IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1984] SGHC 3

Suit 812/1981

Between

Murugason

… Plaintiff

And

The Straits Times Press (1975) Ltd

… Defendant

GROUNDS OF DECISION

Tort; Legal Profession

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Murugason v The Straits Times Press (1975) Ltd

[1984] SGHC 3

Suit 812/1981
Chua F A J
21 February 1984

1 The plaintiff in this case claims damages against the defendants for a libel contained in a report headed `Woman claims T Blangah election was rigged` and published by the defendants in the issue of The ***Straits Times*** newspaper of 22 January 1981.

2 The facts are these. The plaintiff is and was at all material times an advocate and solicitor practising under the style of Murugason & Co in Singapore. The defendants are the proprietors and publishers of The ***Straits Times*** , a newspaper with a wide circulation in Singapore and is one of two English language newspapers delivered in the morning in Singapore. In the 1980 General Election the Telok Blangah constituency was contested by Rohan bin Kamis of the People`s Action Party and by JB Jeraretnam of the Workers` Party. Rohan bin Kamis was elected. On 17 January 1981, an election petition (Election Petition No 1/81) was presented to the High Court on behalf of Mdm Chiew Kim Keat by Murugason & Co in which she stated that she was not satisfied with the election of Rohan bin Kamis on the grounds that there were certain irregularities at a polling centre and at the polling stations in her constituency Telok Blangah and prayed that it might be determined that Rohan

bin Kamis was not duly elected or returned and that the election was void. On 22 January 1981, the defendants published in ***The Straits Times*** the following report:

3 ***Woman claims T Blangah election was rigged***

> *A Telok Blangah voter has filed a petition in the High Court alleging that the election of Rohan Kamis last 23 December as PAP MP for that constituency was rigged.*

4 This voter identifies herself as Mdm Chiew Kim Keat of Depot Road in the petition, which was filed by her lawyer, Mr R Murugason, on Saturday at noon. She paid in cash the $2,000 deposit as required by election law. She is asking the court to declare as void the election, in which Mr JB Jeyaretnam of the Workers` Party lost by 1,046 votes. She cites a number of grounds, one of which relates to an incident over the collection of ballot boxes at the Kampong Jagoh Primary School polling station.

5 In that incident, a bus despatched to collect the six ballot boxes from the school for a counting centre took off with only five of them on board, and only returned later for the remaining one.

6 ***`Substituted`***

> *Mdm Chiew claims the bus came back only after 20 minutes and says she `has reason to believe` that during the time lapse, either the box left behind or one of the other five was substituted with another box containing ballot papers marked for Mr Rohan but not cast for him by voters. Alternatively, she claims in her petition, ballot papers marked for Mr Rohan were inserted into one or more boxes. She does not say who was responsible for the alleged rigging; nor does she name anyone as respondent to the petition.*

7 Other grounds cited by her are:

> *THAT presiding officers at some booths marked ballot papers for some voters even when those voters were capable of doing this themselves.*
>
> *THAT a voter on the register was `refused permission` to vote, and*
>
> *THAT, one voter was allowed to vote twice. Mdm Chiew was said to be not at home when two* ***Straits Times*** *reporters and a photographer called at the Depot Road address listed in her petition last night at 10 o`clock. The people answering the door acknowledged that they were her relatives and declined to answer questions.*

8 ***Own accord***

> *When pressed, one of them a woman in her late 40s, told the* ***Straits Times*** *reporters to `use their heads` to decide if Mdm Chiew had acted on her own accord.*

9 The best person to answer questions was either Mr Jeyaretnam or Mr Murugason, she said, and added:

> *`After all, she is only a washerwoman and they are lawyers.`*
>
> *Mr Murugason, a WP candidate who lost in Jalan Kayu in the December general election, confirmed that he was acting for Mdm Chiew but declined to discuss the petition. Under election law, a person who has filed such a petition and paid the deposit to the Returning Officer is required to name the respondent upon whom the petition is to be served.*

10 Once the respondent is served with the petition, the court will fix a date for hearing.

11 The words in the report which the plaintiff complained of as defamatory are in the paragraphs headed `Own accord`.

12 In para 4 of the amended statement of claim it is pleaded:

> *4 By the said words the Defendant meant and was understood to mean that the Plaintiff had acted improperly and or unethically*

