

IN THE STATE COURTS OF THE REPUBLIC OF SINGAPORE

[2023] SGDC 11

DC Suit No 1217 of 2018 and District Court Appeal No 44 of 2022

Between

- (1) Fang Yiqiang
- (2) Kwek Siew Chuan Jason

... Plaintiffs

And

Goh Siong Heng Benson

... Defendant

GROUNDS OF DECISION

[TORT] — [Defamation]

TABLE OF CONTENTS

INTRODUCTION.....	1
PARTIES	2
THE PARTIES' CASES	4
ISSUES TO BE DETERMINED	7
DECISION OF THE COURT	7
CONCLUSION	15

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Fang Yiqiang and anor

v

Goh Siong Heng Benson

[2023] SGDC 11

District Court — District Court Suit No 1217 of 2018

District Court Appeal No 44 of 2022

District Judge Wong Peck

6-7 January 2022, 16 March 2022, 27 May 2022, 17 August 2022,

20 October 2022, 8 December 2022

27 January 2023

District Judge Wong Peck:

Introduction

1 All parties live or used to live in a Condominium known as the Canopy. They had all served as Management Council members of the Condominium. The plaintiffs were members of the 3rd Management Council and the defendant was the Chairperson of the 2nd Management Council.

2 In the trial before the District Court, there were three plaintiffs who were unhappy with a letter published on 11 August 2017 (“the Letter”) by the defendant in which the defendant sought to requisition an Extra-ordinary General Meeting (“EOGM”). It was proposed in the Letter to table a motion of no confidence against the 3rd Management Council and a motion to select a new Management Council. The plaintiffs’ case was that the Letter was defamatory and started the present suit against the defendant based on the tort of defamation.

3 After the trial, my decision was to dismiss the plaintiffs’ claim. Being dissatisfied, two of the plaintiffs, namely the first and second plaintiffs in the trial before the District Court, appealed against my decision. These are the full grounds of my decision.

Facts

The parties

4 The defendant, who was the Chairperson of the Management Council of the 2nd Council for the period of April 2016 to April 2017, was very concerned with various aspects of the management of the Condominium which was under the charge of the 3rd Management Council which were appointed for the period of April 2017 to December 2017. He then decided to take action to have his concerns addressed by publishing the Letter for which the key disputed words as underlined below (“Written Words”) were as follows:

“ The intent of this note is to:

- 1 Reduce the maintenance fees by \$3.00 (three dollars) per share.

2 Resume shuttle bus service for our residents without increase of maintenance fees.

3 Resolve (sic) current council members due to no confidence, incidents of event against the estate house-rules; pets pool party at badminton court during the water carnival on 20th May 2017 and pets party at badminton court on 4th August 2017 (“Written Words A”).

4 Mismanaged (sic) of our estate (“Written Words B): e.g. Landscape and estate lightings were down and not replace, fountains cleanliness and pumps not functioning problem, guest toilets cleanliness problem, swimming pool cleanliness problem and landscaping deteriorated at rear side of the estate.

5 Re-elect of council members.

6 Review through the whole set of estate house-rules by law.

Please try to attend the EOGM to vote or vote through proxy if you cannot attend.

Notice of the EOGM will be delivered to you in due course.”

5 The plaintiffs were unhappy with the defendant’s Letter as they took the position that the Letter was defamatory. The plaintiffs held important positions in multinational entities as well in local bodies. According to the plaintiffs, the first plaintiff is a Senior Telecommunication at a Fortune Global 500 Chinese multinational entity and a commissioned officer in active reserve in the Singapore Army. The second plaintiff is the regional Chief Financial Officer of a multinational entity listed on the London Stock Exchange in the area of ground engineering and an adjunct lecturer at the Singapore University of Social

Sciences. The third plaintiff is a regional Supply Chain Specialist of a multinational entity in the aviation industry. Hence, they started the present action against the defendant as they claimed that they had suffered reputational damage.

The parties' cases

The plaintiffs' version

6 In [8] to [10] of the Statement of Claim (Amendment no 4), the plaintiffs pleaded that the Written Words were defamatory. In [13] of the same pleading, the plaintiffs pleaded that the natural and ordinary meaning of the Written Words A meant or were understood to mean that the plaintiffs individually or collectively:

- a. abused their positions as council members;
- b. lack integrity;
- c. lost the confidence of the residents of the Canopy due to the way they had handled the two events;
- d. were incompetent as they could not organize events which complied with the estate house rules; and/or
- e. breached their statutory duties.

