Chin Bay Ching v Merchant Ventures Pte Ltd
[2005] SGCA 29

Case Number : CA 86/2004

Decision Date : 17 May 2005

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Lai Kew Chai J

Counsel Name(s) : Ang Cheng Hock and Eugene Thuraisingam (Allen and Gledhill) for the appellant; Kenny Khoo Ming Siang and Leong Why Kong (Ascentsia Law Corporation) for the respondent

Parties : Chin Bay Ching — Merchant Ventures Pte Ltd

Tort – Defamation – Injunction – Interlocutory injunctions – Mandatory and prohibitory injunctions – Mandatory injunction requiring retraction of allegedly defamatory statements – Prohibitory injunction restraining future publication of allegedly defamatory statements – Applicable principles for granting interlocutory injunctions in defamation actions

Tort – Defamation – Injunction – Interlocutory injunctions – Mandatory injunction requiring retraction of allegedly defamatory statements – Whether court having power to grant such injunctions

17 May 2005

Chao Hick Tin JA (delivering the judgment of the court):

1 This was an appeal against a mandatory injunction and a prohibitory injunction granted by the High Court (see [2005] 1 SLR 328) in an action instituted by the respondent, Merchant Ventures Pte Ltd ("MVP") against the appellant, Chin Bay Ching ("Chin") for defamation and malicious falsehood. We heard the appeal on 24 March 2005 and discharged both the injunctions. We now give our reasons.

The background

2 MVP is a Singapore company incorporated by Chin. Initially, it had two shareholders, with Chin holding one share and his brother, Chin Bay Fah, the other share. The brothers were also the first directors of MVP.

3 Sometime in 1997, MVP entered into a joint venture with a Chinese company, Zhuhai City Jin Xing Industry & Commerce Company ("Jin Xing") to develop a golf course, a country club and several bungalow homes (collectively, "the project") in Zhuhai, the People's Republic of China. For this joint venture, the parties decided to use the vehicle known as the Zhuhai Pearl Golf and Country Club ("the Club") to carry out the project.

4 Pursuant to the joint venture agreement, MVP invested $4.2m in the Club whilst Jin Xing secured the land usage right grant ("the Grant") in favour of the Club from the Zhuhai authorities. Of the $4.2m invested in the Club by MVP, at least $1.9m came by way of a shareholder loan from Chin to MVP. The remainder had apparently come from one Tan Siak Meng ("Tan"), but this was disputed by Chin.

5 For reasons which were not entirely clear, the execution of the project was delayed. It was put on "hold" by the Zhuhai authorities. In October 2001, Chin discussed with Tan who claimed that

he could work on the Zhuhai authorities to revive the project. Following further negotiations, where a third person, Ong Sooi Eng ("Ong"), was also involved, it was agreed ("the 2001 Agreement") that Tan would purchase Chin's entire shareholding in MVP for the sum of $2.6m, plus one of the to-be-completed bungalows and two golf memberships in the proposed country club. It was also a part of the understanding that Chin would ensure that MVP would issue to Tan (or his nominee) seven new shares in MVP. Earlier, for his efforts in helping to reinstate the project, Ong had been issued with one share in MVP.

6 Some months later, in February 2002, the parties varied the 2001 Agreement and, under this new agreement ("the 2002 Agreement), the one share meant for Ong would be transferred to Tan and the seven new shares for Tan would be transferred to Anchorage Capital Pte Ltd ("Anchorage"), a private exempt company effectively owned by Tan. In order to ensure that Tan carried out his part of the bargain and as a safeguard to Chin, Tan and Anchorage also agreed to deposit blank pre-signed share transfer forms with a neutral party, Tan Sook Kiat ("TSK").

