AXA Insurance Singapore Pte Ltd *v* Chandran s/o Natesan
[2013] SGHC 158

Case Number : Suit No 576 of 2013 (Summons No 3820 of 2013)

Decision Date : 21 August 2013

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : K Muralidharan Pillai (Rajah & Tann LLP) for plaintiff; Defendant unrepresented and absent.

Parties : AXA Insurance Singapore Pte Ltd — Chandran s/o Natesan

Tort – Nuisance – Private nuisance

21 August 2013 Judgment reserved.

Choo Han Teck J:

1 The plaintiff is a company incorporated in Singapore and carries on the business of general insurance. The defendant held a motor vehicle insurance policy ("the Policy") in respect of his motorcycle with the licence plate number FB7639B ("the Vehicle"). The Policy was issued by the plaintiff. He purchased the policy from the plaintiff around December 2012 to cover the Vehicle from 23 November 2012 to 22 November 2013. The defendant was involved in a road accident along Dunearn Road on 8 June 2013 in which his motorcycle was hit from behind. He made a claim on his policy on 12 June 2013.

2 The plaintiff's statement of claim averred that after the defendant filed his claim under the policy, he began to "persistently send emails and make phone calls to the plaintiff's employees and external lawyers". The plaintiff claimed that "on a number of these occasions the defendant used vulgar and threatening language". It claimed that the defendant "embarked on a course of conduct by his email and phone calls, which was sufficiently repetitive in nature, such as to cause, and which he ought reasonably to know would cause worry, emotional distress or annoyance to the plaintiff's employees and advisors".

3 The plaintiff alleged that between 13 to 25 June 2013 (nine working days), the defendant sent 19 emails to the plaintiff's employees and made at least seven phone calls to them; in a number of those calls vulgar and abusive language was used. The emails and calls were made not to a single person but to several different persons in the plaintiff's employ, including: Ong Hui Fang, a customer service executive; Valencia Lee, a manager in the Motor Claims Department; Charlie Neo, an Associate Director; Dominic Ho, an assistant manager; Doina Palici-Chehab, the Chief Executive Officer; Elaine Lee, a secretary; members of the plaintiff's Claims Service Team; and various others.

4 On 21 June 2013, Willy Tay, solicitors for the plaintiff at the time, wrote to the defendant telling him to stop the abusive language in his email to the plaintiff and that all correspondence henceforth should be sent to Willy Tay's firm Ari, Goh & Partners. I should pause to point out that the subject matter that led to Willy Tay's letter of 21 June 2013 was the claim by the defendant for payment of a "brake pad" of his Vehicle that was damaged in the accident. Willy Tay's letter did not deter the defendant who wrote another email on 24 June 2013 using abusive language. That prompted another warning from Willy Tay on 25 June 2013 which attracted an abusive email from the

defendant abusing him and threatening that he "will ensure [Willy Tay's] bloody face is unidentified" (sic). On 27 June 2013, Willy Tay wrote to the defendant informing him that the plaintiff was giving the defendant seven days' notice under the Policy to terminate the Policy. The plaintiff filed this writ on the next day, claiming the relief of a permanent injunction to restrain the defendant from "harassing, alarming, distressing the employees, directors, partners, servants and agents of the plaintiff and the plaintiff's professional advisers". In the statement of claim filed on 24 July 2013 the plaintiff pleaded that the defendant's action amounted to the tort of nuisance in that he had thus "wrongfully interfered with the plaintiff's use and quiet enjoyment of the plaintiff's leased premises".