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> *in the conduct of his practice and an Advocate and Solicitor of this court.*
>
> ***Particulars of what the words meant and were understood to mean***
>
> (i) Mdm Chiew Kim Keat had not instructed the Plaintiff s firm to present the petition.
>
> (ii) The Plaintiff had presented or caused to be presented the petition to the court without getting proper instructions to do so from the Petitioner and was acting for her as her Solicitor.
>
> (iii) Such conduct was improper unethical and unbecoming an Advocate and Solicitor of this Honourable Court.
>
> ***Facts and matters on which the Plaintiff relies in respect of such meaning***
>
> (1) The Plaintiff repeats para 1 of the Statement of Statement of Claim herein.
>
> (2) The Plaintiff is required in the practice of his profession as an Advocate and Solicitor to have a brief from any client before instituting any proceedings or acting in any way whatsoever on behalf of the client.
>
> (3) The Plaintiff was not a voter in the election in respect of which the Election Petition was presented.

13 The action of the plaintiff is based entirely upon the innuendo pleaded in para 4 of the amended statement of claim supported by particulars under O 78 R 3(1). This rule provides that the plaintiff must give particulars of the extrinsic facts relied on as importing the additional (or altered) meaning and the existence of such facts is essential to the cause of action. Para 4 complains that by innuendo, those words are defamatory. They are alleged to be understood to mean that the plaintiff had acted improperly and or unethically as a solicitor. It is not alleged that the words are defamatory in their natural and ordinary meaning.

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14 The principles applicable here are to be found in (1) Gatley on ***Libel and Slander*** , 8th ed, pp 446, 447, 448, 449, paras 1075, 1076, 1077, 1078; (2) Duncan & Neill on ***Defamation*** (1978), pp 17, 18, 19, 20, paras 4.17 to 4.22.

15 In ***Hough v London Express Newspaper Ltd*** [1940] 507, 513, 515 Slesser LJ said:

> *The burden on the plaintiff is to give evidence of special circumstances which would lead reasonable persons to infer that the words were understood in a defamatory meaning provided such circumstances were known to those persons to whom the words were published:* ***Capital and Counties Bank v Henty****. The evidence required is evidence of special facts causing the words to have a meaning revealed to those who knew the special facts but not revealed by the words in the absence of such knowledge:* ***Tolley v JS Fry & Sons, Ltd****: but as Greer LJ points out in the same case in the Court of Appeal: `It is not proof of a special fact in this sense merely to call a number of people to say that they understood the words in a defamatory sense; they would have to prove some fact known to them which would be sufficient to entitle any reasonable man with such knowledge to interpret the words in a defamatory sense.*

16 And Goddard LJ said:

> *The question of law that arises in this case may thus be stated. Where words are not defamatory in their ordinary meaning, but by reason of special facts are capable of being understood in a secondary and defamatory sense by persons to whom the special facts are known, is it necessary to prove more than that there are people who know the special facts and so might understand the words in a defamatory sense or must there be evidence that some person did so understand them? In my opinion it is unnecessary, though I do not say inadmissible, to call persons to say that they did so understand the words, provided it is proved that they are people who might so understand them.*

17 In ***Grubb v Bristol United Press Ltd*** [1963] 1 QB 309, 328 Holroyd Pearce LJ said:

> *But the genuine innuendo which provides a separate cause of action is that which alleges an extension of the meaning of the*

> *words used and it must be supported by evidence of facts extrinsic to the words themselves...*

18 Although it is not done in practice, I see nothing to prevent the plaintiff, if he chooses, from pleading what he contends to be the ordinary meaning of the words, either in a case where it is doubtful whether a defamatory inference is within the ordinary meaning or even where the words are plainly defamatory. He would merely be providing the defendant with the nature of his case on that point. But, since the practice is to regard a plea beginning `By the said words the defendant meant and was understood to mean` as connoting a plea of innuendo from extrinsic facts, the plaintiff, unless he added the words `in their natural and ordinary meaning` to show that he was not pleading an innuendo proper, would no doubt be ordered to give particulars under O 19 r 6(2). If, even at that stage, the plaintiff made it clear that he was alleging no extension of meaning but only the ordinary meaning, the order would not apply and the plea would not be struck out for lack of particulars.

