

DALAM MAHKAMAH TINGGI MALAYA KUALA LUMPUR

(BAHAGIAN SIVIL)

GUAMAN NO: S6-23-3-2007

ANTARA

THE NEW STRAITS TIMES PRESS (M)

BERHAD & 3 ORS

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..... DEFENDAN

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).

Brief Facts:

The Defendant avers that the Plaintiff's action against him is for the publication of the 15 articles containing defamatory imputations. However the Defendant argues that Plaintiff had failed to indicate whether all the articles should be read conjunctively or otherwise, in order to prove the alleged defamatory imputations. Thus the Defendant contends that the claim may prejudice, embarrass or delay the trial of the proceedings on the following grounds:

- a) The amendment to the Statement of Claim fails to show the nature of the Plaintiff's case against the Defendant;
- b) the purported defamatory imputations fails to plead whether they refer to each of the Plaintiff or to all of the Plaintiffs;
- c) It is not pleaded whether the above imputations are intended to be read together;

The amendment to the Statement of Claim fails to show the nature of the plaintiff's case against the Defendant

For this, I refer to paragraph 11 of the Amended Statement Of Claim which states that the Plaintiffs's claim is based on the purported libellious statement posted between 16.2.2006 until 4.12.2006 in the Defendant's blog (i.e the Jeff Ooi weblog).

It is also stated in paragraph 12, 13, 14 & 15 as to which posts which the Plaintiff's claims to be defamatory of the Plaintiff.

Paragraph 12 refers to all articles and comments concerning the 1st Plaintiff, which are complained of.

Paragraphs 13 concerns the 2nd Plaintiff, paragraph 14 concerns the 3rd Plaintiff.

Paragraph 15 concerns the 4th Plaintiff.

Paragraphs 12, 13, 14, and 15 makes it clear to the Defendant to know what are the publications complained of, or what part of the publications which was claimed as defamatory.

Paragraph 20 of the amended Statement of Claim, in so far as the 1st Plaintiff is concerned, the natural and ordinary meaning of the articles as set out in paragraph 12 and alternatively the innuendo meanings are set out. Similarly in so far as the 2nd Plaintiff is concerned, the natural and ordinary meaning of the articles as set out in paragraph 21 and alternatively the innuendo meanings are set out, in so far as the 3rd Plaintiff is concerned, the natural and ordinary meaning of the articles as set out in paragraph 23 for the 4th Plaintiff and alternatively the innuendo meanings are set out.

Paragraph 20 until 23 sets out the specific articles in respect of each Plaintiff. Paragraph 20 refers to the articles set out in paragraph 12. Similarly paragraph 21 refers to the articles set out in paragraph 13, paragraph 22 refers to the articles set out in paragraph 14.

Whether these postings referred to in paragraph 12, 13, 14 and 15 if read cumulatively refers to each of the Plaintiff or all of the Plaintiff. It is not pleaded whether the above imputations are intended to be read together

The question is that whether all these imputations should be read cumulatively.

On this, paragraph 17 of the Amended Statement of Claim is clear, as it is pleaded by the Plaintiffs that all the defamatory articles “should be read with 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 10th 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.”

I am also of the view that paragraphs 12, 13, 14, and 15 without being read together is able to stand on its own, bearing the meaning as pleaded by paragraphs 20-25 of the amended Statement of Claim. It does not need to be read cumulatively in order to constitute a defamatory meaning against the Plaintiff. Paragraph 23 refers to the articles set out in paragraph 15.

Therefore it is clear that for each Plaintiff:

- The articles complained of are specifically pleaded;
- The natural and ordinary meanings of the words complained of are set out in detail.

To summarized, the purported imputation being read separately or cumulatively can show clearly what is being pleaded by the Plaintiffs against the Defendant. Therefore, the objections of the Defendant is without basis and the claims are clearly pleaded. Thus, this case is not one which is obviously unsustainable and ought to be struck out. The appeal by the Defendant is dismissed with costs.

Datin Zabariah Mohd Yusof

Tarikh : 10.6.2009

Bagi Pihak Plaintiff : Encik Riswant Singh
Tetuan Zul Rafique & Partners

Bagi Pihak Defendant : Khor See Yimm
Tetuan Thomas Philip