World Sport Group Pte Ltd *v* Dorsey James Michael
[2013] SGHC 78

Case Number	: Originating Summons No 839 of 2012 (Registrar's Appeal No 404 of 2012)
Decision Date	: 10 April 2013
Tribunal/Court	: High Court
Coram	: Judith Prakash J
Counsel Name(s)	: Deborah Evaline Barker SC and Hewage Ushan Saminda Premaratne (KhattarWong LLP) for the plaintiff; N Sreenivasan and Sujatha Selvakumar (Straits Law Practice LLC) for the defendant.
Parties	: World Sport Group Pte Ltd — Dorsey James Michael

Civil Procedure – Interrogatories

10 April 2013

Judith Prakash J:

1 The plaintiff in this Originating Summons, World Sport Group Pte Ltd, initiated these proceedings under O 24 r 6(1) and O 26A r 1(1) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("the Rules") in order to obtain pre-action discovery from, and administer pre-action interrogatories against, the defendant, James Michael Dorsey. The interrogatories sought to be administered were set out in Schedule 1 annexed to the Originating Summons. A copy of Schedule 1 is annexed to these grounds of decision.

[LawNet Admin Note: Schedule 1 is viewable only to LawNet subscribers via the PDF in the Case View Tools.]

2 The application first came on for hearing before an assistant registrar ("AR") and she ordered the defendant to answer all the interrogatories set out in Schedule 1. She refused, however, to order discovery of the documents specified in Schedule 2 (which was also annexed to the Originating Summons). The defendant appealed. There was, however, no cross-appeal by the plaintiff on the issue of discovery. On hearing the appeal, I decided that the defendant had to answer the following interrogatories, *viz*, nos 1, 2(a), 2(b), 2(c), 6 and 6.1. I allowed the defendant's appeal in respect of the other interrogatories being nos 2(d), 2(e), 3.1, 3.2, 4, 5, 6.2 and 6.3. The defendant is not satisfied with this outcome and has appealed to the Court of Appeal.

Background

3 The plaintiff is a company which was incorporated in Singapore in 2002. It provides sports marketing and media and event management in connection with international sporting events throughout Asia. The plaintiff and its related entities have been in a contractual relationship with the Asian Football Confederation ("AFC") since 1993 with respect to the commercial rights of major football competitions staged by the AFC. The AFC is the organiser, controller and official governing body of the sport of association football throughout Asia (including Australia).

4 The defendant is a Senior Fellow at the Nanyang Technological University's S Rajaratnam School of International Studies ("NTU"). He has a keen interest in issues affecting the Middle East and

North Africa including politics and the interaction of sports with politics, economics and culture. In addition, he is a blogger on his blog http://mideastsoccer.blogspot.sg/. He also has a Twitter account which he uses to tweet his posts and articles. The defendant writes articles on, *inter alia*, the political, social and economic development of soccer in the Middle East on his blog and in a multitude of other media, which he tweets through his Twitter account.

5 The AFC has been in contractual relationships with the plaintiff and its related entities since 1993. On 15 June 2009, the AFC and an associate of the plaintiff entered into a Master Rights Agreement ("the MRA") for the exploitation of commercial rights to AFC football competitions taking place between 2013 and 2020. The MRA was novated to the plaintiff with effect from 1 January 2010. According to the plaintiff, the MRA contains a strict confidentiality clause which prevents the plaintiff from disclosing its contents unless required by law.

6 In July 2011, Mohamed Bin Hammam ("MBH"), the then president of AFC, was banned from the International Federation of Association Football ("FIFA") as a result of allegations of election bribery made against him. Subsequently, the Court of Arbitration for Sport overturned this ban but FIFA then banned him again pending concerns regarding his management of AFC's funds as well as pending a renewed investigation into the election bribery charges.

7 On or about 13 July 2012, PriceWaterhouseCoopers Advisory Service Sdn Bhd ("PWC"), under the instructions of AFC and its Malaysian solicitors, put up an audit report ("the Report") reviewing transactions, accounting practices and contracts negotiated during MBH's tenure as president of the AFC. The Report contains a number of references to the MRA and its commercial terms. According to the plaintiff, the Report states that it is intended solely for the "internal use and benefit" of AFC and its Malaysian solicitors and is therefore confidential. The plaintiff also alleges that remarks defamatory of it are contained in the Report.

