

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

[2023] SGHC 221

Suit No 510 of 2021

Between

Diana Foo

... Plaintiff

And

Woo Mui Chan

... Defendant

JUDGMENT

[Tort — Defamation]

[Tort — Defamation — Justification]

[Tort — Defamation — Qualified privilege]

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Foo Diana
v
Woo Mui Chan

[2023] SGHC 221

General Division of the High Court — Suit No 510 of 2021

S Mohan J

27–29 June, 23 August 2022, 15 May 2023

14 August 2023

Judgment reserved.

S Mohan J:

1 The case before me concerns defamation proceedings commenced by Ms Diana Foo (the “plaintiff”) against Ms Woo Mui Chan (the “defendant”).

2 For the reasons I shall elaborate upon below, I find the defendant liable for defamation. As parties have agreed to a bifurcation of the proceedings, this judgment will only address the issue of liability, leaving damages to be assessed separately.

Facts

The parties

3 The plaintiff is an advocate and solicitor, who was called to the Singapore bar in or around February 2005. She has been practising ever since.¹ The defendant is best described as an individual engaged in business and who, among other endeavours, started a restaurant at 44 Prinsep Street #01-01 known as Z Bistro and Bar (the “Restaurant”) in 2015.²

4 The plaintiff and the defendant were first introduced to each other by the plaintiff’s aunt in 2015 and eventually became friends.³ Among other matters, the defendant approached the plaintiff for legal advice relating to the Restaurant.⁴ It is uncontested that over time, the plaintiff advanced several loans to the defendant. However, they disagree on when these loans were given, what their amounts were, and whether they were repaid.⁵

5 The parties’ relationship began to deteriorate over time and eventually became fractious and litigious. On 19 May 2018, the plaintiff issued a statutory demand against the defendant for the sum of S\$36,350.00 which the plaintiff

¹ Affidavit of Evidence-in-Chief (“AEIC”) of Diana Foo in HC/S 510/2021 dated 11 March 2022 (“Diana Foo’s AEIC in HC/S 510/2021”) at para 4.

² AEIC of Woo Mui Chan in HC/OSB 59/2018 dated 1 June 2018 (“Woo Mui Chan’s AEIC in HC/OSB 59/2018”) at para 4 (Diana Foo’s Exhibit (“DF-1 Exhibit”) at p 43).

³ Diana Foo’s AEIC in HC/OSB 59/2018 at para 4 (DF-1 Exhibit at p 52); Woo Mui Chan’s AEIC in HC/OSB 59/2018 at para 4 (DF-1 Exhibit at p 43).

⁴ Diana Foo’s AEIC in HC/OSB 59/2018 at paras 8–9 (DF-1 Exhibit at p 53); Woo Mui Chan’s AEIC in HC/OSB 59/2018 at para 4 (DF-1 Exhibit at p 43).

⁵ Diana Foo’s AEIC in HC/OSB 59/2018 at paras 25–28 (DF-1 Exhibit at pp 56–57); Woo Mui Chan’s AEIC in HC/OSB 59/2018 at paras 5–10 (DF-1 Exhibit at pp 43–44); Diana Foo’s AEIC in HC/S 510/2021 at para 62.

asserted was owed to her by the defendant.⁶ The statutory demand was successfully set aside by the defendant on the basis that she disputed the debt. On 29 August 2018, the plaintiff instituted legal proceedings against the defendant in MC/MC 13957/2018 claiming the sum of S\$37,350.00 against the defendant.⁷ On 2 April 2019, the plaintiff and the defendant entered into a settlement agreement, pursuant to which the defendant was allowed to make instalment payments to settle this sum.⁸ However, the defendant defaulted on the instalment payments. On 29 October 2019, the plaintiff issued yet another statutory demand against the defendant, this time for the sum of S\$23,691.12.⁹ The defendant then sought to set aside this statutory demand. The matter was again eventually settled between the parties.¹⁰

6 However, as the defendant persisted in not paying the sums then due, the plaintiff commenced a second action against the defendant on 22 January 2020 in MC/MC 1044/2020 for the sum of S\$15,000.00 then due and owing to the plaintiff.¹¹ The defendant was subsequently adjudged liable to pay the plaintiff the sum of S\$17,750.00.¹² The defendant eventually satisfied the judgment debt due to the plaintiff.¹³

⁶ DF-1 Exhibit at p 48.

⁷ Diana Foo's AEIC in HC/S 510/2021 at para 14.

⁸ DF-1 Exhibit at p 107.

⁹ DF-1 Exhibit at pp 122–124.

¹⁰ Diana Foo's AEIC in HC/S 510/2021 at para 17.

¹¹ Diana Foo's AEIC in HC/S 510/2021 at para 19, DF-1 Exhibit at p 151.

¹² DF-1 Exhibit at p 160.