7 Pursuant to the 2001 and 2002 Agreements, all the shares which Chin held in MVP, less one share, were duly transferred to Tan and Anchorage. MVP had thus come under the control of Tan. However, Tan failed to carry out his promise of executing and delivering the blank transfer forms to the stakeholder, TSK. Neither did Tan pay up the whole of the $2.6m to Chin. In fact, he paid only a part. As a result, on 8 November 2002, Chin instructed his solicitors to write a letter to the Zhuhai authorities ("first letter of complaint"), the substantive part of which reads:

> We wish to inform you that owing to the legal dispute over the shareholding among the members of [MVP], we would like to request the authorities concerned through your Honour to temporarily cease all consultations in respect of the use of land and other matters pertaining to [the project].

8 Eleven days later, on 19 November 2002, Chin's solicitors instituted an action in Suit No 1395 of 2002 ("the first action") against Tan and Anchorage, claiming for the return of the shares in MVP on account of their breach of the 2001 Agreement as modified by the 2002 Agreement. At that point, Tan owned 10% of the shares in MVP and Anchorage owned another 80%, with Chin holding only 10% of the shares.

9 In January 2003, the Zhuhai authorities, presumably pursuant to the first letter of complaint, revoked the grant of the land made to the Club. In June 2003, the parties reached an agreement to settle the first action, under which Tan and Anchorage agreed to pay Chin $1.95m by equal monthly instalments of $155,000 each and one final instalment of $400,000, with the first instalment due on 1 August 2003 ("the Settlement Agreement"). The first action was to be withdrawn by Chin upon the receipt of full payment. It was alleged by MVP that under the terms of the settlement, Chin was to appoint a Chinese legal representative for the Club and, within seven days of such appointment, Chin was to withdraw the first letter of complaint made to the Zhuhai authorities. There was some uncertainty as to whether Chin had, in fact, assumed the obligation to appoint a legal representative. This would, no doubt, be a point of fact to be determined at trial.

10 Tan paid only the first instalment under the Settlement Agreement and defaulted on the second instalment due on 1 September 2003. Thus, on 16 September 2003, Chin's then solicitors, M/s Vijay & Co, wrote a letter to the Zhuhai authorities ("the second letter of complaint"), the substance of which reads:

> We act for [Chin] … In this Suit No 1395/2002/E, Chin had sued [Tan] and [Anchorage] for the return of shares in [MVP] that belonged to him because Tan and Anchorage had

breached agreed conditions.

…

In these circumstances, we would like to put you on Notice that you may want to avoid any dealings with [Tan], Anchorage and [MVP] or any party other than Chin concerning compensation until the matter is resolved.

11 This second letter of complaint was the subject of MVP's present action for defamation and malicious falsehood which was instituted on 5 February 2004.

12 In the meantime, on 1 October 2003, Chin assigned the benefits under the Settlement Agreement to one Mr Chuah Chong Eu ("Chuah") for a mere $300,000 as Chin was in urgent need of funds. On 31 October 2003, Chuah instituted Suit No 1070 of 2003 ("the second action") against Tan and Anchorage for breach of the Settlement Agreement. On 24 February 2004, Chuah obtained summary judgment against Tan and Anchorage for damages of $1,795,000, plus interest and costs.

The pleadings

13 In the present action against Chin, MVP pleaded in its Statement of Claim that the second letter of complaint contained the following defamatory meanings:

(a) Tan and Anchorage are not trustworthy in business and/or are liable to dishonour their contractual obligations;

(b) Tan and Anchorage are financially lacking and/or wholly incapable of completing the project;

(c) Consequently, [MVP is] by virtue of the association with Tan and Anchorage untrustworthy in business, liable to dishonour agreements, lacking in financial means and/or skills to complete the project.

In the alternative, MVP sued for malicious falsehood.

14 In the action, the reliefs prayed for by MVP included, besides the sum of $4.2m and damages, the following:

An injunction requiring [Chin] to retract the first and second letter[s] [of complaint], acknowledging that he had no bases [*sic*] whatsoever for making the allegations and that the same are unfounded.

15 In his Defence, Chin pleaded justification and qualified privilege. For justification, Chin relied, *inter alia*, on the fact that Chuah had obtained a final judgment against Tan and Anchorage. Chin averred that qualified privilege applied because both he and the Zhuhai authorities had a common or corresponding interest in the matter which was the subject of the first and second letters of complaint. The letters were written to protect Chin's own interests. Chin said that there was no malice on his part.