8 Between 23 July 2012 and 22 September 2012, the defendant published several posts and articles on the world wide web. These included the following:

(a) on 23 July 2012, an article entitled "*Bin Hammam Audit Opens Pandora's Box – Analysis*";

(b) on 24 July 2012, an article entitled "*UAE and UAE hire fired AFC Bin Hammam Associates – Analysis*";

(c) on 27 July 2012, an article entitled "*FIFA's suspension of Bin Hammam buys time*";

(d) on 28 August 2012, a post entitled "*FIFA investigates: World Cup host Qatar in the hot seat*" on his blog;

(e) on 28 August 2012 an article entitled "*FIFA investigates: World Cup host Qatar in the hot seat*";

(f) on 5 September 2012, a post entitled "*AFC reports stolen Bin Hammam payment documents to police*" on his blog;

(g) on 12 September 2012, a post entitled "*World Sport Group sues journalist in bid to squash reporting on Bin Hammam*" on his blog; and

(h) on 22 September 2012, a post entitled "*Iran accused WSG of overpricing in breach of international rules*" on his blog.

9 In his article posted on his blog on 23 July 2012, the defendant referred to and quoted from the Report. The quoted parts included portions of the Report which the plaintiff says are defamatory of it. In this article, the defendant admitted that he had obtained a copy of the Report. Subsequently, in or about August 2012, media organisations in Australia, Saudi Arabia and northern California published articles which made reference to the Report.

The proceedings

10 The plaintiff commenced the present proceedings to obtain discovery of the Report and for leave to serve pre-action interrogatories pursuant to O 26A r 1 of the Rules ("O 26A r 1") on the defendant to:

(a) identify the party or parties responsible for publishing the Report or its contents to third parties; and

(b) identify the party or parties who provided confidential information to the defendant pertaining to the MRA and to ascertain the nature of any breach of an obligation of confidentiality.

11 The plaintiff's intention is to commence proceedings against the defendant and/or:

(a) any party whom the answers to the interrogatories show had provided a copy of the Report to any third party in breach of confidentiality and/or had published material defamatory of the plaintiff contained in the Report to any party by providing a copy of the whole or any part of the Report to any person; and

(b) any party whom the answers to the interrogatories show had provided confidential information to the defendant relating to the MRA.

12 The plaintiff's position is that the Report was prepared without its representatives having been consulted or interviewed and that:

(a) the Report contains assertions and imputations that are *prima facie* defamatory;

(b) PWC was provided with inaccurate or incomplete information and materials which were insufficient for PWC to prepare a report containing an accurate picture of what actually transpired; and

(c) the Report makes conclusions that are speculative.

13 The defendant alleges that the Report is not confidential. He does not dispute that the Report contains defamatory allegations and/or conveys innuendos of the plaintiff that are defamatory. His position is that the plaintiff ought to direct its intended cause of action against the AFC for "disseminating the Report which allegedly contained defamatory remarks about the Plaintiff". The AFC has, however, according to the plaintiff, denied that it disclosed the Report to anyone but FIFA. The AFC has also stated that the distribution of the Report is unauthorised and that those who have received it must destroy it. The plaintiff admits that it does not have any evidence that links the circulation of the Report with the AFC and/or its employees/officers/representatives.

The law

14 The relevant portions of O 26A r 1 provide as follows:

> **Interrogatories against other person (O. 26A, r. 1)**
>
> **1.—(1**) An application for an order to administer interrogatories before the commencement of proceedings shall be made by originating summons and the person against whom the order is sought shall be made defendant to the originating summons.
>
> ...
>
> (3) The originating summons under paragraph (1) or summons under paragraph (2) shall be supported by an affidavit which must –
>
> > (*a*) in the case of an originating summons under paragraph (1), state the grounds for the application, the material facts pertaining to the intended proceedings and whether the person against whom the order is ought is likely to be party to subsequent proceedings in Court; and
> >
> > (*b*) in any case, specify the interrogatories to be administered and show ... that the answers to the interrogatories are relevant to an issue arising or likely to arise out of the claim made or likely to be made in the proceedings or the identity of the likely parties to the proceedings, or both.
>
> ...
>
> (5) An order to administer interrogatories before the commencement of proceedings ... may be made by the Court for the purpose of or with a view to identifying possible parties to any proceedings in such circumstances where the Court thinks it just to make such an order, and on such terms as it thinks just.

