IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 243

District Court Appeal No 14 of 2022

Between

On Site Car Accessories.SG (KEL Services)

… *Appellant*

And

Jerry Tang Mun Wah

… *Respondent*

GROUNDS OF DECISION

[Tort — Defamation — Defamatory statements]
[Tort — Defamation — Justification]
[Tort — Defamation — Fair comment]

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v
Tang Mun Wah Jerry

[2022] SGHC 243

General Division of the High Court — District Court Appeal No 14 of 2022
Kwek Mean Luck J
7 September 2022

28 September 2022

Kwek Mean Luck J:

Introduction

1 The appellant was the plaintiff in MC/MC 5974/2021 ("Suit 5974"). In Suit 5974, the appellant brought a defamation claim against the respondent. The District Judge (the "DJ") dismissed the appellant's claim. In HC/DCA 14/2022, the appellant appealed against the DJ's decision.

Factual Background

2 The appellant is a partnership registered in Singapore. It primarily provides motor vehicle workshop services.[1] On 18 May 2021, the respondent

[1] Record of Appeal (Vol II Part A) at p 25, [4]

contacted the appellant to replace his car battery.[2] Upon completion, the appellant informed the respondent that the battery came with a 1-year warranty.[3] On or around 28 May 2021, the respondent found several issues with the audio system and roof lights of his car.[4] The respondent contacted the appellant and requested the appellant's assistance in examining the car battery. The respondent's case was that the appellant sought to charge him for the on-site attendance.[5] The appellant's case was that it informed the respondent that a service fee would only be charged if the issues detected were not related to the car battery installed by the appellant.[6] The respondent decided not to proceed with the service.

3 On or around 19 June 2021, the respondent posted a Facebook Post titled "Bad experience and delay after service request" (the "Post") on three different Facebook groups for car enthusiasts, SG Car Accesories [*sic*] Sales Market ("SGCASMG"), Garage Sales Singapore ("GSSG") and SG Car Workshops ("SGCWG"), collectively referred to as the "FB Groups".[7] The appellant is a member of the FB Groups. The Post stated:[8]

> Recently, I had engaged this above car battery replacement service from this provider. I was charged $220 for car battery only on site. Initiately [*sic*], everything was ok. 10days later due to WFH, and realized both my car audio system and roof lights, no power. Called them up and asked for advise whether can come n check the connections as the installation was at night

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2 Record of Appeal (Vol II Part A) at p 6, [4].

3 Record of Appeal (Vol II Part A) at p 27, [10]; Record of Appeal (Vol II Part B) at p 26, lines 15–18.

4 Record of Appeal (Vol II Part A) at p 6, [5].

5 Respondent's Case at [16].

6 Record of Appeal (Vol II Part A) at p 27, [10].

7 Record of Appeal (Vol II Part A) at p 26, [8].

8 Record of Appeal (Vol II Part A) at p 54.

> on the actual day. I was told to be charge for the service. I was just wondering, what is the purpose of promise of warranty been told. Asked again for invoice of proof as he(Kel) didn't issue on spot. He keep delaying the time of not issue the invoice. Now, no respond at all.

Decision below

4 The DJ dismissed the appellant's claim. The DJ found that considering the context of the Post, a reasonable reader would not regard the post as defamatory.[9] Even if it were defamatory, the DJ held that the pleaded defences of justification and fair comment applied in this case.[10] The respondent had called Mr Lee Ming Cheng ("Mr Lee"), a mechanic from Jogh Enterprise, to testify on the state of the car battery installed by the appellant. Mr Lee testified that he had replaced the battery installed by the appellant and that Jogh Enterprise's diagnosis was that the issues with the audio system and roof lights were caused by a loose connection and a faulty battery. As Jogh Enterprise's diagnosis was unchallenged, the DJ found that the defence of justification was made out, in that the battery installed by the appellant was defective and/or was installed erroneously.[11] The DJ also found that the Post was a fair comment as the respondent was outlining the auto service he had received from the appellant, which was of public interest to other potential customers.[12]

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9 Record of Appeal (Vol I) at p 20, [22].

