

# LIM YEN LU v UNITY REALTY SDN BHD

CaseAnalysis

| **[2021] MLJU 2897**

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## Lim Yen Lu v Unity Realty Sdn Bhd [2021] MLJU 2897

Malayan Law Journal Unreported

HIGH COURT (KUALA LUMPUR)

MOHD ARIEF EMRAN ARIFIN JC

CIVIL APPEAL NO WA-12ANCvC-230-09 OF 2019

15 December 2021

*Daljit Singh (Daljit Singh) for the applicant.*

*Fong Foong Lan (Rajinder & Goh) for the respondent.*

### **Mohd Arief Emran Arifin JC:**

GROUND OF JUDGMENT. Introduction

**[1]** The following grounds contains my reason for dismissing the Appellant's application to impose penal sanction against the Respondent for failing to comply with the orders of this Court.

**[2]** The high court has allowed leave to institute contempt proceedings against the Respondent.

**[3]** The Appellant's grievance lies on the allegation that the Respondent had disclosed the following statement in a Memorandum that was allegedly published online on 4.4.2020. The Appellant contends that this infringes the terms of the Consent Order dated 8.2.2020.

**[4]** For ease of reference I reproduce the relevant terms of the Consent Order and the Memorandum dated 4-4-2020 ("Memorandum") referred to by the Appellant.

(a) Consent Order

iii. Perayu/Defendan akan dalam tempoh sepuluh (10) hari dari tarikh Penghakiman Persetujuan ini, pada hari bekerja dan atas kos dan perbelanjaan sendiri:-

- a. Menerbitkan penarikan balik/permohonan maaf bertulis dalam kolum / edisi nasional surat khabar *China Press*;
- b. Penarikan balik/permohonan maaf akan diterbitkan dalam Bahasa Inggeris dan Bahasa Cina seperti berikut:

**ENGLISH**

*"I, Lim Yen Lu (Ruth) sincerely and unreservedly retract all allegations and suggestions made against Unity Realty Sdn Bhd on my Facebook Live video in March 2019.*

*I sincerely and unreservedly apologise to Unity Realty Sdn Bhd for making those statements or allegations which were untrue against it.*

*我, Lim Yen Lu (Ruth) 真诚及毫无保留地撤回我在 2019 年 3 月期间通过 Facebook Live 对 Unity Realty Sdn Bhd 所做出的的所有指控和暗示。*

*对于对 Unity Realty Sdn Bhd 所做出的这些不实的声明或指控, 我真诚及毫无保留地向Unity Realty Sdn Bhd表示歉意."*

....

- v. Kecuali untuk tujuan menangani aduan yang dibuat oleh Perayu/Defendan terhadap Responden/Plaintif dengan Polis Diraja Malaysia dan LPPEH dan kecuali diperlukan oleh pihak berkuasa, Responden/Plaintif termasuk pengarah-pengarah dan/atau pekerja-pekerjanya tidak akan menerbitkan semula, menyerahkan dan/atau mengedarkan penarikan balik/permohonan maaf kepada mana-mana pihak luar;
- vi. Perayu/Defendan berakujaji untuk berhenti membuat fitnah lanjutan terhadap reputasi Responden/Plaintif; dan

(b) Memorandum

**Memo 04 April 2020**

*We refer to the Company's Memo 04 April 2020 regarding the defamation proceedings initiated by the Company against Ms. Ruth Lim Yen Lu.*

*Following the legal proceedings, the Company has since:*

*1. accepted the written apologies from Ms. Ruth Lim Yen Lu as published in China Press newspaper on 25 February 2020; and*

*2. received and accepted the compensation offered by Ms. Ruth Lim Yen Lu.*

*As such, the matter has come to an end.*

*It is also agreed between the Company and Ms. Ruth Lim Yen Lu that Ms. Ruth Lim Yen Lu shall cease and desist from defaming the Company and the Company (including the employees) will not republish her written apology. On account of the agreement, we would like to highlight and remind all members of the Company to refrain from distributing or recirculating Ms. Ruth Lim Yen Lu's written apology as published in China Press on 25 February 2020.*

*We would also like to take this opportunity to thank you for your support to uphold and protect the Company's good name and interest. Rest assured that the Company takes its good name and reputation seriously and will take all necessary steps to protect it."*

[5]I note that the facts as disclosed in the affidavits filed by parties indicate the following:-

- (I) The Respondent had issued the aforesaid Memorandum on 4-4-2020 allegedly for the internal consumption of the company.
- (II) The said Memorandum was then uploaded to a website known as yesdig.com.

[6]The Appellant contends that the Respondent had failed to take all reasonable steps to release the said Memorandum to the public and as a result, the Respondent had failed to comply with the terms of the Consent Order.

