Malcomson Nicholas Hugh Bertram and Another v Naresh Kumar Mehta [2001] SGHC 308

Case Number : Suit 687/2001 , SIC 1575/2001

Decision Date : 12 October 2001

Tribunal/Court : High Court

Coram : Lee Seiu Kin JC

Counsel Name(s) : KM Pillai and Bianca Cheo (Allen & Gledhill) for the plaintiffs

Parties : Malcomson Nicholas Hugh Bertram; Another — Naresh Kumar Mehta

Civil Procedure – Summary judgment – Judgment in default of defence – Whether rule mandatory – Whether court retains discretionary power – Duty of court to satisfy itself of plaintiff's entitlement to judgment – O 19 r 7(1) Rules of Court

Tort – Trespass – Intrusion on residence and office premises – Whether to grant damages and injunctions

Tort – Harassment – Intentional use of modern communication devices to cause offence, fear, distress and annoyance – Sending numerous e-mail and SMS messages via mobile telephone – Whether to grant injunctions

Tort – Nuisance – Unsolicited communication – Making of telephone calls, sending faxes – Whether injunctions to be granted

Tort – Negligence – Duty not to cause harm to others – Whether recourse available for intentional acts causing emotional distress – Whether difficulty in quantifying damages hinders court from granting relief

Words and Phrases – 'Appears entitled' – O 19 r 7(1) Rules of Court – 'Harassment'

: The first plaintiff (`Malcomson`) is the Chief Executive Officer of the second plaintiff (`Zerity`), a company in the business of providing financial services.

In February 2000, the defendant (`Mehta`) commenced employment in Zerity as an Assistant Vice-President. His responsibilities included looking into the development of Zerity`s business in the area of e-commerce. However things apparently did not turn out well and after less than three months, on 28 April 2000, Mehta sent an e-mail to Malcomson in which he tendered his resignation. The rest of that e-mail contained a litany of complaints about various people in Zerity. On 2 May, Malcomson replied to say that Zerity accepted Mehta`s resignation with immediate effect and waived the contractual requirement for Mehta to serve a two-month notice period. Zerity also paid Mehta $17,947.83 being his pro-rated salary for 1 May 2000 and two months` salary in lieu of notice pursuant to the relevant provision of the employment contract. Mehta acknowledged the receipt of this letter and the cheque for that sum by signing at the bottom of Zerity`s duplicate copy.

On 6 June 2001, 13 months after Mehta had left Zerity, the plaintiffs took out the writ in this action claiming damages for (1) trespass at Malcomson`s residence; (2) nuisance by telephone at Malcomson`s residence as well as at Zerity`s office; and (3) harassment of Malcomson. The plaintiffs also sought injunctions to restrain Mehta from further committing such acts. On the same day the plaintiffs applied in SIC 1266/2001 for an interim injunction prohibiting Mehta from the same three acts until trial of the action. At the hearing of the SIC on 11 June, Mehta appeared in person. He did not dispute that he had been making the telephone calls and had entered Malcomson`s residence. Instead he explained that he had been trying to contact Malcomson because of the problems he had with the Inland Revenue Authority of Singapore on account of his income tax. At the material time,

Zerity was registered under the name, First-e Asia Pte Ltd. Mehta said that he received an IR8A form, which is the employer`s statement of income in respect of an employee, from Factor-e Asia Pte Ltd. However his employment contract was with First-e Asia Pte Ltd. IRAS had queried him about this discrepancy.

On the basis of Malcomson`s supporting affidavit and in view of Mehta`s position that he had no intention to trespass, cause nuisance or harass, I granted the interim injunction but directed plaintiffs` counsel to look into the matter about the IR8A form raised by Mehta. I also ordered Mehta to communicate with Malcomson and Zerity only through their counsel, Mr Pillai.

In the event, Mehta did not enter appearance by 26 June. Pursuant to O 13 r 6(1), the plaintiffs elected to proceed as if Mehta had done so. On 26 June they filed the statement of claim. This was served on Mehta on 27 June. No defence was filed by Mehta by 12 July 2001 and on that day the plaintiffs filed SIC 1575/2001 to apply for judgment in default of defence pursuant to O 19 r 7 of the Rules of Court. This application was first heard on 25 July 2001. At the hearing, Mr Pillai informed me that he had notified Mehta of the hearing but the latter had chosen not to attend. He exhibited a printout of an e-mail he received from Mehta to that effect. However the hearing was adjourned for further submissions. At the adjourned hearing on 10 August, Mr Pillai applied for and obtained leave to amend the statement of claim.

The amended statement of claim was served on Mehta on 10 August 2001. He did not file any defence to this within the prescribed time and on 27 August the plaintiffs applied again for judgment in default of defence, this time to the amended statement of claim. I reserved judgment and now give my decision in writing.

The application before me is for judgment in default of defence under O 19 r 7(1) which provides as follows:

> *Where the plaintiff makes against a defendant or defendants a claim of a description not mentioned in Rules 2 to 5, then, if the defendant ... fails ... to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed under these Rules for service of the defence, apply to the Court for judgment, and on the hearing of the application the Court shall give such judgment as the plaintiff* ***appears entitled*** *to on his statement of claim. [Emphasis is added.]*

In relation to the corresponding provision in the repealed English Rules of the Supreme Court, the ***Supreme Court Practice*** 1999 had the following commentaries:

> ***Proof of plaintiff`s case*** *- At a meeting of the Judges, a majority decided that the Court cannot receive any evidence in cases hereunder, but must give judgment according to the pleadings alone (* ***Smith v Buchanan*** *...;* ***Young v Thomas*** *...). It is therefore not necessary on the hearing of the summons or motion for judgment to prove the case by evidence (* ***Webster v Vincent*** *...).*

> ***Discretion of the Court*** *- Although para. (1) of the rule is expressed in mandatory terms, the rule is not mandatory but discretionary, and the Court retains its discretionary power whether to give judgment or to extend a party`s time to plead when it is just to do so ... [para 19/7/14]*

In respect of discretion, I would go further to say that the words `appears entitled` that I have emphasised in the rule above requires the court to be satisfied that the plaintiff is indeed entitled to the judgment and relief prayed for. It would require a determination whether the pleadings disclose any cause of action.

In the present case, the plaintiffs have pleaded three causes of action, namely:

(1) trespass and nuisance in respect of Malcomson`s residence (`the residence`);

(2) trespass and nuisance in respect of Zerity`s office premises (`the premises`);

(3) harassment of Malcomson.