16 On 14 June 2004, MVP applied for an interim injunction to require Chin to retract the first and the second letters of complaint in terms of a draft attached thereto and a prohibitory injunction to restrain Chin from further writing to the Zhuhai authorities on the project. On 27 August 2004, the

High Court granted the two injunctions prayed for.

The decision below

17 The judge below, in granting the two injunctions, applied the test laid down by this court in two cases, *ie*, *Chuan Hong Petrol Station Pte Ltd v Shell Singapore (Pte) Ltd* [1992] 2 SLR 729 ("*Chuan Hong*") and *Singapore Press Holdings Ltd v Brown Noel Trading Pte Ltd* [1994] 3 SLR 151 ("*Brown Noel*") which adopted the balance of convenience test propounded in the case of *American Cyanamid v Ethicon* [1975] AC 396 ("*American Cyanamid*"), which was later referred to in Chuan Hong,as the "balance of the risk of doing injustice" test *ie*, at 743, [88]:

> [T]he court should take whichever course appears to carry the lower risk of injustice if it should turn out to have been wrong at trial in the sense of granting relief to a party who fails to establish his rights at the trial, or of failing to grant relief to a party who succeeds at the trial.

18 The judge noted that Chin no longer had any real interest in the project at the time the present action was instituted, other than one share in MVP. She stated that Chin's interest was a monetary one which was to be paid by Tan in accordance with the terms of the Settlement Agreement, and even that interest or right had been extinguished by his assignment to Chuah. Thus, Chin would suffer no prejudice from the retraction of the two letters. In contrast, unless the letters were retracted, and this appeared clearly from a letter of 10 May 2004 from the Club to MVP, the Club would not be able to re-commence negotiations with the Zhuhai authorities. Its loss would be difficult to compute.

Mandatory injunction

19 Before us, counsel for Chin contended that the judge erred in granting the two injunctions. We will first examine the position in relation to the mandatory injunction. Chin submitted that the court's power in a defamation action (the present action is such an action, although MVP had also claimed in malicious falsehood) was limited to ordering damages, costs and an injunction to restrain the defendant from repeating the defamatory statements. In this regard, Chin relied upon a passage in *Gatley on Libel and Slander* (Sweet & Maxwell, 9th Ed, 1998) at para 9.1:

> An award of damages is the primary remedy for defamation … There is no general power for the Court to order the defendant to publish a correction or apology …

and another passage in David Price, *Defamation Law, Procedure & Practice* (Sweet & Maxwell, 2nd Ed, 2001) at p 169:

> Most claimants want an apology and retraction first and foremost. However, a court cannot make an order requiring a defendant to publish an apology against his will. Since the majority of claims settle, the claimant may nevertheless be able to negotiate the publication of an apology as a term of settlement.

20 Chin also referred to the local High Court decision of *Excel Golf Pte Ltd v Allied Domecq Spirits & Wine (Singapore) Ltd* [2003] 4 SLR 771 and the New South Wales Supreme Court decision in *Summertime Holdings Pty Ltd v Environmental Defender's Office Ltd* (1998) 45 NSWLR 291 where Young J stated (at 298) that "the common law does not compel apologies but merely takes the matter of whether an apology is offered or not into account when assessing damages".

21 In contrast, MVP cited *TV3 Network Ltd v Eveready New Zealand Ltd* [1993] 3 NZLR 435 ("*TV3 Network*") where the New Zealand Court of Appeal refused, in an action for malicious falsehood and defamation, to strike out a claim for a mandatory injunction to broadcast corrective advertising even though it was argued that such a relief was untenable. Cooke P said (at 438 and 439):

