

DISTRICT COURT CONSIDERS DEFAMATION CLAIM IN RESPECT OF A LETTER WRITTEN BY THE DEFENDANTS' LAWYERS

Introduction

1. In Management Corporations (“MCSTs”), disputes arise between members of the Management Councils (“MCs”) over a whole range of issues, which sometimes result in the commencement of defamation proceedings by members against other members.
2. In *Lim Song Leng v Koh Lay Choo and others* [2022] SGDC 70, the Plaintiff, an ex-Chairman of the MC of the development known as Harvest@Woodlands, commenced defamation proceedings against 7 Defendants, who were also members of the MC at the material time.
3. A relatively novel feature of the suit was that the allegedly defamatory words were contained in a letter written by the then lawyers of the 7 Defendants, to the Plaintiff. The District Judge held in this case that the Defendants were liable for what had been written by their lawyers.
4. However, the District Judge dismissed the Plaintiff’s claim on other grounds and ordered that the Plaintiff pay the 7 Defendants costs fixed at \$38,000.00 plus disbursements.
5. The Plaintiff’s applications for leave from the District Court and then the High Court, to appeal against the decision, were dismissed on 18 May 2022 and 3 August 2022 respectively.
6. The successful Defendants were represented by Mr Daniel Chen and Mr Kwok Jia Yuan of Lee & Lee.

The Facts

7. The Plaintiff and all 7 Defendants were members of the MC at the material time. The Plaintiff was also the Chairman of the MC, and had been Chairman since April 2014.
8. At a meeting of the MC on 4 October 2018, a presentation was given to members of the MC of the features of a “*Starlite Vision CCTV System*”.
9. According to the minutes of the meeting on 4 October 2018, “*(the Plaintiff) declared his interest under Section of the BMSMA that the company invited to present the proposal, M/s Harvest Nutek Pte Ltd, is under his directorship, and that he will not be involve (sic) in any decision making.*”

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10. The minutes of a further meeting of the MC on 8 November 2018 recorded that “*Having gone through other systems and their costings, M/s Harvest Nutek Pte Ltd, was selected to carry out the installation of the Starlite Vision system.*”
11. According to the Plaintiff, after the presentation on 4 October 2018, there was a general consensus among members of the MC, for Harvest Nutek Pte Ltd to proceed with the installation of the new CCTV system.
12. However, according to the Defendants, they had not heard the Plaintiff declare his interest in Harvest Nutek Pte Ltd, and had not taken part in any decision to appoint Harvest Nutek Pte Ltd to install a new CCTV system.
13. By a letter dated 1 April 2022 (“the Letter”), Subra TT Law LLC, then acting for the 7 Defendants, stated *inter alia* that the Plaintiff did not declare his interest in Harvest Nutek Pte Ltd, had made the decision to appoint Harvest Nutek Pte Ltd to install CCTVs without the consent of the rest of the MC, had acted in breach of the Building Maintenance and Strata Management Act, and demanded that the CCTV works be removed and Harvest Nutek Pte Ltd not be paid.
14. Subra TT Law LLC sent the Letter to the Plaintiff addressed to him as Chairman of the MCST, at the Management Office by registered post, certificate of posting, and fax, and by email to his personal email account.
15. The Plaintiff alleged that the faxed copy of the Letter was left on one of the MCST’s employee’s desks, in the Management Office, which was visible to other employees of the MCST. The Plaintiff asserted that the Letter had been read by 3 employees of the MCST.

Defendants’ Liability for their then Lawyers’ Letter

16. The District Judge held that since the relationship between solicitor and client is that of agent and principal, a solicitor acting on the client’s instructions binds the client and accordingly if there is a commission of a tort in the carrying out of the client’s instructions, the client would bear the liability as principal.
17. In this case, since the Defendants had admitted to causing the allegedly defamatory words to be published, had instructed Subra TT Law LLC on the matter, and had authorised Subra TT Law LLC to send the Letter, the District Judge found that the Defendants were precluded from disavowing the acts of Subra TT Law LLC and therefore liable for the acts of Subra TT Law LLC.

Whether there was Publication to 3rd Parties

18. Parties were in agreement that where the mode of communication is an open one, in this case the fax copy of the Letter to the Management Office, there was an inference or presumption that the allegedly defamatory words had been published to 3rd parties.
19. However, the Defendants called the 3 employees of the MCST, who had allegedly read the Letter, as witnesses. Upon consideration of the testimonies provided by the Defendants’ witnesses, the District Judge held that the Defendants had rebutted the presumption that the allegedly defamatory words in the Letter had been published to third parties.

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20. The Defendants' first witness (DW1) was found not to have read the Letter. His evidence was accepted without any cross-examination.
21. The District Judge found that that the Defendants' second witness (DW2) immediately handed the Letter over to her supervising officer once she noted that it was not a Section 47 BMSMA request and did not come within her purview and had not read the allegedly defamatory words in the Letter.
22. The District Judge found that the Defendants' third witness (DW3) had only read the top portion of the Letter up to the subject heading and had not read its full contents including the allegedly defamatory words.
23. Lastly, the District Judge found it to be a most unlikely scenario that any of the other employees, namely a Bangladeshi handyman and 3 security guards, could have read the Letter for the duration it remained uncollected at the fax machine.

Justification

24. The District Judge held that the words complained of by the Plaintiff, in their natural and ordinary meaning, would lower the reputation of the Plaintiff and cause him to be shunned or avoided.
25. However, the District Judge held that Defendants had nonetheless succeeded in establishing the defence of justification. In determining that the Defendants had succeeded in establishing the defence of justification, the District Judge found that:
 - (a) the Plaintiff had not declared his interest that he was a director of Harvest Nutek Pte Ltd, contrary to what was recorded in the minutes of the fifth MC meeting on 4 October 2018. Thus, he did not inform the attendees of the meeting that he would recuse himself from the discussion on the installation of the CCTV system;
 - (b) the decision to appoint Harvest Nutek Pte Ltd was made by the Plaintiff without the consent of the rest of the MC members; and
 - (c) the statement appearing in the minutes of the 8 November 2018 MC meeting that other systems and costings were considered was untrue.

Qualified Privilege

26. The District Judge further held that the Defendants had succeeded in establishing the defence of qualified privilege. The District Judge observed that even if DW2 and DW3 had read the words of the Letter, in their respective capacities as the MCST's Accounts and Administrative Executive and then Facilities Manager, the duty-interest test was satisfied.
27. The District Judge observed that since DW2 was in charge of preparing the MCST's accounts for each MC meeting and the circulation of the minutes of meetings, it would be within her interest to know if contracts and payments to be made by the MCST had been properly approved by the MC. Meanwhile, DW3 was the manager tasked with administrative matters of the MCST on-site. The works carried out for the installation of the CCTV system fell within

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his scope of duties and it would be within his interest to be informed of whether the works had been properly approved.

28. Having considered the Plaintiff's pleadings, the District Judge held that the evidence adduced provided no basis to find malice on the part of any of the Defendants. The Plaintiff was therefore unable to cross the high threshold of showing that the Defendants had caused the letter to be published with the dominant motive of injuring his reputation.

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