5 On 1 July 2013, Mr Muralidharan Pillai ("Mr Murali"), counsel for the plaintiff applied and obtained a n *ex parte* injunction on an urgent basis on the ground that the defendant was "diagnosed as psychotic" and had threatened not only the plaintiff but its lawyers as well. Mr Murali returned on 1 August 2013 to enter final judgment against the defendant. The defendant was unrepresented and absent. Counsel had no instructions to mention for the defendant but informed the court that the defendant had accepted terms set out in counsel's letter of 12 July 2013 and consented to have judgment entered against him. The relevant paragraphs of Mr Murali's letter of 12 July 2013 were as follows:

> 4. Our client takes a very serious view of your actions against their employees. As responsible employer, our client owes a duty to ensure that their employees operate in a safe working environment. Your actions against our client's employees, especially our client's female employees, have caused them much alarm and distress. Full details of what you have done against them were provided in the court documents (particularly, the affidavit of Mr James Patrick Shanahan dated 28 June 2013) which were served on you on 2 July 2013. It is because of your actions that our client sought and obtained a Court Order to prevent you from further harassing their employees.
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> …
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> 6. After due consideration of your personal circumstances, our client proposes as follows:
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> (1) You consent to our client entering judgment against you. This will mean existing injunction preventing you from harassing our client will be made permanent. This means that you will be permanently restrained, whether by yourself or by instructing or encouraging or permitting any other, from harassing, alarming, distressing the employees, directors, partners, servants, officers and agents of the Plaintiff and the Plaintiff's professional advisers (including but not limited to Rajah & Tann LLP and Ari, Goh & Partners) by making or sending abusive, intimidating or threatening communications to them whether verbally, in writing or by conduct in any form.

The defendant replied by email on the same day, 12 July 2013, to Mr Murali. His email is important and set out in full as follows:

> Received with thanks of your letter dtd 12 July 2013. As indicated, I hereby am willing to conform n oblige to the terms n conditions stated therein paragraph-6. However, I also take a serious view n rebut your comments in phara-4. Pls tell your clients that I do give due n utmost respect to womens as I am also married to a wife, who is a Nrsing Manager, in the women hospital, n also have a grown up daughter too. I do know how to treat ladies n manage my manners with them. Pls tell Mr Patrick that it was his subordinate Ms Valencia who started this unpleasant n ugly episode, otherwise your client may not have to incur so much of legal costs. I believe at least reaching to about 8k, paying both lawyers legal costs n disbursement. My lawyer Ms Ying, indeed

told me that AXA is a very reasonable insurer unlike other insurers over here. She cited some of the matters about my case on how AXA contemplate n finally give in to all my requests.

Therefore, pls don tell me that your client suffered huge financial loss just becoz they have to take up a court action to protect their staffs. If both u n willy had advised your client properly without the need to engage your services then possibly they may NOT have to lose a substantial loss in the handling of my matter.

If only Charlie has assigned the case to Dominic than to Valencia then this matter would NOT have cropped up. I can understand Valencia is a woman n does not have any knowledge about motorcycle, but then it should be Charlies' responsibility to assign my claim matter to Dominic, instead of Valencia, as he is expected to have some knowledge about motorcycles.

Hence, pls tell Patrick NOT to 'tai chi' or throw the ball at me, becoz as a policy holder, I expect the claim handling staff to be very well versed with damaged vehicle insurance claim matters. If only Valencia did not delay my bike repair works for no apparent reason then there is NO need for me to lash at her n of course in a rude n vulgarity manner. Although, I appreciate Patrick's care n loving towards his staff, I do pity him n the CEO to waste so much money on my case matter. It is becoz they are expatriates n not local citizens, its no big surprise that they show care n concern for their staff. More especially as they are French natives, its no wonder they do not give due regard to money sense than their staffs well being. In Singapore, can u find accompany that willing to throw 8k to 9k or even 10k in the drain just becoz their staffs were hurt n unable to work harmoniously. As, I have worked in France, in Grenoble for six yrs, I do know how respectful n kindest people they are. Over there, when a French lady or man pass by another unknown individual, they do greet each other although they don know the individual. However, in Italy, London, Switzerland, the people are unlike the French n lacks courtesy than the French people.