> [S]ince the mingling of law and equity, which is accepted in New Zealand, the remedy of injunction should be available whenever required by justice. To impose jurisdictional limits, as distinct from identifying factors which on practical grounds will tell against the discretionary grant of the remedy, would be a backward step. It would be inconsistent with the past approach of this Court: see for example *Thomas Borthwick & Sons (Australasia) Ltd v South Otago Freezing Co Ltd* [1978] 1 NZLR 538, where an injunction was upheld although having the effect of requiring the performance of a long-term commercial contract entailing co-operation between the parties.
>
> …
>
> The facts that no instance of such an injunction has been found, and that text writers, law reform bodies and even some Judges may have assumed that the jurisdiction does not extend so far, are certainly a warning that a Court should be slow to grant the remedy; but they cannot establish the absence of jurisdiction. There are well-known instances of the discovery that justice requires an established equitable remedy to be adapted to a new use.

22 The general power of our courts as to the reliefs which they may grant is set out in para 14 of the First Schedule to the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) ("SCJA") which provides that the court has the "[p]ower to grant all reliefs and remedies at law and in equity, including damages in addition to, or in substitution for, an injunction or specific performance". Section 4(10) of the Civil Law Act (Cap 43, 1999 Rev Ed) provides that interlocutory injunction may be granted either conditionally or unconditionally as the court thinks just.

23 It is undoubtedly true that granting a prohibitory injunction in a defamation action is common place. However, no precedent could be cited by either party where the court had granted an interlocutory or final mandatory injunction requiring the retraction or correction of defamatory statements. Does it, therefore, follow that just because hitherto the courts have not granted a mandatory injunction in a defamation action, one should conclude that this remedy is not available in such an action? In this regard, we are reminded by what *Spry on The Principles of Equitable Remedies* (Law Book Co, 6th Ed, 2001) ("*Spry*") states at 323:

> Injunctions are granted only when to do so accords with equitable principles, but this restriction involves, not a defect of powers, but an adoption of doctrines and practices that change in their application from time to time. Unfortunately there have sometimes been made observations by judges that tend to confuse questions of jurisdiction or of powers with questions of discretions or of practice. The preferable analysis involves a recognition of the great width of equitable powers, an historical appraisal of the categories of injunctions that have been established and an acceptance that pursuant to general equitable principles injunctions may issue in new categories when this course appears appropriate.

24 Here, we note that the evolution of the reliefs of the Mareva injunction and the *Anton Piller* order is probably an apt illustration supporting the statement in *Spry*. The fact that the courts have, to date, refrained from issuing a mandatory injunction does not mean that this remedy is not available

in a defamation action. It may well be that the courts preferred to enhance the quantum of damages awarded rather than to compel a reluctant defendant to apologise or correct his statements. No reasons have been advanced to show why this remedy should not, as a matter of principle, be available in a defamation action. None was proffered in any of the leading defamation textbooks. It may well be that it would be a rare case where the court would feel the need to issue such a remedy. But that is not to say it is a complete bar.

25 We recognise the force of the argument that a defendant should not be compelled to apologise against his will as the very spirit of an apology is that it must come from the heart, something which the defendant wishes to do on account of the wrong he has done to the plaintiff. On the other hand, an order compelling a defendant to merely withdraw, or correct, an offending statement after a trial, seems to be of a different character or genre from that of an apology. In the same way that the court compels a defendant to pay damages for the defamation, there is no reason or principle why it cannot compel the issue of a correction. Of course, the cases where the court should think that justice requires the grant of a mandatory injunction, to issue either a letter of withdrawal or correction, must be quite exceptional.

26 In this connection, we note the following observation made by Gault J in *TV3 Network* at 447:

> The action for defamation developed in the common law as attracting remedy only in damages. That did not prevent the use of injunctions to restrain threatened repeated publication of defamatory statements after the passing of the Judicature Acts. In principle therefore there is no jurisdictional bar to an injunction cast in mandatory form. Indeed that is what occurred in *Hermann Loog v Bean* [(1884) 26 Ch D 306].

