Arul Chandran v William J. Gartshore and Others
[2000] SGHC 34

Case Number	: Suit 519/1999
Decision Date	: 10 March 2000
Tribunal/Court	: High Court
Coram	: G P Selvam J
Counsel Name(s)	: Andre Arul (Arul Chew & Partners) for the Plaintiff; Michael Hwang SC with Christopher Daniel (Allen & Gledhill) for the Defendant
Parties	: Arul Chandran — William J. Gartshore; Colin A Taylor; Andre C Bouvron; Chim Hou Yan; Chan Kong Thoe; Kenneth Chew Keng Seng

Between

ARUL CHANDRAN (NRIC No 1785083J) ...Plaintiff

And

1. WILLIAM J. GARTSHORE (NRIC No 2564782C)
2. COLIN A TAYLOR (Passport No 700142333)
3. ANDRE C BOUVRON (Passport No 213/93)
4. CHIM HOU YAN (NRIC No 1846770D)
5. CHAN KONG THOE (NRIC No 0336896C)
6. KENNETH CHEW KENG SENG (NRIC No 1070348D)
...Defendants

Citation: Suit No 519 of 1999
Jurisdiction: Singapore
Date: 2000:03:10
2000:02:02
Court: High Court
Coram: G P Selvam J
Counsel:
Andre Arul (Arul Chew & Partners) for the Plaintiff

Michael Hwang SC with Christopher Daniel (Allen & Gledhill) for the Defendants

JUDGMENT:

The claim

1. The plaintiff Arul Chandran is a practising lawyer. He has been so for more than 30 years. This case concerns an office of honour he held in the Tanglin Club, Vice-President, for one year from 25 May 1998. That office also made him a member of the general committee of the Club. There were 11 committee members all told.

2. On 31 March 1999, he was removed from office at a meeting of the general committee. It was the result of a simple majority constituted by the six defendants in this case : William J Gartshore, Colin A Taylor, Andre C Bouvron, Chim Hou Yan, Chan Kong Thoe, Kenneth Chew Keng Seng.

3. The plaintiff felt deeply aggrieved by that decision. So he commenced this action. His purpose was to have his removal declared unlawful and ineffective, with the result that he continued to hold that office as elected Vice-President for the full term. Additionally, he sought as extra relief general damages for mental distress and damage to reputation. As it was an office of honour without an honorarium he did not assert any financial loss. When the plaintiff's counsel suggested general damages in the sum of $30,000 against each defendant, I remarked that he should have gone to the District Court. In response he mutated it to $50,000 against each defendant. According to him, the amount of compensation the plaintiff was entitled to was directly proportionate to the number of defendants, even though there was only one act and one indivisible damage. He never explained the logic of this submission. I shall not let it detain me and I shall continue with the story.

4. In his statement of claim, the plaintiff pleaded his case on the basis of breach of the contract of membership between the parties. The contract was a hypothesized contract which the law constructs for the salvation of someone who has been unfairly victimized by Club politics. At the trial, however, he abandoned his claim for general damages for defamation against the sixth defendant only.

5. In respect of the expulsion, the plaintiff claimed general damages against all six defendants on the basis that "he had suffered embarrassment, humiliation and damage to his reputation and standing and had been unable to and/or been unfairly and/or unjustly deprived of his elected office and/or been unable to attend to his elected duties at the Club as Vice-President and a member of the general committee and had suffered embarrassment, humiliation and damages to his position as a member of the Club".

6. At the commencement of the trial on 23 November 1999, the plaintiff indicated that he might amend his statement of claim to plead conspiracy and add parties for that purpose, but eventually he did not do so.

7. The purported removal was pursuant to the following rule in the constitution of the Club :

> Any President, Vice-President, Honorary Treasurer or Member of the Committee who in the opinion of a majority of the Committee behaves in a manner prejudicial to the interest of the Club or conducts himself in a manner unbecoming a Member of the Committee or the Club shall cease to hold office and shall be removed from the Committee.

This rule hides a power which can lead to division and destabilization in the Club. It enables six members of the general committee to overthrow the President or the Vice-President, who might have been elected to that office by six hundred members of the Club. There is much room for abuse because power tends to be abused particularly when personal prejudices are involved. As long as that power of removal remains in the hands of the general committee members, there is every likelihood of litigation of the kind that is before me. It is not conducive to the good name of the Club. That is something for the Club to ponder.