So, u see, if only Valencia was eloquent n sharp in handling my claim. I certainly would not have lashed at her n at the Willy's secretarial too. Both these ladies should learn how to treat men with respect. I learn from Dominic, Valencia is a manager n senior than him. Therefore, she is expected to know the knowledge of motorcycles better than Dominic as she is a Manager. When the service advisor of Boon Siew called me n told me that AXA is simply delaying the instruction to be given to him to start repair works to the bike immediately. I was appalled n dismayed over Valencia to simply hold her horses, just becoz she don't know my driving experience. She should have a copy of my driving license, or else she could have checked with Ananda-broker, or else she could have just checked with Traffic Police instead of she waited under the tree for the fruit to drop, just expecting me to reach her then only she would proceed to further on my bike repair works.

She ought to know that, when I am riding a 400cc bike of class 2A, then it is necessary for the rider to start from Class 2B, n only upon completing 1 yr of riding experience, then only I can learn n pass Class 2A license, n all these takes 2 yrs or more to complete.his is also Traffic Police n LTA rules n regulations. From this simple information alone, she can ascertain my driving record. Why must she sit under the tree n expect the fruit to drop, when she can climb over it n plug the fruit. How can this be possible, she is a very irresponsible, discriminative, biased n partial n also prejudicial towards me. How can she be possibly working as a Manager. She knew very well that I cannot rent a car or a motorcycle (as there is no rental of bike companies) n furthermore, I can't even take a taxi, as it is not covered under my policy. When, I asked her why she could not call Traffic Police, to find out my experience on the road, if that is what she wants in approving the repair works to my bike, she instead twisted n told me she wants to see the proof copy. My

> contact details n email address were all furnished in the accident report. She could have just called me or email me but instead of, she told the service advisor of Boon Siew on what she wants n ask him to revert to me, when it is her job to get it from me.
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> U see Murali, I am very nice to people n more especially to ladies, but if they don discharge their duties responsibly n fairly n or accordingly, I do not give any damn in lashing up at them. I really sympathies with AXA on their extravagant costs to help protect their staffs, but to tell u the truth, it is totally not worth spending. As, I couldn't go to the Post office to mail it, as it is NOT a guarantee delivery unless I register it, I do not wish to spend money unnecessarily, hence I just email u. My apologies if it were to irk u. (sic)

Even though this letter was written at the end of the dispute between the parties, it gives a lucid indication of the nature of the conduct of the defendant that the plaintiff claimed in its Statement of Claim and the affidavit of its Chief Operating Officer, Mr James Patrick Shanahan. Mr Murali submitted the defendant's letter above in which the defendant wrote to say that he was willing to conform to the terms set out in paragraph 6 of Mr Murali's letter of 12 July. However, the defendant also disputed paragraph 4 of Mr Murali's letter. That was the paragraph which set out the basis for the claim and legal action against the defendant. I am of the view that the defendant did not consent to judgment because such consent must be clear and unequivocal. The correspondence indicated to me that the defendant was not entirely clear as to what exactly he was consenting to. It seemed to me that he was only going to put an end to his persistent engagement of the plaintiff. He continued to dispute the plaintiff's allegations that his conduct was wrongful.