The pleaded facts

I turn now to the facts pleaded in the amended statement of claim. In the particulars pleaded under para 5, the plaintiffs alleged that the following had occurred after Mehta had ceased employment:

> *(i) Between May 2000 and June 2000, the Defendant telephoned Malcomson at the premises on not less than 10 occasions.*
>
> *(ii) Between October 2000 and April 2001, the Defendant sent 8 e-mails to Malcomson which he retrieved at the premises and elsewhere.*
>
> *(iii) In November 2000, the Defendant sent Malcomson 2 facsimiles and 1 bouquet of flowers at the premises.*
>
> *(iv) On 22 October 2001, the Defendant procured a third party, whose name and identity is unknown, to telephone Malcomson at the residence at 6.00 am.*
>
> *(v) On 1 April 2001, the Defendant trespassed on the residence while Malcomson was overseas. He demanded and obtained from Malcomson`s maid the latter`s confidential mobile phone number. On the same day, the Defendant made 3 calls to Malcomson at his mobile phone. These calls were received by Malcomson while he was outside the residence.*
>
> *(vi) On 22 April 2001, the Defendant trespassed on the residence and delivered a greeting card addressed to Malcomson and his wife. This was a card normally used to congratulate couples over the birth of a new-born baby. The Defendant was aware that this was close to the anniversary of the death of their infant son.*
>
> *(vii) Following his resignation in May 2000, the Defendant sent numerous e-mails and SMS messages via mobile telephone to various employees and directors of Zerity, namely the Chief Financial Officer Nachiappan Alagappan, the Chief Operating Officer Cavin Choo and Malcomson. The e-mails and messages were received at the premises and elsewhere.*

In the particulars pleaded under para 9 of the statement of claim, the following additional facts were alleged:

> *(i) Between May 2000 and June 2000, the Defendant telephoned Marianne Lim, Nachiappan Alagappan, Cavin Choo and Martin Buchholz, employees of Zerity, at the premises on a total of 15 occasions.*
>
> *(ii) In October 2000, the Defendant telephoned Marianne Lim, the Human Resource Manager of Zerity, at the premises on 3 occasions.*
>
> *(iii) Between October 2000 and April 2001, the Defendant sent a total of 31 e-mails to Marianne Lim, Nachiappan Alagappan, Cavin Choo, Martin Buchholz and William Scrimgeour, employees of Zerity, at the premises.*
>
> *(iv) In November 2000, the Defendant sent a bouquet of flowers and 2 greeting cards to Marianne Lim, Nachiappan Alagappan and Cavin Choo at the premises.*
>
> *(v) On 1 June 2001, the Defendant attempted to wrongfully enter the premises.*

And finally, in para 10 of the statement of claim, the following additional particulars were pleaded:

> *(i) In May 2000, the Defendant wrongfully entered the premises on at least 2 separate occasions.*
>
> *(ii) On 24 October 2000, the Defendant wrongfully entered the premises.*

In respect of the first two causes of action, ie trespass and nuisance in respect of the residence and the premises, on the pleadings the plaintiffs have established the bases for them. The plaintiffs have alleged that Mehta had trespassed or attempted to trespass the residence and the premises. The persistent faxes, telephone calls and e-mail retrieved at either location would interfere with the plaintiffs` use and enjoyment of the land. These acts collectively constitute the tort of nuisance in relation to the residence and the premises.

It is the third cause of action that requires consideration. This is because harassment is not an established tort. However Mr Pillai urges that the time has come for the court to give recognition to it as an actionable tort. Before turning to examine the relevant developments in the law pertaining to this, I first set out factual circumstances. I am aware that in the present application it is not necessary to look at the evidence. However due to the unique circumstances of the present case, it would be useful to do so in order to obtain a full picture of the harassment complained of. Malcomson had filed an affidavit on 6 June 2001 in support of the application for interim injunction and it is based on that affidavit, along with the documents exhibited, that the findings of fact are based.

The facts from Malcomson`s affidavit

The substantive complaint of Malcomson in respect of harassment is that Mehta:

(1) sent e-mails to Malcomson, some of which he had retrieved outside the premises;

(2) obtained the confidential mobile phone number of Malcomson and made calls to that number which Malcomson received outside the residence; and

(3) sent numerous e-mails and SMS messages via mobile phone to Malcomson and various employees and directors of Zerity, some of which were received outside the premises.

It was Mehta who had resigned of his own accord. It is not known whether he was pressured to do so, but this was not asserted in the e-mail he sent on 28 April 2000 in which he tendered his resignation. However, shortly after his departure, in May 2000, Mehta started making persistent calls to the various directors of Zerity, including Malcomson, Alagappan (the Chief Financial Officer), Choo (the Chief Operating Officer), Buchholz (the Chief Technology Officer) and Lim (the Human Resources Manager). He also sent them e-mails and SMS messages via their mobile phones. These communications varied from pleas to reinstate his employment to allegations of misconduct, incompetence and neglect of duties on the part of Zerity`s employees. On two occasions Mehta appeared unannounced at the premises to demand his job back. Lim, who met him on those occasions, told him that this was not possible and that he should get on with his life.

Around 6 June 2000, at the insistence of Mehta, Malcomson met him at the Starbucks coffee house at Temasek Towers. Mehta told Malcomson that he wanted to `re-establish good relations`. He also wanted his job back. Malcomson asked Mehta to stop annoying the directors of Zerity and to leave the company alone. He told Mehta that Zerity intended to issue a `formal complaint` to him. Mehta pleaded with Malcomson not issue such a complaint and promised that he would cease all contact with Zerity`s employees and related third parties. In view of this, Malcomson agreed not to `issue` the complaint.

However matters did not end there. From October to early November 2000, Mehta sent e-mail messages to Malcomson and various other directors and employees of Zerity. In these messages he levelled accusations at the recipients of giving him a bad reference to a potential employer, Loh. Malcomson was annoyed by this because to his knowledge, Zerity had not given any such reference. Mehta had attached an e-mail from Loh to him to support his accusation. Loh`s e-mail states as follows:

> *Naresh,*
>
> *After the latest incidences of unsolicited calls at night and numerous emails, I have made various reference checks on your background including your stints in Finesse Alliance, Keppel and [Zerity].*
>
> *I regret to inform you that your profile will not fit my requirements, and hence I have no need to meet you on Monday as planned ...*

Lim subsequently received an e-mail from Loh in which the latter apologised for any inconvenience caused as a result of his e-mail to Mehta. Loh later telephoned Lim and clarified that he had not spoken to anyone in Zerity about Mehta and that the reference on Mehta he obtained was from a third party. Loh said that he had received persistent calls and e-mails from Mehta insisting on a job interview and so he had sent that e-mail to Mehta.