7 As for Written Words B, in [14] of the Statement of Claim (Amendment No 4), the plaintiffs pleaded that the natural and ordinary meaning meant or were understood to mean that the plaintiffs, individually or collectively:

- a. were incompetent both as council members and in their professional lives as managers or executives; and/or
- b. were negligent when carrying out their duties as council members.

8 The plaintiff took the position that as the Letter was addressed to the Secretary of the Management Corporation Strata Title of the Canopy (“MCST”), the defendant published the Written Words to the property management agent (“MA”). Further, as the Letter was a requisition for a EOGM, notice was sent to all voting members of the Condominium. These notices for the EOGM repeated the Written Words and they were posted on notice boards in lift lobbies and on the official website of the Canopy during the period of 21 November 2017 to 23 December 2017. The official website was password protected and accessible to residents of the Condominium.

9 It was pleaded that on 21 November 2017, this notice was re-published by one of the defendant’s witnesses, one Alwin Quek, in a closed Facebook group which had 445 members at the material time. This group was meant for residents of the Canopy.

10 According to the plaintiffs, while the defendant was canvassing for proxies from those who would not be attending the EOGM, he re-published the Written Words by either showing them the notice or repeating them orally. At the EOGM held on 23 December 2017, the defendant read out Written Words A and stated orally that the Written Words B referred to “ actual management consists of MA and MC” and “it is the whole team”.

The defendant’s version

11 The defendant did not dispute that he had written the Letter. He also did not dispute that the Letter was sent to the residents of the Canopy. According to the defendant, around 14 August 2017, he showed the Letter to several subsidiary proprietors of the Canopy while he was obtaining signatories from the subsidiary proprietors.

12 The defendant denied that the Written Words in their natural and ordinary meaning were defamatory. According to the defendant, the Written Words bore or were understood to bear the following meaning:

- a. That the then council members (which included the plaintiffs) of the Canopy, no longer command the confidence of the subsidiary proprietors because the council members, among other things, organised, permitted and/or endorsed events that breached the rules and regulations of “The Canopy Executive Condominium Resident’s Handbook”.
- b. That the Management Council and/or the Council Members, at that material time, had managed the Canopy poorly for the following reasons (among other things):
 - i. At all material times, the landscape lighting and the estate lighting were not working and not replaced.
 - ii. At all material times, the pumps in the fountains at the Canopy were not functioning properly and as such the fountains appeared unclean and/or poorly maintained.
 - iii. At all material times, the guest toilets in the Canopy appeared unclean and/or poorly maintained.

- iv. At all material times, the swimming pool appeared poorly maintained and/or unclean.
- v. At all material times, the landscape at the rear side of the Canopy appeared poorly maintained.

13 The defendant pleaded that the defences of justification and qualified privilege applied to the present suit.

Issues to be determined

14 The issues before the court were as follows:

Issue 1- Was the Letter defamatory as claimed by the plaintiffs?

Issue 2- If the Letter was defamatory, did the pleaded defences of justification and qualified privilege apply?

Decision of the court

Issue 1- Was the Letter defamatory as claimed by the plaintiffs?

15 The law of defamation is trite. In *Golden Season Pte Ltd v Kairos Singapore Holdings Pte Ltd* [2015] SGHC 38 at [35] to [36], to establish the tort of defamation, the plaintiffs must show that the statements bear a defamatory meaning, there has been publication to a third party and reference has been made to the plaintiffs. In this suit, it was undisputed that there was publication to a third party.

16 A statement is considered defamatory if it:

- (a) lowers the plaintiffs in the estimation of right-thinking members of society generally;

- (b) causes the plaintiffs to be shunned or avoided; or
- (c) exposes the plaintiffs to hatred, contempt or ridicule.

17 At [37] of *Golden Season* case, the following guiding principles were outlined as:

- (a) The natural and ordinary meaning of a word is that which is conveyed to an ordinary reasonable person;
- (b) As the test is objective, the meaning which the defendant intended to convey is irrelevant;
- (c) The ordinary reasonable reader is not avid for scandal but can read between the lines and draw inferences;
- (d) Where there are a number of possible interpretations, some of which may be non-defamatory, such a reader will not seize on only the defamatory one;
- (e) The ordinary reasonable reader is treated as having read the publication as a whole in determining its meaning, thus “the bane and the antidote must be taken together”; and
- (f) The ordinary reasonable reader will take note of the circumstances and manner of publication.