8. The defendants sought to defend the action. The cornerstone of their defence was that the plaintiff had acted improperly in connection with a certain financial transaction relating to his position as a member of the previous general committee. It went like this. The Club had taken out a protection and indemnity insurance for the benefit of the members of the general committee. In early 1998, all 11 members of the previous general committee were taken to court by three ordinary members in respect of a separate matter. The present plaintiff was a defendant in that action, in which he decided to be his own lawyer. The other 10 defendants in that action were represented by two sets of lawyers. The Court, Lee Seiu Kin JC, decided against the committee members : See ***Graeme McGuire v John Rasmussen*** [1998] 3 SLR 180. They were ordered to pay the costs of the action. Following this, they lodged a claim against the insurance company seeking an indemnity for their costs. The insurers agreed. As the insurance was also for his benefit as a committee member the present plaintiff asked the insurers whether they would pay him for the legal work he had done. He revealed to the insurers that if they would not agree, he would not charge the Club. The insurers agreed to pay his legal charges and eventually paid him. The amount the plaintiff received was $17,000. The defendants in the present action felt that there was something wrong in the plaintiff receiving that amount. It was on that score that they acted in concert and voted him out of office. They said that in their opinion there was sufficient justification to expel him from his elected office of Vice-President. I should mention here that in relation to the legal expenses and any damages the present

defendants might have to pay in this suit, they have in fact sought refuge under the same insurance facility as the plaintiff did.

9. The case came up for trial before me. The plaintiff was cross-examined. As the facts unfolded before me it became evident that the act of the defendants amounted to an unwarranted interference with the arrangement between the plaintiff and the insurers. The Club lost nothing by his act. He had made the claim because he believed that the insurance policy taken out by the Club was for his benefit and that it enabled him to make a claim against the insurers. The insurers were also of the same view. The defendants therefore concerned themselves with something which did not in any way alter or diminish the interest of the Club or the committee. Indeed, someone had made a complaint to the Law Society about the plaintiff's conduct. The Society saw no warrant to impeach him for any impropriety. The defendants' course of action, therefore, was ill-founded on the facts by all accounts.

10. In the event, even before the conclusion of the cross-examination of the plaintiff in the trial before me, the defendants threw in the towel and consented to judgment against themselves. The consent judgment declared as follows : "The plaintiff's removal as Vice-President and as a member of the general committee of the Tanglin Club was wrongful and consequently, the plaintiff remained the Vice-President and a general committee member of the Tanglin Club until 25 May 1999". In addition it included a term that damages were to be paid by the defendants. Such damages, if not agreed, were to be assessed by the trial Judge. Damages were not agreed. More than that, the defendants radically changed their position and said subsequently that as a matter of law substantial damages were not payable. The matter came up before me. The assessment proceedings, in the event, became a trial of an issue of a point of law on damages. It should be mentioned at this juncture that in their defence the defendants did not raise any special defence on damages.

Denial of liability for damages

11. The arguments for the defendants were advanced by the lawyers of the Club's insurers. On the issue of damages their submission went as follows : The plaintiff's office at the Club as its Vice-President and a general committee member was not an office of profit. Accordingly he had not suffered any pecuniary loss as a result of his wrongful removal. In any case, the plaintiff had not pleaded any pecuniary loss. The plaintiff was claiming damages for breach of contract for embarrassment, humiliation and damage to his reputation and standing. Save in very exceptional cases (of which this was not one), such damages were not recoverable for breach of contract. The plaintiff's claim for damages for loss of reputation and standing could have been brought in defamation. In that situation the defendants would have had their defences available. He had not pursued that course of action. He had endorsed such a claim against the sixth defendant on the writ of summons but decided to abandon it. The plaintiff had also indicated at the start of the trial that he might amend his statement of claim to allege conspiracy and add parties. That, too, he had decided not to proceed with. In the premises, the plaintiff was, at most, entitled to nominal damages, which the defendants submitted should be limited to a sum of $1.00 each, making a total of $6.00.

A trilogy of Singapore decisions

12. I shall preface the analysis of the law on the issue before me by bethinking a trilogy of Singapore decisions on the matter. In ***Haron Mundir v Singapore Amateur Athletic Association*** [1992] 1 SLR 18 I rejected a claim for general damages for mental distress in a club case. I did so on the basis of ***Addis v Gramophone Co Ltd*** [1909] AC 488. In ***Haron Mundir***, I attempted to explain one facet of the underlying reason for the rule. Unbeknown to me, the law had turned a full circle. I shall explain this later. Next, ***Hua Khian Ceramics Tiles Supplies Pte Ltd*** [1992] 1 SLR 884 I refused a claim for general damages for injury to reputation in a breach of contract case. Finally, in the case of ***Lee Kuan Yew v Tang Liang Hong*** [1999] 3 SLR 630 ruled that the law will not award general damages for mental distress when damages are to be assessed on a breach of contract basis. In that case, I made a further attempt to explain another facet of the underlying reason for the rule. The last of the trilogy was affirmed by the Court of Appeal in ***Teo Siew Har v Lee Kuan Yew***.