On the morning of 21 October 2000, a Saturday, Mehta telephoned Zerity`s solicitor, Joyce Tan of Joyce A Tan & Partners. Tan had drafted the employment contract between Mehta and Zerity. She is also Zerity`s company secretary. Mehta introduced himself as `John Tan` and made arrangements to meet her the same day about an employment matter. Shortly afterwards he turned up at Tan`s office. Tan told him to leave. Mehta however insisted on having a discussion with her. He eventually left the office but not before making a nuisance of himself.

That afternoon Mehta sent an e-mail to Malcomson and Lim demanding reinstatement of his employment with Zerity. He stated the following:

> *I have also written to you all to reconsider my case in the past and also the NULL VOID case of the letter of appointment issued to me. I need an answer by Monday and would like to settle this issue in a nice manner before I escalate it to the next level of seeking justice.*
>
> *I have arrived at this conclusion that my letter of appointment given to me via the below email was Null and Void. Factor-e Asia Pte Ltd, First-e Asia Pte Ltd, First-e OUB Asia Pte Ltd were formed only on 01/03/2000 while the letter was issued to me in Feburary 2000 as the date stated below.*

He went on to demand reinstatement on the following terms:

> *1. No Termination Clause till December 2001.*
>
> *2. You shall reinstate me immediately with the AVP Position and all the benefits, overseas training and other product training that have been deprived from me including stock Options from the date of Joining. Under what bad circumstances and abusement [**sic**] I had been told to tender resignation will be considered as Null and Void.*
>
> *3. Apology for all the harassement [**sic**] I went thru in finding a Job in a very tight job market, Bad Comment I received from various employers and First-e employees "willingly" coming to my house taking my notebook and cleaning all the stuff searching my house etc. etc. on the instructions of [**sic**].*
>
> *4. The Human Resource Manager-Marianne Lim was appointed after me so she has no right to handle my case at that point of time or until asked for.*
>
> *5. You shall with immediate effect refrain to write or speak any adverse comments about my performance or anything else that shall spoil my image/ reputation etc to any of my prospective employers and shall write to all those employers who you have already to undone the damage as an apology (including BroadVision Singapore whose email is below).*

On Sunday, 22 October 2000, at about 6 o`clock in the morning, the telephone at the residence rang. Malcomson answered it and a lady`s voice at the other end introduced herself as Mehta`s sister. She wanted to talk about Mehta`s employment in Zerity. Annoyed at receiving the call at such an early hour, Malcomson told her that he had already put Mehta on notice not to make further contacts with

him, either personally or through his representatives. At this the lady apologised and hung up. That night, Alagappan and Scrimgeour (employees of Zerity), informed Malcomson via e-mail that Mehta had, to their great annoyance, telephoned them on Saturday, 21 October 2000 and Sunday, 22 October 2000 respectively to complain about his failure to be reinstated.

On 23 October 2000, Mehta telephoned Lim at the premises. He told her that he would report for work the next day. He demanded to be provided with a desk and a telephone at the premises. Lim told Mehta that Zerity would not consider reinstating him. Notwithstanding this, Mehta insisted on turning up for work the next day. And he lived up to his word by appearing at the premises at 8.45am the next day. Lim told him to leave immediately, warning him that she would summon the police otherwise. At this, Mehta left. Later that day, Mehta telephoned Lim at the premises. He threatened to inform the press that his house was ransacked by Zerity at the time his employment was terminated. Malcomson explained that at that time, Alagappan, Choo and Lim had called at Mehta`s residence to check if he had kept any information pertaining to Zerity in his notebook computer. Mehta had willingly submitted himself to the check, which revealed that he was indeed in possession of information and intellectual property belonging to Zerity. He was asked to erase the information from his computer and he complied.

On 27 October 2000, Mehta telephoned Lim at the premises. He again demanded to be reinstated. She was annoyed at his persistent demands and told him once again that Zerity would not reinstate him.

In the evening of 31 October 2000, Malcomson received an e-mail from Mehta. Again he asked for reinstatement with Zerity. He also threatened to complain about Zerity to the authorities should he not be re-employed. The relevant excerpt of the e-mail is as follows:

> *This morning at 11.15 am I have passed the necessary papers along with the ROC/ROB registered papers to the front recep. I would like to resolve this issue on a co-ordial [**sic**] manner and peacefully.*
>
> *I have already emailed to you that I would like to resolve this on a lunch table today but later on calling found that all people missing in the office. I have given my word to Gerhad Huber, Chairman of the company and CEO Nicholas Malcomson that I would like to settle this issue in a nice and professional way.*
>
> *However if the company and responsible people still would like to test my patience then I had a small chat with the Management Consultants in a nice way regarding ROB/ROC issues in a general manner. Under the act the following breaches takes place*
>
> *1. Breach of Contract Act-Both employment and Company Act. The company and the relevant companies can be taken for task.*
>
> *2. Breach of Contract Ractification [**sic**] by Lawyers and other necessary Board of Directors. They can be struck of [**sic**] LawBar Payroll if I take the matter to that level.*
>
> *Leading to cease of [**sic**] their operation and cannot work or operate business in Singapore and all the directors and company secretaries will be liable for prosecution.*

By a letter dated 1 November 2000, Zerity`s solicitors, M/s Allen & Gledhill, requested Mehta to stop harassing and making unsolicited communication with the employees of Zerity. Mehta was also warned not to enter the premises. Mehta replied to this letter by e-mail on the same day. In the e-mail, he apologised for his actions and agreed not to harass or contact Zerity`s employees. The relevant excerpt from his e-mail is reproduced below:

> *I have forgiven your client and all their staff for the so "called employment letter". Having read the contents of the same. I will here by from 02/11/2000 shall just follow the said contents in it.*
>
> *Please accept my apology if I have hurt anyone`s feeling directly or indirectly/intentionally or non intentionally. I hereby wish you all the best in whatever you people do for we small people. I hold no prejudice about the company or any of its persons. However on record I would like to keep injustice was done to me.*

However Mehta continued to send numerous e-mails, faxes, cards and even flowers to Malcomson and other employees of Zerity at the residence and the premises. M/s Allen & Gledhill sent another letter, dated 10 November 2000, to Mehta to warn him again not to harass or communicate with Zerity`s employees. He responded by sending to Allen & Gledhill two faxes the same evening as well as an e-mail at about 1.32am on 11 November 2000. In the first telefax, he confirmed that he had already promised and `given his word of honour` that he would not further communicate with Zerity. He added that it was Lim who had telephoned to thank him for the flowers he had sent. He further claimed that it was Alagappan who had telephoned him to tell him that he (Alagappan) was leaving Zerity and that Mehta should contact Malcomson in respect of any `pending issues in the near future`. In the second fax, he accused M/s Allen & Gledhill`s clerk of forcing his entry into his home to deliver their letter dated 10 November 2000. In an e-mail dated 11 November 2000, Mehta raised the issue of M/s Allen & Gledhill`s letter dated 10 November 2000. He wrote as follows:

> *I am writing to you and also have spoken to you asking if you have any concerns in a nice manner however you still send me the letter which is not professional. Please do not test my patience. I am a nice person and a gentleman ...*

When Malcomson checked with Lim, she said that it was Mehta who had telephoned her to ask if she had received the flowers. She had told him not to send anything or call her again. Lim however recalled an incident which occurred a few days earlier when she had telephoned Mehta by mistake. As soon as she realised this, she apologised and discontinued the conversation. As for Alagappan, he clarified that the reason he telephoned Mehta was to tell him that he was leaving Zerity so that Mehta would stop calling him. Prior to that, Mehta had been calling him frequently on the telephone, sometimes through third parties and had become `too much of a nuisance`. Mehta had also turned up at Alagappan`s house unannounced on 5 November 2000 only to be told to leave immediately.

Finally, in paras 44 to 52 of his affidavit, Malcomson sets out the latest incidents as follows:

> *44. Between 12 November 2000 and 31 March 2001, the Defendant, to my knowledge, did not make any contact with the employees of [Zerity] or myself.*

45. On 1 April 2001, the Defendant came to my residence, uninvited, and asked to see me. At that time, I was overseas. Our maid, Rosmina, informed him that I was not around. The Defendant in an extremely belligerent manner demanded that my maid give him my handphone number. My maid was reduced to tears by his conduct. She was eventually forced to reveal my mobile phone number. This is a private number, which I do not give it to anyone outside the family. He then made three calls to me on the same day through my handphone number. The substance of the conversation was that the Defendant wanted to be re-employed by [Zerity]. I told him not to call me, ever.

46. On 22 April 2001, the Defendant came to my house, again, uninvited. This time, he handed delivered a card addressed to my wife and I. The card had a picture of a rattle on its front with `Congratulations` printed across the front. It is clear from the design of the card that it was meant to be used to congratulate couples over the birth of their newly born babies.

47. The following words were written in the card:

"Thanks a lot Nick for your help. All I need from you, Gracy Choo, Marianne Lim, Peter Seah clearance of my case as green or cannot be employed for the job marked so I can get a job - Naresh."

48. ... My wife showed me the card when I returned to Singapore on 23 April 2001.

49. The receipt of this card from the Defendant was especially distressing to my wife and I. We have been married for some 10 years and our son died at birth two years ago around this time. The Defendant obviously intended to inflict my wife and I with emotional pain and distress by giving us a card containing a picture of a rattle so close to the anniversary.

50. The next day, on 23 April 2001, the Defendant sent me an e-mail requesting that I send a:

"clearance letter to the Ministry of Manpower to allow Singapore Employers to hire [him] and let [him] earn [his] bread and butter."

He also asked for a letter to be sent to the Home Affairs Ministry to:

"put his Singapore identity card back to workable position and not tagging of any criminal/offence or green record."

These demands simply did not make sense to me as [Zerity] has not written to the relevant authorities to complain about him in the first place ...

51. On 27 April 2001, I made a police report against the Defendant ...

52. On 4 June 2001, I received a note from William Scrimgeour of [Zerity]. He stated in the note that on 1 June 2000, whilst he was having lunch at a coffee shop located at the basement of Temasek Tower, the Defendant approached him. The Defendant asked for my whereabouts. He also asked where Ms Lim

> *was. On that day, both of us were overseas. He further informed William Scrimgeour that he had earlier visited [Zerity`s] office and found out that there was nobody there. It was plain to William Scrimgeour that the Defendant had intended to confront me or Ms Lim on that day ...*

What emerges from Malcomson`s affidavit is a sorry story of a person who, out of either malice or due to mental instability, had embarked on a course of conduct with such persistence that he had made life unbearable for the objects of his attention. He had used physical presence as well as telephone, mail, e-mail and SMS messages - all forms of communication available in this day and age - to wear out those people and in the process caused them much annoyance and great distress. Particularly vicious is the sending of the card with the picture of the baby rattle close to the anniversary of the death of Malcomson`s son.

Developments in the law

Before considering the law, it is necessary to define the meaning of the term `harassment`. The ***Shorter Oxford English Dictionary*** (3rd Ed) defines `harass` as follows:

> *1. To wear out, or exhaust with fatigue, care, trouble, etc ... 3. To trouble or vex by repeated attacks ... 4. To worry, distress with annoying labour, care, importunity, misfortune, etc ...*

***Black`s Law Dictionary*** (7th Ed) gives the meaning of `harassment` as follows:

> *Words, conduct, or action (usually repeated or persistent) that, being directed at a specific person, annoys, alarms, or causes substantial emotional distress in that person and serves no legitimate purpose.*

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. This is not intended to be an exhaustive definition of the term but rather one that sufficiently encompasses the facts of the present case in order to proceed with a consideration of the law.

There is no reported decision in our courts which deal with harassment in an action in tort. The position in England is not settled and I now consider the authorities.

Patel v Patel [1988] 2 FLR 179 concerns an action in which the plaintiff sought an injunction against his son-in-law who, in the course of a family dispute, had trespassed on the plaintiff`s home and threatened him in a number of ways such as telephoning him at home or abusing him in the street or at work. An interlocutory injunction was issued restraining the defendant from, inter alia, approaching within 50 yards of the plaintiff`s home. This part of the injunction was subsequently discharged and the Court of Appeal upheld that decision on appeal. In his reasoned judgment, May LJ said:

> *... it must be made clear, at any rate in my opinion, that in common-law*

> *actions based upon an alleged tort injunctions can only be an appropriate remedy where an actual tortious act has been or is likely to be committed. A number of the allegations in the various affidavits that are before us do not constitute a tort, nor give any reason for thinking that a tort might be committed, and I have no doubt that it was for this reason that the judge thought it proper to limit the terms of the original injunction of 20 August 1986, in particular removing from it the restraint on the son-in-law from approaching within 50 yards of his father-in-law`s house. Unless an actual trespass is committed or is more than likely to be committed, it does not seem to me that merely to approach to within 50 yards of a person`s house does give a cause of action which may be restrained by an injunction in those terms.*

That judgment does not deal with the question of harassment. However Waterhouse J, sitting as the second judge in the Court of Appeal, extended the scope of this decision by stating that there was no tort of harassment. In a single-para judgment, he said (at p 182):

> *I agree with the orders proposed by May LJ and with the reasons for them that he has given. In particular, I endorse the approach adopted by the judge below in reformulating the injunctions. The essence of the appellant`s complaint is that he has been the victim of repeated harassment since May 1985, but in the present state of the law there is no tort of harassment. The judge was right, in my judgment, in limiting the scope of the injunctions in the way that he did.*