¹³ Diana Foo's AEIC in HC/S 510/2021 at para 22.

Background to the present dispute

7 Sometime in or around 2018, at a time when the relationship between the plaintiff and defendant had already soured, the defendant posted a public review on The Law Society of Singapore’s (“LSS”) Google page using the username “Katherine Woo” (“Statement 1”).¹⁴ The post read as follows:

I really desperately asking for help I was being bullied by a lady lawyer, Name Diana Foo from Tan See Swan & Co.

She force me to do illegal deals with her, I have recorded how I was being bullied by her.

I am very Helpless.

Woo mui chan

8 On 23 June 2020, the plaintiff issued a letter of demand to the defendant, stating that the allegations conveyed by Statement 1 were false and baseless. The plaintiff demanded that the defendant acknowledge that the public statement was defamatory, provide an unconditional apology and undertaking, sign and publish the public apology and undertaking in both English and Chinese newspapers and on LSS’ website, and further, compensate the plaintiff in the sum of S\$100,000.00.¹⁵ A further and final demand was sent to the defendant on 9 April 2021.¹⁶ The defendant did not meet any of the plaintiff’s demands.

9 On 3 March 2020, the defendant lodged a written complaint to LSS (“Statement 2”), stating, among others, that:¹⁷

...

¹⁴ DF-1 Exhibit at pp 8–11.

¹⁵ Diana Foo’s AEIC in HC/S 510/2021 at para 38; DF-1 Exhibit at pp 274–276.

¹⁶ Statement of Claim (Amendment No. 1) (“SOC”) at para 18.

¹⁷ DF-1 Exhibit at pp 16–19.

14. On a few occasions, the dates of which I cannot recall precisely now, the Lawyer handed me a stack of Singapore currency notes, saying that she would lend me money.

15. As I was in need, and due to what I felt was the Lawyer's kindness, I reciprocated by accepting the money but agreed with her that it was only a loan, though not a "friendly" loan. The Lawyer, despite my request to the contrary, insisted that the details of the loans should not be written or captured in any written agreement.

...

18. The Lawyer also began to ask me about assisting her in a deal in Vietnam, to move "money"; the details of which I found too complicated to understand and which I cannot describe sufficiently here, and thus declined.

...

20. All the time that I have known the Lawyer, she seemed to talk to me like a close confidant and like someone who had a sexual relationship with her; for example, she would refer to me as "darling" or "dear" in front of other people that we met, and she would try to establish physical contact.

21. I rebuffed these advances as politely as I could, particularly, in view that she had been so kind to me before in lending me money.

...

30. The issues which I raise for the Council are as follows:-

- (i) Is it permissible for the Lawyer to lend money to a client?
- (ii) Is it permissible for the Lawyer to make sexual advances towards the client?
- (iii) I am surprised that a Lawyer should be allowed to use vulgarities in the course of legal work ...

10 The plaintiff was informed by LSS of the complaint on 31 March 2020.¹⁸ The Review Committee constituted by LSS reviewed the matter and dismissed the complaint unanimously.¹⁹

¹⁸ Diana Foo's AEIC in HC/S 510/2021 at para 42; DF-1 Exhibit at pp 12–13.

¹⁹ DF-1 Exhibit at pp 37–39.

11 On 21 August 2020, the plaintiff issued a letter of demand to the defendant, stating that the plaintiff intends to make a claim in defamation against the defendant for both Statement 1 and Statement 2 (collectively the “Statements”), followed by a further demand on 9 April 2021.²⁰ The defendant did not apologise or seek to settle matters.

The parties’ cases

12 The plaintiff submits that the Statements contain allegations and/or statements that are defamatory; secondly, that these allegations and/or statements make clear references to the plaintiff; and thirdly, that these allegations and/or statements have been communicated to third parties who would reasonably understand the allegations and/or statements to be defamatory of the plaintiff.²¹ The defendant has not raised any arguments to challenge this.

13 Rather, the defendant relies on the defence of justification with respect to Statement 1 and the defence of qualified privilege with respect to Statement 2.²²

General principles on the law on defamation

14 To succeed in an action for defamation, the plaintiff must establish a *prima facie* case that (a) the statement is defamatory in nature; (b) the defamatory statement refers to the plaintiff; and (c) the statement is published: *Lee Hsien Loong v Review Publishing Co Ltd and another and another suit* [2009] 1 SLR(R) 177 (“*Review Publishing (HC)*”) at [23].

²⁰ DF-1 Exhibit at p 308; SOC at paras 35–37.

²¹ SOC at paras 9 and 23.

²² Defence (Amendment No. 2) (“Defence”) at paras 22 and 40; Defendant’s Written Submissions (“DWS”) at pp 39–45.

