Chee Soon Juan and others *v* Public Prosecutor
[2011] SGHC 40

Case Number	: Magistrate's Appeals Nos 432-434 of 2009
Decision Date	: 22 February 2011
Tribunal/Court	: High Court
Coram	: Woo Bih Li J
Counsel Name(s)	: The appellants in person; Isaac Tan, John Lu Zhuoren and Thiagesh Sukumaran (Attorney-General's Chambers) for the respondent.
Parties	: Chee Soon Juan and others — Public Prosecutor

Criminal Law

Constitutional Law

22 February 2011 Judgment reserved.

Woo Bih Li J:

Introduction

1 The appellants, namely Chee Soon Juan ("Dr Chee"), Chee Siok Chin ("CSC") and Ghandi s/o Karuppiah Ambalam ("Ghandi"), were each convicted by a District Judge of one charge under r 5 of the Miscellaneous Offences (Public Order and Nuisance) (Assemblies & Processions) Rules (Cap 184, R 1, 2000 Rev Ed) ("the MOR"). The charge read as follows:

> You, [name of appellant] are charged that you, on the 10th day of September 2006 at about 12.15 pm, in the vicinity of Raffles City Shopping Centre, North Bridge Road, Singapore, which is a public place, together with the [two other appellants and three other people, *ie* Tan Teck Wee ("Tan"), Jeffrey George ("Jeffrey") and Harkirat Kaur d/o Harmit Singh ("Harkirat")], did participate in an assembly intended to demonstrate opposition to the actions of the Government, which assembly you ought reasonably to have known was held without a permit under the MOR, and you have thereby committed an offence punishable under Rule 5 of the said Rules.

Dr Chee, CSC and Ghandi were each fined $1,000 (in default, one week's imprisonment). Each of them has served the default sentence in lieu of payment of the fine. All three of them are appealing against their conviction and sentence on the ground that the District Judge has erred in fact and in law.

The facts

2 On 10 September 2006 at or around 12.15pm, the appellants together with Tan, Jeffrey and Harkirat, had gathered in the vicinity of Raffles City Shopping Centre, near the entrance to City Hall MRT Station, and had, as a group, distributed flyers to members of the public moving about in the vicinity. They were spotted by police officers on special patrolling duties in conjunction with the World Bank and International Monetary Fund meeting then taking place in Singapore. The flyers which were being distributed contained the following words:

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[emphasis in original]

3 The appellants, Tan, Jeffrey and Harkirat had not applied for and did not possess a permit to carry out the activity on 10 September 2006.

The law

4 The MOR was promulgated pursuant to the power granted to the Minister of Home Affairs by s 5(1) of the Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Rev Ed) ("the MOA"). The purpose of the MOR was to ensure the maintenance of public order and to prevent congestion and annoyance caused by assemblies and processions held by *all kinds of groups and organisations*: see the statement of the Senior Minister of State for Home Affairs, Dr Lee Boon Yang, at the Second Reading of the Minor Offences (Amendment) Bill (*Singapore Parliamentary Debates*, *Official Report* (16 February 1989) vol 52 at col 689).

5 The appellants were charged under r 5 of the MOR, which provided as follows:

> 5. Any person who participates in any assembly or procession in any public road, public place or place of public resort shall, if he knows or ought reasonably to have known that the assembly or procession is held without a permit, or in contravention of any term or condition of a permit, be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000.

6 Rule 2(1) of the MOR defined an assembly or procession to which the MOR applied as follows:

> 2. —(1) Subject to paragraph (2), these Rules shall apply to *any assembly* or procession of *5 or more persons* in any public road, *public place* or place of public resort intended —
>
> (a) *to demonstrate support for or opposition to the views or actions of any person*;
>
> (b) to publicise a cause or campaign; or
>
> (c) to mark or commemorate any event.
>
> [emphasis added]

As can be seen, the criteria in r 2(1)(a)-(c) do not differentiate between activities held to promote a particular cause or campaign from recreational, social and commercial activities.

7 Rule 2(2) of the MOR listed out assemblies and processions which were exempted from the MOR. None are applicable here.

8 Section 2 of the MOA defined a "public place" as "any place or premises to which at the material time the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission".

