

Icadam Technologies Sdn Bhd and Others v CAD-IT Consultants (Asia) Pte Ltd and Others
[2005] SGHC 130

Case Number : Suit 497/2004
Decision Date : 21 July 2005
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : Daniel Koh and Charissa Soh (Rajah and Tann) for the plaintiffs; Benedict Tan (Goodwins Law Corporation) for the first defendants; Randhir Ram Chandra and Thomas Tan (Haridass Ho and Partners) for the second defendant
Parties : Icadam Technologies Sdn Bhd; Wong Chee Tieng — CAD-IT Consultants (Asia) Pte Ltd; Tan Chin Yeow Alvin

Damages – Aggravation – Tort – Whether decision to award aggravated damages must be made by person assessing damages – Whether aggravated damages should be awarded

Evidence – Witnesses – Witnesses' credibility – Corroboration – Weight given to evidence by non-neutral persons – Whether second defendant had spoken the words complained of

Tort – Defamation – Defamatory statements – Second defendant making defamatory remarks regarding plaintiffs – Natural and ordinary meaning of words – Whether words complained of defamatory

Tort – Defamation – Vicarious liability – Defences – Whether knowledge, approval and consent constituting elements of vicarious liability

Words and Phrases – Definition – "Calculated to disparage the plaintiff in any office, profession, calling, trade or business" – Section 5 Defamation Act (Cap 75, 1985 Rev Ed)

21 July 2005

Kan Ting Chiu J:

The parties

1 Mr Wong Chee Tieng or C T Wong is the second plaintiff in this action. He is the director of research and development of the first plaintiff, Icadam Technologies Sdn Bhd. In 1995, he set up a company known as CT Design Software House Sdn Bhd ("CT Design"). CT Design developed and marketed software for use in the metal stamping industry known as "V6 Software".

2 In 1999, the second plaintiff and CT Design entered into a joint venture with the first defendant CAD-IT Consultants (Asia) Pte Ltd, another company which is now named V6 Technologies (Asia) Pte Ltd ("V6"), and two individuals. Pursuant to the joint venture, CT Design assigned its rights in the V6 Software to V6, and the second plaintiff became a shareholder and director of V6 and also the first defendant's general manager of V6 Software development.

3 Disputes arose between the joint venture parties which led to a settlement whereby the second plaintiff sold his shares in V6 and ceased to be involved with V6 and the first defendant.

4 After parting ways, the second plaintiff set up the first plaintiff which also engaged in developing software for the metal stamping industry, and it developed software known as "iCADAM Software".

5 As the first plaintiff and the first defendant were in the same field of business, they had common target clients, one of which was Amtek Engineering Limited ("Amtek").

6 The action arose from a visit to Amtek by two employees of the first defendant, namely Mr Alvin Tan Chin Yew and Mr S Elamurugan ("Elamurugan") on 9 March 2004 to promote V6 Software. The former was a market development manager and also the second defendant in this action. The latter was a software engineer. The plaintiffs claimed that the defendants defamed them during that visit.

The words complained of

7 The words complained of were not set out in the Statement of Claim filed by the plaintiffs. Both the defendants wanted the plaintiffs to give particulars of the words. The words provided in the Further and Better Particulars to the Statement of Claim were:

CT Wong has no any rights to develop software that is related to the Metal Stamping Industry;

The software developed by CT Wong might have infringed the Intellectual Property Right of CAD-IT/V6's technology software, and will be subjected to future legal pursue and consequences; and

Any future user/customer, including prospective user/customer like Amtek, who uses the software developed by CT Wong will have to pay the royalty fees to CAD-IT for the usage of CAD-IT/V6's technology.

8 The plaintiffs claimed that those words, by their natural and ordinary meaning meant and were understood to mean that:

(a) the plaintiffs, by developing and commercially exploiting their software for use in the metal stamping industry, had acted in breach of their legal obligations and would be subject to civil and/or criminal liability for such breach;

(b) the plaintiffs, by developing and commercially exploiting their software for use in the metal stamping industry, had infringed or are likely to have infringed the intellectual property rights of the first defendant and/or V6 such that legal proceedings would be commenced against the plaintiffs and they are thereby subject to civil and/or criminal liability for such breach under the Copyright Act (Cap 63, 1999 Rev Ed) or any other relevant laws;

(c) in relation to the promotion of the iCADAM Software the plaintiffs have been dishonest and/or dishonourable in their dealings with Amtek; and/or

(d) the plaintiffs were dishonest and/or dishonourable in their trade or office.