15 Words can be defamatory in their natural and ordinary meaning, which includes any meaning capable of being inferred from the offending words standing on their own in addition to their literal meaning: *Review Publishing Co Ltd and another v Lee Hsien Loong and another appeal* [2010] 1 SLR 52 (“*Review Publishing (CA)*”) at [26]. A statement is defamatory in nature if it tends to: (a) lower the plaintiff in the estimation of right-thinking members of society generally; (b) cause the plaintiff to be shunned or avoided; or (c) expose the plaintiff to hatred, contempt or ridicule: *Review Publishing (HC)* at [47].

16 A statement is published if it is communicated to at least one person other than the plaintiff who would reasonably understand the statement to be defamatory of the plaintiff: *Lim Eng Hock Peter v Lin Jian Wei and another* [2009] 2 SLR(R) 1004 (“*Peter Lim*”) at [83]; Gary Chan Kok Yew, *The Law of Torts in Singapore* (Academy Publishing, 2nd Ed, 2016) (“*The Law of Torts in Singapore*”) at p 526.

17 To defeat the *prima facie* cause of action in defamation, the burden lies on the defendant to raise a recognised defence, such as justification, fair comment, or qualified privilege: *The Law of Torts in Singapore* at p 539.

Statement 1

Whether the plaintiff has established a prima facie case of defamation

18 The plaintiff submits that the natural and ordinary meaning of Statement 1 is that:²³

- (a) The plaintiff is a rogue lawyer who has no regard for the law and professional ethics.

²³ SOC at para 10.

- (b) The plaintiff is a bully, which connotes that she is a thug, intimidator, tormentor, tyrant, oppressor, who tyrannised and strong-armed the defendant.
- (c) The plaintiff has no qualms about breaching the laws of Singapore to force the defendant to enter into illegal dealings with the plaintiff in her capacity as a lawyer.
- (d) The plaintiff has committed crimes.
- (e) The plaintiff has breached her professional duty as an officer of the court.
- (f) The plaintiff is dishonest, unethical, lacking in integrity and mendacious.

19 While I do not agree with the entirety of the plaintiff’s submissions, I am nevertheless of the view that Statement 1 is defamatory in nature. In its natural and ordinary meaning, Statement 1 plainly states that the plaintiff had bullied the defendant by forcing the defendant to “do illegal deals” with her. This not only impugns the character and integrity of the plaintiff, but also indicates that the plaintiff is knowingly involved in illegal dealings and, further, forced the defendant to participate in these illegal dealings. Without a doubt, such allegations would tend to lower the plaintiff in the estimation of right-thinking members of society generally, especially because the plaintiff is a member of the legal profession, which Statement 1 itself takes pains to highlight.

20 Second, Statement 1 also explicitly identifies the plaintiff, stating her full name “Diana Foo” and the law firm that the plaintiff practises at, *ie*, “Tan See Swan & Co.”.

21 Third, there is no question that Statement 1 was published as it took the form of a public post or review on LSS' Google page. The fact of publication is confirmed by a comment made by a Google account holder "Yew Woo", who had replied to Statement 1 with "go report her lah. [*sic*]".²⁴ Evidently, Statement 1 was communicated to *at least* one person other than the plaintiff who understood the statement to be defamatory of the plaintiff.

22 Therefore, I find that the plaintiff has successfully established a *prima facie* case that Statement 1 is defamatory.

Whether the defence of justification applies

23 To succeed in a plea of justification, the defendant needs to prove that the substance or gist of the offending words is true: *Review Publishing (CA)* at [134]. In the present case, the burden thus lies on the defendant to show that the substance or gist of the offending words in Statement 1 is true. In my view, this requires proving that (a) the "deals" were illegal; (b) the plaintiff knew that the "deals" were illegal; and (c) the plaintiff had forced the defendant to partake in these illegal "deals".

24 In her pleaded defence, the defendant relies on two such alleged "deals". The first "deal" refers to a 2017 investment agreement involving the transfer of US\$80m from the defendant's business acquaintance, a Mr Liao Cheng Wei ("Mr Liao"), into a Singapore escrow account opened in the parties' joint names. In consideration for payment of the sum of US\$80m, one Ms Encarnado Maria Cornelia ("Ms Cornelia"), a Filipino national who claimed to own 105 MT Gold (AU) Bullion held in a HSBC Singapore bank account, would transfer

²⁴ DF-1 Exhibit at p 9.

the gold to Mr Liao.²⁵ I shall refer to this as the “Gold Deal”. The second “deal” refers to a 2018 investment agreement between the defendant’s business contact, a Mr Ken Ol’ Franklin (“Mr Franklin”), and ILDC Viet Nam Company Limited (the “Vietnam Co”), where Mr Franklin was to invest US\$500m in the Vietnam Co.²⁶ I shall refer to this as the “Vietnam Deal”.