9 Under the MOR, subject to the exceptions stated in r 2(2), an assembly (whether it involved commercial, political, social, recreational or other activities) intended to achieve any of the purposes listed in r 2(1)(a) – (c) was an assembly for which a permit was required if there were five or more participants. The police would then have the discretion whether to grant a permit when this was applied for.

10 The term "assembly" is not defined in the MOA or the MOR. However, the meaning of the word was explained by Yong Pung How CJ in *Ng Chye Huay v Public Prosecutor* [2006] 1 SLR(R) 157 ("*Ng Chye Huay*") (at [47]–[49] and [52]):

> 47 … [the meaning of the term "assembly"], for the purposes of the offences committed by [the appellants in *Ng Chye Huay*], *must thus be derived by looking at the mischief that the [MOA and the MOR (collectively referred to as "the legislation")] was enacted to address*, as well as comparing these provisions to the unlawful assembly provision found in the Penal Code [(Cap 224, 1984 Rev Ed)].
>
> 48 A search in Hansard revealed that during a debate on the Minor Offences (Amendment) Bill … on 16 February 1989, one Member of Parliament articulated that the seriousness of the problem of assemblies stemmed from the propensity of participants of such gatherings to create trouble (*Singapore Parliamentary Debates, Official Report* (16 February 1989) vol 52 at col 699). … The amendment bill thus vested authority in the Minister to require permits for assemblies of more than five people.
>
> 49 In my opinion, the legislation *was aimed at dealing with the misbehaviour of the persons gathered in an assembly of five or more, and such mischief can occur even if those gathered are engaged in varied activities*. It is not necessary for every member of the assembly to be engaged in the exact same activity in order for the assembly to create trouble. *It is sufficient that the people gathered can be identified as a collective entity and that they have a common purpose*.
>
> …
>
> 52 This reading is buttressed by examining the unlawful assembly provision found in s 141 of the Penal Code. … Similar to s 5 of the [MOA] and r 5 of the [MOR], s 141 of the Penal Code concerns itself with the potential mischief of a gathering or assembly of people. The offence in s 141 is *defined by reference to the type of common object held by that assembly*. It was clear to me that the concept of an undesirable assembly is closely linked to the common object of that assembly. In the instant case, the finding that the members of the group shared a common object was in no way negated by the fact that they were engaged in separate activities. …
>
> [emphasis added]

I accept that an assembly is comprised of a group of persons gathered together as a collective entity with a common purpose even if the members of the group may be engaged in different activities.

11 For completeness I should mention that the MOR and s 5 of the MOA were repealed on 9 October 2009. Assemblies and processions in public places are now regulated by Part II of the Public Order Act 2009 (Act 15 of 2009). Nothing turns on this.

Decision on the appeals against conviction

12 Rules 2 and 5 of the MOR applied where there were (i) a group of five or more persons; (ii) in a public place; (iii) gathered together as a common entity; (iv) with a common purpose of demonstrating support for or opposition to the views or actions of any person, or publicising a cause or campaign, or marking or commemorating any event; (v) in circumstances in which they knew or ought reasonably to have known that the assembly was held without a permit or in contravention of any term or condition of a permit.

13 On appeal, the appellants did not dispute that (i), (ii), (iii) and (iv) were satisfied. I would, however, make some observations on the District Judge's conclusion that the Government is a person within the meaning of r 2(1)(a) of the MOR (and therefore, that the flyers distributed by the appellants and others in their assembly, which were clearly targeted at and opposed to the alleged actions of Cabinet Ministers, violated r 2(1)(a)). The District Judge reached this conclusion because (1) s 2 of the Interpretation Act (Cap 1, 2002 Rev Ed) provides that a "person" includes "any company or association or body of persons, corporate or unincorporate", and (2) a person in law is any entity that is capable of enjoying rights or is subject to duties enforceable at law (*Central Christian Church v Chen Cheng* [1994] 3 SLR(R) 342 at [1]). With respect, the first reason is inapplicable to the Government, while the second reason, if applied inexorably, would lead to the surprising result that the Government would be a "person" liable under criminal statutes. I would prefer to define "person" in r 2(1)(a) of the MOR with specific regard to its evidently broad scope. On this view, any identifiable entity, whether or not a legal person *stricto sensu*, would be a person for the purpose of r 2(1)(a).