6 Mr Murali submitted before me that the plaintiff's claim was based on the tort of nuisance, and alternatively, on the tort of harassment. In both causes of action counsel relied on the authority of *Malcomson Nicholas Hugh Bertram & Anor v Mehta Noresh Kumar* [2001] 3 SLR(R) 379 ("*Malcomson*"). Although counsel made stronger and more vigorous submission on the tort of harassment than he did in respect of the tort of nuisance, I was not able to see where the tort of harassment was pleaded in the claim. To avoid having to deal with any subsequent claim that the tort of harassment was implicit in the allegations in the statement of claim, or a request for the statement of claim to be amended I shall deal with Mr Murali's submissions in respect of both causes of action. The cause of action pleaded by the plaintiff was based on the tort of nuisance but the facts set out in the statement of claim and the supporting affidavit showed that the conduct of the defendant affected the individual employees and officers of the plaintiff company. The tort of nuisance insofar as it pertains to the plaintiff's right of enjoyment of its land does not extend to the peace of mind of the employees. Lord Hoffmann in his speech in *Hunter v Canary Wharf Ltd* [1997] AC 655 ("*Hunter v Canary Wharf*") at 706B-C emphatically held that the tort of private nuisance is not available to cases where the acts of nuisance cause discomfort to persons who are non-occupiers. That is one of the modern cases that illustrate a basic feature of the tort of nuisance - the ambit of that tort and its application *only* to situations where the acts of nuisance affect the enjoyment of the plaintiff's land. I am of the opinion that the plaintiff's claim cannot succeed, if only because the facts do not give rise to a tort of nuisance in respect of the plaintiff's enjoyment of its land. If the defendant's conduct sufficiently affected the peace of mind of the individual employees and officers, those employees or officers who suffered harm or damage from the defendant's conduct have to sue. That brings up the next issue, namely, the plaintiff's claim for a permanent injunction for harassment. There are two substantial flaws in this part of the plaintiff's claim. First, the tort of harassment was not pleaded as a cause of action in the statement of claim. Secondly, even if it were, the plaintiff has not shown whether it was entitled to sue on behalf of its employees.

7 There is another matter which stands in way of the plaintiff's claim in harassment. I am not convinced that a cause of action exists presently at common law to found a claim in the tort of

harassment. Mr Murali referred me to *Malcomson* as the authority for such a claim. He also referred to the reference to this case by the Court of Appeal in *Tee Yok Kiat v Pang Min Seng* [2013] SGCA 9 ("*Tee Yok Kiat*"). *Malcomson* concerned a case in which an ex-employee kept pressing his former boss to give him his job back. He trespassed into the plaintiff boss' home. His methods were uncouth and in bad taste. The plaintiff's boss and his family were worn out by the defendant's persistence. Lee Seiu Kin J allowed the plaintiff's claim for nuisance and trespass, and also for 'harassment' of Mr Malcomson and his family. Lee J held (at [31]) that:

> For the purposes of this application I shall take the term "harassment" to mean a course of conduct by a person, whether by words or action, directly or through third parties, sufficiently repetitive in nature as would cause, and which he ought reasonably to know would cause, worry, emotional distress or annoyance to another person.

Lee J added that the above was "not meant to be an exhaustive definition of the term but rather one that sufficiently encompasses the facts of the present case". He also noted that so far as the law was concerned, "the position in England is not settled" and there was no reported decisions in our courts. The learned judge then reviewed the House of Lords' decision in *Hunter v Canary Wharf*, and various other cases including *Wilkinson v Downton* [1897] 2 QB 57, *Janvier v Sweeney* [1991] 2 KB 316, *Khorashandjian v Bush* [1993] QB 727, and finally, Selvam J's decision in *Arul Chandran v Gartshore* [2000] 1 SLR(R) 436 ("*Arul Chandran*"). Lee J was of the view that if *Arul Chandran* had held that actions for mental distress cannot succeed, this was a comment made *obiter*. The issue in that case concerned damages for mental distress arising from a breach of contract. Lee J then referred to Lord Hoffmann's comment in *Hunter v Canary Wharf* in which Lord Hoffmann remarked that he saw "no reason why a tort of intention should be subject to a rule which excludes compensation for mere distress, inconvenience or discomfort in actions based on negligence" and Lee J concluded (at [44]) that "there is no authority in the way of the development of the law in this area in Singapore".