The Gold Deal

25 In my judgment, with respect to the Gold Deal, the defence of justification fails for three reasons. First, the defendant has not met her burden of proof to show that the Gold Deal was illegal. Second, even if the Gold Deal was illegal, the defendant has not proved that the plaintiff was aware of the illegality, or that the plaintiff forced the defendant to partake in the illegality. Third, the evidence before me indicates that on the balance of probabilities, it is more likely that it was the defendant and not the plaintiff who initiated and introduced the Gold Deal to the plaintiff.

26 First, the defendant does not plead or particularise the illegal nature of the Gold Deal. At best, the defendant states that “the [d]efendant and Mr Liao realised that the investment agreement was *potentially* and/or actually a fraudulent arrangement and/or a scam [emphasis added]” because they were allegedly informed by a staff member from HSBC that HSBC does not maintain or operate any accounts holding gold bullion.²⁷ The use of the word “potentially” is telling – even on the defendant’s own account, the defendant cannot be sure whether the Gold Deal was a fraudulent arrangement and thus

²⁵ Defence at para 22(1).

²⁶ Defence at para 22(2).

²⁷ Defence at para 22(1)(g)–(h).

illegal. I therefore ask rhetorically: how, then, can the defendant prove that the substance or gist of the offending words in Statement 1 is true?

27 Further, the defendant led no evidence, apart from a bare assertion, that a HSBC officer Mr Ivan Ho had allegedly told the defendant and Mr Liao that “the Filipinos had no gold account in Singapore and that HSBC does not have a licence to deal with gold”, coupled with a copy of Mr Ivan Ho’s name card.²⁸ I fail to see how the defendant can expect such bare and unsubstantiated evidence to be capable of discharging her burden of showing that the Gold Deal was illegal.

28 The final nail in the coffin is the defendant’s own admission in cross-examination. When asked by the plaintiff’s counsel whether the Gold Deal was “an illegal deal”, the defendant responded with “[i]t’s---it’s not a [sic] illegal deal”.²⁹ For someone who expressed in no uncertain terms that “[the plaintiff] force[d] [the defendant] to do illegal deals with her” in Statement 1, the defendant’s admission is damning and, in my view, makes it difficult to accept that the substance or gist of the offending words in Statement 1 is true.

29 Second, even if the Gold Deal was illegal, the defendant has not proved that the plaintiff was even aware of such illegality, much less that the plaintiff forced the defendant to partake in the illegality. Again, the defendant led no evidence which even remotely suggests that the plaintiff was aware of the alleged fraudulent arrangement and/or scam, in that Ms Cornelia did not actually own any gold in a HSBC Singapore bank account. On the contrary, the

²⁸ AEIC of Woo Mui Chan in HC/S 510/2021 dated 24 February 2022 (“Woo Mui Chan’s AEIC in HC/S 510/2021”) at para 12.

²⁹ Notes of Evidence (“NE”) of 23 August 2022 at p 54 ln 22–30.

evidence suggests that the plaintiff knew no more than the defendant did in relation to the gold allegedly owned by Ms Cornelia. On the defendant’s own account, it was not the plaintiff who had ties with and introduced Ms Cornelia to the defendant, but a man named Mr Steven Goh, who apparently introduced “some Filipinos” to *both* the plaintiff and the defendant.³⁰ The evidence thus does not suggest that the plaintiff knew that there was a fraudulent arrangement while the defendant was kept in the dark.

30 Third, in my assessment of the evidence, I also find that the plaintiff did not force the defendant to partake in any illegality (even assuming there was any); on the contrary, I find that it was *the defendant* who initiated and introduced the Gold Deal to the plaintiff. This is clear from the defendant’s admission during cross-examination as well as contemporaneous email evidence.

31 On 13 November 2016, the defendant emailed the plaintiff, attaching a copy of a “Warrant to Act”, wherein Ms Cornelia, the Attorney of one Mr Henry Dela Pena Sansano, granted a Singapore law firm (Syed & Partners) a warrant to act for her in Singapore on certain matters.³¹ When the email was raised to the defendant in cross-examination and the defendant was asked if it meant that she “introduced Diana Foo to this deal”, the defendant replied that she did introduce the plaintiff “[t]o the gold deal”.³² Further, on 3 February 2017, the defendant sent an email to the plaintiff titled “HSBC 3500MT Gold Transfer Ownership”, attaching what appeared to be a series of transfer of ownership

³⁰ NE of 23 August 2022 at p 54 ln 30–p 55 ln 11; Woo Mui Chan’s AEIC in HC/S 510/2021 at para 10.

³¹ DF-1 Exhibit at pp 422–423.

³² NE of 23 August 2022 at p 68 ln 4–24.

documents allegedly from HSBC, Claymore Branch, Gold Bullion Department, and which apparently showed that there was gold worth US\$490,362,812,500.00 under HSBC’s custody/safekeeping.³³

32 In my view, the evidence thus points to the conclusion that it was the defendant who *initiated* and *introduced* the Gold Deal to the plaintiff. The corollary must be that the defendant was not forced by the plaintiff to partake in the Gold Deal.