This position was doubted by the Court of Appeal in **Khorasandjian v Bush** [1993] QB 727[1993] 3 All ER 669. After quoting from the judgment of Waterhouse J, Dillon LJ said ([1993] QB 727 at 738; [1993] 3 All ER 669 at 678):

> *I find it difficult to give much weight to that general dictum that there is no tort of harassment, when the reformulated injunctions which Waterhouse J approved included an injunction restraining the defendant from molesting the plaintiff.*

In **Burris v Azadani** [1995] 4 All ER 802[1995] 1 WLR 1372, Sir Thomas Bingham MR also doubted the position taken by Waterhouse J in ***Patel v Patel*** (supra). The Master of the Rolls, with whom the other two Lord Justices agreed, quoted from the judgments of May LJ and Waterhouse J and said ([1995] 4 All ER 802 at 809; [1995] 1 WLR 1372 at 1378):

> *I do not, however, understand May LJ to have held that such an order was improper even in a case where the commission of a tort was reasonably to be apprehended and where an exclusion zone order was reasonably judged to be necessary for protection of the plaintiff as the potential victim of tortious conduct. Nor, in the light of later authority, can the view be upheld that there is no tort of harassment.*

In England the matter is now covered by the Protection from Harassment Act 1997 - see **Hunter v Canary Wharf** [1997] AC 655[1997] 2 All ER 426. In that case, the House of Lords was faced with the question whether a person who had no right to the land affected by a nuisance could bring an action in private nuisance. The majority of their Lordships held that only a person with a right to exclusive possession of the land affected could sue, and a mere licensee or occupier could not. In so

holding, the House had to overrule the decision of the Court of Appeal in ***Khorasandjian v Bush*** (supra), in which the facts were as follows: the plaintiff met the defendant in a snooker club when she was 16 years of age and he 20. They became friends and dated on and off over a period of about a year. Then the plaintiff broke up the relationship but the defendant, who had suicidal tendencies, could not accept it. He embarked on a series of acts directed at the plaintiff which included threats of violence, aggressive behaviour in her presence and simply following her around and shouting abuse. He also pestered her with telephone calls to her parents` as well as grandmother`s home. On one occasion, as a result of such abusive behaviour, the defendant was arrested and kept in custody over the weekend but was given a 12-month conditional discharge. However he made further threats against the plaintiff and was eventually sent to prison for six weeks for threatening to kill her. He was also fined for offences under the Telecommunications Act 1984 in respect of nuisance telephone calls he made to the plaintiff. The Court of Appeal had upheld an injunction against the defendant restraining him from, inter alia, `harassing, pestering or communicating with` the plaintiff. In his speech in ***Hunter v Canary Wharf*** , Lord Goff had this to say ([1997] AC 655 at 690-691; [1997] 2 All ER 426 at 437-438) of the decision of the Court of Appeal in ***Khorasandjian v Bush*** :

> *The question before the Court of Appeal was whether the judge had jurisdiction to grant such an injunction, in relation to telephone calls made to the plaintiff at her parents` home. The home was the property of the plaintiff`s mother, and it was recognised that her mother could complain of persistent and unwanted telephone calls made to her; but it was submitted that the plaintiff, as a mere licensee in her mother`s house, could not invoke the tort of private nuisance to complain of unwanted and harassing telephone calls made to her in her mother`s home. The majority of the Court of Appeal (Peter Gibson J dissenting) rejected this submission, relying on the decision of the Appellate Division of the Alberta Supreme Court in* ***Motherwell v Motherwell*** *[1976] 73 DLR (3d) 62. In that case, the Appellate Division not only recognised that the legal owner of property could obtain an injunction, on the ground of private nuisance, to restrain persistent harassment by unwanted telephone calls to his home, but also that the same remedy was open to his wife who had no interest in the property. In the Court of Appeal Peter Gibson J dissented on the ground that it was wrong in principle that a mere licensee or someone without any interest in, or right to occupy, the relevant land should be able to sue in private nuisance.*
>
> *It is necessary therefore to consider the basis of the decision in* ***Motherwell v Motherwell*** *that a wife, who has no interest in the matrimonial home where she lives, is nevertheless able to sue in private nuisance in respect of interference with her enjoyment of that home. The case was concerned with a claim for an injunction against the defendant, who was the daughter of one of the plaintiffs, the other two plaintiffs being her brother and sister-in-law. The main ground of the complaint against the defendant was that, as a result of a paranoid condition from which she suffered which produced in her the conviction that her sister-in-law and her father`s housekeeper were inflaming her brother and her father against her, she persistently made a very large number of telephone calls to her brother`s and her father`s homes, in which she abused her sister-in-law and the housekeeper. The Appellate Division of the Alberta Supreme Court, in a judgment delivered by Clement JA, held that not only could her father and brother, as householders, obtain an injunction against the defendant to restrain this activity as a private nuisance, but so also could her sister-in-law although she had no interest in her husband`s property. Clement JA said (at 78):*
>
> *`Here we have a wife harassed in the matrimonial home. She has a status, a right to live there with her husband and children. I find it absurd to say that her occupancy of the matrimonial home is insufficient to found an action in nuisance. In my opinion she is entitled to the same relief as is her husband, the*

brother.`

*This conclusion was very largely based on the decision of the Court of Appeal in **Foster v Warblington Urban District Council** [1906] 1 KB 648, which Clement JA understood to establish a distinction between `one who is "merely present"` and `occupancy of a substantial nature`, and that in the latter case the occupier was entitled to sue in private nuisance. However, **Foster v Warblington Urban District Council** does not, in my opinion, provide authority for the proposition that a person in the position of a mere licensee, such as a wife or husband in her or his spouse`s house, is entitled to sue in that action. This misunderstanding must, I fear, undermine the authority of **Motherwell v Motherwell** on this point; and in so far as the decision of the Court of Appeal in **Khorasandjian v Bush** is founded upon **Motherwell v Motherwell** it is likewise undermined.*

Lord Goff recognised that the primary complaint of the plaintiff in ***Khorasandjian v Bush*** (supra) was not private nuisance but harassment. He continued ([1997] AC 655 at 691-692; [1997] 2 All ER 426 at 438):