19 The plaintiff in the present case, however, did not do that, but delivered particulars, and contends that he is entitled under those particulars to allege an extended meaning.

20 In ***Lewis v Daily Telegraph Ltd*** [1964] AC 234, 273, 279 Lord Hodson and Lord Devlin expressed views as to the pleading and nature of innuendoes.

21 Lord Hodson said:

> *I argue with the observations of Upjohn LJ in* ***Grubb v Bristol United Press Ltd*** *to the effect that O 19 r 6(2), makes no alteration in the law except in cases where a true innuendo is pleaded. A pleader is entitled to allege in his statement of claim what the words in their natural and ordinary meaning convey, provided he makes it clear that he is not relying upon a true*

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> *innuendo which gives a separate cause of action and requires a separate verdict from the jury.*

22 Lord Devlin said:

> *My Lords, a system of pleading was built up on this basis which in 1949 was disconcerted by the introduction of a new rule - O 19 r 6(2). The object of the rule was to require that extrinsic facts must not only be proved but pleaded, thus restoring the position before 1852. The object was simple enough. It is the language of the rule that has caused the difficulties which have recently been brought to a head and have been the subject of three decisions, including the present one, by the Court of Appeal. The sub-rule reads: (2) In an action for libel or slander if the plaintiff alleges that the words or matter complained of were used in a defamatory sense other than their ordinary meaning, he shall give particular of the facts and matters on which he relies in support of such sense.`*

23 The word `innuendo` is not used. But the effect of the language is that any meaning that does not require the support of extrinsic fact is assumed to be part of the ordinary meaning of the words. Accordingly, an innuendo, however well concealed, that is capable of being detected in the language used is deemed to be part of the ordinary meaning.

24 This might be an academic matter if it were not for the principle that the ordinary meaning of words and the meaning enlarged by innuendo give rise to separate causes of action. This principle, which originated out of the old forms of pleading, seems to me in modern times to be of dubious value. But it is now firmly settled on the authority of ***Sim v Stretch*** , and the House was not asked to qualify it. How is this principle affected by the new rule? Are there now three causes of action? If there are only two, to which of them does the innuendo that is inherent in the words belong? In ***Grubb v Bristol United Press Ltd*** the Court of Appeal, disagreeing with some observations made by Diplock LJ in ***Loughans v Odhams Press Ltd*** decided in effect that there were only two

causes of action and that the innuendo cause of action comprised only the innuendo that was supported by extrinsic facts.

25 My Lords, I think, on the whole, that this is the better solution, though it brings with it a consequence that I dislike, namely, that at two points there is a divergence between the popular and the legal meaning of words. Just as the popular and legal meanings of `malice` have drifted apart, so the popular and legal meanings of `innuendo` must now be separated. I shall in the rest of my speech describe as a legal innuendo the innuendo that is the subject-matter of a separate cause of action. I suppose that it does not matter what terminology is used so long as it is agreed. But I do not care for the description of the popular innuendo as a false innuendo; it is the law and not popular usage that gives a false and restricted meaning to the word. The other respect is that the natural and ordinary meaning of words for the purposes of a defamation is not their natural and ordinary meaning for other purposes of the law. There must be added to the implications which a court is prepared to make as a matter of construction all such insinuations and innuendoes as could reasonably be read into them by the ordinary man.

26 The consequence of all this is, I think, that there will have to be three paras in a statement of claim where previously two have served. In the first paragraph the defamatory words will be set out as hitherto. It may be that they will speak for themselves. If not, a second para will set out those innuendoes or indirect meanings which go beyond the literal meaning of the words but which the pleader claims to be inherent in them. Thirdly, if the pleader has the necessary material, he can plead a secondary meaning or legal innuendo supported by particulars under O 19 r 6(2). Hitherto it has been customary to put the whole innuendo into one paragraph but now this may easily result in the confusion of two causes of action and in consequent embarrassment. The