33 These findings are sufficient for me to dismiss the defence of justification raised by the defendant *vis-à-vis* Statement 1 insofar as the Gold Deal is concerned. However, I wish to make a brief remark on the defendant’s integrity and credibility as a witness.

34 The defendant states in her affidavit of evidence-in-chief (“AEIC”) that “the [p]laintiff had prepared a fake contract between the Filipino and Mr Liao” and that “a copy of the said contract ... is ... exhibited at [pp] 32–36 of [the defendant’s exhibit]”.³⁴ Page 36 of the defendant’s exhibit contains signatures of one Mr Kok Chiew Leong (“Mr Kok”) and Mr Liao.³⁵ During cross-examination, the defendant was referred to pages 32–36 of her AEIC and confirmed repeatedly that the Gold Deal agreement was signed at page 36.³⁶

35 However, page 36 of the defendant’s exhibit is identical to page 523 of the plaintiff’s exhibit in her AEIC, which is the signature page to a *different* agreement, namely, a Joint Venture Agreement between Oasis Realtors &

³³ DF-1 Exhibit at pp 562–569.

³⁴ Woo Mui Chan’s AEIC in HC/S 510/2021 at para 8.

³⁵ Woo Mui Chan’s Exhibit (“WMC-1 Exhibit”) at pp 32–36.

³⁶ NE of 23 August 2022 at p 56 ln 7–17, p 57 ln 9–15.

Consultants Pte Ltd and Super Nice Co Ltd.³⁷ The identical signature pages contain the signatures of Mr Kok, on behalf of Oasis Realtors & Consultants Pte Ltd, and Mr Liao on the other hand, for and on behalf of Super Nice Co Ltd. At the bottom of page 36 of the defendant’s AEIC exhibit, it even states “Joint Venture Agreement” and carries the page number “5”, in contrast to the earlier pages of the Gold Deal agreement which were not numbered. In my view, it is apparent that the defendant’s assertion that page 36 of her AEIC exhibit contains the signatures for the Gold Deal agreement is false.

36 In response to my questions raised during the trial, the defendant insisted that page 36 contained the signatures for the Gold Deal agreement. She adapted her evidence to state that they were simultaneously signatures for *both* the Joint Venture Agreement and the Gold Deal agreement. She confirmed that they were signed on the same day at the same time at the same location.³⁸ In my view, the defendant was spinning another falsehood to cover her earlier one. Her explanation simply does not stack up against the documentary evidence. The parties to both agreements are plainly different. The Joint Venture Agreement, which the signature page was taken from, is between Oasis Realtors & Consultants Pte Ltd and Super Nice Co Ltd. The Gold Deal agreement is between Ms Cornelia and Mr Liao. The signature page only refers to one “Agreement”.

37 The defendant also stated during the trial that she gave a copy of the signed Gold Deal agreement to her present counsel.³⁹ Both Mr Tan Hiang Teck Simon, lead counsel for the defendant, and Ms Tan-Goh Song Gek Alice (Mr

³⁷ DF-1 Exhibit at pp 519–523.

³⁸ NE of 23 August 2022 at p 64 ln 14–24.

³⁹ NE of 23 August 2022 at p 65 ln 30 – p 66 ln 11.

Tan’s instructing solicitor) confirmed that they have never received or seen such a document.⁴⁰ In my view, this was yet another falsehood by the defendant and speaks volumes of the defendant’s lack of integrity and credibility as a witness.

38 Recognising that her purported explanations hold no water, the defendant then sought to *retract* all her assertions some seven months later by way of her application for leave to adduce further evidence after the close of the trial and after parties had exchanged closing submissions. In her affidavit supporting the application, the defendant alleged that the signature page was “wrongly attached to the Gold Agreement instead of being inserted after the F1 (Terminal 5 Agreement)”.⁴¹ After hearing arguments, I had little hesitation dismissing that application.

The Vietnam Deal

39 In my judgment, with respect to the Vietnam Deal, the defence of justification also fails, again primarily for the fundamental reason that the defendant has not discharged her burden of proof to show that the Vietnam Deal was in fact illegal.

40 As with the Gold Deal, the defendant also does not plead or particularise what exactly was illegal about the Vietnam Deal.⁴² Her main grievance appears to be the absence of supporting documents and information regarding the Vietnam Deal.⁴³ In my view, this in and of itself cannot possibly amount to illegality or cogent evidence of illegality. At best, the defendant claims that the

⁴⁰ NE of 23 August 2022 at p 66 ln 26 – p 67 ln 3.

⁴¹ AEIC of Woo Mui Chan in HC/S 510/2021 dated 24 March 2023 at para 5.

⁴² Defence at para 22(2).