10 Record of Appeal (Vol I) at p 21, [25]–[26] and p 23, [30].

11 Record of Appeal (Vol I) at p 23, [31].

12 Record of Appeal (Vol I) at p 21, [25]–[26].

The Appeal

Plain and ordinary meaning of the Post

5 A statement is considered to be defamatory if: (a) it lowers the appellant in the estimation of right-thinking members of society generally; (b) causes the appellant to be shunned or avoided; or (c) exposes the appellant to hatred, contempt or ridicule: *Golden Season Pte Ltd and others v Kairos Singapore Holdings Pte Ltd and another* [2015] 2 SLR 751 ("*Golden Season*") at [36].

6 The court in *Golden Season* further held at [37] that whether a statement is defamatory is generally determined based on the construction of the natural and ordinary meaning of the words used. In doing so, the following principles apply:

(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 that the maker of the statement 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 the publication.

7 The appellant submitted that the natural and ordinary meaning of the Post was that the appellant would definitely charge the respondent for checking the car battery previously installed by him, regardless of whether the issues were related to the car battery.[13] This could be seen from the part of the Post that stated:

> Called them up and asked for advise whether can come n check the connections as the installation was at night on the actual day. I was told to be charge for the service. I was just wondering, what is the purpose of promise of warranty been told.

8 The appellant submitted that the natural and ordinary meaning of the Post was defamatory. The Post suggested that the appellant had provided the respondent with a defective car battery and then sought to charge the respondent for checking and/or fixing that allegedly defective car battery, despite the warranty that it had provided. This would suggest to ordinary readers that the appellant's business practices were unfair or dishonest in seeking to charge the respondent for simply checking the battery, despite the promise of warranty, which would in turn cause potential customers to be suspicious of the appellant's services.[14]

9 The respondent pleaded that the natural and ordinary meaning of the Post was that the appellant "had offered to only check and/or resolve the [respondent's] concerns with his car if an additional fee was paid".[15] The respondent submitted that the Post was not defamatory as the respondent did

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13 Appellant's Case at [23].

14 Appellant's Case at [11] and [33].

15 Defence at [9(b)]; Record of Appeal (Vol I) at p 97.

not specify in the Post that the appellant had provided a defective battery to him. The respondent further argued that an ordinary reader would have drawn the inference that there may have been other reasons for his car issues since he stated that the battery was functioning properly after the appellant's installation and the issues only surfaced after ten days.[16]

10 I noted that the Post began with the respondent stating that he had engaged the appellant for car battery replacement service, that things were alright initially and that there were issues with the audio system and roof lights of his car ten days later. In my view, it would be clear to the ordinary reader that the respondent was suggesting that the issue was with the battery. This was fortified by the respondent's further statement in the Post that he called the appellant, who had provided the battery, to "come [and] check" the connections. I therefore found that the natural and ordinary meaning of the Post was, as pleaded by the appellant, that:

(a) the respondent was still facing issues with his car's battery after the appellant's battery replacement;

(b) upon the respondent's request for further assistance, the appellant informed the respondent that he would definitely be charged for the service; and

(c) this was a breach of the warranty by the appellant.

11 The test of whether words are defamatory is whether the words tend to lower the appellant in the estimation of right-thinking members of society generally: see [5] above. This test has been adopted in defamation cases involving businesses: *WBG Network (Singapore) Pte Ltd v Meridian Life*

16 Respondent's Case at [11].

International Pte Ltd and others [2008] 4 SLR(R) 727 ("*WBG Network*") at [42]; *Golden Season* at [131].

12 I found that the Post was defamatory to the appellant. It did suggest some degree of unfairness and unreasonableness on the part of the appellant in seeking to charge the respondent despite the promise of warranty. In the eyes of an ordinary and reasonable reader, such an allegation would lower the reputation and standing of the appellant's business, as compared to other businesses providing similar car battery replacement services.

13 I then turned to examine if the defences of justification and fair comment applied in this case.

Justification

14 The respondent submitted that in his correspondence with the appellant, there was a mention of a charge for the appellant's on-site attendance. This caused the respondent to believe that attendance by the appellant would be chargeable.[17]

15 The appellant highlighted that, upon the respondent contacting the appellant, the appellant offered to attend to the respondent on-site regarding the car issues, and that the appellant would charge a service fee only if the issues detected in the respondent's vehicle were not attributed to the car battery installed by the appellant. This was evidenced in:

(a) the Audio Transcription by JC Translation Pte Ltd of the WhatsApp voice conversation between the appellant's manager, Mr Tay

[17] Respondent's Case at [16].