27 Equally germane are the views expressed by Lord Goff of Chieveley in *South Carolina Insurance Co v Assurantie Maatschappij 'de Zeven Provincien' NV* [1986] 3 All ER 487 at 499:

> I am reluctant to accept the proposition that the power of the court to grant injunctions is restricted to certain exclusive categories. That power is unfettered by statute; and it is impossible for us now to foresee every circumstance in which it may be thought right to make the remedy available.

28 At the end of the day, the question whether a mandatory injunction, requiring retraction or correction, is an appropriate and just relief must depend on the circumstances. The following discussions of this precise point by Gault J in *TV3 Network* (at 447) set out some of the matters which the court should take into account to determine whether to grant such a relief:

> In defamation cases the freedom of speech and the appropriateness of a Court's direction to the press or electronic media to publish or broadcast will be of great importance. So too will be the practicability of ordering retraction or correction in cases where the assessments of damages (which would be affected by such orders) are in the hands of a jury. Another factor will be the lapse of time between the publication of the defamatory statement and the time for compliance with any order for retraction or correction. In many cases the gap will be such as to raise a question of whether further publication would be counter-productive. On the other hand the modern approach to the dissemination of information in fields of consumer safety, the impact on trading interests, whether malice has been proved, whether the injury is shown to be continuing and the fact that the issue of remedy arises only after it has been shown that there has been an abuse of the right of freedom of speech also may be relevant factors. Those are all matters that go to the

discretion whether or not to make any order. They do not go to the Court's jurisdiction.

29 Accordingly, we had reservations on the submission made by Chin that the courts had no power at all to grant such a relief. Indisputably, the award of damages will be the primary remedy in a defamation action.

30 Assuming that there is such a power in the court to grant the relief, the next question to consider is whether the judge, in the circumstances of the present case, fell into error in granting the interim mandatory injunction. In this regard, it is vitally important to bear in mind the ambit of the letter which Chin was compelled, under the order made by the court below, to write to the Zhuhai authorities, the relevant parts of which read:

> … I have been ordered by the High Court of Singapore to retract the First and Second Letters.
>
> … I hereby acknowledge that I had no basis nor *locus standi* for requesting that you refrain from dealing with [MVP]. My dispute with [Tan and Anchorage] has no bearing on [MVP], the Club and all or any issue relating to the revocation of the Land Grant.
>
> … Consequently I hereby unconditionally and irrevocably retract the said First and Second Letters and all or any requests made thereunder.

31 One very significant aspect of this withdrawal letter is that it required Chin to admit that he was wrong to have written the two letters to the Zhuhai authorities. There is as yet no trial at which the court has found that Chin's defences of justification or qualified privilege failed. The court has yet to determine the substantive merits of the action and the defences raised. It seems to us that while the judge below had correctly set out the guidelines laid down in *Chuan Hong* and *Brown Noel*, she had not appreciated that their application to the special situation of a defamation action must be modified. As early as in 1887, Lord Esher MR had already in the case of *William Coulson and Sons v James Coulson and Co* (1887) 3 TLR 846 ("*Coulson*") recognised the unique position of a defamation action in relation to the issue of an interim injunction. He said at 846:

> To justify the Court in granting an interim injunction it must come to a decision upon the question of libel or no libel, before the jury decided whether it was a libel or not. Therefore the jurisdiction was of a delicate nature. It ought only to be exercised in the clearest cases, where any jury would say that the matter complained of was libellous, and where if the jury did not so find the Court would set aside the verdict as unreasonable. The Court must also be satisfied that in all probability the alleged libel was untrue, and if written on a privileged occasion that there was malice on the part of the defendant.

32 In the subsequent case of *Bonnard v Perryman* [1891] 2 Ch 269 ("*Bonnard*"), the rationale for a stricter test before an interlocutory injunction could be granted by the court in a defamation action was enunciated by Lord Coleridge CJ at 284 in these terms:

> But it is obvious that the subject-matter of an action for defamation is so special as to require exceptional caution in exercising the jurisdiction to interfere by injunction before the trial of an action to prevent an anticipated wrong. The right of free speech is one which it is for the public interest that individuals should possess, and, indeed, that they should exercise without impediment, so long as no wrongful act is done; and, unless an alleged libel is untrue, there is no wrong committed; but, on the contrary, often a very wholesome act is performed in the publication and repetition of an alleged libel. Until it is

clear that an alleged libel is untrue, it is not clear that any right at all has been infringed; and the importance of leaving free speech unfettered is a strong reason in cases of libel for dealing most cautiously and warily with the granting of interim injunctions.