The defences

9 The first defendant denied that the words complained of were understood to bear or were capable of bearing the meanings the plaintiffs asserted. It was also pleaded that the statements were made without its knowledge, approval and consent.

10 The second defendant's defence was a bare denial of the words complained of and the meanings attributed to them.

11 Neither defendant pleaded justification, fair comment or qualified privilege in defence.

The issues

12 There were not many issues in this case, and at the close of the case, the issues that needed to be addressed were narrowed down to:

- (a) whether the second defendant had said the words complained of;
- (b) whether the words complained of bore the meaning the plaintiffs alleged;
- (c) whether the plaintiffs' action was sustainable without proof of special damage; and
- (d) whether the first defendant was vicariously liable if the second defendant spoke the words complained of.

Whether the second defendant spoke the words

13 The plaintiffs did not have first-hand knowledge of those words themselves. The second plaintiff was informed of them by Liow Leong Eng ("Liow"), an employee of Amtek.^[1] The plaintiffs sought to obtain more information from Amtek. Amtek was reluctant to be brought into the dispute and did not provide it voluntarily. Eventually, the plaintiffs obtained the information after pre-action interrogatories were served on three Amtek employees, namely Liow, Kok Chia Liang ("Kok") and Ng Tong Chye ("Ng").

14 Liow, Kok and Ng were principal witnesses for the plaintiffs in this action. Liow and Kok were the Technical Development and Research and Development managers respectively of Amtek whilst Ng was a senior engineer. They all related the events of 9 March 2004 where the second defendant and Elamurugan went to their company to demonstrate the V6 Software to the three of them and another Amtek employee, Xin Shou Jun, an engineer from China.

15 Their accounts set out in their affidavits of evidence-in-chief were largely similar. They recounted that the second defendant told them that he was aware that the second plaintiff was trying to sell his own metal stamping software to Amtek. The critical parts of the second defendant's statements were set out by them in identical terms:

I have come to inform you that CT Wong has no any [*sic*] rights to develop software that is related to the Metal Stamping Industry.

and that:

[T]he software developed by CT Wong might have infringed the Intellectual Property Right of CAD-IT or V6's technology software and will be subjected to further legal pursue [*sic*] and consequences.

and when Liow cautioned him that these were serious allegations and he was not concerned about the dispute between CT Wong and CAD-IT, the second defendant issued a warning that:

[A]ny future user or customer, including any prospective potential user/customer like Amtek, who uses the software developed by CT Wong will have to pay royalty fees to CAD-IT for the usage of CAD-IT or V6 technology.

16 The second defendant's statements troubled Liow, Kok and Ng as they could affect their company, which was already a client of the first plaintiff. They had a discussion among themselves about two days later and submitted a report on the matter drafted by Liow to Amtek's senior management. The text of the report was:

Re: Records of Incident for the Preview of V6 software of CAD-IT

1. On the 9th March, 2004 at about 2.30 pm, Mr. Alvin Tan, Market Development Manager and Mr. S.Elamurugan, Application Engineer of CAD-IT, came to our office on our invitation for V6 CAD software preview.

2. With Liow Leong Eng, Mike Kok, Ng Tong Chye and Xin Shou Jun attended the demonstration session in one of the meeting room at 3rd floor of No. 1 Kian Teck Drive, Singapore (628818).

3. Before the demonstration session started, Mr Alvin Tan made a claim that he has come here to inform us, that CT Wong has no rights to develop software that is related to the Metal Stamping Industry.

4. Mr. Alvin Tan also made a claim that he has come here to inform us that, the software developed by CT Wong might have infringed the Intellectual Property Right of CAD-IT/V6's technology software, and will be subjected to future legal pursue and consequences.

5. Subsequently to statement 3 & 4, that accordingly to Mr. Alvin Tan, any future user/customer, including prospective potential user/customer like Amtek, who uses the software developed by CT Wong will have to pay the royalty fees to CAD-IT for the usage of CAD-IT/V6's technology.

6. Upon watching the demonstration session, and testing on one of our assembly drawing (softcopy) created by the software developed by CT Wong, we found that V6 software was not able to read the data.

7. Mr. S.Elamurugan made a remark that it is a different data structure and hence V6 is not able to read it.

8. Mr. Alvin Tan said that he will announce the claim of statement 4 & 5 on the public launch of the V6 software on the 18th March 2004 at their seminar.