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essential distinction between the second and third paragraph will lie in the fact that particulars under the rule must be appended to the third. That is, so to speak, the hallmark of the legal innuendo. The pleader can, if he chooses emphasise the character of the second para by including in it some such words as were used in ***Loughan`s*** case. That case was, in my opinion, rightly decided and rightly distinguished from ***Grubb`s*** case by Upjohn LJ in the latter case. Or the pleader can, as was suggested by Holroyd Pearce LJ in ***Grubb`s*** case, plead in the second para that the words in their natural and ordinary meaning were understood to mean one thing; and then he could plead in the third paragraph that by reason of the facts thereinafter particularised they were understood to mean another. The meanings alleged in the third para can be the same as those alleged in the second paragraph if the pleader is relying upon the legal innuendo only as an alternative; or they can be different. But the essential thing is that if a para is unaccompanied by particulars it cannot be a legal innuendo since for a legal innuendo particulars are mandatory and the innuendo cannot be proved without them.

27 The plaintiff must, unless the words complained of are defamatory in their natural or ordinary meaning, plead the meaning he alleges the words to have. In ***Fullam v Newcastle Chronicle*** [1977] 3 All ER 32, 35 Lord Denning MR said:

> *The essence of libel is the publication of written words to a person or persons by whom they would be reasonably understood to be defamatory of the plaintiff. But those words may give rise to two separate and distinct causes of action: see* ***Grubb v Bristol United Press Ltd*** *and* ***Lewis v Daily Telegraph Ltd****. They are these.*

28 First, the cause of action based on a popular innuendo. If the plaintiff relies on the natural meanings of the words (pleading what is called a `popular` innuendo so as to show what, in his view, is the natural and ordinary meaning)

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he must, in his statement of claim, specify the person or persons to whom they were published, save in the case of a newspaper or periodical which is published to the world at large, when the persons are so numerous as to go without saying - or book, I would add.

29 Secondly, the cause of action based on a legal innuendo. If the plaintiff relies on some special-circumstances which convey (to some particular person or persons knowing these circumstances) a special defamatory meaning other than the natural and ordinary meaning of the words (pleading what is called a `legal innuendo, so as to show what is that special defamatory meaning), then he must in his statement of claim specify the particular person or persons to whom they were published and the special circumstances known to that person or persons, for the simple reason that these are the `material facts` on which he relies, and must rely, for this cause of action. It comes straight within the general rule of pleading contained in RSC O 18 r 7; and also within the particular rule in libel actions contained in RSC O 82 r 3. In this second cause of action there is no exception in the case of a newspaper, because the words would not be so understood by the world at large, but only by the particular person or persons who know the special circumstances.

30 And in ***Grappelli v Derek Block Holdings (S) Ltd*** Lord Denning MR again said:

> *In the case of these secondary meanings even innuendos, the plaintiff ought to specify the persons who have the particular knowledge from which they drew a defamatory meaning.*

31 In the present case the plaintiff has not specified the persons who have the particular knowledge from which they drew a defamatory meaning. Nor are any special circumstances or meanings alleged.

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32 I now come to deal with para 4 of the amended statement of claim where the plaintiff has pleaded some meaning.

33 Under facts and matters relied upon:

> (1) Cannot support an innuendo as it is a statement of fact that the plaintiff is a solicitor.
>
> (2) The plaintiff must have a brief. The words in the report do not imply that he did not have instructions.
>
> (3) The plaintiff was not a voter in the Telok Blangah constituency. If anybody knew that he was not a Telok Blangah constituent (no one has been called) why should they suppose that the plaintiff had any indirect or dishonourable motive for having the election at Telok Blangah declared void?

34 Under `Particulars of what the words meant and understood to mean`:

> (i) Mdm Chiew Kim Keat had not instructed the plaintiff`s firm to present the petition. This is an example of what ***Gatley*** at para 1076 calls an `Imaginative innuendo`. That is, putting a strained or unjustified meaning on words. To argue without evidence that the words reported in the article would be understood by a reader having some special knowledge, or because of some extrinsic facts or circumstances, as meaning that the plaintiff had acted without Mdm Chiew`s instructions, is unsustainable.
>
> (ii) What does the plaintiff mean by saying `Without getting proper instructions` when in (i) he alleged that the words meant that he had no instructions at all. It is difficult to understand. The phrase `proper instructions` is vague. The words `and was acting for her as her solicitor` do not have any clear meaning. Do they mean that the plaintiff not only filed the Petition without `proper instructions` but is also purporting to act as her solicitor without `proper` instructions.
>
> (iii) The innuendo under (iii) would likely arise only if the meaning raised under (i) as an innuendo (and under (ii) if it is not too vague) is made out.

