Fraser and Neave Limited and Others v Aberdeen Asset Management Asia Limited and Another
[2001] SGHC 107

Case Number	: Suit 883/2000/N, RA 17/2001/R
Decision Date	: 24 May 2001
Tribunal/Court	: High Court
Coram	: Tan Lee Meng J
Counsel Name(s)	: Davinder Singh, SC and Hri Kumar (Drew & Napier LLC) for the plaintiffs/respondents; Imran H Khwaja, Chew Kei-Jin and Moiz H Sithawalla (Tan, Rajah & Cheah) for the defendants/appellants
Parties	: Fraser and Neave Limited; Fam Yue Onn Michael; Tan Yam Pin; Ian Alastair Maclean — Aberdeen Asset Management Asia Limited; Hugh Young

JUDGMENT:

Grounds of Decision

1. In this case, the first plaintiff, Fraser and Neave Limited (hereinafter referred to as "F & N"), the second plaintiff, Mr Michael Fam Yue Onn, the third plaintiff, Mr Tan Yam Pin, and the fourth plaintiff, Mr Ian Alastair Maclean, alleged that they were defamed by the defendants, Aberdeen Asset Management Asia Ltd (hereinafter referred to as "Aberdeen") and Mr Hugh Young. As the allegedly defamatory remarks were contained in a letter to the *Business Times* on 24 August 2000, the plaintiffs, relying on O 14 r 12(1) of the Rules of Court, applied for a determination of the meaning of the words used in the letter. Aberdeen and Mr Young, who were dissatisfied with the Assistant Registrars construction of the words in question, appealed to the High Court. I varied the ruling of Assistant Registrar. As Aberdeen and Mr Young have appealed against my decision, I set out below the reasons for my decision.

A. THE LETTER TO THE BUSINESS TIMES

2. The letter, which appeared in the *Business Times* on 24 August 2000 (hereinafter referred to as "the letter"), was re-published in the *Business Times* website. It is set out below, with the allegedly offending words in italics.

"CMB Asia minorities were kept in the dark

Hot on the heels of Times Publishing, we have another case of minority shareholders being kept in the dark and not having sufficient time to consider an offer for a company. Again, the company in question, CMB Asia, is part of the restructuring of the Fraser and Neave group.

Crown Cork of the US (already 41 per cent shareholder of CMB Asia) made a general offer for CMB Asia on July 22 at S$3.23, to which the other major shareholder, *Fraser and Neave, with 34 per cent, readily assented. This price is at a discount to a heavily written-down book value and not much above the companys holding of cash in the bank*.

The offer document was posted out on Aug 14 and the offer declared un-conditional one day later a fait accompli.

The independent advice to shareholders has yet to emerge, but institutional shareholders have been given a deadline of Aug 25 by their custodians to reply to the offer which expires on Sept 5. *This gives little time for independent directors of CMB Asia to consider the offer, and to communicate with the minority shareholders, and even less time to have an open debate.*

Once again, as in the case of Times Publishing (where the independent advice stating the deal to be undervaluing the company

came too late), minority shareholders risk falling victim to an "inside job".

This is a poor advertisement for transparency, duty of boards to act equally on behalf of all shareholders, and protection of the rights of minority shareholders.

Hugh Young"

B. THE ASSISTANT REGISTRARS DECISION

3. F & N and the other three plaintiffs applied in SIC 1319 of 2000P to have the natural and ordinary meaning of the allegedly defamatory words in the letter determined under O 14 r 12(1) of the Rules of Court. They pleaded that the allegedly defamatory words, in their natural and ordinary meaning, meant and were understood to mean that they had:

> acted improperly and/or dishonestly by conspiring with Crown Cork & Seal ("CCS") and CMB Asia Ltd in relation to the takeover of CMB Asia Ltd by CCS, to force on the minority shareholders an inadequate price for their shares by:
>
> > (a) suppressing material information in respect of the said takeover; and
> >
> > (b) giving the minority shareholders insufficient time to consider the offer.

4. At the hearing of the SIC on 12 January 2001, the Assistant Registrar agreed substantially with the meaning pleaded by F & N and the other plaintiffs. However, she disagreed that the words "and/or dishonestly" should be included in her determination of the natural and ordinary meaning of the words. Apart from this, she ruled that the offending letter also suggested that the plaintiffs readily assented to the sale of shares to CCS at a heavily written-down book value. Her ruling was thus as follows:

> The Words, in their natural and ordinary meaning, meant and were understood to mean that [F & N, Mr Fam, Mr Tan and Mr Maclean] acted improperly by conspiring with Crown Cork & Seal ("CCS") and CMB Asia Ltd in relation to the takeover of CMB Asia Ltd by CCS, to force on the minority shareholders an inadequate price for their shares by:
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> > (a) suppressing material information in respect of the said takeover; and/or
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> > (b) giving the minority shareholders insufficient time to consider the offer; and/or
> >
> > (c) readily assenting in the sale of its shares to CCS at a heavily written down book value.

