinary course of business in relation to the subject matter i.e. the proceeds of a tenancy agreement. (Refer to ***Mahadevi a/p Nadchatiram v Thiruchelvasegaram a/l Manickavasegar*** [2001] 2 AMR 2111)

The words/statement was written on occasion of absolute or qualified privilege

I am of the view that the letter allegedly defamatory of the Plaintiff is written on an occasion of absolute or qualified privilege. The defendant wrote the letter while acting on behalf of his client and in the ordinary course of his duty as solicitor for his client. (Refer to the case of ***Zainudin bin Muhammad v NEC System Integration Construction Ltd & Ors*** [2000] 6 MLJ 763).

There is no malice or mala fide being referred in the statement of claim. On this, I refer to the Federal Court case of ***John Lee & Anor v Henry Wong Jan Fook*** [1981] 1 MLJ 108 where the Federal Court in its judgment states thus:

“.....As for malice, it has already been observed that the statement of claim makes not the slightest reference to any claim of malice on the part of the appellants. If, as a matter of pleading, malice could nevertheless be inferred into the statement of claim, then quite clearly, it was not supportable by any evidence, intrinsic or otherwise.”

Therefore, from the above, it is clear that the Plaintiff does not have a reasonable cause of action against the Defendant. The claim is frivolous and vexatious and is an abuse of courts process.

Hence, 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 10.7.2009

Bagi Pihak Plaintiff : Encik D. R. John
Tetuan Atma Singh Veriah.

Bagi Pihak Defendant : Puan Marianne
Tetuan Shui Tai.

