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Ex-Treasurer of Singapore Chess Federation Wins Defamation Lawsuit and is Awarded S\$120,000 in Damages

Introduction

Mr Jasmin Nisban, formerly the Honorary Treasurer and elected Council member of the Singapore Chess Federation, recently won a defamation lawsuit against 21 defendants and was awarded S\$120,000 in damages. In a 427-page judgment in the case of *Jasmin Nisban v Chan Boon Siang and 20 Ors* [2023] SGDC 158, District Judge Tan May Tee ruled on several noteworthy points of law, including whether a failure to dissociate from the defamatory statements would amount to a retrospective assumption of responsibility for the publication of defamatory statements, as well as the effect of prior settlements on the quantum of damages. This Update provides a summary of the decision and highlights the key points of law.

Mr Nisban was represented by Lau Kok Keng and Edina Lim of Rajah & Tann Singapore's Intellectual Property, Sports & Gaming Practice.

Brief Background

In 2015, the incumbent SCF President, Mr Ignatius Leong ("**Leong**"), was unexpectedly challenged for his position and defeated by a team led by Mr Leonard Lau ("**Lau**"). During these elections, Mr Nisban - the plaintiff - was elected to the SCF Council as Honorary Treasurer.

Leong had been the SCF's first President in 1980, and had served in the SCF in other capacities over the years. He boasted an impressive chess-related resume which included serving as General Secretary of the world governing body for chess, Fédération Internationale des Échecs ("**FIDE**"). In contrast, his successor, Leonard Lau, was a relative novice within the chess community.

The members who were elected to the Council belonged to two opposing camps. One camp consisted of Lau and several other Council members, including the plaintiff ("**Camp 1**"), while the other camp comprised Leong and his supporters ("**Camp 2**"). There were tensions amongst the elected Council members, and the members of Camp 2 engaged in a series of acts to attempt to oust Camp 1 members from the SCF Council. These acts included – the resignation of a chess trainer, Ms Anjela Khegay ("**Khegay**") over inappropriate remarks made by one Camp 1 member, Tony Tan; the mass resignation of Camp 2 members from the Council on or about 23 October 2015; and the imposition of harsh and disproportionate sanctions on the SCF Council by the Asean Chess Confederation ("**ACC**"), which was an organisation founded by Leong and of which Leong served as President.



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When none of these methods worked, several members of Camp 2, namely Leong, and two of the defendants Gan Yeow Beng, and Philip Chan, came up with the idea of requisitioning an Extraordinary General Meeting ("**EOGM**") to vote out the elected SCF Council members. The reasons for requisitioning the EOGM were set out in a Requisition Letter ("**the Letter**") that was signed by 51 requisitioners. Part of the Letter dealt with the resignation of a female trainer who alleged that offensive comments had been made by a Council member against her. As part of the narrative of the incident, the plaintiff was explicitly named in the Letter as one of two Council members "implicated" in an incident "involving sexual misconduct". This was patently false. The plaintiff had only been present in the room when the comments were made by another Council member to the female trainer, and no accusations were made against him by the alleged victim.

In January 2016, the defendants delivered the Letter to Lau, the Executive Director of the SCF, and an administrative staff member of the SCF. The Letter was subsequently disseminated to the rest of the Council and a redacted version was sent to all SCF members.

Soon after the Letter was sent to the SCF Council, the plaintiff sent letters of demand to the requisitioners. Each demand letter informed each of them that the allegations of sexual misconduct against the plaintiff were false and defamatory, and gave each of them the opportunity to dissociate themselves from the defamatory statements. While a few of the requisitioners agreed to dissociate themselves from the defamatory statement, none of the 21 defendants agreed to do so. Instead, they challenged the plaintiff to sue them.

There was an attempt during the early stages of the proceedings by the defendants to strike out the plaintiff's claim on the grounds that there was "no real and substantial" tort, (otherwise known as the *Jameel* principle). The defendants argued that the publication was, at most, limited to Lau, the Executive Director of the SCF, and an administrative staff member of the SCF, all of whom had received the Requisition Letter from the defendants directly. As such, the publication did not cause significant damage to the plaintiff because the three recipients would have either known about the allegations or had read the Requisition Letter in their ordinary course of duties as an SCF employee. The defendants succeeded at first instance before the Deputy Registrar, but the decision was reversed by a District Judge and upheld by the High Court on further appeal, thus allowing the matter to proceed to trial.

The Judgment

In a 427-page judgment, the learned Judge detailed various events leading up to the EOGM and the publication of the defamatory statements. She then proceeded to analyse the relevant legal principles and apply them to the case at hand. We highlight several noteworthy points below.

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The natural and ordinary meaning of the statements

The plaintiff argued that the word "implicated" contained connotations of legal or moral wrongdoing while the defendants argued that the word meant the plaintiff had merely been involved in investigations as a witness to the sexual misconduct incident. The defendants also submitted that the class of readers ought to be limited to SCF Council and the 51 requisitioners.