Analysis of the law - Mental Distress

13. I now commence an analysis of the law on the issue. Historically speaking, English law acted on the apriorism that pure mental suffering without physical injury was an inevitable fact of interpersonal relationships in private and public life alike. Unlike actionable physical injury, which arises from an external cause, mental distress stems from inherent predisposition of the individual. As it arose from the constitution and circumstances of the individual it did not traditionally give a cause of action. After all, people must learn to accept with a certain degree of stoicism the slings and arrows of this vale of tears. In such instances, they should be slow to rush to the law with a tale of tears and fears save in certain recognised circumstances. It makes no difference whether the event causing such suffering was the commission of a tort or the breaking of a contract. In the time-honoured language of the law, such suffering is too remote for recompense at law: see ***Victorian Railways Commissioners v Coultas*** (1888) 13 AC 222. At one time, it was thought that this was not a desirable situation because it failed to deter the callous conduct of irresponsible people. So an attempt was made to move the boundary by Wright J in ***Wilkinson v Downton*** (1897) 2 QB 57. Notably, that was not a contract action. Even in tort the novelty failed to flourish. It is settled law that mental distress by itself does not constitute sufficient damage to found a cause of action. In 1957, Devlin J stated the correct position in ***Behrens v Bertram Mills Circus Ltd*** [1957] 2 QB 1 at 28 : "The general principle embedded in the common law that mental suffering caused by grief, fear, anguish and the like is not assessable." It is apt for me to repeat here what I said in ***Haron Mundir v Singapore Amateur Athletic Association*** [1992] 1 SLR 18 at p 31 :

> The object of awarding damages in contract is different from tort. The underlying logic for the difference is that the law of contract is concerned with a defendant's failure to improve the claimant's position by his failure to keep a promise. In contract the loss is monetary and, being measurable in terms of money, is therefore special. The law of tort, on the other hand, is concerned with the plaintiff's position made worse by a wrongdoing of the defendant. The damage is in the main non-economic and, being immeasurable, is general. Damages must be assessed.

14. Furthermore, in ***Lonrho v Fayed*** **(No 5)** [1993] 1 WLR 1489, the English Court of Appeal emphatically stated that damages for injury to reputation and injury to feelings, though recoverable in an action for defamation, could not be recovered in an action for conspiracy. To sustain a claim for conspiracy, actual financial loss must be proved. The bottom line position is that in tort damages for mental suffering became a subsidiary element in the assessment of damages.

Present authorities

15. The position in contract is very circumscribed. The present state of the law is stated clearly and concisely in ***Chitty On Contracts*** 28th Edition, Para 27-069 as follows :

> 27-069 - Normally, no damages in contract will be awarded for injury to the claimant's feelings, or for his mental distress, anguish, annoyance, loss of reputation or social discredit by the breach of contract; as where an employee is wrongfully dismissed in a humiliating manner.

16. ***Halsbury's Laws of England***, 4th Edition, Vol 12(1) encapsulates the current law in these words :

> 957 - Whether damages are recoverable in contract for loss of enjoyment, loss of amenity, disappointment, vexation, distress or similar suffering caused by breach depends on the nature of the contract broken and on whether the innocent party suffers any accompanying physical discomfort or inconvenience. Such damages are awarded only exceptionally and awards are traditionally modest.

> 958 - The general rule is that a contract breaker is not liable for distress, frustration, anxiety, displeasure, vexation, tension or aggravation caused to the innocent party by the breach of contract. The rule is one of policy and applies notwithstanding the foreseeability of the distress or other adverse event.

17. The American wisdom on the matter is accurately articulated in ***Modern Law of Contracts***, 1999 Revised Edition, by Howard O. Hunter at p 18-12 :

> Recovery for mental distress, disappointment, and anguish is inappropriate in contract actions for four reasons : (1) it is not directly related to the economic effect of the breach; (2) it is open to speculation; (3) it may be the subject of frivolous claims; and (4) it is not reasonably within the contemplation of the breaching party.

Damage to reputation

18. Closely related to the problem of awarding damages for mental distress is the problem of damage to reputation. As far back as English legal history can go, English law has recognised damage to one's reputation as a cause of action. This was because reputation carries greater value than material wealth. This justification was well expressed in these words in ***Otello Act III Scene 3***.

