

A case commentary:
chan yoke sim v
choong teck fook and
ors



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The plaintiff a kindergarden teacher at Tadika Emmanuel (TE) seeks damages over several tort of defamation by several Emmanuel Baptist Church committee members. The plaintiff alleged the committee members have published defamatory statements which leads the other members of the church to believe she was a corrupt, untrustworthy and dishonest person and have repeatedly committing several accounts of frauds and criminal breach of trust during her service in TE. The 1st defamatory statement was that she had allegedly receive twice the payment from the TE board during the same month implying she was a dishonest person. Misusing fund from TE to buy bankdraft for her son that is studying in Australia therefore implying she has committed a criminal breach of trust. Alleged to have repeatedly committing fraud on the accounts of TE and is a corrupt, untrustworthy and a person without morale and principle. Alleged to have abused her position during her service in TE to gain profit for her own personal gains. The plaintiff have demanded TE board to take appropriate actions to clear her name and demanded an apology statement to be publish to the rest of the members but was ignored by TE board.

Firstly to prove whether the statements were defamatory and is made with malice, lets look on the statement that the plaintiff cash in both checks issued to her by the TE board chairman. A replacement cheque is issued by the bank to replace the cheque the plaintiff had loss. This proves that the plaintiff had not cash in both cheques like claimed. The fact that the cheque was reimbursed by the TE board chairman was never questioned and yet allegation against the plaintiff was made , even after the plaintiff had requested the TE board to carry out investigations to clear her name and

demanded an apology no actions were taken by the board and the chairman of the TE board never came out and clarify the matters. I would quote one of the defamatory statement published by the TE board

The plaintiff alleged these passages to be defamatory to her in the 2009

Minutes:

iii. Purported usage of TE fees collection for the purchase of personal bank draft (Refer to item 6. 3 of the Fact Finding Report and Appendix F).

Bro. BC said TE previous Treasurer, sis. Ang Hwee Loo (AHL)'s allegation was a very strong and sensitive one as the teacher she referred to was bro. CYH's sister. The Fact Finding Team could not conclude that the purported bank draft was in fact related to the discrepancy being written off in Point 7 of Appendix C, or the purchase of personal bank draft actually happened.

v. Salary for Sep-06 was alleged to have been paid twice to a teacher (Refer to 6. 5 of the Fact Finding Report and Appendix G & H).

Bro. BC in referring to item 3. 1 of the Audit Report (Appendix I) said the audit observation has given the impression of the salary cheques being issued twice to a teacher when actually the alleged replacement cheque was issued to bro. RL as a reimbursement for a different amount. Bro. BC said there were two aspects to this finding. firstly, sis. AHL admitted to the Fact Finding Team that she had omitted to cancel the first salary cheque that was reported lost. secondly, although the second reimbursement cheque to bro. RL included an amount of the teacher's salary for Sep-06, there was no voucher to evidence the second salary payment purportedly to have been

made in cash. Therefore, the Fact Finding Team could not confirm that the teacher in question has received the Sep-06 salary twice.

Sis. LKK commented that when she joined the TE Board, she remembered being told that the TE accounts were very messy. Sis. LL also recalled that sis. AHL wanted collections to be banked in immediately and teachers were later not allowed to hold any money. Since sis. AHL's allegation of a teacher having used TE money to purchase personal bank draft was never tabled and discussed in the past TE Board meetings, the present TE Board accepted the recommendation of the Fact Finding Team and unanimously agreed that the unsubstantiated allegation be dismissed.

(the alleged fourth defamatory statements)

Is the statements by the TE board defamatory or not? I would quote the decision delivered by Gopal Sri Ram JCA (as he then was) in the Court of Appeal case of *Chok Foo Choo @ Chok Kee Lian v The China Press Bhd* [1999] 1 MLJ 371 at pp 374 and 375 where it was held that:

In my judgment, the test which is to be applied lies in the question: do the words published in their natural and ordinary meaning impute to the plaintiff any dishonourable or discreditable conduct or motives or a lack of integrity on his part? If the question invites an affirmative response, then the words complained of are defamatory. (See *JB Jeyaretnam v Goh Chok Tong* [1985] 1 MLJ 334.) Richard

2 MLJ 117 at 128

Malanjum J, in an admirable judgment in *Tun Datuk Patinggi Haji Abdul-Rahman Ya'kub v Bre Sdn Bhd & Ors* [1996] 1 MLJ 393, collected and reviewed the relevant authorities upon this branch of the subject and I would, with respect, expressly approve the approach adopted by him.