The Court rejected the arguments raised by the defendants and ruled that the class of readers should not be limited to the parties listed by the defendants, but rather who the class of readers were **intended to be**. Here, the intended target audience of the Letter would have been the SCF members whose support was being canvassed for an EOGM. The Court also stated that even if the class of readers were limited to the 51 requisitioners, those who did not know the plaintiff and did not know of the sexual misconduct incident beyond what was described in the Letter would have no basis to make any distinction between the individual who had actually made the offensive remarks on the one hand and the plaintiff on the other as to their actual culpability for the misconduct alleged.

Hence, the Court held that an ordinary reasonable SCF member would have understood the statements to mean that the plaintiff had been accused of having committed sexual misconduct, and that the sexual misconduct was serious enough to cause the chess trainer to resign and make a police report.

Whether the natural and ordinary meaning of the statements are defamatory

The Court held that the statements were to be understood as there being reasonable grounds to suspect the plaintiff of sexual misconduct, which qualified as defamatory as it would lead to embarrassment, loss of reputation, relationships, and even negatively impact his career prospects.

Publication of the statements

The defendants attempted to argue that publication had not been made to a third party as the plaintiff and the SCF Exco ought to have been regarded as the same entity. The Court rejected this argument, stating that the SCF Council is not a legal entity but a group of natural persons. Therefore, publication to the SCF Council naturally meant publication to persons within the Council who were third parties. The Court also held that the defendants' signatures on the Letter were to be taken as authorisation of publication regardless of whether they had read the Letter itself. The Court also accepted that in principle, there could be publication between signatories inter se because re-publication to subsequent persons who were approached to sign the letter was a foreseeable consequence of their actions.

Meaning and effect of the defendants' refusal to dissociate

The Court rejected the defendants' argument that the plaintiff's letter of demand had required them to dissociate themselves from the entirety of the Letter rather than just the defamatory statements. The demand letter had been clearly phrased so that its recipients could dissociate themselves only from the defamatory statements without renouncing the entire contents of the Letter.

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Notably, the Court also stated that the defendants' failure to dissociate themselves from the defamatory statements despite having received the letter of demand amounted to a retrospective assumption of responsibility for the initial publication of said statements.

Defences

Defence of justification

The defendants failed to succeed in this defence as neither the female trainer's police report nor her resignation letter made any allegations against the plaintiff. Hence, there were no reasonable grounds for suspecting the plaintiff of any wrongdoing.

Defence of fair comment

The Court also rejected the defendants' defence of fair comment as the defamatory statements were clearly written to be taken as facts rather than comments.

Defence of qualified privilege

The Court accepted that the defendants' participation in the publication of the Requisition Letter fell under qualified privilege. However, this defence was defeated because the plaintiff was able to prove that the defendants had acted with malice.

Malice

The Court found that the publication of the defamatory statements had been motivated by a malicious intent to overthrow the newly elected Council which had won the 2015 SCF elections and had effected change of leadership of the SCF against all expectations. Such a change caused Leong to lose his longstanding position as SCF President. Leong had engineered the attempt to overthrow the newly elected Council with support from several other members of the Exco by, *inter alia*, having them sign the Letter and support a requisition of an EOGM for members to vote out Lau and the newly elected Council.

In determining if malice had been shown on the part of each defendant, the Court dedicated just over 200 pages of the judgment to examining the intention of each defendant in signing the Letter, ultimately finding that the defendants had each acted with malice because they had each either known the statements to be false or had been reckless as to the truth or falsity of the statements, or that they were motivated by dominant improper purposes (i.e. to support Leong) in signing the Letter. Hence, the defendants' defence of qualified privilege was defeated.

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Damages

The plaintiff was awarded S\$120,000 in damages, of which S\$40,000 was awarded as aggravated damages. The Court noted that the defendants' conduct during the trial had increased the hurt caused to the plaintiff as many of them had dug in their heels and insisted that the statements were not defamatory, and that they had done no wrong in endorsing the same, even when they had not even read the Letter. The Court further noted that many of the defendants came to trial prepared to defend a contrived interpretation of "implicated" as conveying only a benign meaning. Such conduct factored into her decision on the extent of damages. Moreover, the Court held that the settlements obtained by the plaintiff from the initial defendants did not affect the quantum of damages that the plaintiff was entitled to. This was primarily because the settlements reached were only in respect of payment of costs rather than damages.

The Jameel principle

The Court also considered the defendants' renewed attempt at trial to use the *Jameel* principle to strike out the plaintiff's case. The *Jameel* principle deals with a situation where a plaintiff's claim may be struck out if no real and substantial tort had been committed. The defendants had, back in 2017, applied to strike out the plaintiff's case based on the *Jameel* principle. While they initially succeeded before a Deputy Registrar, this decision was overturned by the District Court. The District Court held that the plaintiff's case should not be struck out for being an abuse of process. The defendants appealed to the High Court and the High Court upheld the District Court's decision. Notwithstanding the fact that the defendants had already failed to strike out the plaintiff's case before, the defendants sought to raise this argument again at trial.