14 Returning to the appeal, Dr Chee on behalf of the appellants raised the following further issues at the hearing on 22 November 2010:

(a) whether there must have been an imminent threat to public order before the appellants could be charged for an offence under r 5 of the MOR;

(b) whether the appellants ought reasonably to have known that a permit was required for their activity on 10 September 2006;

(c) even if the appellants ought reasonably to have known that a permit was required for their activity on 10 September 2006, whether they ought to have applied for a permit; and

(d) whether the appellants' rights to equality under Art 12 of the Constitution of the Republic of Singapore (1999 Rev Ed) ("the Constitution") had been violated.

15 Furthermore, Dr Chee informed me that the appellants wished to rely also on their submissions made in Magistrate's Appeals No 101-108, 110-111 of 2010. I have addressed those arguments in my judgment made in respect of those appeals and would apply the same reasoning to the present case.

16 I now turn to address issues (a) to (d).

(a) Whether there must have been an imminent threat to public order before the appellants could be charged for an offence under r 5 of the MOR

17 Dr Chee referred to the decision of the UK House of Lords in *Regina (Laporte) v Chief Constable of Gloucestershire Constabulary* [2007] 2 AC 105 ("*Laporte*") and submitted that a reasonable apprehension of an imminent breach of public order was required before the police could arrest the appellants on 10 September 2006. Dr Chee pointed out that, at the trial before the District Judge, Inspector Patrick Lim Boon Hua (PW6), who was present at the scene of the incident on 10 September 2006, had admitted under cross-examination that he had seen no concern of any public order incident and had not thought that the appellants had committed any offence until he was informed by another police officer that the appellants did not have a permit to carry out the 16 September 2006 rally that was advertised in the flyers (see [2] above). [note: 1]

18 The claimant in *Laporte* was a passenger on a coach travelling from London to a protest demonstration at an air base in Gloucestershire whose coach had been intercepted and returned to London by police who were acting under the instructions of the Chief Constable of Gloucestershire Constabulary. She brought judicial review proceedings in which she asserted that her rights of freedom of expression and assembly had been unlawfully interfered with. The House of Lords considered the issue of when the common law power of the police and citizens to prevent breaches of the peace by arrest or action short of arrest may be exercised and concluded that it can only be exercised when a breach of the peace is so imminent as would be necessary to justify an arrest. In the present case, unlike the situation in *Laporte*, the appellants had not been arrested or charged for a breach of the peace. Rather, they were charged, pursuant to r 5 of the MOR, for the offence of participating in an unlawful assembly without a permit. The decision in *Laporte* therefore does not assist the appellants' case.

19 Rule 5 of the MOR required persons planning an assembly or procession to obtain a permit. As Choo Han Teck J observed in *Public Prosecutor v Chong Kai Xiong and others* [2010] 3 SLR 355 ("*PP v Chong Kai Xiong*") at [10] – [11], r 5 was a pre-emptive rule that left the assessment of risks to the permit issuer. The purpose of r 5 was to give the police notice of such events so that they may exercise their discretion to refuse permission or grant permission with or without conditions. It was not for a participant to say that no permit or no application for a permit was necessary because he intended to participate or in fact participated in a peaceful manner – an offence under r 5 was committed once the appellants participated in an assembly or procession within the meaning of r 2 of the MOR *without a permit*, regardless of whether the appellants' activities posed a threat to public disorder.

20 In this regard, the question whether an assembly or procession falls within r 2 of the MOR depended on the *purpose* of the assembly or procession and not on whether the eventual execution of such a purpose posed a threat to public disorder. I concur with the District Judge's comment at [9] of his Grounds of Decision (see *PP v Chee Soon Juan and others* [2010] SGDC 262) that, in the present case, it was not the act of distributing flyers that amounted to a contravention of r 5 of the MOR but the fact that the appellants were gathered together to convey their support for or opposition to the views or actions of a person, *viz* the Government, within the meaning of r 2(1)(a) of the MOR without a permit, albeit via the medium of flyers. In this regard, the District Judge's comment at [39] of his Grounds of Decision that "[i]t is assemblies that demonstrate opposition to the view of government that are regulated for security concerns" is, with respect, unfortunately worded. The law extends to all demonstrations of support for or opposition to the views or actions of any person, and not just the Government.