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35 The general burden of proof is on the plaintiff, so that it is for him to show, if he relies on the natural and ordinary meaning, that the words convey a defamatory imputation, or, if it is disputed what defamatory imputation they convey, that they convey the most serious imputation on which he relies (***Gatley*** para 114). Where in their natural and ordinary meaning the words are not defamatory of the plaintiff he will have the onus of showing that there were extrinsic facts, known to one or more of those persons to whom the words were published, which would cause the words to convey the defamatory imputation on which he relies to a reasonable person with that knowledge. He need not prove that anyone did understand the words in that sense (***Gatley*** para 116).

36 As I have said, the cause of action as pleaded in the amended statement of claim is one which is based solely on a legal innuendo. In it the plaintiff relies on special circumstances which convey to some particular person or persons, knowing those circumstances, a special defamatory meaning other than the natural and ordinary meaning. However, on the final address of counsel for the plaintiff, it seems that the plaintiff is also claiming a natural and ordinary meaning. That is a separate cause of action. It is clear that the plaintiffs action as pleaded is based entirely upon a legal innuendo.

37 On 4 October 1983, solicitors for the defendants wrote to the solicitors for the plaintiff in these terms:

> *In para 4 of the Statement of Claim, it is not alleged specifically that the words complained of, in their natural and ordinary meaning, meant and were understood to mean what is alleged in that paragraph.*

38 As it is not pleaded that those meanings are attributable to the words complained of in their natural and ordinary meaning, it appears that your client is relying on a legal, or true, innuendo, in which event the provisions of O 78 R

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3(1) apply, but have not been complied with. We, therefore, call upon you to file particulars of the facts and matters on which your client relies in support of the alleged innuendoes.

39 As the trial is fixed for 7 and 8 November next, it is important that these particulars should be filed without delay.

40 If, on the other hand, the defamation pleaded is alleged to arise out of the natural and ordinary meaning of the words, and para 4, with the particulars thereunder, was only intended to plead the meanings which the Plaintiff says such words bear, would you please let us know at once, and confirm that you will apply to amend the Statement of Claim at the trial to add the words `in their natural and ordinary meaning` in line of para 4 of the Statement of Claim, after the word `Defendant`.

41 The Statement of Claim as it stands is confusing and we shall have to apply to court unless we hear satisfactorily from you by return.

42 No reply was received by the defendants` solicitors and on 11 October 1983, an application for further directions` was filed seeking an order that:

> *Paragraph 4 of the Statement of Claim may be amended or struck out as tending to prejudice or embarrass the fair trial of this action and/or for irregularity for non-compliance with the Rules of the Supreme Court, O 78 r 3(1) in that it is not alleged that the words complained of in para 3 of the Statement of Claim in their natural and ordinary meaning bear the meanings alleged in para 4 of the Statement of Claim and yet no particulars of the innuendoes alleged are given as required by the said O 78 r 3(1).*

43 On 7 November 1983, the plaintiff amended his statement of claim.

44 By relying solely on a legal innuendo, the plaintiff admits that in their natural and ordinary meaning, the words are not defamatory. No special,

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technical or slang meanings and no extrinsic facts and circumstances are alleged to create an innuendo.

45 The only evidence has been that of the plaintiff himself who testified as to what innuendo he considered the report to contain. No evidence whatever has been called to prove that there are some special meanings, facts or circumstances in this case and that there are people acquainted with them and so might understand the report in the defamatory sense alleged, and that the report was published to them. Such evidence is an essential element in a case of legal innuendo.

46 As the plaintiff has failed to establish any legal innuendo his claim must fail.

47 The plaintiff`s claim is dismissed with costs.

48 ***Claim dismissed***

Chua F A J

JB Jeyaretnam (JB Jeyaretnam & Co) for the plaintiff
AP Godwin (Godwin & Co) for the defendants

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