15 In *Singapore Court Practice 2009* (Jeffrey Pinsler SC gen ed) (LexisNexis, 2009) ("*Singapore Court Practice 2009*"), it is noted at para 26A/1/5 that O 26A r 1(5) formulates the principle enunciated in *Norwich Pharmacal Co v Customs and Excise Commissioners* [1974] AC 133 ("*Norwich Pharmacal*"). The principle laid down in *Norwich Pharmacal* is that a claimant may seek information for the purpose of identifying the person who is potentially liable to him. The wording of O 26A r 1(5) is broader than this original principle in that the court is given the power to administer interrogatories with a view to identifying "possible parties" to any proceedings.

16 The rationale of the *Norwich Pharmacal* principle as explained by Lord Reid at p 174 was that if information in the possession of the defendant as to the identity of tortfeasors could not be made available by discovery, the applicant would not be able to begin any action against possible parties because he would not know the identity of the persons who had committed tortious wrongdoings against him.

17 The scope of the *Norwich Pharmacal* principle was examined further in *British Steel Corp v Granada Television Ltd* [1980] 3 WLR 774 ("*British Steel*"). There, the applicant, British Steel, commenced an action against a television company for disclosure of the name of one of the applicant's employees who had wrongfully passed confidential information to the television company. The High Court granted the order and this was upheld on appeal. Lord Wilberforce stated at p 826 of his opinion in the House of Lords that for an aggrieved person to succeed in obtaining such an order against a journalist, he would have "to satisfy the court that he has a real grievance, even after

suing the newspaper, which, in the interest of justice, he ought to be allowed to pursue, and that this ought, in the particular case, to outweigh whatever public interest there may be in preserving the confidence". Lord Wilberforce further noted at p 827 that there was a public interest in the free flow of information but that the strength of such interest would vary from case to case and the court ought to take this into account. In the *British Steel* case, however, the balance was strongly in British Steel's favour because:

> [British Steel] suffered a grievous wrong, in which Granada itself became involved, not innocently, but with active participation. To confine [British Steel] to its remedy against Granada and to deny it the opportunity of a remedy against the source, would be a significant denial of justice.

18 There is substantial case authority in Singapore on this issue. Singapore courts have not only applied the *Norwich Pharmacal* principle but have also considered O 26A r 2 and emphasised that if the interrogatories are not relevant and necessary either for disposing fairly of the cause or matter or for saving costs, they will not be allowed. For example, in *Richland Logistics Services Pte Ltd v Biforst Singapore Pte Ltd* [2006] SGHC 137, Lai Siu Chiu J observed at [38] that:

> In any event, whatever the outcome of the interrogatories, granting the application would amount to a cost-savings measure. If the defendant's answers proved that the plaintiff's suspicions were unfounded, time and money would have been saved by the plaintiff not pursuing a claim against AKTPL. On the other hand, if the plaintiff's suspicions were proved correct, it could take the appropriate action against AKTPL and/or Ang and/or Koh. The defendant would not be prejudiced in any event as the plaintiff would bear the defendant's costs of answering the interrogatories, pursuant to O 26A r 5 of the Rules. ...

19 It is also relevant in this case to reiterate that what has been called the "newspaper rule" in England does not apply in Singapore. The newspaper rule as observed in England is that the courts will not, as a rule, compel a newspaper in a libel action to disclose before trial the source of its information. In *KLW Holdings Ltd v Singapore Press Holdings Ltd* [2002] 2 SLR(R) 477, it was held that there was no newspaper rule in Singapore. This decision was followed by *Tullett Prebon (Singapore) Ltd and others v Spring Mark Geoffrey and another* [2007] 3 SLR(R) 187. Instead, the courts have, as demonstrated in the two cases cited, leaned in favour of a balancing of interests approach in resolving cases that require a reporter/journalist to disclose the identity of his source.