33 While we recognise that *Coulson* and *Bonnard* were decided well before 1975, before the *American Cyanamid* case, even later cases had not departed from the stricter test propounded in *Coulson* and *Bonnard*. Counsel for Chin also referred, in particular, to these cases from various Commonwealth countries in support of his contention, namely, *Trevor v Solomon* (1977) 248 EG 779, *Herbage v Times Newspapers Ltd* The Times 1 May 1981, *The New Straits Times Press Bhd v Airasia Bhd* [1987] 1 MLJ 36, *Edelsten v John Fairfax & Sons Ltd* [1978] 1 NSWLR 685, *McSweeney v Berryman* [1980] 2 NZLR 168 and *Kwek Juan Bok Lawrence v Lim Han Yong* [1989] SLR 655 ("*Lawrence Kwek*"), the last being a Singapore case.

34 In *Bestobell Paints Ltd v Bigg* [1975] FSR 421 ("*Bestobell Paints*"), Oliver J at 429–430 expressly alluded to *American Cyanamid* and held that it did not apply to a defamation action:

> There is an old and well established principle which is still applied in modern times and which is in no way affected by the recent decision by the House of Lords in [*American Cyanamid*] that no interlocutory injunction will be granted in defamation proceedings, where the defendant announces his intention of justifying, to restrain him from publishing the alleged defamatory statement until its truth or untruth has been determined at the trial, except in cases where the statement is obviously untruthful and libellous. That was established towards the end of the last century and it has been asserted over and over again.

35 We appreciate that in England, the trial of a defamation action was and is by jury and there could thus be reluctance on the part of the court in granting an interlocutory injunction. It could be that the judges in England were disinclined to usurp the function of the jury at the trial or prejudge an issue which fell within the domain of the jury.

36 The significance of this difference, that the trial of a defamation action in England was by jury and in Singapore was and is by the judge alone, came up for consideration in *Lawrence Kwek*. There, our High Court applied the same stricter test. Chan Sek Keong J (as he then was) explained why the difference was immaterial as follows (at 658):

> [U]ntil the action is tried, the judge is in exactly the same position as a jury, in a trial where there is a jury. Like a jury, a judge is also in no position to say whether the defence has been established until he has heard all the evidence.

37 We must at this juncture make one clarification. We appreciate that all the cases discussed above related to the grant of an interlocutory prohibitory injunction, not a mandatory injunction. In our opinion, that should not matter as the reasoning above should apply with even greater force in relation to the issue of an interlocutory mandatory injunction. Accordingly, we agreed with the submission of Chin that in relation to an application for an interlocutory injunction in a defamation action, whether mandatory or prohibitory, the jurisdiction of the court was not to be exercised simply on *American Cyanamid* guidelines but with great caution and should generally only be granted where it was clear that the statement complained of was libellous and no defence could possibly apply. Having satisfied this test, the court must further be satisfied that this is a case where special circumstances exist which warrant the issue of an exceptional relief like an interlocutory mandatory injunction.

38 In the present case, Chin pleaded the defences of justification and qualified privilege. In the light of the facts enumerated in [2] to [12] above, we could not see how it could be alleged that these two defences were clearly without merits. It is true that under the Settlement Agreement there is a question as to whether Chin was required to appoint a Chinese legal representative, which Chin had failed to do. However, what is clear is that Tan had failed to fulfil his promise to pay. The fact that Chuah obtained a summary judgment against Tan and Anchorage under the Settlement Agreement (see [12] above) is indicative that there are probably some merits in the defences raised by Chin in relation to the present action by MVP.

