



The Social Outcast v OSEAS Pte Ltd – A Case Brief on the Law of Defamation

Case Note of The Social Outcast v OSEAS Pte Ltd

Our team of lawyers, led by lead counsel Mr. Wilbur Lim, act for Ishiro (OSEAS Pte Ltd), a well-known Japanese F&B chain in Singapore, in a high profile defamation suit. We had successfully defended Ishiro against defamation claims filed by another F&B business, The Social Outcast.

The suit had garnered intense media scrutiny as a number of F&B businesses had alleged Ishiro of defaming competitors.



The twist and turning point of the case happened when we had not only succeeded in defending against the entire defamation claims by The Social Outcast, our lawyers had also succeeded in Ishiro's counterclaims in defamation against the The Social Outcast in the same suit.

In this regard, the Court had found that the The Social Outcast's allegations of defamation by Ishiro, by way of their letter of demand, are in fact defamatory of Ishiro. This case is therefore important in setting out the principles that a letter of demand, if published to a third party and contains statements which are defamatory, could also be the subject of a claim in defamation.



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Facts

The Social Outcast, a Muslim-owned food stall, sued Ishiro, a Japanese fusion food chain, for defamatory statements allegedly made by an employee of Ishiro. Both food stalls are located at The Bedok Marketplace.

Ishiro's ex-employee, Mr Chua Wen Bin, had left a spate of negative reviews and comments in relation to The Social Outcast on Facebook.

When this situation began drawing attention, Ishiro published two statements to establish that the comments posted were made by Mr Chua in his personal capacity and had nothing to do with Ishiro.

Several days later, Mr Aminurrashid posted on his personal Facebook page the first page of the letter of demand The Social Outcast had issued to Mr Goh. The letter of demand was subsequently reported by two online media outlets, Yahoo! News Singapore and Mothership. Ishiro then counterclaimed for defamation of their business against The Social Outcast.

Interesting Issues Involved

In defending against The Social Outcast's claims, we had raised a number of novel issues of law.

Firstly, whether a plaintiff must join the primary tortfeasor to a suit or is the plaintiff entitled to commence a claim against a secondary tortfeasor under vicarious liability without even having to establish primary liability.

Secondly, if primary liability needs to be established, whether the Court could make a finding on primary liability when the primary tortfeasor is not even joined as a party to the suit.

Holding of the Court

Issues

A. Whether Ishiro should be liable for the Defamatory Statements

Primary Liability

The Social Outcast chose to sue Ishiro, rather than Mr Chua, who was the actual perpetrator. While Ishiro's stand is that the defamatory statements were made by Mr Chua in his personal capacity, outside of work, and hence they should not be held liable, The Social Outcast submitted that Ishiro should still be held liable. This was on the grounds that Ishiro had "participated in, secured and/or authorised" the publication of the defamatory statements.



Vicarious Liability

The Court was unable to accept the submission for vicarious liability for several reasons.

First, The Social Outcast did not plead vicarious liability, but rather primary liability in its Statement of Claim, alleging that Ishiro was responsible for the statements made by Mr Chua. The inquiry depends on whether Mr Chua's conduct had a sufficient connection with the relationship between Mr Chua and Mr Goh, Mr Goh must in some way have created or significantly enhanced, by virtue of that relationship, the very risk that in fact materialised, in order to be held vicariously liable for Mr Chua's wrongful acts (Ng Huat Seng and another v Munib Mohammad Madni and another [2017] 2 SLR 1074 at [62]-[66]). It is not clear from The Social Outcast's pleadings that Mr Goh had done anything to enhance the risk of Mr Chua making the defamatory statements.

The Court distinguished the case of *Bellman v Northampton Recruitment Ltd* [2018] EWCA Civ 2214 ("Bellman"), where the English Court of Appeal imposed vicarious liability on the employer for the employee's wrongful conduct even though it occurred outside the workplace and outside office hours. The present facts are distinguishable from *Bellman* as Mr Chua did not make the defamatory statements in exercise of his authority as a manager of the stall, but rather, they were published in his capacity as a purported customer of The Social Outcast.

The Court also found *Mohamud v Wm Morrison Supermarkets plc* [2016] AC 677 ("Mohamud") to be distinguishable as Mr Chua's publication of the statements was rooted in a personal dislike that he took against Mr Aminurrashid. In the statements he published, he did not claim that he was acting on behalf of Ishiro, but acted in his own capacity to vent his inner frustration.

Admission of Liability

The Social Outcast claimed that Ishiro had "accepted responsibility and liability as the employer" of Mr Chua for the defamatory statements through the statements published on its Instagram and Facebook pages on 8 and 9 September 2021. The Social Outcast's submissions focused on the statement posted on 9 September 2021, pleading that the statement made amounted to an admission of liability.

The Court found that Mr Goh's statement did not give rise to a clear and unequivocal admission of liability in relation to The Social Outcast.

Firstly, because Ishiro claimed to have not been involved in Mr Chua's actions, so it did not seem congruent that they would now be assuming "full responsibility" for his actions. Furthermore, the form of "full responsibility" that Ishiro was claiming to assume was not clearly stated.

Secondly, The Social Outcast was not even identified in the statement. The statement was addressed to "Mentai-Ya and all businesses that have been affected", and it is undisputed that The Social Outcast was not identified as one of the affected businesses in the Mentai-Ya video. The Social Outcast's submission that "all businesses that have been affected" contains an implicit reference to The Social Outcast is a direct contrast to its earlier pleaded case that the apology was "not directed at [The Social Outcast]".



Thirdly, Ishiro's response to the letter of demand issued to them by The Social Outcast should have dispelled any doubt as to whether Mr Goh's statement was an admission. In its letter of demand dated 15 September 2021, The Social Outcast alleged that Ishiro "expressly admitted" that Ishiro "took full responsibility" for the actions of its employee. Ishiro's solicitor then issued a letter dated 23 September 2021 objecting to the assertion that the statements amount to any form of admission. Ishiro's reply to The Social Outcast's letter of demand would have made clear that Ishiro was not making any admission of liability to The Social Outcast.

Admissions must be clear and unequivocal if they are to be used against the person making them (Qingdao Bohai Construction Group Co. Ltd and others v Goh Teck Beng and another [2016] 4 SLR 977 at [87]).

B. Analysis of the Defendant's counterclaim

Ishiro counterclaimed against The Social Outcast for publishing to third parties a letter of demand issued to Ishiro. Ishiro pleaded that the allegations made in the letter of demand were defamatory, as the natural and ordinary meaning of the statements was that Ishiro was involved in the alleged defamatory statements made against The Social Outcast and other food and beverage establishments. This would ordinarily lead people to believe that the Defendant conducts its business improperly, in that it had baselessly defamed The Social Outcast.

Aside from establishing that the statements were defamatory, Ishiro had to prove that the defamatory statements were published to third parties.

Mr Aminurrashid was found to have published the first page of the letter of demand on his personal Facebook page. This was picked up by news outlet Foodie King, who went on to publish an article on the contents of the letter of demand. Second, Yahoo! News Singapore and Mothership published articles on the letter of demand.

The Court granted Ishiro's counterclaim in part and awarded general damages to Ishiro.

Judgement

The Court dismissed The Social Outcast's claim. The Court also allows Ishiro's counterclaim in part, as Mr Aminurrashid had published the front page of its letter of demand to third parties, and the published contents did imply that Ishiro was complicit in Mr Chua's acts. The published contents are defamatory.

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