[7]She further contends that the Memorandum invites third parties to read her earlier written apology and as a result, the said action constitutes a republication of the written apology contrary to the terms of the Consent Order.

[8]Therefore, the Appellant argues that this republication constitutes a contemptuous act that justifies punishment against the Respondent.

#### B. Applicable Law

[9]It is trite that the standard of proof required for this Court to impose committal proceedings against a party is that the applicant must prove that the Respondent had committed the alleged contemptuous act beyond reasonable doubt. Please refer to *Tan Sri Dato Dr. Rozali Ismail & ors v Lim Pang Cheong & ors* [2012] 2 MLRA 717 and the recent decision of the Federal Court in *Pegum Negara Malaysia v Mkini Dotcom Sdn Bhd & anor* [2021] 3 CLJ 603.

[10]The burden of proof lies on the Appellant who is the applicant in this contempt proceedings.

[11]The Federal Court in *Pegum Negara Malaysia v Mkini Dotcom (supra)* also held that any Court that deals with contempt proceedings must proceed cautiously before making a finding of guilt.

[12]I also refer to the decision of the Federal Court in *T O Thomas v Asia Fishing Industry Pte Ltd* [1977] 1 LNS 125, where Lee Hun Hoe CJ (Borneo) held:-

“Wilfully, disobeying an order of the court constituted contempt. This commonly consists in a party's doing otherwise than he is enjoined to do, or not doing what he is commanded or required to do by the process, order or decree of the court: *Miller v. Knox* [1838] 4 Bing NC 574. The contempt must be wilful.

An order of court must have been contumaciously disregarded. It is no good if it is casual, accidental and unintentional. *Fairclough & Sons v. Manchester Ship Cane Co. (No 2)* [1897] WN 7.

On the question of guilty mind reference may be made as to what was said by Palles CB in *Rex v. Dolan* [1907] 2 IR 260.

As to the law applicable to the case, there is no doubt. Actual intention to prejudice is immaterial. I wholly deny that the law of this court has been that absence of an actual intention to prejudice is to excuse the party from being adjudged guilty of contempt of court, if the court arrives at the conclusion which I have arrived at, that there is a real danger that it will affect the trial, or that absence of intention is to excuse the party from punishment. Such a circumstance as that ought, no doubt to be taken into consideration in considering the nature of the punishment to be awarded, as, for instance, whether it should be imprisonment.”

This statement of the law was approved in *Regina v. Odhams Press Ltd* [1957] 1 QB 73; [1956] 3 All ER 494 also relying on *Roach v. Garvan*, [1742] 2 Ark 469. Ex parte Jones. [1806] 13 Ves 237.

Intention is of no consequence in the matter of contempt by disobedience to a court order: *A-G v. Walthamstow Urban District Council*; [1895] 11 TLR 533. *Stancomb v. Trowbridge Urban District Council* [1910] 2 Ch. 190. In particular, Donovan LJ expressed his view clearly in *Re A-G's Application*, *A-G v. Butterworth* [1963] 1 QB 696 in these words: -

[13]I conceive the position, however, to be this. *Regina v. Odham's Press Ltd* [1957] 1 QB 73 **ex parte A - G [1956] 3 All ER 494** makes it clear that an intention to interfere with the proper administration of

justice is not an essential ingredient of the offence of contempt of court. It is enough if the action complained of is inherently likely so to interfere.”

**[14]** I also refer to the decision of Hasnah Mohammed Hashim J (as her Ladyship then was) in *Pyramid Saimira Theatre Chain (M) Sdn Bhd v Kumpulan Pawagam Iswaria Sdn Bhd* [2011] 1 LNS 1186

**[15]** Another important case that this Court must take note of is the recent decision of the Federal Court in *Goldern Star & ors v Ling Peek Hoe & ors* [2021] 3 CLJ 443, where the Court found that the conduct not only of the client but also of the advocate and solicitor that continued to disregard and disrespect the order of the Federal Court constitute contumacious and disrespectful conduct justifying contempt proceedings being taken against the respondents.

**[16]** Therefore, guided by the above-referred jurisprudence, I find that the Appellants must show to this Court that the Respondent had wilfully, deliberately disobeyed, or disregarded the order of the Court by issuing the Memorandum that had made reference to the Appellant’s apology. The Appellant must also show that the Respondent was also responsible for the leak of the said Memorandum on yesdig.com as alleged.