*But I must go further. If a plaintiff, such as the daughter of the householder in **Khorasandjian v Bush**, is harassed by abusive telephone calls, the gravamen of the complaint lies in the harassment which is just as much an abuse, or indeed an invasion of her privacy, whether she is pestered in this way in her mother`s or her husband`s house, or she is staying with a friend, or is at her place of work, or even in her car with a mobile phone. In truth, what the Court of Appeal appears to have been doing was to exploit the law of private nuisance in order to create by the back door a tort of harassment which was only partially effective in that it was artificially limited to harassment which takes place in her home. I myself do not consider that this is a satisfactory manner in which to develop the law, especially when, as in the case in question, the step so taken was inconsistent with another decision of the Court of Appeal, viz **Malone v Laskey** [1907] 2 KB 141, by which the court was bound. In any event, a tort of harassment has now received statutory recognition (see the Protection from Harassment Act 1997). We are therefore no longer troubled with the question whether the common law should be developed to provide such a remedy.*

Lord Hoffmann agreed and expressed similar sentiments, saying ([1997] AC 655 at 707; [1997] 2 All ER 426 at 452):

*The perceived gap in **Khorasandjian**`s case was the absence of a tort of intentional harassment causing distress without actual bodily or psychiatric illness. This limitation is thought to arise out of cases like **Wilkinson v Downton** [1897] 2 QB 57 and **Janvier v Sweeney** [1919] 2 KB 316. The law of harassment has now been put on a statutory basis (see the Protection from Harassment Act 1997) and it is unnecessary to consider how the common law might have developed. But as at present advised, I see no reason why a tort of intention should be subject to the rule which excludes compensation for mere distress, inconvenience or discomfort in actions based on negligence (see **Hicks v Chief Constable of the South Yorkshire Police** [1992] 2 All ER 65). The policy considerations are quite different. I do not therefore say that **Khorasandjian**`s case was wrongly decided. But it must be seen as a case on intentional harassment, not nuisance.*

Wilkinson v Downton [1897] 2 QB 57 and **Janvier v Sweeney** [1919] 2 KB 316 are of course the well-known cases which established that false words or verbal threats calculated to cause, and uttered with the knowledge that they are likely to cause, and actually causing physical injury to the person to whom they are uttered are actionable. But I do not understand those cases, which have extended the law to include recovery for mental shock caused by intentional acts, as restricting in any manner its further development.

The editors of ***Bullen & Leake & Jacob`s Precedents of Pleadings*** (14th Ed, 2001) take the position that harassment is a recognised tort, although they did not consider the judgment of the House of Lords in ***Hunter v Canary Wharf*** (supra). In para 54-01 of ***Bullen & Leake*** , the editors state:

> *Harassment is now recognized at common law and protection will be afforded against it, in particular, by the courts` powers to grant injunctive relief. In* ***Khorasandjian v Bush*** *... the Court of Appeal dismissed an appeal against an order restraining the defendant from "using violence to, harassing, pestering or communicating with" the claimant by, among other things, "the persecution by telephone calls". In* ***Burris v Azadani*** *... Sir Thomas Bingham MR reviewed the law of harassment in the context of the court`s power to grant interlocutory injunctive relief and concluded that the jurisdiction derived from section 37(1) of the Supreme Court Act 1981 and section 38 of the County Courts Act 1984 was not limited to restraining conduct which is in itself tortious or otherwise unlawful but extends to the protection of "the legitimate interests of those who have invoked [the court`s] jurisdiction" ...*

In ***International Privacy, Publicity and Personality Laws*** (2001) (Henry, Ed), the contributors to the chapter on Singapore (ch 24), opined that the Singapore courts should recognise the tort of harassment. After quoting from the speech of Lord Hoffmann in ***Hunter v Canary Wharf*** that I have reproduced above, the editors say (at p 368):

> *This passage from the decision of Lord Hoffmann provides material for the development in Singapore of a common law tort of intentional harassment ...*
>
> *If and when this takes place, there would be much scope for the protection of privacy, since the tort may, if fully developed, protect against `distress, inconvenience and discomfort`. The main difficulty against the adoption of the tort of harassment in Singapore is a passage from the decision of Selvam J in* ***Arul Chandran v Gartshore*** *which suggests that mental distress is not actionable. It is submitted that Selvam J`s statement that mental distress is not actionable should not preclude the development and acceptance of a tort of intentional harassment in Singapore for several reasons. First, the statement of Selvam J was only an obiter dicta in respect of recovery for mental distress in tort, since the case before Selvam J involved a claim for breach of contract. Secondly, Selvam J relied on old judgments that mental distress was not recoverable. Selvam J`s attention was not drawn to the modern cases including those cited in this part of the chapter that support the view that there can be a cause of action based on intentionally causing mental distress. Thirdly, Selvam J`s suggestion that such damages should not be recoverable on the basis that they are difficult to quantify is not a good reason to deny a remedy. The courts are adept in quantifying damages ...*

The passage in **Arul Chandran v Gartshore** [2000] 2 SLR 446 that the editors are referring to is probably [para]13 in which the judge said:

> *I now commence an analysis of the law on the issue. Historically speaking, English law acted on the apriorism that pure mental suffering without physical injury was an inevitable fact of interpersonal relationships in private and public life alike. Unlike actionable physical injury, which arises from an external cause, mental distress stems from inherent predisposition of the individual. As it arose from the constitution and circumstances of the individual it did not traditionally give a cause of action. After all, people must learn to accept with a certain degree of stoicism the slings and arrows of this vale of tears. In such instances, they should be slow to rush to the law with a tale of tears and fears save in certain recognised circumstances. It makes no difference whether the event causing such suffering was the commission of a tort or the breaking of a contract. In the time-honoured language of the law, such suffering is too remote for recompense at law: see **Victorian Railway Commissioners v Coultas** (Unreported) ">222">. At one time, it was thought that this was not a desirable situation because it failed to deter the callous conduct of irresponsible people. So an attempt was made to move the boundary by Wright J in **Wilkinson v Downton** [1897] 2 QB 57. Notably, that was not a contract action. Even in tort the novelty failed to flourish. It is settled law that mental distress by itself does not constitute sufficient damage to found a cause of action. In 1957, Devlin J stated the correct position in **Behrens v Bertram Mills Circus Ltd** [1957] 2 QB 1 at 28: `The general principle embedded in the common law that mental suffering caused by grief, fear, anguish and the like is not assessable.`*

For my part, I do not think that the judge had intended to rule out all actions founded on mental distress. But to the extent that he does, I would agree with the editors that the statement in respect of tort is obiter because the question before the court in that case involved damages for mental distress in a breach of contract situation. Also, counsel there did not appear to have cited the authorities that I have dealt with above, in particular, the statement by Lord Hoffmann in ***Hunter v Canary Wharf*** (quoted in [para]39 above) in which he said that he saw no reason why `a tort of intention should be subject to the rule which excludes compensation for mere distress, inconvenience or discomfort in actions based on negligence`. In the premises, I consider that there is no authority in the way of the development of the law in this area in Singapore.

