

**DALAM MAHKAMAH TINGGI D1 KUALA LUMPUR
DALAM WILAYAH PERSEKUTUAN, MALAYSIA
(BAHAGIAN SIVIL)**

GUAMAN SIVIL NO: S6-23-95-2008

ANTARA

STEMLIFE BERHAD

.....PLAINTIF

DAN

1. BRISTOL-MYERS SQUIBB (M) SDN BHD

2. ARACHNID SDN BHD

.....DEFENDAN

GROUND OF JUDGMENT

This is the hearing of the application by the 2nd Defendant under 018 r 19 (a) and/or (b) and/or (d) to strike out the Plaintiff's Statement of Claim. I allowed the application and the Plaintiff appealed against the decision. Below are my grounds.

Background Facts

The 2nd Defendant, Arachnid Sdn Bhd ('Arachnid') is a company that provides web development and related services.

In 2003, Arachnid was hired by the 1st Defendant to set up the Website found at www.meadjohnsonasia.com. Arachnid thereafter provided maintenance services for the Website.

The Website hosts a forum known as the Asian Mom's Network ('the forum').

In 2007, the words complained of by the Plaintiff were posted by Forum users on the Forum.

The Plaintiff alleges that Arachnid is responsible for the alleged defamation.

Arachnid seeks to strike out the Plaintiffs suit under Order 18 r 19 (1) (a) and/or (b) and/or (d) on the basis that it discloses no reasonable cause of action or is frivolous, vexatious and an abuse of process of this Court.

The Courts Findings

There is no reasonable cause of action : Reasons-

- a) Arachnid's role was simply to set up and maintain the Website for the 1st Defendant. Arachnid is the 1st Defendant's web agency. The Website belongs to the 1st Defendant;

- b) Arachnid is not the author of the words complained of. In fact, the Plaintiff identifies the authors as the forum users whose pseudonyms are 'mother-to-be', 'goodmum', 'stef-law', 'kakalily', 'joo6699', 'fion27' and 'stemlie'. In the case of 'stemlie', the words complained of do not even appear on the website. It is only a hyperlink to another website.
- c) Arachnid is also not the editor to those words complained of.
- d) Therefore Arachnid cannot be the publisher of the words complained of.

Arachnid who merely provides the service of setting up and maintaining a Website cannot be held responsible as a "publisher" under the law of defamation.

Refer to the case of ***Bunt v Tiley and Others*** [2006] 3 All ER 336 which held that Internet service providers which performed no more than a passive role in facilitating posting on the internet cannot be deemed a publisher at common law.

In ***Byrne v Deane*** (1937) 2 All ER 204 where the court held that the Defendant were liable for defamatory material posted on the club bulletin board. In this case the facts shows that the Defendants were made aware of the articles complained of and yet failed to remove the same.

The case of ***The New Straits Times Press (M) Bhd & ors v Ahirudin bin Attan*** [2008] 1 MLJ 814 where the court held that the respondent, a blogger, could not be held held liable as publisher of the “Walk With “Us” weblog by reason of the hyperlink on his own weblog which linked the “Walk With Us” weblog with his weblog.

I find that the Suit is Frivolous, Vexatious, Abuse of Process. Reasons are as follows-

- a) Arachnid was hired by the 1st Defendant to set up the “Website;
- b) Arachnid provided maintenance services including providing updates and upgrades upon instructions from the 1st Defendant. This is not sufficient to attach liability on the part of Arachnid.
- c) There is no participation by Arachnid in the promotion of the Forum.
- d) The contents of the Website would not be within the knowledge of Arachnid, unless informed by the 1st Defendant.
- e) Arachnid does not control content posted on the Forum and that it does not moderate or monitor the Forum. Any postings on the Website will only be removed upon instructions by the 1st Defendant.
- f) The Plaintiff had not shown as to how Arachnid contributed or “knowingly” involved in the publication of the words complained of.

In relation to the words complained of, Arachnid only became aware of the postings when it was informed by the 1st Defendant of the same.

The following supports the fact that Arachnid had no control on the contents of the Website, and had never played an active role in respect of the publications and neither would Arachnid have knowledge of the contents of the words posted on the website-

- on 18.9.2007 Plaintiff's solicitors, Messrs Raja, Darryl & Loh sent to the 1st Defendant a letter demanding inter alia that certain topics and a hyperlink be removed from the Forum on the basis that they were defamatory of the Plaintiff. Arachnid did not receive any correspondence from the Plaintiff or its solicitors at the time. On 21.9.2007, the 1st Defendant had proceeded to remove all four topics on the Forum containing the words complained of. A printout showing the topics, postings and the time of removal of the same is set out at Exhibit CWK-2 of the 2nd Defendant's 1st Affidavit. Arachnid was not informed nor consulted by the 1st Defendant on the removal of the postings and there was no reason for the 1st Defendant to do so anyway;
- On 30.11.2007, Arachnid, deactivated the user accounts of two of the Forum users, i.e. "kakalily" and "stemlie" which were the source of the Plaintiff's complaint. This deactivation was done upon the request of the 1st Defendant. An email dated 30.11.2007 sent by the 1st Defendant's personnel to Arachnid's

personnel and the response on the same date are in Exhibit CWK-3. Therefore there is no reason for Arachnid to be aware or had knowledge of the words posted on the Website.

The Plaintiff states in its submission that there is every reason to believe that Arachnid played a wider role in relation to the Website, but this is a mere bare allegation with positive averments of how that can be so.

Further the Plaintiff submits that since libel over the internet is a developing area of the law, the role and extent of Arachnid's involvement in the publication cannot be ascertained unless a trial is conducted. I cannot agree with this proposition as this would amount to "fishing" for evidence. It goes to show that the Plaintiff does not know of the liability of Arachnid in this case. The Plaintiff seems to state that, at trial hopefully this issue can be made clear. That is not a legitimate use of court proceedings and clearly an abuse of courts process. It is not appropriate in law to prosecute an action without any basis with the hope that something may turn out. I find support for this proposition in the English Court of Appeal in of ***Re Soul D Harrison & Sons Plc*** [1995] 1 BCLC 14.

Until the Plaintiff can show to this court that there is a reasonable cause of action against Arachnid, the claim by the Plaintiff against Arachnid is clearly frivolous and vexatious.

Therefore, on the above reasons, I allowed the application of the 2nd Defendant (Arachnid) to strike out the Plaintiff's Writ and Statement of

Claim. The claim by the Plaintiff in Enclosure 1 as against the 2nd Defendant is dismissed with costs.

t.t. Datin Zabariah Mohd Yusof

Tarikh : 2.6.2009

Bagi pihak Plaintiff : Encik Rishwant Singh & Farah Shuhadah
Tetuan Zul Rafique & Partners

Bagi Defendan Pertama : Chai Siew Wan
Tetuan Shearn Delamore & Co

Bagi Pihak defendan Kedua : Encik T. S. Lim
Tetuan Chooi & Co.