18 I agreed with the defendant’s position as to the pleaded meaning of the Written Words. In my view, the Written Words in their natural and ordinary meaning, when viewed with rest of the Letter as a whole, were understood to mean that the Management Council no longer commanded the confidence of the subsidiary proprietors because the Management Council members had organised, in particular, two events that breached the rules and regulations of

the house rules as defined in “The Canopy Executive Condominium Resident’s Handbook” and that the Management Council and its members at the material time had managed the Condominium poorly. As a result, the defendant proposed an EOGM to re-elect the Management Council members.

19 I found that in this case, the written words in the allegedly defamatory statement were not defamatory as the legal test for establishing defamation had not been satisfied. Firstly, the plaintiffs had clearly not been specifically named in the statement as reference was made to the council as a group. During the EOGM, the defendant had clarified that he referred to “the whole team”. The first plaintiff also agreed during cross-examination in court that the written words referred to the whole council. I found that when an ordinary reasonable reader did read the written words, it did not lower the standing of the plaintiffs in the estimation of right thinking members of society as the defendant was merely raising his concerns about the way the estate had been run and the necessary action was for the council to be dissolved and re-elected. There was no reference made in the Letter as to incompetence or negligence or had breached any statutory duties or had abused their positions as council members.

20 In addition, I agreed with [111] to [116] of the defendant’s Closing Submissions in that the “sting” of an otherwise defamatory statement could be neutralised if the context in which it was published called for circumspection. In *Terrence Fernandez v Lim Shao Ying Genevieve* [2020] SGHC 278, the Court found that where the nature of an allegedly defamatory document was a complaint and where it was going to be part of a disciplinary process, the sting of any insult was neutralised by the context of the publication because a complaint necessarily entailed levying allegations which in turn would

necessarily attract a certain degree of fair-minded scepticism from the original reasonable reader.

21 In the present suit, the Written Words were a series of complaints to be put before a EOGM for the subsidiary proprietors of the Canopy to consider re-election of the Management Council members. This was supported by the plaintiff's witness, Mr Brian Lim, who testified in court that Resolution 4 pertaining to the alleged mismanagement of the Canopy "look more like a complaint." Hence, Resolutions 3 and 4 were ruled "out of motion". As rightly put forth by the defendant, reasonably-informed subsidiary proprietors would reserve judgment until EOGM when the complaints would be discussed and voted on. Hence, I found that the Written Words and the same words when uttered orally could not have been defamatory as the sting had been neutralised by circumspection as these complaints were to be discussed at the EOGM.

Issue 2- If the Letter was defamatory, did the pleaded defences of justification and qualified privilege apply?

22 Having found that the written words were not defamatory, there was no necessity for me to go further on the applicable defences. For completeness, I shall do so on the first pleaded defence of justification. Even taking the plaintiffs' case at its highest in that the written words were defamatory, I found that the defence of justification applied here as the defendant had proven it to be true that the subsidiary proprietors had lost confidence in the 3rd council and that the condominium's various facilities were mismanaged.

23 To establish this defence, the defendant would need to prove the substance or gist of the offending words was true as laid down at [134] of *Review Publishing Co Ltd v Lee Hsien Loong* [2010] 1 SLR 52.

24 I agreed with the defendant that the subsidiary proprietors had lost confidence in the council in that majority of the subsidiary proprietors had voted to dissolve the 3rd council rather than allowing it to continue in office at the EOGM held on 23 December 2017 at 10am¹. The minutes of the EOGM stated under the header “Resolve [ie dissolve] current council members [ie the 3rd MC] due to no confidence”, that the house proposed a resolution to “Resolve the current council team”². Notably, this vote of no confidence passed based on majority of the votes. Hence, there was justification for the written words relating to dissolution of the 3rd council.

25 I found that for the 2 events of the water carnival held on 20th May 2017 and pets party on 4 August 2017 which took place at the badminton court were not in compliance with the rules and regulations of “ The Canopy executive Condominium Resident’s Handbook.” It was clear that the rules and regulations, in particular, [17] of section 5.3 of the Residents’ Handbook provided for no pets to be allowed at the badminton court. Even if such a rule could be changed, it was only if due notice was given to do so. The first plaintiff conceded that no such notice was given.