20 In *Bayerische Hypo- und Vereinsbank AG v Asia Pacific Breweries (Singapore) Pte Ltd and other applications* [2004] 4 SLR(R) 39, Belinda Ang Saw Ean J noted that the court had a duty to ensure that any application for pre-action discovery was not frivolous or speculative and that the applicant was not on a fishing expedition. Once the court was satisfied that these criteria had been met, then the next consideration would be whether the discovery would be necessary for disposing fairly of the proceedings or for saving costs. As Choo Han Teck J put it more colourfully in *Ng Giok Oh v Sajjad Akhtar* [2003] 1 SLR(R) 375 at [7], pre-action discovery is not an instrument for private detectives snooping for action. Whilst the cited cases are on pre-action discovery, the principles they state are also relevant in cases like the present on pre-action interrogatories. In this respect, it is stated in *Singapore Court Practice 2009* at para 26A/1/5 that the authorities applicable to pre-action discovery would similarly apply to pre-action interrogatories.

The appeal

21 The first two interrogatories that I ordered the defendant to answer are the following:

1. State the names and last known addresses of the "*sources close to the AFC*" and "*source*"

or "*sources*" referred to in your blog post titled "*FIFA investigates: World Cup host Qatar in the hot seat*" … (URL: http://mideastsoccer.blogspot.sg/2012/08/ fifa-investigates-world-cup-host-qatar.html)?

2. Is each of the "*sources close to the AFC*" or the "*sources*" an employee/officer/representative [of] the Asian Federation [*sic*] Confederation ("**AFC**")?

If yes:-

(a) What is his/her position?

If no:-,

(b) What is the relationship of each of the "*sources close to the AFC*" or "*sources*" to the AFC?

(c) Was any of them previously employed by or associated with AFC?

These interrogatories dealt with the source's identity and relationship to AFC.

22 The other two interrogatories that I ordered to be answered dealt with the MRA and are a follow-up to interrogatories 1 and 2. They are:

6. Are you or have you been in possession or custody of any agreement between World Sport Football Ltd ("WSF") and the AFC or World Sport Group Pte Ltd ("WSG") and the AFC?

6.1 If yes, did the source provide you a copy of any agreement/s between WSF and/or WSG and the AFC?

If yes:-

(a) Please state the date, time and place the source provided you a copy of any such agreement/s.

If no:-

(b) Did the source provide you part of any such agreement/s between WSF and/or WSG and the AFC?

If yes:-

(i). Please state the date, time and place the source provided you part of any such agreement/s.

These interrogatories were more specifically directed towards ascertaining whether a copy of the MRA was given to the defendant and if so by whom. Whilst my order referred specifically only to interrogatory 6.1, this was an oversight as an answer to interrogatory 6 is necessarily required before interrogatory 6.1 becomes answerable.

23 It may be helpful for me to set out here the portions of the defendant's article which gave rise to the plaintiff's request for interrogatories. These read:

The AFC has raised questions about the sincerity of its investigation by hiring the group despite CAS's rejection of its earlier work. The group has been tasked with further investigating the findings of a report by PriceWaterhouseCooper [*sic*] (PwC) that charged Mr. Bin Hammam had used an AFC sundry account as his personal account and raised questions about his negotiation of a $1 billion marketing and rights contract with Singapore-based World Sport Group (WSG) ... The PwC report further suggested that there may have been cases of AFC money laundering, tax invasion [*sic*], bribery and busting of US sanctions against Iran and North Korea under Mr. Bin Hammam's leadership.

...