⁴³ Defence at para 22(2)(c)–(e).

plaintiff had told her that the agreement for the Vietnam Deal was “for show”.⁴⁴ When pressed to explain what exactly was illegal about the Vietnam Deal during cross-examination, the defendant stated that “[she] wanted [the plaintiff] to put in all the detail [*sic*] in the contract but [the plaintiff] told [her] this contract is just for show”.⁴⁵

41 At no point was it explained by the defendant what exactly “for show” meant and why that rendered the Vietnam Deal illegal. I reiterate that the legal and evidential burden lies on the defendant to show that the substance or gist of the offending words in Statement 1 is true (see [23] above). In my view, the defendant has failed to discharge that burden.

42 Further, the defendant’s allegation that the plaintiff had told her the Vietnam Deal agreement was “for show” amounts to a bare assertion, uncorroborated by any evidence surfaced during the proceedings. The defendant seeks to rely heavily on an audio recording of a telephone conversation between the plaintiff and the defendant, where the defendant raised concerns over the legality of the Vietnam Deal. The conversation took place on 30 April 2018,⁴⁶ and was recorded by the defendant without the plaintiff’s knowledge. It appears to me that the conversation was an attempt by the defendant to ensnare the plaintiff into admitting that the Vietnam Deal was illegal. However, in my judgment, when the entire transcript of the conversation is considered, the defendant’s attempt failed and in fact backfired as a result of the plaintiff’s confirmation that all their deals have to be conducted *legally*.⁴⁷

⁴⁴ Defence at para 22(2)(e).

⁴⁵ NE of 23 August 2022 at p 51 ln 13–14.

⁴⁶ WMC-1 Exhibit at p 10.

⁴⁷ WMC-1 Exhibit at p 13.

[Defendant:] No... I want to do something to [...] make money with you but, we have to do it the legal way. I'm not saying anything. I says [sic] that, ok, if let's says [sic] it's a legalized [sic] thing, ok, can make money together, why not??

Correct?

Since we got the opportunity to make the money together, I'm saying that. [...] *but we have to do it legally, you understand or not?*

[Plaintiff:] Ok I'm not saying about this also what [sic], *I agree with you.*

[emphasis added]

43 In sum, the defendant has failed to make good her case that the Vietnam Deal was illegal, and consequently, has also failed to show that the substance or gist of the offending words in Statement 1 is true.

44 Finally, I would also add that whilst the defendant pleads justification as a defence in the making of Statement 1, somewhat inconsistently, the defendant also pleads that, in response to the plaintiff's letters of demand (see [8] and [11] above), the defendant was "prepared to apologise and settle the matter".⁴⁸ But this begs the question – if Statement 1 was true, why apologise?

45 Similarly, the defendant pleads that she deleted Statement 1 from LSS' Google page after she received the letter of demand from the plaintiff.⁴⁹ This pleading was, in my view, also inconsistent with the defendant's pleaded defence of justification, and begs the question – why take down or delete the post if it was substantially true?

⁴⁸ Defence at paras 33 and 56.

⁴⁹ Defence at para 61.

46 These internally inconsistent pleadings also serve to further highlight the weaknesses in the defendant’s justification defence.

47 Accordingly and for the reasons above, the defendant’s plea of justification is, in my judgment, without merit and I reject it. The result is that the plaintiff’s claim against the defendant succeeds insofar as Statement 1 is concerned.

Statement 2

Whether the plaintiff has established a prima facie case of defamation

48 I turn now to Statement 2. The plaintiff contends that the natural and ordinary meaning of Statement 2 is that:⁵⁰

- (a) The plaintiff is a rogue lawyer who has no regard for the law and professional ethics.
- (b) The plaintiff is a homosexual.
- (c) The plaintiff entered into illegal dealings with the defendant in her capacity as a lawyer.
- (d) The plaintiff committed crimes.
- (e) The plaintiff is dishonest, unethical, lacking in integrity and mendacious.

49 As with Statement 1, while I do not agree with the plaintiff’s submissions in their entirety, I am of the view that the natural and ordinary meaning of Statement 2 at least encompasses the following:

⁵⁰ SOC at paras 25–27.

- (a) The plaintiff had lent money to the defendant in the form of cash, insisting that the loans should not be recorded, the inference being that this was suspicious conduct (paras 14–15 of Statement 2).
- (b) The plaintiff had asked the defendant to assist her in a deal in Vietnam to “move money”, the inference being that this was an illegal transaction involving an element of money laundering (para 18 of Statement 2).
- (c) The plaintiff had made unwanted sexual advances towards the defendant (paras 20–21 of Statement 2).
- (d) The plaintiff had used vulgarities against the defendant in the course of her legal work (para 30 of Statement 2).