Leong Beng ("Mr Tay") and the respondent ("JC Translation"). In this conversation, the appellant clearly indicated that he would only charge the respondent an on-site fee if it transpired that the issue was not related to the battery:[18]

> Mr Tay: [p]layer no power … is sometimes due to other components or other thing ah, short circuit and short until the player, but I can come down drop by to see your car … *if it's not related to my battery, then I'll have an on-site fee…*
>
> **…**
>
> Mr Tay: … *if it's related to the battery, then definitely I'll be responsible* … but normally … battery … don't link to your player this kind of thing … but it's ok … I mean if you want me come down and check I'm ok to come down…
>
> …
>
> Mr Tay: … the way I say is I can come down to check no problem, but *anything is not related to my battery, then it's chargeable*… to be fair.
>
> [emphasis added]

(b) the respondent's admission that "the [appellant] did mention that, if the [issues] were caused by any battery defect, it would remedy the [issues] at its own cost";[19]

(c) the respondent's statement that "[he] understood that [the appellant] would charge [him] fees if the [issues] were not caused by the [battery installed by the appellant]";[20] and

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18 Record of Appeal (Vol IV Part A), at p 60.

19 Defence at [11(d)]; Record of Appeal (Vol I) at p 98.

20 Respondent's AEIC dated 29 November 2021 at [7]; Record of Appeal (Vol II Part A) at p 6.

(d) the respondent's acknowledgement during cross-examination that the appellant did say that if the issue was not related to his battery, then it was chargeable.[21]

16 Thus, the evidence showed that upon being contacted, the appellant offered to attend to the respondent on-site regarding the issues with his car, and that a service fee would be charged *if* the issues detected in the respondent's vehicle were not attributed to the car battery installed by the appellant. The respondent was thus not justified in imputing that the appellant would definitely charge the respondent for checking the car battery previously installed by him, regardless of whether the battery was defective.

17 The respondent further submitted that he was justified as:[22]

(a) the delay in the issuing of the invoice was one of the "stings" in the Post and the appellant admitted that an invoice had not been issued to date; and

(b) Mr Lee later diagnosed the issues with the respondent's car as having been caused by loose connection and/or the battery being faulty.

18 The appellant did not allege that a statement that there was a delay in issuing an invoice was defamatory. This was hence not an issue in this appeal.

19 The fact that the car was subsequently diagnosed to have a loose connection or faulty battery was also not relevant to the appellant's defamation action. The action proceeded on the basis that the respondent said that he would

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21 Record of Appeal (Vol IV Part B) at p 193 line 27 to p 194 line 9.

22 Respondent's Case at [26]–[30].

be charged for checking the car battery, regardless of whether the battery was defective.

20 In view of the evidence set out above, I found that the defence of justification did not apply.

Fair Comment

21 I turned to consider the defence of fair comment. The respondent submitted that the Post was a fair comment as the respondent was outlining the service that the appellant had provided him and it was of public interest to other potential customers of the appellant.

22 At [13.015] of Gary Chan Kok Yew and Lee Pey Woan, *The Law of Torts in Singapore* (Academy Publishing, 2nd Ed, 2016) ("*The Law of Torts in Singapore*"), the definition of a "comment" is explained as follows:

> …The English court in *Branson v Bower (No 1)* defined 'comment' as 'something which is or can reasonably be inferred to be a deduction, inference, conclusion, criticism, remark, observation *etc*'. A comment is generally equated with a statement of opinion…

23 At [13.021] of *The Law of Torts in Singapore*, the learned authors also state that the comment must be based on true facts. Where the basic facts stated are untrue, the defence of fair comment does not arise.

24 While outlining the quality of service provided by the appellant may be regarded as a form of comment, whether the appellant would charge the respondent a service charge even if the battery installed by the appellant was faulty, was an issue of "fact". The evidence before the court was that this "fact" was not true.

25 Hence, the defence of fair comment would not apply to the Post.

Summary on whether Post was defamatory

26 In summary, I found that the Post was defamatory and that the defences of justification and fair comment did not apply. I therefore allowed the appeal.