21 The appellants attempted to draw parallels between their activities on 10 September 2006 with that of five or more persons distributing flyers for commercial purposes, *eg*, to advertise for a tuition centre. This is misconceived because it is not the act of distributing flyers that attracts the operation of the MOR but is an assembly or procession within the meaning of r 2(1).

22 In this regard, it is important to note that whether the MOR applied to a particular assembly depended on whether the purpose of that assembly fell within the scope of r 2(1)(a), (b) or (c) of the MOR, rather than on the manner in which the participants of the assembly executed such intent. Depending on the facts of the case, the distribution of flyers to advertise a tuition centre might arguably not be for any of the purposes listed in r 2(1)(a), (b) and (c) of the MOR, *eg*, where the flyers merely invite the public to attend a tuition centre and neither the tuition centre nor the flyers promote any cause. Even if the distribution of flyers for a tuition centre is considered to promote a cause within r 2(1)(b), as Dr Chee suggested, and if the police do not take action against those distributing such flyers, that does not mean that the action taken against the appellants is unconstitutional as I will elaborate below at [40].

(b) Whether the appellants ought reasonably to have known that the assembly was held without a permit

23 The MOR was promulgated pursuant to s 5(1) of the MOA (see [4] above). Rule 5 of the MOR provided that "any person who participates in any assembly or procession in any public road, public place or place of public resort shall, if he *knows or ought reasonably to have known* that the assembly or procession *is held without a permit*, or in contravention of any term or condition of a permit, be guilty of an offence".

24 It bears reiterating that the charge against each appellant was that he or she ought reasonably to have known that the assembly on 10 September 2006 was held without a permit. The District Judge, however, appears to have concluded that the appellants in fact knew that there was no permit, see [11] and [40] of his Grounds of Decision. The situation where a participant actually knows that an assembly is held without a permit is clear enough. If, however, there is insufficient evidence to establish that a participant actually knows that an assembly is held without a permit, it is rather more difficult to say, in the abstract, when he ought reasonably to know that fact. The absence of a permit is not something which physically manifests itself. Therefore, an answer can be given only in respect of facts of each particular case or person. I would add that in respect of either limb of r 5, ignorance of the law or a mistake in thinking that it did not apply to the facts would not be a defence.

25 I come now to what each of the appellants knew or ought reasonably to have known in respect of the absence of a permit. I start with Dr Chee. He had applied for a permit for the rally and march on 16 September 2006 referred to in the flyers (see [2] above), and did so before distributing the flyers on 10 September 2006. [note: 2] The purpose of the rally and march was stated clearly on the flyers, whose contents Dr Chee had a hand in formulating. [note: 3] On these facts it is clear that Dr Chee knew about the need for a permit, at least in relation to the rally and march. It must also be clear to Dr Chee that by distributing the flyers he was promoting the rally and march, for which he knew a permit was required.

26 Dr Chee's evidence [note: 4] was as follows:

Q: Did you have a permit for what you did on 10/9/06?

A: No.

Q: You knew you had no permit?

A: I did not know that we needed a permit.

Q: Were there a discussion between yourself and the others whether a permit was needed?

A: I can't remember I do not know.

Q: Did the 2 other Defendants know that there is no permit on that day?

A: I wouldn't know.

Q: Even before 10/9/06 you were aware that certain events required permits for gathering in public.

A: We were never quite clear.

Q: You had previously applied for permits in other events?

A: Yes.

Q: For events on 16/9/06, a rally and march. You had applied for a permit for this event prior to 10/9/06.

A: Yes.

Q: Any reason why you applied for a permit for 16/9/06 rally and march on 16/9/06 but you did not do so on the event of 10/9/06?

A: The same reason why anyone wanting to distribute flyers would not have it in their mind to apply for it.

Q: When you hold a rally and march it is your view that you need a permit?

A: Not my view.

Q: But you said that it is a regulation in Singapore.

A: Yes.

Q: You know what regulations there are?

A: What I am learning a little more. I can't tell you at that time we knew exactly under which act.

Q: You did not think that according to the regulation that applies in Singapore that you needed a permit to distribute pamphlets on 10/9/06?

A: Yes.

Q: You did not think that the law requires you to get a permit to distribute pamphlets?