8 Lee J then felt that he had a free hand to develop the common law, but it is not clear what the court there did because if there were hitherto no recognised law of harassment, then *Malcomson* cannot be said to be a case of recognising the tort of harassment, in which event, *Malcomson* must have created an entirely new tort. Referring to the kind of abusive and threatening behaviour that was the subject of *Malcomson* and the 'lacuna in the law', Lee J held (at [55]) that "I do not believe that it is not possible for the common law to respond to this need". He further held (at [56]) that "I can see no reason why the law cannot come to their aid in the circumstances". It would be appropriate now to refer to *Tee Yok Kiat*. That was a case based on breach of trust and allegations of blackmail. The plaintiff pleaded an alternative claim based on the tort of harassment but the Court of Appeal held that it was not necessary for the court to decide on that point but nonetheless, it went on "to make some brief observations" on the point. Chao JA, who wrote the decision of the Court of Appeal, observed (at [39]) that

> [N]one of the parties questioned the existence of this tort in our law. For the tort of harassment to be made out, [the first plaintiff/appellant] had to prove that: (a) [the first defendant/respondent's] course of conduct, whether by words or action or whether directly or through third parties, was sufficiently repetitive in nature as would cause worry, emotional distress or annoyance to her; and (b) [the first defendant/respondent] ought reasonably to have known that his conduct would have such an effect on her.

The words quoted above were directly replicated from Lee J's judgment in *Malcomson*. We thus return to the point where we have no basis or principle upon which the tort of harassment is founded, save that it was thought to be a necessary step in the development of the law. In the meantime, we are

missing some steps which, even if I were to attempt to cover them, there would be too many, and beyond the scope of the court. I am of the view that a law against harassment must be delineated and legislated by Parliament. As Lee J noted in *Malcomson*, the law presently makes 'harassment' an offence under ss 13A and 13B of The Miscellaneous Offences (Public Order and Nuisance) Act, Cap 184, Rev Ed 1997. Having made reference to acts of harassment through legislation, it is up to the legislature to determine whether the law should be used to govern annoyance caused by means of letters, emails, and telephone messages, and whether the present public order law ought to be expanded to allow a claim for civil remedies. And it is for Parliament to determine what the nature and extent of such remedies should be.

9 The conduct of the defendant in *Malcomson* readily enables one to sympathise with the plaintiff. The defendant's act of sending a baby rattle to the plaintiff on the anniversary of the latter's child's death was insensitive and wrong. The defendant in the present action before me did not behave well either. His conduct that the plaintiff complained of consisted mainly of constant telephone calls and email which contain abusive and insulting language. The conduct of the defendants in both cases may be indefensible socially and morally, but to award a civil remedy for that conduct requires the law to specifically provide for it. Such laws will have gone through the legislative process of deliberation and debate by members of the legislature accountable to the public. The court is not subject to that process of accountability and must therefore be restrained in the law-making process – that is, even if one were to regard the court's role in the application of the law as law-making. In this case, the defendant was described by counsel as harassing the plaintiff's staff, but from the point of the defendant, he was pressing for his rights as a policy holder. We do not know who was right because that issue was not before the court. The plaintiff may be right, but there may be other employers unlike this plaintiff, who might rely on a loosely proclaimed law of harassment to oppress its weaker and poorer opponent. If the defendant in *Malcomson* did not send the baby rattle, and if the defendant in this case did not use abusive language, would their conduct still be regarded as harassment? Would a loosely recognised law of harassment be used to oppress others and avoid one's legal obligations?

10 Expanding the current boundaries of torts against the person beyond those like trespass (that require direct physical contact but do not require damage), and those like the rule in *Wilkinson v Downton* (which does not require direct physical contact but requires proof of damage) should be done only where the rule can be formulated clearly, comprehensively, and concisely (such as the 'neighbour principle' in *Donoghue v Stevenson* [1932] AC 562). I doubt that a clear and comprehensive law on harassment as a civil cause of action can be effectively formulated in a judicial pronouncement, more so because there are, in modern times, calls for laws relating to privacy. Civil action in harassment and laws relating to privacy are complex and connected and must be considered together. Finally, by allowing litigants to sue when they feel harassed when there is no direct contact nor proof of damage, the court may be creating a blockbuster tort which will have unpredictable consequences, some of which may not be desirable. These are matters that need public debate to have the social, moral, and legal dimensions brought into the open. The forum for that is in the well of Parliament. For the reasons above, the plaintiff's application, by way of this summons-in-chambers, to enter judgment against the defendant is dismissed.