¹ 5 BA pg 170

² Defendant’s closing submissions at [101] pg 43-44

26 I agreed with the defendant that he did not approve having pets at the badminton court for the Halloween party on 5 November 2016. His approval was given only for pets walking around the estate and not at the badminton court. I also agreed with the defendant that he did not give approval for pets being present for the water carnival of 20 May 2017 as no pets was mentioned in the Whatsapp chat³ that evidenced approval for this event. In fact, the first plaintiff agreed during cross-examination in court that no approval was given for pets being present at this event.

27 At trial, I found that the defendant had proven that it was substantially true that the landscape and estate lighting, pumps in the fountains, guest toilets, swimming pool and landscape at rear of the condominium were poorly maintained. Hence, there was justification for the written words pertaining to poor maintenance of the estate. Although it might be the MA's direct responsibility to ensure the estate was well maintained, it was the Management Council that had oversight of the MA. It was for this reason that the MA referred to decisions and issues to council members for consideration and decision. I found that there was evidence of poor maintenance of these facilities. I shall elaborate on my findings relating to the poor maintenance of the facilities in the Condominium.

Landscape and estate lighting

28 The second plaintiff conceded during cross-examination that it was possible for 15-20 estate lamps not to be working for 2 or more months. It was also the evidence of plaintiff's witness Mr Brian Lim that it was very common

³ 1 BA pg 109-112

for lights and pumps in the estate not to be fixed for 4 weeks and that it was fair for the subsidiary proprietors to feel discontent when this happened.

29 The defendant also exhibited in his AEIC⁴ some photographs showing lights in the development that were not working. The defendant had testified that some of these areas pertained to pathways which when not lit would pose as a safety hazard. I accepted the defendant's evidence.

Pumps in fountains

30 In the second plaintiff's AEIC, he stated that the pumps were faulty, and water were "stagnant" and "milky". The second plaintiff stated in [77] and [78] of his s AEIC⁵ that for the period of 11 July 2017 to 2 September 2017, the fountains were "not totally clear". In my view, this was an acknowledgement that the pumps in the fountains were not working properly.

Guest toilets

31 During cross-examination, the defendant conceded that there was no evidence in the form of photographs taken by him evidencing dirty toilets prior to the renovation that was completed after December 2017 before Chinese New Year. His photos in his AEIC⁶ were instead taken after the renovation. However, I found that at [83] of the second plaintiff's AEIC⁷, he stated that there was bad air circulation due to "design flaw". As result, mould

⁴ BA Vol 5 at pg 226-228

⁵ 2 BA pg 21

⁶ BA Vol 5 pg 215

⁷ 2 BA pg 23

and fungus could grow quite quickly. In my mind, this was a concession that the condition of the toilets was less than desirable.

Swimming pool

32 The second plaintiff conceded in [89] of his AEIC⁸ that it was possible for algae to grow in the swimming pool and at [92], he also conceded that 2 underwater lamps would slightly be out of position in that they popped out. The defendant also exhibited in his AEIC⁹ photographs showing algae in the swimming pool. This proved that the swimming pool was not properly maintained.

Landscape at rear of condominium

33 The first plaintiff agreed during cross-examination in court that landscaping at those areas was bare at times. The second plaintiff also agreed that the plants at the rear of the estate were not growing. The defendant also exhibited in his AEIC¹⁰ photographs showing the plants not growing properly at the rear of the estate. Hence, I was of the view that the landscape at the rear of the Condominium was poorly maintained.

34 Having found that the first pleaded defence of justification applied to the present suit, there was no necessity for me to determine if the second defence of qualified privilege applied in that the defamatory statements were

⁸ 2 BA pg 24

⁹ BA Vol 5 pg 230

¹⁰ BA Vol 5 pg 225

made on occasion of qualified privilege and if the defence of qualified privilege had been defeated by malice.

Conclusion

35 For the above reasons, I dismissed the plaintiffs' claim. After hearing parties on their submissions relating to costs and disbursements, I fixed the costs and disbursements accordingly to be paid by the plaintiffs to the defendant.



Wong Peck
District Judge

George Hwang (George Hwang LLC) for the plaintiffs;
Gerard Quek and Daniel Ling (PDLegal LLC) for the defendant.