50 The sting of these allegations is, in my view, defamatory. They give the impression that the plaintiff was engaged in illicit or unlawful financial activities, made unwanted sexual advances towards the defendant, and did not conduct herself professionally. In my view, this would tend to lower the plaintiff in the estimation of right-thinking members of society generally.

51 Statement 2 explicitly identifies the plaintiff. It is, after all, a written complaint against the plaintiff that was sent to LSS.

52 There is also no question that Statement 2 was published as it was specifically communicated to LSS, which then convened a Review Committee to respond to the complaint. The Review Committee ultimately found, unanimously, that there was no breach by the plaintiff of the Legal Professional

Act or Legal Professional (Professional Conduct) Rules 2015.⁵¹ But that does not detract from the fact that there was publication of Statement 2.

53 Therefore, I find that the plaintiff has successfully established a *prima facie* case that Statement 2 is defamatory.

Whether the defence of qualified privilege applies

54 In respect of Statement 2, the only defence pleaded by the defendant is the defence of qualified privilege.⁵² The defence of qualified privilege recognises that there are circumstances where the law allows an individual to make statements which may be *ex facie* defamatory without incurring legal liability when there is a need for a particular recipient to receive frank and uninhibited communication of particular information from a particular source: *Peter Lim* at [163].

55 The categories of communications enjoying qualified privilege include the following: (a) statements made between parties who share a common or mutual interest in the subject matter of the communication; (b) statements made in the discharge of a legal, social or moral duty; (c) statements made in the protection of one's own self-interest; and (d) fair and accurate reports of certain proceedings: *Peter Lim* at [164].

56 The privilege is said to be qualified (as opposed to absolute) as the defence can be defeated where the plaintiff can show that the defendant was actuated by malice or has exceeded the privilege the law has granted: *Peter Lim* at [165].

⁵¹ DF-1 Exhibit at pp 38–39.

⁵² Defence at para 40.

57 The defendant would be regarded as having acted with malice if the defendant (a) was actuated by an improper or ulterior motive; or (b) did not believe that the statement was true or was reckless as to the truth of the statements: *Chan Cheng Wah Bernard and others v Koh Sin Chong Freddie and another appeal* [2012] 1 SLR 506 at [90]; *The Law of Torts in Singapore* at p 572.

Whether Statement 2 enjoys qualified privilege

58 I turn first to consider if the assertions made in Statement 2 would qualify as a communication that would enjoy qualified privilege. In my judgment, Statement 2 does fall under a category of communications enjoying qualified privilege, namely as statements made between parties who share a common or mutual interest in the subject matter of the communication.

59 Statement 2 details instances of the plaintiff's alleged misconduct in the course of an alleged solicitor-client relationship between the plaintiff and the defendant. It requested LSS to review the complaints against the plaintiff, specifically on the questions of whether it was permissible for the plaintiff to (a) lend money to her client (the defendant); (b) make sexual advances towards her client (the defendant); and (c) use vulgarities in the course of the plaintiff's legal work.⁵³

60 LSS is the body that regulates lawyers in Singapore and investigates complaints relating to the conduct of lawyers in Singapore. Therefore, as between the defendant and LSS, I am of the view that there exists a common or mutual interest in the subject matter of Statement 2, namely the plaintiff's

⁵³ DF-1 Exhibit at p 18, para 30.

alleged professional misconduct in the course of the alleged solicitor-client relationship between the plaintiff and the defendant. As such, Statement 2 is capable of enjoying qualified privilege.

Whether the defence of qualified privilege is defeated by malice

61 In my judgment, Statement 2 was actuated by malice on the defendant’s part. Accordingly, I find and hold that the defence of qualified privilege is defeated. Let me elaborate.

62 The plaintiff and the defendant have had an acrimonious and litigious relationship since 2018, due in large part to the defendant’s failure to repay in full the loans given by the plaintiff and/or the judgment debt due to the plaintiff (see [5]–[6] above).

63 In 2018, the defendant posted Statement 1 on LSS’ Google page, stating, *inter alia*, that the plaintiff had forced the defendant to partake in illegal deals with her (see [7] above). I have found Statement 1 to be defamatory of the plaintiff. I have also concluded that the defendant could not show that the substance or gist of the offending words in Statement 1 is true (see [33] and [43] above).

64 This is the factual context within which Statement 2 was made on 3 March 2020.

65 In respect of paras 20–21 of Statement 2 (see [9] above), I am of the view that the defendant could not possibly have believed in the truth of her allegations, namely that the plaintiff had made unwanted sexual advances towards the defendant and that the defendant had “rebuffed these advances”. I find it unnecessary to examine or comment on the nature of the relationship, if

any, between the plaintiff and the defendant. However, I note that the contemporaneous evidence by way of text messages exchanged between the plaintiff and defendant shows that the defendant addressed the plaintiff as “dear”, “darling”, and “baby”, and both parties had exchanged similarly affectionate messages with each other.⁵⁴ The defendant confirmed during cross-examination that these terms of endearment were indeed “[her] words”.⁵⁵ In light of the history of acrimony between the parties, I find that the only plausible explanation behind the defendant’s allegation against the plaintiff in relation to the assertion of unwanted sexual advances (and the underlying implication of “homosexual tendencies”), addressed to LSS, is that the defendant’s motive was to injure the plaintiff.