Ultimately, the Court held that the defendants could not seek to strike out the plaintiff's claim due to the doctrine of issue estoppel, where issues that had been decided earlier during the same legal proceedings cannot be raised again in a subsequent trial. As regards the element of "identity of parties", the Court held that this was satisfied even though the 36th defendant had not been party to the earlier application to strike out the plaintiff's claim. This was because the parties had been "effectively identical" in that the previous hearings and decisions on the striking out application before the District Court and the High Court had also dealt with the same factual matrix and the same arguments had been made by the 36th defendant with regard to the limited extent of publication.

Concluding Remarks

The judgment was a landmark judgment for the State Courts given the sheer number of defendants for which malice had to be analysed and the length of the judgment, which clarified several legal issues that have not previously been explicitly dealt with in Singaporean courts. Firstly, the signing of a letter can be taken to mean that one authorises the publication of potentially defamatory statements even where the signatory has not read and is not aware of such statements at the time of signing. Secondly, if a person is notified in a clear manner of his potential endorsement of defamatory statements and given

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an opportunity to dissociate himself from the statement, his refusal to do so will be taken as retrospectively assuming responsibility for the publication of the statement. Thirdly, where a plaintiff brings a claim against multiple defendants and some defendants do not proceed to trial after settling the matter, the settlement amounts will not reduce the final sum of damages that may be awarded, if the settlements are in respect of reimbursement of costs only.

As the saying goes, "*Give a dog a bad name and hang him*". This best describes what the defendants in the suit tried to do to the plaintiff. After seven long years of legal proceedings, the judgment has provided much deserved vindication for the plaintiff's reputation and compensation for the various forms of hurt he has suffered since the defamatory statements were published.

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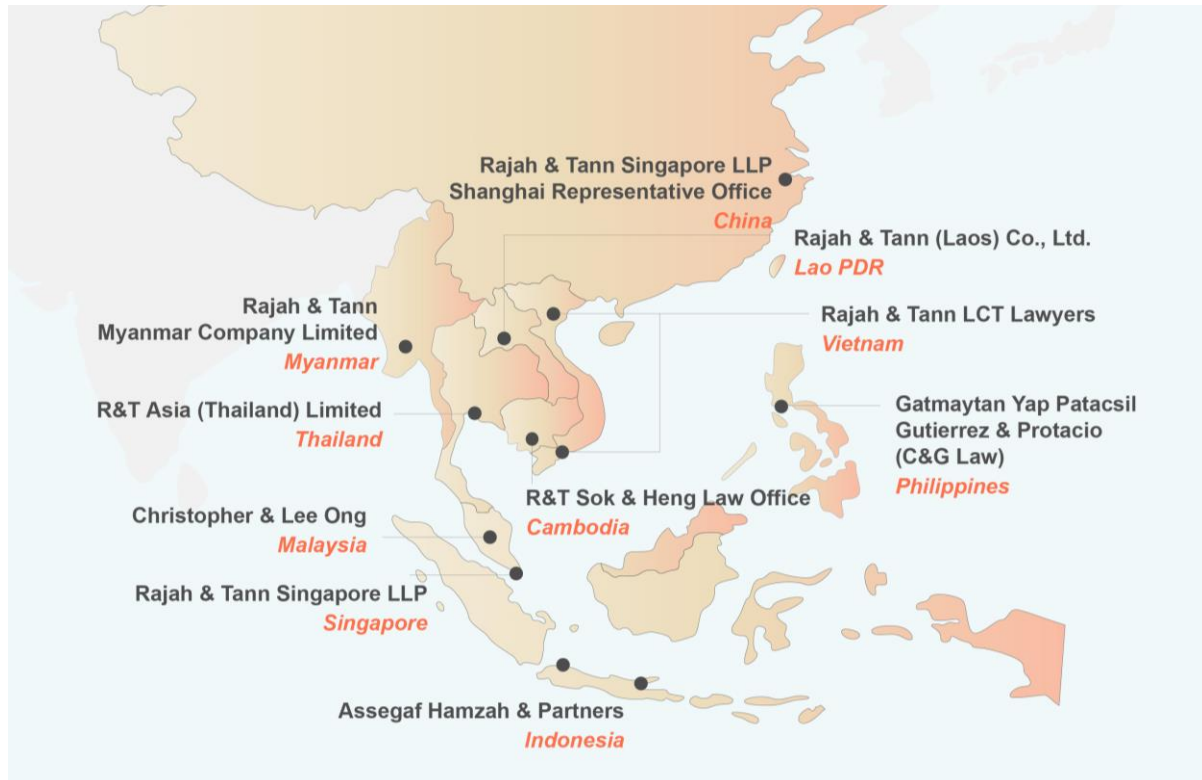
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