> Good name in man and woman,
>
> Is the immediate jewel of their souls:
>
> Who steals my purse steals trash; 'tis something, nothing;
>
> 'Twas mine, 'tis his, and has been slave to thousands;
>
> But he that filches from me my good name
>
> Robs me of that which not enriches him,
>
> And makes me poor indeed.

It is on that moral fundament that the torts of libel and slander were founded. Since, save in certain exceptional circumstances, no general damages would be awarded in breach of contract cases, financial loss resulting from damage to reputation must be proved in contract cases.

19. Para 27-071 ***Chitty On Contracts*** states the true principle that "Damages for loss of reputation as such are not normally awarded for breach of contract, since protection of reputation is the role of the tort of defamation". See also ***Malik v Bank of Credit And Commerce International SA*** [1998] AC 20 where at page 40 Lord Nicholls said : "I agree that the cause of action known to the law in respect of injury to reputation is the tort of defamation."

The Malik case

20. (i) However, that recent decision of ***Malik v Bank of Credit And Commerce International SA*** made a slight variation to the above rule. This case made it possible to recover financial loss, that is special damages, where breach of a contract damages

one's reputation which in turn causes foreseeable *financial loss* to the claimant. The claim is subject to the established limiting principles of remoteness causation and mitigation.

(ii) The ***Malik*** case arose out of a contract of employment and the disastrous collapse of the infamous bank – Bank of Credit and Commerce International SA ("BCCI") ("the bank"). Malik was the head of deposit accounts and customer services at a branch office of the bank. When the bank was ordered to be wound up he was dismissed by the provisional liquidators on the ground of redundancy. He brought an action asserting that he had lost more than his job. He said that by reason of the corrupt and/or dishonest manner in which the bank operated and the consequential collapse of the bank he was at a handicap on the labour market because he was stigmatised by reason of his employment by the bank. He claimed £50,000 based on some "table of service". His claim was based on an implied term in his contract of employment that "the employer will not, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee." The liquidators rejected the claim.

(iii) On appeal Evans-Lombe J refused to imply the term contended for. The Judge found ***Addis v Gramophone Co Ltd*** the principal stumbling block. On appeal the Court of Appeal was prepared to imply a term to the effect that the bank was under a duty not, without reasonable and proper cause, to conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee. Nevertheless, "stigma damage" as a head of compensation was not recoverable in law. Once again ***Addis v Gramophone Co Ltd*** provided the justification for the decision. Malik appealed to the House of Lords. His appeal was allowed. The House of Lords ruled that the bank had broken its implied obligation of trust and confidence. Accordingly Malik was entitled to damages for the financial loss suffered by him upon proof and to the extent that his future employment prospects were prejudiced by the stigma of his employment with the eggregious employer.

(iv) The ***Malik*** case does not, however, affect the law relating to general damages for breach of contract. It must at once be appreciated that this was not a case of wrongful termination of employment. The breach there related to an independent implied term. Next, it was not a claim for general damages but special damages – that is to say financial loss. Despite ***Malik***'s case, the general rule remains that for breach of contract, the compensation is for proven financial loss and not general damages

The Ruxley Electronics case

21. It is now necessary to consider another House of Lords decision, namely, ***Ruxley Electronics and Construction v Forsyth*** [1996] AC 344. This case gives effect to the ancient Greek wisdom : "Nothing too much". That saying was transformed into a rule of law by the great American judge – Cardozo J. In the leading case of ***Jacob & Youngs Inc v Kent*** (1921) 129 N.E. 889 Cardozo J, delivering the judgment of the majority of the Court of Appeals of New York, held that the court will not award damages which would be grossly and unfairly out of proportion to the good to be obtained. In the ***Ruxley Electronics*** case, the defendant had contracted to build a swimming pool with a diving area 7 feet 6 inches deep. On completion the diving area was only 6 feet deep. The owner claimed £21,500 being the estimated cost of rebuilding it to the contractual dept of 7 feet 6 inches. The plaintiff had no intention of reconstructing the pool to the contractual depth. Judge Diamond QC rejected the claim of special damages and awarded general damages in the sum of £2,500 for loss of pleasurable amenity. The Court of Appeal reversed the decision. The House of Lords restored the decision of Judge Diamond QC. The House of Lords held that the plaintiff was entitled to something for loss of amenity. The claim for the estimated cost of reinstatement in the circumstances of the case was unreasonable.