The WSG master rights agreement (MRA) that according to sources close to the AFC handed the soccer body's assets embodied in its rights to the company is certain to be at the core of both investigations. ***PwC questioned the fact that the contract as well as the agreement with Al Jazeera had been awarded without being putting [sic] out to tender or financial due diligence.*** Sources close to AFC said the contract awarded WSG all the benefits while ensuring that AFC retained the potential liabilities. ***PwC said the contract failed to give AFC a right to audit WSG's services or costs. "In comparison with similar-type agreements for other sports, it appears that the current MRA may be considerably undervalued," the PwC report said.***

The report charged further that Mr. Bin Hammam had received in February 2008 $12 million from Al Baraka Investment and Development Co, believed to be owned by Saudi billionaire Sheikh Saleh Kamel. ***"We understand that the Al Baraka Group may have been a 20% beneficial owner of the WSG group" (World Sport Group) with which the AFC signed a $1 billion master rights agreement (MRA) in June 2009 negotiated by Mr. Bin Hammam," the report said.***

Sources close to the AFC said the soccer body had been advised to conclude a service provider rather than a master rights agreement with WSG. This would have allowed the AFC to retain control of its rights, determine how they are exploited and enabled it to continuously supervise the quality of services provided by WSG. It would have also guaranteed that the AFC rather than WSG would have been the contracting party with broadcasters and sponsors and would have insulated the soccer body from any risk should WSG ever default, the sources said. They said the contract was out of sync with other international sports bodies that had shifted years ago from rights to service provider agreements.

The sources said the WSG agreement was further detrimental to AFC's interests because it failed to precisely define what commercial rights were being granted. ...

The sources said the contract put WSG in the driver's seat with no oversight or transparency. ...

[emphasis in bold italics and underline added]

24 The plaintiff submitted that the portions of the article which are underlined and emphasised in bold above, when read alone and together, conveyed imputations defamatory of the plaintiff. These were that the plaintiff secured the MRA at an undervaluation because of the absence of a tender and/or by improper means and that as a result the MRA was seriously disadvantageous to the AFC. Further, there was an innuendo that the plaintiff was involved in corrupt practices, including paying bribes to MBH, to secure the MRA. The plaintiff considered that the publication or dissemination of the defamatory Report or the defamatory statements contained in the Report would cause it damage and therefore it had a right to seek relief against the party responsible whether the same was the

defendant, the "sources close to the AFC" or any other third party. It should be noted that the plaintiff maintained that there was no truth in the derogatory statements and that the Report had not considered other material favourable to it.

25 I agreed that the defendant's article contained statements that were, *prima facie*, defamatory of the plaintiff and had identified these statements as emanating either from the Report or from "sources close to the AFC" or from "sources" who may or may not have been the same as those close to the AFC. If in fact such sources had provided the Report or information about the Report to the defendant, they would, *prima facie*, have defamed the plaintiff or assisted in the publication of defamatory statements. Thus, the plaintiff on the face of it had a cause of action in defamation against such sources. The plaintiff had said in its affidavits and submissions that it intended to commence legal proceedings against such sources and needed to identify the same for this purpose.

26 The plaintiff also argued that because of the presence of the confidentiality clause in the MRA, it had a possible cause of action in breach of confidence against "sources close to the AFC" who might have provided a copy of the MRA or information about it to the defendant. I agreed that anybody who was employed by the AFC or had come to know about the MRA by reason of a connection with the AFC could possibly be liable to the plaintiff for breach of confidence if such person had released information about the same to the defendant who was not entitled to be given such information by virtue of the confidentiality clause in the MRA. In order to sue such persons, the plaintiff would have to know their identities.

27 I was satisfied that the plaintiff had not made its application frivolously or vexatiously and that it had a valid reason for administering pre-action interrogatories to the defendant.

28 The defendant argued that the plaintiff could sue him and that should be a sufficient remedy. The plaintiff answered that it had not yet commenced any proceedings against the defendant because it wanted to know who the proper parties to sue were. The defendant was an individual and the source might be an individual or might be someone that a company was responsible for. Further, the defendant as an independent commentator might be able to put up a defence of fair comment on a matter of public interest but such a defence might not be available to the source. If the defendant was the only person sued and he succeeded in this defence of fair comment, the plaintiff would then be denied any remedy. It should be noted that the defendant had indicated in a letter from his solicitors that even if the contents of his article were defamatory of the plaintiff (which he denied), they were fair comments. In order for the plaintiff to be afforded such protection as permitted under the law, it needed to ascertain the identities of other persons potentially liable to it. I agreed that the fact that the defendant might be liable for defamation was not a sufficient reason to allow him to protect his sources since pursuing a legal action against the defendant alone might not be effective.