C. THE APPEAL

5. As has been mentioned, Aberdeen and Mr Young appealed against the ruling of the Assistant Registrar.

O 14 r 12(1) of the Rules of Court

6. The right of a party to apply to the court for a determination of a question of law or the construction of a document is governed by O 14 r 12(1) of the Rules of Court, which provides as follows:

> (1) The Court may, upon the application of a party or of its own motion, determine any question of law or construction of any document arising in any cause or matter at any stage of the proceedings where it appears to the Court that
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> > (a) such question is suitable for determination without a full trial of the action; and
> >
> > (b) such determination will fully determine (subject only to any possible appeal) the entire cause or matter or any claim or issue therein.

7. As for whether a plaintiff in a defamation case may rely on O 14 r 12(1) to have the ordinary meaning of words in an allegedly defamatory document construed, the position is not in doubt. In *Microsoft Corporation & Ors v SM Summit Holdings Ltd & Anor* [1999] 4 SLR 529, 554-555 which concerned an allegation of defamation arising from a press statement, LP Thean JA, who delivered the judgment of the Court of Appeal, said as follows:

> As for the argument that the meaning of the words complained of is not suitable for determination without a full trial of the action because such determination requires the hearing of evidence, we find that such an argument is completely misplaced. There are obvious advantages in determining the issue of the meaning before trial, as the learned judge held at para 27.8 of his grounds of judgment:
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> > It was plain in all the circumstances that a preliminary determination as to the meaning of the words complained [of] if made would allow the defendants not only to focus on whether there was a triable issue as to their defence of justification of the meaning as determined but further that if there was such a triable issue and leave was granted to defend the action the defendants would also be focused on their particular defence at the subsequent trial.
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> In our judgment, in this case, the natural and ordinary meaning of the alleged defamatory words is a question which is suitable for determination under O 14 r 12(1).

8. Mr Imran Khwaja, the counsel for Aberdeen and Mr Young, contended that the present factual matrix made the application for a construction of the allegedly defamatory words in the letter before the trial inappropriate. He also submitted that if the letter is construed, it will be found that it is not defamatory of the plaintiffs.

9. At the outset, it ought to be noted that Mr Fam, Mr Tan and Mr Maclean, unlike F & N, were not specifically referred to in the letter. I thus ruled that whether or not there is a sufficient nexus between Mr Fam, Mr Tan and Mr Maclean and the allegedly defamatory words in the letter is a question which should be determined at the trial. This is because extrinsic evidence would be required to show why they were also defamed in the letter and it is clear from the decision of the Court of Appeal in *Microsoft Corporation & Ors v SM Summit Holdings Ltd & Anor* [1999] 4 SLR 529, 555 that such evidence is not admissible in an

application under O 14 r 12(1). However, in the case of F & N, I saw no reason why there could not be a determination of the natural and ordinary meaning of the allegedly defamatory words in the letter.

Principles for construing allegedly defamatory words

10. What is meant by the term "natural and ordinary meaning of words" was explained by Lord Reid in *Rubber Improvement Ltd v Daily Telegraph Ltd* [1964] AC 234, 258 in the following succinct terms:

> What the ordinary man would infer without special knowledge has generally been called the natural and ordinary meaning of the words. But that expression is rather misleading in that it conceals the fact that there are two elements in it. Sometimes it is not necessary to go beyond the words themselves, as where the plaintiff has been called a thief or a murderer. But more often the sting is not so much in the words themselves as in what the ordinary man will infer from them, and that is also regarded as part of their natural and ordinary meaning.

11. The above passage was endorsed by the Court of Appeal in *Microsoft Corporation & Ors v SM Summit Holdings Ltd & Anor* [1999] 4 SLR 529, 556.

12. The principles for determining the natural and ordinary meaning of words are well known. In *Microsoft Corporation & Ors v SM Summit Holdings Ltd & Anor*, LP Thean JA summed up the position at p 555 as follows:

> The court decides what meaning the words would have conveyed to an ordinary, reasonable person using his general knowledge and common sense: *Jeyaretnam Joshua Benjamin v Goh Chok Tong* [1984-1985] SLR 516; . The test is an objective one: it is the natural and ordinary meaning as understood by an ordinary, reasonable person, not unduly suspicious or avid for scandal. The meaning intended by the maker of the defamatory statement is irrelevant. Similarly, the sense in which the words were actually understood by the party alleged to have been defamed is also irrelevant. 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 passage in which they are set out. The court is not confined to the literal or strict meaning of the words, but takes into account what the ordinary, reasonable person may reasonably infer from the words. The ordinary, reasonable person reads between the lines.