The basic facts in the present case can be summarised as follows: Mehta, having left the employment of Zerity, embarked on a course of conduct that made life unbearable for Malcomson and the other employees of his former employer. It was a course of conduct that any reasonable person would consider intolerable. Indeed Mehta`s actions, as can be seen from his behaviour generally, the written communications from him, and the fact that third parties have also been at the receiving end of his actions, could well be a manifestation of some form of mental illness. However even if that is relevant, Mehta has not entered a defence nor filed any affidavits and for the present purposes I can only assume that he has the faculties of an ordinary person.

In ***Wilkinson v Downton*** (supra), the defendant played a practical joke on the plaintiff by telling her that her husband had met with a serious accident and had broken both legs. On hearing this the plaintiff suffered a violent shock, fell ill and became incapacitated for several weeks. The court found that these consequences were not the result of any existing condition or predisposition of the plaintiff. In giving judgment for the plaintiff, Wright J declined to base the action on fraud because the damage suffered did not naturally result from the plaintiff acting upon the false statement.

Instead he held as follows (at pp 58-59):

> *The defendant has, as I assume for the moment, wilfully done an act calculated to cause physical harm to the plaintiff - that is to say, to infringe her legal right to personal safety, and has in fact thereby caused physical harm to her. That proposition without more appears to me to state a good cause of action, there being no justification alleged for the act. This wilful injuria is in law malicious, although no malicious purpose to cause the harm which was caused nor any motive of spite is imputed to the defendant.*
>
> *It remains to consider whether the assumptions involved in the proposition are made out. One question is whether the defendant`s act was so plainly calculated to produce some effect of the kind which was produced that an intention to produce it ought to be imputed to the defendant, regard being had to the fact that the effect was produced on a person proved to be in an ordinary state of health and mind. I think that it was. It is difficult to imagine that such a statement, made suddenly and with apparent seriousness, could fail to produce grave effects under the circumstances upon any but an exceptionally indifferent person, and therefore an intention to produce such an effect must be imputed, and it is no answer in law to say that more harm was done than was anticipated, for that is commonly the case with all wrongs.*

Wright J then held that the connection between cause and effect in that case was sufficiently close such that the damages suffered by the plaintiff were not too remote in law. He considered the decision of the Privy Council in **Victorian Rlys Comrs v Coultas** [1888] 13 App Cas 222 to be of doubtful authority. In any event Wright J distinguished it on the grounds that the ***Victorian Rlys*** case did not involve any element of wilful wrong. He also distinguished **Allsop v Allsop** (Unreported) (Unreported) , a case involving a slander. Wright J considered that the plaintiff had a legal right to personal safety. This right was infringed by the defendant who had wilfully done an act calculated to cause, and which did cause, physical harm to her. It did not matter that it was not the defendant`s intention to cause physical harm. What was important was that the defendant had intended to carry out the act and the consequences that resulted were within reasonable contemplation.

In ***Janvier v Sweeney*** (supra), the plaintiff was a French woman employed as companion to one Mrs Rowton. She was engaged to be married to a Mr Neumann, a German, against the wishes of her relatives. In July 1915 Neumann was interned in the Isle of Man. The plaintiff had visited him there twice and corresponded regularly with him. In mid-1917, one Miss Marsh moved in to live with Rowton. The first defendant was a private detective and he wanted to look at some letters that Marsh had in her possession. His assistant, the second defendant, went up to the plaintiff and announced, falsely, that he was a detective from Scotland Yard representing the military authorities. He told the plaintiff that she was the woman they were looking for as she had been corresponding with a German spy. They had hoped to scare her into helping them gain access to Marsh`s letters. Unfortunately the plaintiff suffered a severe nervous shock as a result of this encounter. The English Court of Appeal approved and applied ***Wilkinson v Downton*** (supra) and held that the defendants were liable to the plaintiff in damages. The words of Duke LJ, at p 326 are particularly apposite:

> *This is a much stronger case than **Wilkinson v Downton**. In that case there was no intention to commit a wrongful act; the defendant merely intended to play a practical joke upon the plaintiff. In the present case there was an intention to terrify the plaintiff for the purpose of attaining an unlawful object in which both the defendants were jointly concerned.*

Should there be a tort of harassment?

There the law in this area has remained up to today, apart from the dicta in ***Burris v Azadani*** and ***Hunter v Canary Wharf*** (supra). The common law has been in development for close to 1,000 years. In most of that time the nature of the community regulated by it was rural and agrarian. Indeed emphasis had been placed on land because that was the main means of economic output and, consequently, wealth. As concerns the area of law in the present case, protection was offered to the landowner against interference with enjoyment of his land by the tort of nuisance. Outside of his land he, as with any individual, is protected generally by the tort of trespass to the person and the tort of negligence.

In the last 200 years improvements in technology have brought about three great changes in lifestyle, at least for those of us in affluent societies. The first is urbanisation due to the fact that the means of livelihood for most people shifted from agriculture to manufacturing and services. More and more people live closer and closer together. The second is the widespread availability of leisure time. No longer do most people have to toil long hours daily in order to eke out a hand to mouth existence. With education, and hence skills, and technology, productivity has risen to such levels that virtually everyone can afford considerable periods of leisure. The third great change is in communication. With mobile phones, voicemail, SMS and pagers we can be contacted anytime, anywhere, instantaneously or otherwise. With e-mail and internet homepages our presence is not tied down to geography but has become virtual, somewhere out there in the ether of cyberspace.

These three changes have combined to create the problem in the present case which did not and could not exist before. An abundance of leisure time means that there are people who can afford the time and money to indulge in fantasies about other people, whether in respect of any grievance they have, or of so-called celebrities, another product of the modern era of mass media and sophisticated marketing. And the means by which such people can act out their fantasies have become not only easier but more powerful. No longer need one be within sight or hearing of the victim. He or she can be reached aurally by mobile phone and pager, or communicated to in the form of words, symbols or graphics by SMS or e-mail. This can be done anytime from anywhere. With a computer, such communications can be generated at high volumes automatically, eg e-mail `spamming`. While there are those who may view the proliferation of pagers, mobile phones and e-mail with dismay, a steadily growing number of people consider these devices indispensable to their occupation and in many cases, to their personal lives as well. Certainly within one generation these will be as commonplace as the fixed-line telephone and television have become in the lifetime of those of us who are old enough to have ever been deprived of them. People will arrange their lives around these devices as was done for the earlier inventions.