To further support the statements were defamatory I quoted the decision by Low Hop Bing J (as he then was) in the case of *Abu Samah bin Omar v Zainal bin Montel* [2004] 5 MLJ 377 at p 382 where it was held that:

Whether the words are defamatory?

In respect of this issue, it has been said that there is no precise test applied to determine whether or not any given words are defamatory or are capable of a defamatory imputation. Several general formulations have been accepted and may be stated as follows:

- (a)

any imputation which may tend to lower the plaintiff in the estimation of right thinking members of society generally (see *SB Palmer v AS Rajah & Ors* [1949] MLJ 6); to cut him off from society or to expose him to hatred, contempt or ridicule (see *Abdul Rahman Talib v Seenivasagam & Anor* [1965] 1 MLJ 142);

- (b)

a defamatory statement is one to a man's discredit, or which tends to lower him in the estimation of others, or to injure his reputation in his office, trade or profession, or to injure his financial credit or if the words cause him to be shunned or avoided: *Yussouppoff v Metro-Goldwyn-Mayer Pictures Ltd* [1934] <https://assignbuster.com/a-case-commentary-chan-yoke-sim-v-choong-teck-fook-ors/>

50 TLR 58; per Mohamed Azmi J (later FCJ) in *Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Bhd & Anor* [1973] 2 MLJ 56at p 58, *Gatley on Libel and Slander* (6th Ed) p 4, as followed by Ramly Ali J in *Kian Lup Construction* , pp 41-42.

It is also crucial to determine whether the statement is being defamatory or not, the words must be read in its context in which they were used, (see *Lim Guan Eng v Utusan Melayu (M) Bhd* [2012] 2 MLJ 394at pp 403-404 (HC))

The plaintiff therefore had no other options but to bring the case to the court to clear her name. The attitude and actions of the defendants towards the plaintiff up until the trial was indifferent with their imputations towards the plaintiff. There was no investigation carry out to clear her name and all allegation is based on assumption and therefore it is flawed. The defendants were indifferent to the truth and seems to have falsify all the allegation made towards the plaintiff, this is sufficient to prove there was malicious intention towards the plaintiff.

The next course is to prove whether the alleged defamatory statements and records were being publish to third party. The documents which allegedly contain information about the plaintiff wrong doing was suppose to be classify information as stated and will only be distribute during different occasions of meetings of the board or if the documents were requested by the members of the board yet unfortunately the person that have the responsibility to keep the documents confidential had made the documents known to the members of the TE board and the regular members of the church that has nothing to do with their administration. Even though the distribution of the

records doesn't fall into the category of general public and even if the plaintiff doesn't conduct a business for a living but the family of the plaintiff were devout members of the church and this action has severely made the other members of the church label her and probably her family as frauds and untrustworthy severely damaging her worth as a person and affecting the plaintiff family as well. This was proven that the defamatory statements were valid as the regular members of the church falls into the category as 3rd party.

According to Defamation act the TE board committees had violated section 5 of slandering the plaintiff of her reputation as a teacher thus will bring problems to her employment in the future. They are also guilty of violating section 6 slandering of title since TE board has allegedly published several defamatory statements that imply the plaintiff was a dishonest person and a fraud and has been proven the statements were made with malice.

The TE board couldn't claim to be alleged to the defenses of unintentional defamation in section 7 since the plaintiff have requested a lot of times for investigations to be carry out to clear her name and unfortunately was ignored. This alone prove that this is far from being unintentional. The TE board couldn't claim section 8 Justification as defenses as well since there was never any official investigation being carry out to verify the allegations made towards the plaintiff therefore all allegations were without prove and was just slanderous. The TE board couldn't claim section 10 Mitigation damages as well since there was no action taken even after the plaintiff have ask for clarification and apology from the TE board and their attitude has remain indifferent up until the trial. This shows that the TE board isn't sincere

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in their apology and has no intention of doing so until it is proven they had indeed committed defamation against the plaintiff.

Based on the analysis above, It is unfair that the plaintiff receive such treatment when the defendants could care less about proving the authenticity of the alleged claim that the plaintiff have committed the alleged dishonest act. the plaintiff is eligible to receive payments for the damages that the defendants were responsible for the defamation.