The plaintiff's arguments

22. The present plaintiff pitched his case at a high level. It was postulated to depend on the proposition that general damages would be awarded for mental distress and its cognates arising from breach of contract if that was within the contemplation of the

parties. The plaintiff relied on ***Cox v Philips Industries Ltd*** [1976] 1 WLR 638 which first articulated the proposition in 1975.

23. Another case relied on by the plaintiff was ***Tippett v International Typographical Union*** (1976) 71 DLR (3D) 146. In that case, it was held that general damages within reasonable bounds were recoverable for loss of reputation and mental distress arising from breach of contract. The case applied the test of foreseeability. The court sidestepped ***Addis v Gramophone Co Ltd*** on the understanding that in that case the mental distress was not foreseeable.

24. The plaintiffs further cited ***Brown v Waterloo Regional Board of Commissioners of Police*** (1982) 136 DLR (3d) 49. The case stated, inter alia, the following at p 56 :

> It is now clear that damages are recoverable for mental suffering flowing from a breach of contract if such damage is within the contemplation of the parties at the time they enter the contract. Normally, in ordinary commercial contract situations, it is not contemplated that mental suffering will result from a breach of contract; however, where the contract affects "personal, social and family interests", the likelihood of mental suffering in the event of a breach may be foreseen. There has been a dramatic breakthrough in the law in this area in recent years. The earlier law as set out in *Addis v Gramophone Co Ltd* is being abandoned.

25. In the above case, the Court relied on ***McGregor on Damages*** 13th Ed (1972) and the following proposition of Lord Denning MR in ***Cook v S*** [1967] 1 All ER 299 at p 303 "I think that, just as in the law of tort, so also in the law of contract, damages can be recovered for nervous shock or anxiety state if it is a reasonably foreseeable consequence".

26. Great reliance was placed by the plaintiff on a New Zealand case : ***Whelan v Waitaii Meats Ltd*** [1991] 2 NZLR 74. In that case the New Zealand High Court awarded $50,000 as general damages in a wrongful dismissal case. The principal reason the court gave for not following ***Addis v Gramophone Co Ltd*** was that the proposition that the law did not permit general damages for breach of contract was no longer the law as the House of Lords itself had departed from it in ***Wilson v United Counties Bank Ltd*** [1920] AC 102.

27. After reviewing the relevant authorities, I concluded that the plaintiff relied on outdated law based on outdated cases and books. ***Cox v Philips Industries Ltd*** was overruled by ***Bliss v South East Thames Regional Health Authority*** [1987] 1 C.R. 700. The 16th edition of ***McGregor On Damages*** has abandoned the purported changes in law stated in earlier editions. By 1991, attempts to put an end to the conventional wisdom had died a silent death. The law had turned a full circle. In 1991, in the case of ***Watts v Morrow*** [1991] 1 WLR 1421, Bingham L.J. lucidly put the point and purpose of the correct rule at 1445 :

> A contract-breaker is not in general liable for any distress, frustration, anxiety, displeasure, vexation, tension or aggravation which his breach of contract may cause to the innocent party. This rule is not, I think, founded on the assumption that such reactions are not foreseeable, which they surely are or may be, but on considerations of policy.
>
> But the rule is not absolute. Where the very object of a contract is to provide pleasure, relaxation, peace of mind or freedom from molestation, damages will be awarded if the fruit of the contract is not provided or if the contrary result is procured instead. If the law did not cater for this exceptional category of case it would be defective.

In ***Lee Kuan Yew v Tang Liang Hong*** [1999] 3 SLR 630, counsel for the claimant declared with great fanatical force that it was a monstrous principle and vowed to have it reversed on appeal. The case went on appeal. The Singapore Court of Appeal, on the basis of ***Addis v Gramophone Co Ltd,*** as further amplified in ***Jarvis v Swans Tours Ltd*** [1973] 1 All ER 71 and ***Malik*** cases, held that general damages are not recoverable for mental distress arising from breach of contract. See ***Teo Siew Har v Lee Kuan Yew*** (Civil Appeal No 303 of 1998) [1999] 4 SLR 560.

Conclusion

28. On the basis of the above discourse I have no alternative but to dismiss the claim for substantial general damages. I award nominal damages of $1 against each defendant. In doing so I should make it clear that the disallowance of the plaintiff's extra relief for damages does not in any way discount the exculpation he has been given with the agreement of his opponents.

29. Had the plaintiff been suspended from or deprived of his Club membership I would have given general damages under the exception of loss of amenities. In this case the plaintiff remained a member at all times.

Dated this 10th day of March 2000.

G P SELVAM

JUDGE