9. Mr. Alvin Tan verbally agrees to write to us on the claims of statement 4 & 5 after the public launch.

10. The demonstration session ends at about 3.30 pm.

11. We hereby state that the above statements are true within our personal capacity and best knowledge.

17 While both defence counsel questioned the three witnesses on this document, no questions were raised about its authenticity. Their evidence that the report was prepared and submitted to inform Amtek's senior management of matters that happened on 9 March 2004 was not disputed.

18 Counsel cross-examined the three witnesses at some length and in some detail. They went

through the events from the time of the arrival of the second defendant and Elamurugan, to their entry into the room where the demonstration was conducted, the persons who entered and left the room, the preliminary small talk, the presentation, the questions asked, and the discussions.

19 Not surprisingly, there were inconsistencies in the accounts of the three witnesses particularly on peripheral matters and matters of detail. But the main thrust of their evidence endured, that the words complained of were spoken in the course of that meeting. It was noteworthy that in cross-examination, it was not put to the witnesses that they had conspired to incriminate the second defendant, that they had reason to bear false evidence against him, or that he had said something which they mistook for the words complained of.

20 The allegations the second defendant made were taken seriously by Liow, Kok and Ng and their employers because Amtek had purchased software from the first plaintiff. In January 2004, the first plaintiff had contracted to sell to Amtek its iCADAM software customised to Amtek's requirements. The US\$162,000 purchase price for the software was to be paid in two equal payments.[\[2\]](#)

21 On learning of the allegations, Amtek withheld the second payment for the software until the doubts over the rights on the software were resolved. The second payment was not paid till after the defences in this action were filed, when it became clear that the defendants did not contend that the allegations were true.[\[3\]](#)

22 The first defendant denied that the words complained of were said. Its only witness with direct knowledge of the meeting of 9 March, Elamurugan recounted a conversation between Liow and the second defendant as follows:

- a. that Mr. Liow informed the 2nd Defendant that he was aware of the agreement between the 2nd Plaintiff and the 1st Defendants;
- b. that Mr. Liow had read the agreement between the 2nd Plaintiff and the 1st Defendant and felt that neither the Plaintiffs had breached the terms of the agreement nor has the Plaintiffs infringed the intellectual property rights of the 1st Defendants;
- c. the 2nd Defendant informed Mr. Liow that he was in no position to comment on the terms of the agreement or the intellectual property rights of the 1st Defendants and he had to leave the matter to the management of the 1st Defendants to decide after consulting with Solicitors;
- d. Mr. Liow insisted that if the 1st Defendant feels that the Plaintiffs had breached the terms of the agreement and has infringed the intellectual property rights of the 1st Defendants, the 1st Defendants should commence legal action against the Plaintiffs; and
- e. again, the 2nd Defendant said that he was not in a position to comment as it was up to the management of the 1st Defendants after consulting their Solicitors.[\[4\]](#)

23 Elamurugan's references to "the Plaintiffs" as well as "the 2nd Plaintiff" were significant in that they showed that both plaintiffs were referred to. This confirmed that during the visit, in addition to demonstrating and promoting the first defendant's software, the unhappy relationship between the plaintiffs and the first defendant was discussed.

24 The second defendant admitted that the question of the first defendant taking legal action against the first plaintiff was also brought up. However, in his version of the discussion it was Liow who brought that up.^[5] Nevertheless, his admission confirmed that something more than a product demonstration took place.

25 When I reviewed the evidence to determine whether the words complained of were said, the following factors were in the plaintiffs' favour:

(a) Liow, Kok and Ng were independent and neutral parties with no stakes in the first plaintiff or the first defendant.

(b) There was a contemporaneous record of the second defendant's allegations tendered by Liow, Kok and Ng to Amtek's senior management.

(c) Amtek delayed the second payment of the iCADAM software to the first plaintiff when it learnt of the allegations.

(d) There was no suggestion that Liow, Kok and Ng knowingly made false allegations against the second defendant, or that they had misunderstood what he had said.

26 On the other hand, I was not impressed by the evidence of the second defendant and Elamurugan. They were not neutral witnesses, as both were employees of the first defendant. Although the second defendant has since left its employ, he remained a defendant in the action.