39 We appreciate that with the first and the second letters of complaints in the hands of the Zhuhai authorities, it is perhaps natural that the Zhuhai authorities would be reluctant to re-commence negotiations with the Club to resolve the dispute involving the project. Thus, we understand the anxiety of MVP, and of the Club, of wanting to remove this perceived obstruction and move things along to a solution with the Zhuhai authorities. Nevertheless, a letter of withdrawal in the terms set out in the Order of Court of 27 August 2004 is clearly unwarranted. It required capitulation on the part of Chin.

40 It seems to us that the judge placed too much significance on the subsequent events, *ie*, Chin's assignment of the rights under the Settlement Agreement to Chuah and the fact that on account thereof, Chin no longer owned any real interest in MVP other than one nominal share: see [28] and [35] of her judgment. The court should have considered the second letter of complaint as at the date it was written. Was Chin entitled to write the second letter to the Zhuhai authorities? What is the correct meaning to be ascribed to the letter?

41 Finally, we need to make a brief comment on the point as to whether the position would be altered in any way by the fact that in the present action, there is an alternative claim in malicious falsehood. We do not think so, as the foundation for the claim in malicious falsehood is essentially the same as that for the claim in defamation. In *Bestobell Paints* at 438, Oliver J answered this same argument as follows:

> It is, of course, true that the action for malicious falsehood or injurious falsehood is not strictly an action for libel or slander but an action on the case for damage wilfully and intentionally done without just occasion or excuse (see *Ratcliffe* v. *Evans* [1892] 2 Q.B. 519). But I cannot find, in the authorities to which I have been referred to or to which my own researches have led me, any foundation for the suggestion that so far as the question of interlocutory relief is concerned any different principle is applicable in such an action nor, indeed, can I see any logical reason why it should be, if the reason for the rule in *Bonnard* v. *Perryman*, given by the Master of Rolls is correct.

Interlocutory injunction to restrain further publication

42 We now turn to the interim prohibitory injunction granted by the judge to restrain Chin from further publishing the alleged defamatory statements. In her grounds of decision, the judge did not give specific reasons for granting the interim prohibitory injunction. The conditions which must be satisfied before the court grants such an interim prohibitory injunction are set out in *Duncan and Neill on Defamation* (Butterworths, 2nd Ed, 1983) at para 19.02 as follows:

> The court has jurisdiction to grant an [interlocutory] injunction to prevent any further publication where the plaintiff can establish—
>
> (a) a *prima facie* case of libel or slander;

(b) that the defendant threatens or intends to make a further publication;

(c) that if a further publication is made the plaintiff will suffer an injury which cannot be fully compensated in damages.

43 In *Gatley on Libel and Slander* (Sweet & Maxwell, 10th Ed, 2004), at para 25.2, the learned authors set out the applicable conditions for the issue of an injunction to restrain further publication to be the following:

(1) the statement is unarguably defamatory;

(2) there are no grounds for concluding the statement may be true;

(3) there is no other defence which might succeed;

(4) there is evidence of an intention to repeat or publish the defamatory statement.

44 From both these standard textbooks, it would be noted that one of the essential conditions which must be satisfied before a prohibitory injunction may be granted is that there must be evidence of a threat or intention to repeat the defamatory remarks. However, there is no evidence at all that Chin had threatened to repeat or intended to continue the publication of the allegedly defamatory statements. There was no basis for MVP to even think that Chin would write further to the Zhuhai authorities. Accordingly, the interim prohibitory injunction should not have been granted. It had not been shown to be necessary. We would hasten to add that in only referring to this condition, it must not be taken that all the other conditions necessary for the grant of a prohibitory injunction had been satisfied.

45 Finally, we ought to mention that MVP sought the leave of this court to amend its Statement of Claim to include a claim in tort for interfering in a contractual relationship. Such an application was, in fact, pending before an assistant registrar. We did not think the oral application fell within the ambit of this appeal.

46 In the result, we allowed the appeal with costs, here and below. We also ordered the refund of the security for costs to the appellant.

Appeal allowed.

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