Whether the letter defamed F & N

13. At the outset, it ought to be reiterated that in an action for defamation, the plaintiff must establish that the offending words are defamatory of him. In *Gatley on Libel and Slander,* 9th ed, the position is stated at p 161 as follows:

> To succeed in an action for defamation the plaintiff must not only prove that the defendant published the words and that they are defamatory: he must also identify himself as the person defamed.
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> . The question in all cases is whether the words might be understood by reasonable people to refer to the plaintiff, subject to the qualification that where

> the words are published to persons who have special knowledge the issue will be decided by reference to what reasonable persons possessing that knowledge would understand by them.

14. Mr Khwaja submitted that F & N had no cause of action against his clients because the letter did not put them in a bad light. He explained in para 6 of his written submissions as follows:

> The thrust of the article is in respect of good corporate governance and specifically the duties owed by the board of CMB Asia towards its minority shareholders. The only reference to the 1st Plaintiffs is of a purely factual nature: that CMB Asia is part of the restructuring of the F & N Group and that the 1st Plaintiffs agreed to sell their shares to CCS at the offered price. With regard to the latter, all the readers of the letter would know that and that the 1st Plaintiffs owed no duty to the shareholders of CMB Asia. Moreover, the 1st Plaintiffs were free to sell their shares in CMB Asia to whomsoever, whenever and whatever price they chose. Consequently there cannot be nor was there any defamatory imputation against the 1st Plaintiffs.

15. A perusal of the opening two sentences of the letter will show that the scope of the letter is wider than that suggested by Mr Khwaja. The sentences are as follows:

> *Hot on the heels*
>
> of Times Publishing, we have another case of minority shareholders being *kept in the dark* and not having sufficient time to consider an offer for a company. *Again*, the company in question, CMB Asia, is part of the restructuring of the *Fraser and Neave group*.

16. Even if the thrust of the letter concerned good governance, there is clearly an insinuation that F & N is involved in keeping minority shareholders in the dark. It must not be overlooked that the CMB is first referred to in the letter as a part of the F & N group. "Kept in the dark" has negative connotations and suggests that minority shareholders have deliberately been denied information to which they are entitled with respect to the proposed takeover. The term "again" was obviously a carefully chosen word. Coming after the use of the words "hot on the heels" and "another case", the reader must think that there is a connection between the restructuring of the F & N group and the keeping of minority shareholders in the two restructured companies in the dark.

17. The insinuation that F & N did something wrong continues in the following paragraph. It states that "Fraser and Neave, with 34 per cent, *readily assented*" to a price which was at a "*heavily written-down book value* and *not much above the companys holding of cash in the bank*". Read with the rest of the letter, the impression given is that F & N was so keen to have the deal done that it was willing to accept an inadequate price for its shares and at the expense of not giving minority shareholders enough time to consider the offer or sufficient information to make an informed choice.

18. The following sentence from the letter rings the death knell for the assertion that the letter does not have any reference to F & N:

> *Once again*, as in the case of Times Publishing minority shareholders risk falling *victim* to an "*inside job*".

19. In the above sentence, the reader is reminded once again of the Times Publishing case, which also involved F & N. An allegation was made that in both cases, minority shareholders risked falling "victim" to an "inside job". The terms "victim" and "inside job" have negative connotations. The term "inside job" refers to a crime or wrongdoing against anyone by an affiliated person or someone working for or trusted by the victim. As F & N was involved in both cases and there was an inside job in the

two cases, the reader would think that F & N is party to the "inside job", and especially so since they "readily" assented to selling their shares at a very low price. The word "victim" certainly suggests that the minority shareholders have been wronged by F & N as well.

20. In view of the aforesaid, I had no difficulty in coming to the conclusion that F & N had reason to feel aggrieved by the letter and that there was a case for determining the natural and ordinary meaning of the words in the letter.

My construction of the letter

21. I accepted that there was an insinuation in the letter that F & N acted improperly by agreeing with CCS and CMB to ensure that minority shareholders had no real alternative but to accept an inadequate price for their shares by ensuring that they were not given material information in respect of the takeover and that they were not given enough time to consider the offer. In that sense, they were "forced" to accept the offer. However, I was not satisfied that an ordinary reader of the *Business Times* would, without more, have assumed that there was a "conspiracy". I also found it unnecessary to add the words "readily assenting in the sale of its shares to CCS at a heavily written down book value" to the natural and ordinary meaning of the words, as proposed by F & N. Finally, I modified the words "suppressing material information with respect to the takeover" in the Assistant Registrars ruling. In view of the aforesaid, I ruled that the allegedly defamatory words in the letter were meant and were understood to mean that:

> [F & N] acted improperly by agreeing with Crown Cork & Seal ("CCS") and CMB Asia Ltd in relation to the takeover of CMB Asia Ltd by CCS, to force the minority shareholders to accept an inadequate price for their shares by:
>
> > (a) ensuring that material information was not provided to the minority shareholders in respect of the said takeover; and/or
> >
> > (b) ensuring that there was insufficient time for the minority shareholders to consider the offer.

Tan Lee Meng

Judge