27 He was shown by uncontroverted evidence to have spoken poorly of the plaintiffs at a seminar organised by the first defendant nine days later on 18 March 2004. At that seminar to introduce V6 Software, he made unprovoked and negative statements about the original developers of the V6 Software (*ie* the second plaintiff and CT Design), describing them as a one-man operation with limited management and marketing capacity. The second defendant's disposition to talk dismissively of the second plaintiff at a product launch added credibility and corroboration to the evidence that he had run the second plaintiff and his company down while speaking to a common target client a week earlier.

28 I found that the plaintiffs have established on the balance of probabilities, that the second defendant spoke the words complained of.

Whether the words complained of bore the meaning the plaintiffs alleged

29 In *Aaron v Cheong Yip Seng* [1996] 1 SLR 623 at 683, [41], the Court of Appeal held:

In considering the natural and ordinary meaning of the words the proper approach is to consider what meaning the words would convey to an ordinary reasonable person who is neither unduly naïve or suspicious, using his general knowledge and common sense. Such a meaning is not confined to the literal or strict meaning of the words but includes any inferences which can reasonably be drawn by such person: see *Rubber Improvement Ltd v Daily Telegraph Ltd* [1964] AC 234 at p 258; and *Jones v Skelton* [1963] 3 All ER 952 at p 958.

30 The ordinary reasonable person contemplated is an ordinary reasonable person who heard the words in the context when they are published, not one who only read the words set out in the pleadings. In *Jeyaretnam Joshua Benjamin v Lee Kuan Yew* [1992] 2 SLR 310 at 318–319, [19], the Court of Appeal explained:

In determining the natural and ordinary meaning of the words complained of, the sense or meaning intended by the appellant is irrelevant. Nor for such purpose is the sense or meaning in which the words were understood by the respondent relevant. Nor is extrinsic evidence admissible in construing the words. The meaning must be gathered from the words themselves and in the context of the entire speech made by the appellant on that occasion. It is the natural and ordinary meaning as understood by reasonable members of the audience at the Bedok car park on that evening using their general knowledge and common sense. Such meaning is not confined to a literal or strict meaning of the words, but includes any inferences or implications which could reasonably be drawn by such persons ...

31 The test in this case was what those words meant to Liow, Kok and Ng if they were ordinary reasonable persons.

32 The first defendant set out the context of the statements in its Closing Submissions:

[T]he alleged defamatory statements have to be read in the following context:

a. that Amtek and/or their representatives had prior to the publication of the statements knowledge of the existence of the V6 Software. This is found in the evidence of Ng where he states that Liow had asked him to evaluate whether the 2 softwares were identical and in the evidence of Liow where he states that he had prior knowledge of the Intellectual Property issue in the teleconversation with Mr. Derek Chua, prior to the presentation on the 9th March 2004;

b. that Amtek and/or their representatives had prior to the publication of the statements were concerned about any potential Intellectual Property issues between the V6 and ICADAM Software. At the meeting between Mr. Chan Eng Guan and Mr. Tan Sook Kiang, Mr. Chan was queries as to the ownership of V6. Why would the technical director of Amtek in his discussion highlight this issue, but to show that he was concerned about the Intellectual Property issue between the V6 and ICADAM software. This is not disputed by the Plaintiffs or raised in cross-examination of Mr. Chan;

c. that Amtek and/or their representatives was aware of the history between the Plaintiffs and the 1st Defendant having dealt with the 1st Defendants prior to the incorporation of the 1st Plaintiffs.

33 Viewed in that context, Liow, Kok and Ng would understand that the second defendant was referring not only to the second plaintiff who was specifically referred to, but also to the first plaintiff, the company he had set up to market the iCADAM Software he had developed.

34 When the link to the first plaintiff was established, the words complained of were clearly defamatory of both plaintiffs. It bears remembering that neither defendant had pleaded justification, fair comment, or privilege as alternative or further defences to their pleas that those words were never said.

Whether the action is sustainable without proof of special damage

35 This question was raised by the second defendant. His counsel was aware of, and cited s 5 of the Defamation Act (Cap 75, 1985 Rev Ed) in his submissions:

In an action for slander in respect of words calculated to disparage the plaintiff in any office, profession, calling, trade or business held or carried on by him at the time of the publication, it

shall not be necessary to allege or prove special damage whether or not the words are spoken of the plaintiff in the way of his office, profession, calling, trade or business.

36 A simple reading of the provision would suggest that this action came within its purview, as the words complained of were clearly calculated to disparage the plaintiffs in their profession, trade and business.