Damages

27 The appellant submitted that the following should be taken into account in assessing the quantum of damages:

(a) There was wide publication. The potential viewership of the Post was high given that the Post was published in three Facebook groups with about 178,200 members.[23]

(b) The respondent failed to apologise or remove the Post.[24]

(c) There was malice on the respondent's part which warranted aggravated damages. Applying *Lee Hsien Loong v Xu Yuan Chen and another suit* [2022] 3 SLR 924 ("*LHL v XYC*") at [88], malice may be proven in two ways: (a) the respondent's knowledge of falsity, recklessness, or lack of belief in the defamatory statement; and (b) where the respondent has a genuine belief in the truth of the statement, but his dominant motive is to injure the appellant. Here, the respondent clearly knew the falsity or lack of truth of the Post. It would also be clear from

[23] Appellant's Case at [69].

[24] Appellant's Case at [71].

the mode and extent of the publication that the respondent's dominant motive was to injure the appellant's reputation.[25]

28 In *LHL v XYC*, the article in question was viewed some 98,338 times and the total quantum of damage awarded was $210,000 ($160,000 as general damages and $50,000 as aggravated damages). The Post here had arguably a higher viewership as it was published in three Facebook groups with a total of about 178,200 members. The appellant accepted that there was a difference in the standing of the parties given that *LHL v* XYC concerned the Prime Minister of Singapore, and submitted that the quantum in this case ought to be $60,000, including aggravated damages.[26]

29 The appellant also sought orders that:[27]

(a) the respondent remove each of the Post and all other defamatory statements from all online or other sources, including but not limited to SGCASMG, GSSG and SGCWG;

(b) the respondent issue a written apology addressed to the appellant, which shall be published in the SGCASMG, GSSG and SGCWG and on the respondent's Facebook account, in words to be determined by the appellant; and

(c) the respondent undertake not to, whether by himself, his servants, agents or otherwise howsoever, publish and/or cause to be

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25 Appellant's Case at [73].

26 Appellant's Case at [87]–[88].

27 Appellant's Case at [97].

published any adverse, negative or derogatory statements against the appellant, in any manner whatsoever, in the future.

30 The respondent submitted that appellant should only be entitled to nominal damages. While the potential viewership of the Post was high, the Post only had 12 "reactions" and 85 comments in total. This would decrease the quantum of damages that may be awarded. The respondent submitted that he was entitled to rely on the DJ's judgement that the Post was not defamatory, and that he was justified in refusing to apologise or remove the Post. The respondent also submitted that he had not acted with malice or knowledge that the Post contained falsities.

31 In *Lim Eng Hock Peter v Lin Jian Wei and another and another appeal* [2010] 4 SLR 357 ("*Lim Eng Hock Peter*"), the Court of Appeal highlighted at [7] some of the relevant factors in determining the quantum of general damages:

(a) the nature and gravity of the defamation;

(b) the conduct, position and standing of the parties;

(c) the mode and extent of publication;

(d) the natural indignation of the Court at the injury caused;

(e) the conduct of the party making the statement from the time the defamatory statement is published to the very moment of the verdict;

(f) the failure to apologise and retract the defamatory statement; and

(g) the presence of malice.

32 In this case, the defamatory content was not of a very serious nature. Although there were imputations that the appellant was unreasonable or dishonest in its business dealings, the Post did not allege that the appellant was engaged in any illegal or fraudulent conduct, as in *TJ System (S) Pte Ltd and Others v Ngow Kheong Shen (No 2)* [2003] SGHC 217 ("*TJ System*"), for example. There, the defendant wrote to his fellow colleagues, 15 Cisco officers, suggesting that the plaintiff company and some of its employees were suspected of having bribed staff from the Police Technology Department to procure projects. Damages in the range of $20,000 to $30,000 were awarded to the various plaintiffs.

33 The appellant did not show that it had any particular standing in the car workshop industry. It had only 1,323 followers on Facebook.[28] This was therefore unlike the cases of *Lim Eng Hock Peter* and *Yeow Khim Seng Mark v Phan Ying Sheng* [2021] SGHC 145 ("*Yeow Khim Seng*"). In *Lim Eng Hock Peter*, the appellant was a prominent businessman and investor. The defamatory statements suggested that the appellant had caused the club's financial losses through mismanagement for his own benefit. These statements were published in an "Explanatory Statement" by the club to its 17,000 members. The court awarded $140,000 as general damages and $70,000 as aggravated damages. In *Yeow Khim Seng*, the respondent was a social media content creator in the motorcycling and travel industry, who had between 40,000 to 50,000 followers on her Facebook page at the material time. The court awarded $25,000 in general damages and $15,000 in aggravated damages.