But life can be unbearable for the person who finds himself the object of attention of one who is determined to make use of these modern devices to harass. That person`s mobile phone can be ringing away at all times and in all places. He may get a flood of SMS messages, which can now be conveniently sent out by computer via e-mail. His inbox can be flooded with unwanted e-mail. These communications can be warm words of adulation or they can be chilling threats to property or personal safety. The result can range from displeasure to distress to debilitation.

Sections 13A and 13B of the Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Ed) provide as follows:

13A.	-	(1)	Any person who in a public place or in a private place, with intent to cause harassment, alarm or distress to another person -	
			(a)	uses threatening, abusive or insulting words or behaviour; or
			(b)	displays any writing, sign or other visible representation which is threatening, abusive or insulting,
			thereby causing that person or any other person harassment, alarm or distress, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000.	
		(2)	It is a defence for the accused to prove -	

			(a)	that he was inside a dwelling-house and had no reason to believe that the words or behaviour used, or the writing, sign or other visible representation displayed, by him would be heard or seen by a person outside that dwelling-house or any other dwelling-house; or
			(b)	that his conduct was reasonable.
13B.	-	(1)	Any person who in a public place or in a private place -	
			(a)	uses threatening, abusive or insulting words or behaviour; or
			(b)	displays any writing, sign or other visible representation which is threatening, abusive or insulting,

			within the hearing or sight of any person likely to be caused harassment, alarm or distress thereby shall be guilty of an offence and shall be liableon conviction to a fine not exceeding $2,000.	
		(2)	It is a defence for the accused to prove -	
			(a)	that he had no reason to believe that there was any person within hearing or sight who was likely to be caused harassment, alarm or distress;

			(b)	that he was inside a dwelling-house and had no reason to believe that the words or behaviour used, or the writing, sign or other visible representation displayed, would be heard or seen by a person outside that dwelling-house or any other dwelling-house; or
			(c)	that his conduct was reasonable.

Intentional harassment, alarm or distress **Harassment, alarm or distress** Therefore, under that Act, if a person uses words that are abusive, insulting or threatening or behaves in that manner in any place and as a consequence causes harassment, alarm or distress to another person, the former may have committed an offence under the Act. However it would appear that similar words expressed by the perpetrator over the mobile phone which causes harassment, alarm or distress to the victim would not be an offence under this Act. Of course the victim can always switch off his mobile phone if he does not want to receive such calls and therefore it is not necessary to make that behaviour an offence. But this suggestion restricts the victim`s right to use his mobile phone or any other device through which the perpetrator`s communications are sent. In my opinion there is a need to address this lacuna in the law.

I do not believe that it is not possible for the common law to respond to this need. In Singapore we live in one of the most densely populated countries in the world. And the policy of the government is to further increase the population. It will make for an intensely uncomfortable living environment if there is no recourse against a person who intentionally makes use of modern communication devices in a manner that causes offence, fear, distress and annoyance to another. Mehta had embarked on such a course of conduct by making the mobile phone calls along with his other acts of nuisance. He ought reasonably to know that such acts would cause worry, emotional distress, annoyance to Malcomson. In the law of negligence, a person has a duty to ensure that he does not cause any damage to others. Such acts are unintentional but they result in physical harm to the victim. Surely in respect of intentional acts that cause harm in the form of emotional distress, the law is able to provide a recourse. The fact that in such cases it is difficult to quantify damages should not, in my opinion, hinder the court from giving the appropriate relief. In the present case, as I suspect will generally be the situation in most cases of this nature, what the plaintiffs essentially want are not

damages but an injunction restraining Mehta from continuing with such acts. I see no reason of policy against ordering Mehta to stop such behaviour. They do not further the common good. Instead they cause the plaintiffs to lose time and emotional energy which can be better spent on more productive activities. Just as importantly, those acts do not contribute anything to the welfare of Mehta and an injunction from the court would in all probability steer him into a positive direction and at the very least make him get on with his life.

There is of course the need to balance the plaintiffs` right to privacy against Mehta`s right to free speech. However the latter right has always been subject to the existing law, eg defamation, sedition and, as I have demonstrated above, the Miscellaneous Offences (Public Order and Nuisance) Act. Freedom of speech, as with any other freedom, extends to where it begins to impinge on another person`s rights. If Mehta has any cause of action against the plaintiffs he should seek his recourse in the courts. What the plaintiffs ask here, apart from orders in respect of the well-established tort of private nuisance, is for Mehta to be prohibited from keying several combinations of numbers in his telephone. I can see no reason why the law cannot come to their aid in the circumstances.

I would note also that there appears to be an increasing number of cases of what is known as `stalking`, ie the harassment by individuals of the objects of their fantasies or desire. The latter are mostly celebrities, ie people such as entertainment figures who are glamorised by the mass media. In some countries such cases sometimes end tragically. Although that situation does not obtain in the present case, recognition of a tort of harassment could nip many of those cases in the bud. In **Fine Robert v McLardy Eileen May** [1998] EWCA 3003 (6 July 1998), Millet LJ commented as follows:

> *In the past, the absence of a tort of interference with privacy has been a serious blot on our jurisprudence. It has made it difficult to uphold injunctions of the present kind, necessary though they are, on any rational basis. With the imminent incorporation of the European Convention on Human Rights, which guarantees the privacy of the individual, his or her home and correspondence, this may be a thing of the past. It will not be long before this court is called on to consider whether, in the new circumstances, injunctions of the present kind can be granted generally to prevent harassment and stalking wherever it may take place, and without having to base this jurisdiction on the law of nuisance.*

In my opinion that time has come in Singapore.

Conclusion

In the premises, I give judgment to the plaintiffs and make the following orders:

(1) An injunction restraining the defendant from entering or being within the residence.

(2) An injunction restraining the defendant (whether by himself or his agent) from doing, procuring, inciting, abetting or encouraging any other person to do, any of the following:

(a) contacting or attempting to contact the first plaintiff either directly or indirectly by speaking to him, telephoning (with or without speaking), writing, sending messages electronically or through facsimile or in any other way; or

(b) sending or causing to be sent by hand, postal service, facsimile, electronic mail or otherwise howsoever, any article to the first plaintiff or so that it is likely to come to the attention of the first

plaintiff.

(3) An injunction restraining the defendant from entering or being within the premises.

(4) An injunction restraining the defendant from telephoning (with or without speaking) the second plaintiff`s employees or officers at the premises or procuring, inciting, abetting or encouraging any person to do likewise.

(5) An injunction restraining the defendant from sending any document or article to the second plaintiff`s employees or officers at the premises whether by hand, postal service, facsimile, electronic mail or otherwise howsoever or from inciting, causing or encouraging any person to do likewise.

The interim injunction granted on 11 June 2001 is consequently discharged. I also order Mehta to pay the costs of the plaintiffs (in one set only) in this action.

Outcome:

Application allowed.