37 However, it was submitted that:

It is for the Plaintiffs to nail their colours to their mast and the Defendants are entitled to be told the case they were required to answer. The Plaintiffs have not adduced any corroborative evidence to show that the Plaintiffs have been disparaged in any office, trade or business held or carried on by the Plaintiffs at the time of the publication.

38 It is not clear what counsel intended by the words "have been disparaged". If counsel meant that the plaintiffs had suffered in their office, trade or business, the submission was misguided. Once the plaintiffs have shown that the words complained of were calculated to disparage the plaintiffs in their profession, trade or business, s 5 comes into operation. The section does not require actual harm to be caused; it looks only at the intention.

Whether the first defendant is vicariously liable for the words complained of

39 There was no question that the second defendant had gone to Amtek's office on 9 March 2004 in the course of his employment with the first defendant to demonstrate the V6 Software. This was admitted by the second defendant and Elamurugan.

40 The first defendant's defence on this issue was:

The [first defendant] further says that even if statements were made by the representatives and/or employees of the [first defendant] on the 9th March 2004 (which is denied), the statements were made without the knowledge, approval and consent of the [first defendant].[\[6\]](#)

41 This defence implied that knowledge, approval and consent are elements of vicarious liability, but this was not elaborated on by counsel during the hearing, and was not touched on in the closing submissions. I took this fallacious defence to have been abandoned.

My decision

42 In view of my findings on the issues, I found in favour of the plaintiffs against the defendants.

43 I ordered that damages be assessed by the Registrar. I also decided that the plaintiffs were not entitled to the aggravated damages they sought.

44 When I made the order I was mindful of the view I expressed previously in *Lee Kuan Yew v Chee Soon Juan (No 2)* [2005] 1 SLR 552 and *Goh Chok Tong v Chee Soon Juan (No 2)* [2005] 1 SLR 573. The senior assistant registrar who heard those cases entered interlocutory judgment for the respective plaintiffs and ordered that "damages (including aggravated damages) to be assessed by a Judge in Open Court", and I stated that inasmuch as the assessment process must necessarily include the determination whether aggravated damages are to be ordered, that decision should be left to the person who assesses the damages. I should have amplified on that and put the

proper context to it, as it appeared to be inconsistent with my judgment in another defamation action, *Macquarie Corporate Telecommunications Pte Ltd v Phoenix Communications Pte Ltd* [2004] 1 SLR 463 ("*Macquarie*") where I entered judgment for the plaintiffs with aggravated damages to be assessed.

45 In those two cases against Chee Soon Juan, the matters came up before the senior assistant registrar on the plaintiffs' applications for summary judgment. The issue before him was whether there was any triable issue that could be raised on the issue of liability. The evidence was led by affidavits, with no cross-examination. Against that backdrop, there was little before the senior assistant registrar which could assist him in determining whether aggravated damages should be awarded, and he should have left that to the court that was to assess damages.

46 In the present case (as in *Macquarie*), however, there was a full trial with witnesses being produced and examined. Evidence was led on the background of the second plaintiff's involvement with the V6 Software and the joint venture, and the first defendant's reaction when the first plaintiff marketed its software after the break-up, in addition to the circumstances in which the words complained of were spoken. Only the quantification of the damages was not gone into.

47 At the conclusion of the hearing before me, there was little or nothing left to consider in deciding whether aggravated damages should be awarded. I found that unlike the senior assistant registrar in those two cases, I should make the determination.

48 After reviewing the matter, I did not award aggravated damages. Two factors led me to this decision. While the words complained of were serious allegations, the defendants had not attempted to justify the allegations, or to claim that they were entitled to make them. Secondly, the words complained of were said to a limited audience and were not repeated by the defendants. The plaintiffs have not appealed against this part of my decision, and the defendants cannot be unhappy that aggravated damages were not awarded.

[\[1\]](#) Affidavit of evidence-in-chief of Wong Chee Tieng para 11

[\[2\]](#) Affidavit of evidence-in-chief of Wong Chee Tieng para 30

[\[3\]](#) Affidavit of evidence-in-chief of Wong Chee Tieng para 44

[\[4\]](#) Affidavit of evidence-in-chief of S Elamurugan para 14

[\[5\]](#) Affidavit of evidence-in-chief of Alvin Tan Chin Yeow paras 24 and 25

[\[6\]](#) Defence of the 1st Defendants para 13