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Defamation Law: The Sting Of A Case

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Could a single sentence in a statement or article be regarded as defamatory? In the recent case of *Dato' Sri Dr Mohamad Salleh bin Ismail & Anor v Nurul Izzah bt Anwar & Anor [2021] 2 MLJ 577 (Dato Sri Dr Mohamad Salleh)*, the Federal Court held that such a statement cannot be read in isolation. Instead, it ought to be viewed through the lenses of an ordinary and reasonable person who must be taken to have read the statement as a whole.

Background

The facts of the *Dato Sri Dr Mohamad Salleh* case concern a press conference held on 7 March 2012 by Nurul Izzah bt Anwar (the 1st Respondent and a Member of Parliament) where she made a statement against another former Member of Parliament in respect of the alleged mismanagement of funds under the National Feedlot Centre project. Among others, Nurul Izzah pointed out that Dato' Sri Dr Mohamad Salleh (the 1st Appellant) was the Chairman and director of National Feedlot Corp Sdn Bhd, who was also the husband of the former Member of Parliament. On this basis, the 1st Respondent alleged there may have been potential conflicts of interest involved in the wife's purchase of 8 condominiums in the KL Eco City development, due to the 1st Appellant's position in National Feedlot Corp Sdn Bhd. The said press statement was then published by an online news portal known as Malaysiakini TV.

In this regard, the 1st Appellant argued that certain portions of the 1st Respondent's press statement above were defamatory namely:

"Pendedahan terbaru pada hari ini oleh saudara Rafizi Ramli, bahawa dana awam yang disalurkan dalam Projek Fidlot Kebangsaan (National Feedlot Centre) telah digunakan untuk membeli lapang unit hartanah mewah di KL Eco City pada nilai semasa yang mencecah RM12 juta mengundang pelbagai persoalan baru.

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Pertama, tindakan suami dan keluarga seorang menteri kanan yang dahulunya ahli parlimen kawasan terbabit membeli hartanah tersebut menimbulkan pertembungan kepentingan (conflict of interest) di antara tugas sebagai seorang ahli parlimen dan kemahuan keluarga beliau. You would have access to the plans, development plans of a particular area if you're member of parliament, dan ada kemungkinan, pengetahuan ini digunakan dalam usaha pembelian oleh suami menteri kanan tersebut."

The 1st Appellant alleged that the statement above had conveyed in their natural and ordinary meaning, *inter alia* that:

1. The 1st Appellant had used NFC Sdn Bhd's money as security to obtain a loan for his purchase of the 8 condominium units.
2. The 1st Appellant and his family misappropriated NFC Sdn Bhd's money to purchase the said condominium units.

In the High Court, the 1st Appellant's claim was dismissed on the basis that the appellants had failed to prove that the impugned statements were defamatory. On appeal, the Court of Appeal held when the entire press statement was viewed as a whole, the alleged statement was not defamatory against the 1st Appellant since the press statement was mainly directed against the 1st Appellant's wife, who was then an Member of Parliament for Lembah Pantai, where the squatters living at Kampung Abdullah Hukum were evicted to make way for the KL Eco City development.

Decision

The Federal Court affirmed both the High Court and Court of Appeal's decisions that the statement in question was not defamatory against the appellants. The real issue to be determined by the Federal Court was how would an ordinary, reasonable and fair-minded reader assess the statement?

On this point, the Federal Court adopted the objective test established by the House of Lords in *Charleston and another*

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v News Group Newspapers Ltd and another [1995] 2 All ER 313, where a statement is ought to be assessed by the standards of an ordinary and reasonable reader, who must be taken to have read the statement in its entirety, as follows:

“Whether the text of a newspaper article will, in any particular case, be sufficient to neutralise the defamatory implication of a prominent headline will sometimes be nicely balanced question for the jury to decide and will depend not only on the nature of the libel which the headline conveys and the language of the text which is relied on to neutralise it but also on the manner in which the whole of the relevant material is set out and presented. But the proposition that the prominent headline, or as here the headlines plus photographs, may found a claim in libel in isolation from its related text because some readers only read headlines, is to my mind quite unacceptable in the light of the principles discussed above.”

On the facts of the *Charleston* case, the House of Lords held that the publication of digitally altered images of celebrities’ faces superimposed on near-naked bodies of models in compromising poses and its corresponding headline, was not defamatory because readers were assumed to have read the full article which explained and negated the effects of the defamatory parts complained of.

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As such, the Federal Court opined that “*in our assessment, such person will not pay any attention to the alleged defamatory matter complained of which was in effect one sentence in a very long press statement and instead be focused only on the major part of the press statement concerning the wife of the first plaintiff. That was the main sting which because of its focus ameliorated the effect of the subject matter of complaint which was, in effect, one sentence.*” The alleged defamatory statement cannot be viewed in isolation from the rest of the press statement made by the 1st Respondent.

The Federal Court further held that the 1st Respondent’s defence of justification as per Section 8 of the Defamation Act 1957 had been made out. Thus, the 1st Respondent could not be held liable for damages for defamation and the appeal was dismissed.

Commentary

The judgment of the Federal Court in *Dato' Sri Dr Mohamad Salleh* marks the first decision made by the apex court of Malaysia which had accepted the objective test in the *Charleston* case in assessing whether an impugned statement forming part of an article is defamatory. However, it must be noted that the House of Lord's decision in the *Charleston* case was strongly criticised by the Australian High Court in *Chakravarti v Advertiser Newspapers Ltd* [1998] HCA 37.

In particular, the Australian High Court took the view that the House of Lords had ignored the realities of how ordinary people receive communications by media technology. Instead, the Australian High Court held that ordinary readers can be easily influenced by headlines, graphics and other methods used by the media to create general impressions for readers who might not pay careful attention to the actual content of the article itself.

Whilst the judgment in the *Chakravarti* case was raised by the 1st Appellant, our Federal Court declined to apply it in *Dato' Sri Dr Mohamad Salleh*. However, it is crucial to note that the Federal Court also held that there might be exceptional cases where statements could be regarded as defamatory when viewed in isolation, depending on the way technology may be used to intentionally mislead viewers “for the sake of sensationalism to deepen their pockets or to promote some insidious agenda by their backers”.

In this regard, the flexible approach taken by the Federal Court may have serious consequences for instances where technology is used by the media to manipulate their viewers' attention as observed in the *Chakravarti* case. Notwithstanding the aforesaid, marketing tactics commonly used by online media such as paywalls may be affected, where the full content of an article is hidden from non-paying members of the public who are enticed to click and view the article by eye-catching headlines which could potentially result in a claim for defamation.

As such, although the rest of the article may elevate the sting of a statement which might be defamatory when read or viewed in isolation, parties may need to re-consider the way

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which such media content is communicated to the public, in light of *Dato' Sri Dr Mohamad Salleh*.

Authored by Tan Zhixin, an associate from the firm's Dispute Resolution practice.

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