**[17]** I am also of the opinion that the above cases also indicate that for the Appellant to be successful she must show beyond reasonable doubt that there was alleged publication or republication of the written apology by the Respondent. It must be shown that this was not objectively casual, accidental, or unintentional and that the Respondent had wilfully and deliberately disobeyed the order. See the judgment of S Nantha Balan J (as he then was) in *Tan Sri Datuk Nadraja Ratnam v Murali Subramaniam* [2017] 1 LNS 2263.

C. Decision of this Court

**[18]** As I have alluded earlier, the Appellant’s grounds for instituting contempt proceedings against the Respondent are as follows: -

- (I) That the Memorandum contains a reference to the apology issued by the Appellant to the Respondent that was earlier published in China Press on 25.5.2020;
- (II) That this Memorandum was subsequently published on yesdig.com.

**[19]** To the Appellant the Memorandum and its subsequent publication on yesdig.com, constitute fresh publication of her written apology.

**[20]** It is common ground for both litigants that the republication of the said apology is prohibited under the terms of the Consent Order and as such should attract penal sanction by this Court. However, they differ on whether the said Memorandum infringes the order and the effect of the leak of the said document on yesdig.com.

**[21]** To support his client’s case, the Appellant’s counsel refers to the letters dated 19.11.2018 issued (dated wrongly) between solicitors when the said Memorandum and its subsequent republication was brought to the attention of the Respondent’s solicitors.

**[22]** The Appellant believes that the contents of the letters indicate unequivocally that the Respondent admits the failure to comply with the terms of the Consent Order and the republication of the apology by the Appellant.

**[23]** The Respondent on the other hand contends that the Memorandum was only an internal document and does not contravene the said order. It also contends that it was unaware of the said republication, it did not authorise the uploading of the said Memorandum on yesdig.com and did intimate in its letter to the Appellant’s solicitors that the Respondent will take all steps to stop the said leakage and did warn its agents and employees not to do so.

**[24]** Having considered the affidavits, documents exhibited therein and the submissions by the litigants, I am of the opinion that the Appellant has not shown that the Respondent had committed any act that could be considered in contravention of the Court order and therefore it is not guilty of contempt.

**[25]** Firstly, when I consider the said order, I find that the Consent order prevents the publication of the written apology externally to third parties. The order does not prevent the sharing of the terms of the Consent Order internally with members of the company internally.

**[26]** Therefore, I do not find that the mere fact that the Respondent had prepared a Memorandum to inform its employees and / or agents of the outcome of the said suit and the terms of the Consent order, does not on its own prove there is any disregard or contemptuous conduct justifying penalising the Respondent.

**[27]** I agree that the Respondent had explained that the Memorandum was only shared internally and was not issued to the public at large. This is consistent in the letter dated 19.11.2018 issued by its solicitors after it was informed that the said Memorandum was shared on yesdig.com.

**[28]** The Respondent's solicitors had apologised for the said leakage of the Memorandum and have assured the Appellant that it did not intend to contravene the terms of the Consent Order and did not allow any of its employees or agents to share the same. The Respondent has also assured the Appellant that it will take steps to ensure that the said Memorandum is not shared subsequently. The evidence indicates objectively that there is no intention on the part of the Appellant to disregard the order.

**[29]** I appreciate the Appellant's arguments that there was a republication of the apology as there was a reference to the same in the said Memorandum. Her counsel contends that the cases on republication in a claim relating to libel should be utilised by this Court.

**[30]** However, I do not believe that the principles of republication apply to the facts at hand. In this case, as I said earlier, the Memorandum was issued internally within the company. Therefore, even if they were to be considered republication, this will not contravene the terms of the order as it was only republished internally.

**[31]** Secondly, even if I were to accede to the Appellant's arguments and agree that the release of the memorandum on yesdig.com constitutes republication, there is no evidence that the release of the memorandum was undertaken by the company. The Appellant did not produce any evidence that the company had intentionally disregarded the order and on its own volition released the same on yesdig.com.

**[32]** To support its claim, the Appellant had produced a Whats App image of the Memorandum on yesdig.com that was shared with her. She did not produce the identity of the person who had shared the said information with her. This is crucial, as the Appellant must show beyond reasonable doubt that this leak is attributed to the Respondent and it is not objectively casual, accidental, or unintentional.

**[33]** Given the explanation provided by the Respondent, I do not find any objective evidence to link the said leak to it. The Respondent did indicate that it will not contravene the order and will inform its employees and agents that they are not to republish the said apology to any third party.

#### D. Decision

**[34]** In the circumstances, I find that the Appellant has failed to discharge the onus to prove the allegation against the Respondent beyond reasonable doubt. I find that the Respondent did not wilfully and deliberately disobey the order of the Court and is not guilty of contempt as alleged by the Appellant. Costs of RM 5,000.00 subject to allocator to be paid by the Applicant to the Respondent.

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