66 The other allegations in Statement 2 (see [49(a), (b) and (d)] above) must also be seen in light of the context established above (at [62]–[63]).

67 In respect of paras 14–15, it is undisputed that the plaintiff and the defendant were friends when these loans were advanced by the plaintiff to the defendant.⁵⁶ Therefore, it is not surprising that these loans were not recorded in any formal manner. In my view, the fact that the defendant has chosen to take issue with this only after their relationship has soured reinforces the finding that the defendant sent the complaint in Statement 2 to LSS with the motive of injuring the plaintiff, in retaliation for the legal actions that the plaintiff had instituted against the defendant.

⁵⁴ DF-1 Exhibit at pp 747–756.

⁵⁵ NE of 23 August 2022 at p 82 ln 25–p 83 ln 30.

⁵⁶ Diana Foo’s AEIC in HC/S 510/2021 at para 62; Woo Mui Chan’s AEIC in HC/OSB 59/2018 at para 4 (DF-1 Exhibit at p 43).

68 With respect to para 18 of Statement 2 where the defendant states that the plaintiff had asked her to assist in a deal in Vietnam to “move money”, I note that this was not one of the specific issues raised by the defendant to LSS at para 30 of Statement 2 (see [59] above). The words “move money” connote that this was an *illegal* transaction with an element of possible money laundering (see [49(b)] above). Given the lack of relevance of this allegation to the investigation request made of LSS by the defendant as well as the defendant’s choice of words, this reinforces my finding above that the defendant sent the complaint in Statement 2 to LSS with the motive of injuring the plaintiff. That motive was malicious.

69 As for the allegation in para 30 of Statement 2 that the plaintiff had used vulgarities against the defendant, this is true from the evidence adduced in the proceedings. Vulgarities were indeed frequently used by the plaintiff in her interactions with the defendant and the plaintiff also admitted that she did utter vulgarities during the telephone conversation between her and the defendant ([42] above). However, Statement 2 must be seen as a whole. In order to accurately ascertain the defendant’s motivations in sending the letter of complaint to LSS, Statement 2 should not be sliced and diced into separate and distinct allegations. In my view, this specific complaint by the defendant is *but one* of the manifestations of the defendant’s personal grievances against the plaintiff. I find that the raising of this allegation against the plaintiff was also actuated by malice on the defendant’s part to seek to maximise the injury or damage to the plaintiff’s career as an advocate and solicitor.

70 Finally, underlying the complaint in Statement 2 is the premise that the defendant was at the material time the client of the plaintiff. I find that on a balance of probabilities, the defendant could not possibly have honestly

believed this to be true. This is apparent from the exchange between the defendant and the LSS Review Committee:⁵⁷

i) Requested information: The exact period during which the Complainant had engaged the Respondent for legal services.

Complainant's Answer: "Helping me with my daughter Probate, [the Respondent] *just only gave me basic information that's all.*"

ii) Requested information: A copy/copies of the Engagement Letter(s) between the Complainant and The Respondent.

Complainant's Answer: *There was no Engagement Letter.*

iii) Requested information: The aggregate sum paid by the Complainant to the Respondent for legal services.

Complainant's Answer: The Respondent said that "*the advice was for free*".

[emphasis added in italics]

71 It is clear that even with the alleged deal to "move money", the defendant did not consider that there was any solicitor-client relationship extant *when* the complaint was sent by her to LSS. When viewed in the round, it is quite apparent, in my view, that Statement 2 was not sent by the defendant because she had grievances about the plaintiff as her lawyer at the material time but because she had a personal grudge against the plaintiff following the breakdown of their friendship, and the plaintiff happened to be a lawyer in practice. Thus, the motive behind Statement 2 was, in my judgment, one actuated by malice – as a form of retaliation against the plaintiff. For the foregoing reasons, I find and hold that the defence of qualified privilege is defeated by the defendant's malice. Thus, the plaintiff's claim against the defendant in relation to Statement 2 also succeeds.

⁵⁷ DF-1 Exhibit at pp 38–39.

Conclusion

72 For the reasons detailed in this judgment, the plaintiff's claim against the defendant succeeds. I find the defendant liable to the plaintiff for defamation arising from the Statements made by the defendant. As the trial has been bifurcated, the question of what damages are due to the plaintiff are to be assessed.

73 I shall hear the parties separately on the question of costs of the trial on liability and any other costs that have been reserved for my determination.

S Mohan J
Judge of the High Court

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