34 While the Post was published in the FB Groups that had a total of around 178,000 members, the number of members alone was not determinative of the

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[28] Appellant's Case at [68].

extensiveness of the publication. This was because not all members check the posts in their Facebook groups. In *Koh Sin Chong Freddie v Chan Cheng Wah Bernard and others and another appeal* [2013] 4 SLR 629, the court held that although the club had 10,000 members, only a modest percentage of members would have seen the defamatory content which was contained in minutes posted on the club's notice board: at [48]. In this case, the Post on SGCASMG gathered 12 reactions and 85 comments.[29] This was far lower than the defamatory Facebook post in *Yeow Khim Seng* which garnered 346 reactions, 575 shares and 125 comments. In *Yeow Khim Seng*, the court accepted the number of reactions, shares and comments as a rough indicator of the number of persons who would have the read post: at [87]. I accepted the appellant's submission that not all who viewed the post may have reacted to it. However, there was no evidence of the number of people who viewed the Post, and even if the number of people who viewed it was several multiples of the number of people who reacted to it, the number would still be very far from the total number of members, which was 178,000.

35 I found that the appellant did establish malice. The appellant expressly informed the respondent that it would only charge the respondent if the issues with his car were unrelated to the battery, to which the respondent replied "ok lah, fair enough lah".[30] By his Post, the respondent was reckless about the truthfulness of what he posted. Even if the respondent was genuinely mistaken as to what the appellant had meant at the time of the publication, the respondent would have been clear about the appellant's position in the course of the proceedings. Yet, the respondent refused to remove the Post or apologise to the appellant and maintained his defence of justification.

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29 Appellant's Case at [70].

30 Record Of Appeal (Vol IV Part B), at p 60.

36 In totality, I was of the view that general damages should be assessed at $20,000. The respondent's failure to apologise and refusal to retract the defamatory statement, as well as the presence of malice, justified a slight upward calibration of the general damages. At the same time, the publication here had much lower traction than that in *Yeow Khim Seng* and the victim there was an influencer who had 40 times the number of the appellant's followers on Facebook and stood to suffer more harm to her reputation. The award of $20,000 was also consistent with those made in *TJ System* and *Golden Season*. Both *TJ System* and *Golden Season* involved less extensive publication, but the defamatory content of the statements in those cases was far more egregious. The allegations in *TJ System* were that of bribery, while the allegations in *Golden Season* were about the misuse of donors' monies. The first plaintiff in *Golden Season* was awarded $15,000 in general damages while the third plaintiff was awarded $30,000 in general damages and $20,000 in aggravated damages.

37 I found that aggravated damages were not applicable here. The courts have held that aggravated damages are not applicable for corporate entities because "[i]t is common understanding that aggravated damages are awarded for injury to feelings and pride in circumstances where the [defendant's] conduct has aggravated the injury...": *Golden Season* at [136]. Since companies cannot suffer injury to feelings, aggravated damages would not be applicable to corporate plaintiffs: *ATU and others v ATY* [2015] 4 SLR 1159 at [56]–[60]. The same principles should apply to partnerships. The Post pertained to the business practices of the appellant as a partnership. As a corporate entity, the partnership could not suffer injuries to feelings and pride from the Post.

38 Taking the above into consideration, I awarded the appellant $20,000 in general damages, with statutory interest from the time of the writ to the date of judgment.

39 I also made the following orders:

(a) that the respondent remove each of the Post and all other defamatory statements from all online or other sources, including but not limited to SGCASMG, GSSG and SGCWG;

(b) that the respondent issue a written apology addressed to the appellant, which should be published in the SGCASMG, GSSG and SGCWG; and

(c) that the respondent refrain from making any further such defamatory statement on all online or other sources, including but not limited to SGCASMG, GSSG and SGCWG.

40 I awarded costs to the appellant in the sum of $12,000 for the appeal plus disbursements in the sum of $5,478.60. For the hearing below, the costs in the sum of $12,000 plus disbursements incurred by the appellant in the sum of $1,705.40 were reversed in favour of the appellant.

Kwek Mean Luck
Judge of the High Court

Clarence Lun Yaodong, Cheston James Ow (Fervent Chambers LLC) for the appellant;
Viveganandam Devaraj, M Nareindharan (Lion Chambers LLC) for the respondent.