29 The MRA itself was a confidential document. On this basis, the defendant who was not a party to it was not entitled to information about it. Therefore, whoever informed the defendant about the MRA was, possibly, a wrongdoer and the plaintiff was entitled to investigate and initiate action to determine whether it had a legal remedy for breach of confidence.

30 The plaintiff was at this stage unaware of who had given the defendant information about the MRA apart from what was stated in the Report. Such a person might have been authorised by the AFC to distribute the MRA, he might be a person connected with the AFC who was acting without authority, or he might be a person who had no connection at all with the AFC but who had somehow managed to get a copy of the MRA. In this regard, the plaintiff was entitled to know what connection this person had with the AFC since such connection would determine whether and, if so, the extent to which the confidentiality of MRA had been breached by the AFC or a person connected to it.

Question 2 of the interrogatories was designed to elicit this information and I allowed it for this reason. The answer would inform the plaintiff about the relationship between the AFC and the source who had given information about the MRA to the defendant and would allow the plaintiff to properly calibrate its future course of action. I allowed interrogatories 6 and 6.1 for the same reason.

31 The defendant argued that he was entitled to protect his sources as a journalist. He produced a copy of the Code of Professional Conduct of the Singapore National Union of Journalists. However, the defendant did not state in his affidavit that he was a member of the Singapore National Union of Journalists or that he considered himself to be bound by that Code of Professional Conduct. I accepted the plaintiff's submission that, *prima facie*, the defendant was not a journalist as he was employed by NTU as a Senior Fellow and kept up his blog and his Twitter posts for his own interests and to disseminate his own viewpoints. The defendant himself in one of his affidavits had said that prior to joining NTU he had been a journalist and that from 2006 until the date of the affidavit, he was also a freelance writer and speaker. In any event, as I have stated earlier, there is no newspaper rule in Singapore that operates to protect a journalist's sources from being disclosed. Instead, the court adopts a balancing of interests approach.

32 The court orders a party to disclose his source of information if the plaintiff shows that it has a real interest in suing the source and this outweighs the public interest of preserving the confidence of sources. In this case, the plaintiff did establish its real interest in suing the defendant's source(s). As for the public interest, whilst the public has an interest in the free flow of information, such interest has to be balanced, *inter alia*, against the need to preserve confidentiality and to encourage persons bound by obligations of confidentiality to abide by the same. The "sources close to the AFC" had *prima facie* breached their duties of confidentiality under the MRA or in equity (by virtue of having knowledge of the confidentiality of the MRA) and *prima facie* it would not be correct to protect such breaches. Of course, once the identity of the source is known, the source will be able to defend his/its actions in accordance with the law.

33 In *British Steel*, Templeman LJ (as he then was) recognised at p 812 that "[n]o principle of public policy or freedom of the press or freedom of information or journalistic ethics justifies resistance in these circumstances to [British Steel's] claim to discover from Granada the identity of [British Steel's] employees who broke his promise to [British Steel], enabled Granada to breach their duty to [British Steel] and now shelters behind Granada's promise of concealment". This *dictum* aptly reflected the situation before me. I was satisfied that the public interest in the free flow of information would not be adversely affected by the orders that I made against the defendant in the light of the *prima facie* probability that his sources were in breach of their legal obligations of confidentiality by furnishing him with information on, or a copy of, the MRA.

34 One final point. During the hearing I pointed out to the plaintiff that it was possible that it had no cause of action in Singapore against anyone other than the defendant. This was because the AFC is a Malaysian company and therefore "sources close to the AFC" were probably in Malaysia as well. The plaintiff persuaded me that that was speculation. The defendant had not indicated where he received his information and in what manner. In the present age of easy movement of persons between nations and the easier transmission of information across borders, the information was as likely to have been received in Singapore as anywhere else.