A: This or any party.

Q: What if you stand in an open area, instead of distributing pamphlets and shouted out the contents to passing public, do you think?

A: That would be a hypothetical question we are not allowed to answer hypothetical questions.

CT: Answer the question. It goes towards your knowledge.

A: If you say if it was a contravention of the rules if I stood up in public and uttered the contents verbally rather than passing it out the authority would have accused me of speaking in public without a permit. The contents are secondary. It would be the act of speaking in public.

Q: Your answer would be if you had thought you require a permit.

A: Yes.

27 It is significant that when Dr Chee was asked squarely whether he knew that there was no permit for the activity on 10 September 2006, he did not outrightly deny such knowledge. Instead, he said he did not know that a permit was required. His evidence suggested that this was because he thought that no permit was required in the circumstances or that he did not even think about the question of a permit.

28 In my view, he knew that there was no permit for the activity on 10 September 2006. He applied for one for the rally and march on 16 September 2006 (but the application was unsuccessful). He did not apply for one for the activity on 10 September 2006. *A fortiori*, he ought reasonably to have known that the assembly was held without a permit.

29 As mentioned above, it is no defence for Dr Chee to say that he thought that no permit was required in the circumstances.

30 As regards the possibility that he did not even think about the question of a permit, this point was considered by the District Court in *PP v You Xin and others* [2007] SGDC 79 where the court said at [44]:

> 44 One other issue raised was the matter of whether the accused persons "ought reasonably to know" that there was no permit applied for. The accused person's own evidence shows that they did not believe that a permit was required. One can infer, therefore, that the existence of a permit was never truly active in their mind, or that they simply did not care. As a result, they, at the very least, ought to know that there was indeed no permit for such an assembly.

The decision of the District Court on conviction for an offence under r 5 of the MOR was upheld by the High Court: see *You Xin v PP & another appeal* [2007] 4 SLR(R) 17.

31 Even if Dr Chee did not actually know that the activity on 10 September 2006 was held without a permit, I am of the view that in the circumstances, he ought reasonably to have known.

32 As for CSC, her evidence was that the question of a permit for the activity on 10 September 2006 did not cross her mind [note: 5]. However, she was a member of the central executive committee of the Singapore Democratic Party ("SDP"). [note: 6] The march and rally of 16 September 2006 was an SDP event, as indicated by the reference to the SDP website on the flyers. She herself was distributing the flyers promoting the march and rally. I infer that she was familiar with the

organisation of the march and rally, and specifically that a permit was applied for that activity. CSC also must have known that the flyers were promoting that march and rally. In the circumstances, I am of the view that CSC ought reasonably to have known that there was no permit for the assembly on 10 September 2006.

33 As for Ghandi, his refusal to testify justified drawing an adverse inference against him on a matter – *ie*, his state of mind with regard to the non-issuance of the permit – that was peculiarly within his knowledge. I also noted that it was not suggested for him in the cross-examination of the witnesses for the prosecution, that he did not in fact know that there was no permit for the assembly on 10 September 2006 or that there was no reason that he ought to have known that there was no permit. I am therefore also of the view that he ought reasonably to have known that there was no permit.

34 In the circumstances, it is clear beyond reasonable doubt that each of the appellants, at the least, ought reasonably to have known that there was no permit for the assembly on 10 September 2006.

(c) Whether the appellants ought to have applied for a permit for their activity on 10 September 2006

35 Dr Chee pointed out that the appellants were members of the SDP, a registered opposition party in Singapore. Dr Chee argued that, in a modern democratic society based on the rule of law, it is nonsensical for the demonstration of opposition to the actions of the Government to be an offence.

36 This is not a legal argument. In any case, the appellants were not charged for demonstrating opposition to the views of the Government, but were charged for carrying out their activities *without a permit*, which was required before they could carry out an assembly as defined in r 2 of the MOR (see [18] above). As Dr Arthur Beng Kian Lam stated in Parliament at the Second Reading of the Minor Offences (Amendment) Bill (*Singapore Parliamentary Debates*, *Official Report* (16 February 1989) vol 52 at col 699):

> No one is prevented from having assemblies. All he needs to do is to apply for a permit and it will be duly processed.

37 It is important to bear in mind that r 5 of the MOR kicked in only when the various ingredients (mentioned in [12] above) are present. For example, a group of persons expressing their views in a non-public place in support or in opposition of the views of another person need not apply for a permit.

38 Dr Chee stressed that even if the appellants had applied for a permit, none would be issued because of a policy that no permit will be issued for outdoor political activities. He submitted that such a policy is *ultra vires* the Constitution. I have addressed this submission in my judgment in Magistrate's Appeals Nos 101-108 and 110-111 of 2010. In short, the appellants' claim that the police had resolved never to issue a permit for political activities is a matter of administrative law that did not arise in this appeal since no application was made by any of the appellants for a permit to hold the assembly on 10 September 2006: see also *PP v Chong Kai Xiong* at [13].

(d) Whether the appellants' rights to equality under Art 12 of the Constitution have been violated

39 The appellants argued that their rights to equality of treatment under the law pursuant to Art

12 of the Constitution had been violated by the decision of the police to take enforcement action against them. The appellants claimed that the police had discriminated against them by making a distinction between commercial and political activities. Before the District Judge, the appellants had also suggested that their political party, the SDP, had been singled out for enforcement quite unlike other opposition parties who had also distributed flyers opposing the Government. For the reasons given below, I am of the opinion that the appellants' constitutional rights to equality of treatment have not been violated.

40 Firstly, the police were entitled to exercise their discretion in enforcing the provisions of the MOR. Specifically, even assuming that the police had adopted a general policy determining that political activities as a class posed a greater threat to public order than commercial activities, this was not in itself offensive for the purposes of administrative law provided that the police do not fetter their discretion and remain prepared to consider the facts of each case. Further, if political activities as a class were determined to pose a greater threat to public order than commercial activities, then this would form a rational basis for differential treatment, and thus not offend Art 12(1). Indeed, Dr Chee submitted that it was not possible or desirable to administer and enforce a rule which requires all groups wishing to distribute flyers to apply for a permit. Art 12(1) does not require that there be no discrimination at all; rather, it requires that those within a similar category or class of persons are not to be treated unalike.

41 Secondly, with regard to the suggestion that the SDP have been discriminated against as compared to other opposition parties who have also distributed flyers opposing the Government, I agree with the finding of the District Judge (at [16] of his Grounds of Decision) that there was no evidence of unlawful discrimination in bringing the charges against the appellants in the present case. There was no evidence that the police knew about the activities of opposition parties raised by the defence witnesses. There was also no evidence that the police had deliberately declined to take action against some opposition parties engaged in similar activities.

Decision on the appeals against sentence

42 Whilst Tan had not been prosecuted as he had left the country, Jeffrey and Harkirat had pleaded guilty to the charges against them which were similar to the charges against the appellants in this appeal. Jeffrey was sentenced to a fine of $700 (in default one week's imprisonment) and Harkirat was sentenced to a fine of $650 (in default four days' imprisonment). The District Judge sentenced all the appellants to the maximum prescribed punishment of a fine of $1,000 (in default one week's imprisonment) on the ground that their offences involved a deliberate disregard of the law and a refusal to heed the regulation intended to preserve law and order. As at 10 September 2006, Dr Chee and Mr Ghandi had previous convictions for, *inter alia*, providing public entertainment without a licence in contravention of s19(1)(a) of the Public Entertainments and Meetings Act (Cap 257, 2001 Rev Ed) whilst CSC had no antecedents. However, CSC was at the material time a member of SDP's central executive committee and was familiar with the march and rally of 16 September 2006 which the assembly on 10 September 2006 was trying to promote (see [32] above). The appellants did not express or demonstrate any regret that they had broken the law. The appellants made no submission on sentence at the hearing on 22 November 2010 before me. I am of the view that the sentence imposed on each appellant by the District Judge is not manifestly excessive.

Conclusion

43 The appeals against conviction and sentence are dismissed.

[note: 1] Notes of Evidence ("NE") 20/4/2009, p 783; 21/4/2009, pp 794 and 809.

[note: 2] NE 12/10/2009, p 1149

[note: 3] NE 12/10/ 2009, p 1138

[note: 4] NE 12/10/2009, pp 1149-1151

[note: 5] NE 13/10/2009 pp 1173-1175

[note: 6] NE 13/10/2009 p 1165