

HONG KONG / JUDGMENT

**CHUI PUI KUN v. CHUI WAI KWAN**

## COURT

Court of First Instance

## DECIDED

26 May 2011

## CASE / FILE NUMBER

HCA2339/2009

Source: legalref.judiciary.hk · Research copy typeset by Esheria. Not court-issued or certified.

bjbj }GW) Coram : Mr. Registrar K.W. Lung in Chambers Date of Paper Disposal : 19 May 2011  
Date of Handing Down Decision : 26 May 2011

## D E C I S I O N

By summons dated 1 March 2011, the defendant applied for leave to file and serve 2 supplemental witness statements of the defendant and Lo On and 2 further witness statements of Chui Tak Yiu and Chui Suk Man Michelle respectively (the two further witness statements). By consent, leave was granted to the defendant to serve the two supplemental witness statements. The plaintiff raised objections to the serving of the two further witness statements, which was adjourned to a date to be fixed for argument, directions on the filing of written submissions having been given. An Order with the above terms has been made and filed on 29 March 2011. The parties have submitted their written submissions in accordance with the Order. The defendant applied to the Court for determination of the disputes over the two further witness statements without a hearing pursuant to Order 32 rule 11A of the Rules of the High Court (RHC), to which application the plaintiff has raised no objection. The Court acceded to the parties request. Having considered the written submissions, I allow the further witness statements of Chui Tak Yiu and Chui Suk Man Michelle to be served subject to some edition of their statements. The followings are the reasons for my decision. In this action, the plaintiff claims against the defendant for defamation arising out of 3 Chinese letters respectively dated 28 October 2009, 10 November 2009 and 10 November 2009 sent by the defendant to the other directors and shareholders of the companies of which they are the shareholders and directors. Chui Tak Yiu and Chui Suk Man Michelle are the defendant's son and daughter and they are also the recipients of those letters. For brevity of this Decision, I shall not quote the text of the letters here. They are set out in paragraphs 8 and 14 respectively of the Amended Statement of Claim filed on 23 November 2010. The plaintiff pleaded that in the natural and ordinary meanings and in the entire context of the letters, they were understood to mean, in gist: The plaintiff was making improper and/or undue designs on ancestral or company properties; The plaintiff unnecessarily sold the ancestral property at

Lockhart Road and had acted improperly in such sale, and failed to obtain the best profit for the shareholders; The plaintiff unlawfully altered the Will of the late father and had committed forgery; The plaintiff had improperly diluted the interests of other minority shareholders by increasing the share capital of one of the companies; The plaintiff has, during the past 10 odd years, wrongfully kept the common seal of the companies in his custody without the knowledge or approval of the shareholders and directors of the companies; and There are reasonable grounds to suspect the plaintiff of stealing important company documents such as to warrant the involvement of the police. Paragraphs 9 and 15 of the Amended Statement of Claim. The defendant denies that the letters are defamatory of the plaintiff and contends that the imputations against the plaintiff which the letters may bear are true in substance and in fact. The defendant has also pleaded the defence of qualified privilege. The plaintiff's objections to the two further witness statements can be summarized that they contain unnecessary personal details of the witnesses; some of the facts stated in the further witness statements are contained in the defendant's own witness statement and paragraphs 18-23 of Chui Tak Yiu's statement contain Mr. Chui's opinion that the letters are not defamatory, same as for Miss Chui's statement at paragraphs 16 and 17, which is not admissible evidence as the plaintiff is relying on the natural and ordinary meaning. The plaintiff argues that if leave is granted to serve the further witness statements, the trial will inevitably be prolonged unnecessarily. The jury's time will also be wasted. I consider that it is unnecessary to set out the paragraphs of the two further witness statements the way the plaintiff has done so in the written submission to support his argument that they are unnecessary personal details and they are contained in the defendant's witness statement. I agree with the defendant's argument that the personal details of the two witnesses are relevant to the factual background of the matter and they are relatively short. It is unlikely that such personal details will prolong the trial. As to the argument that the contents of the two further witness statements are mentioned in the defendant's witness statement, I consider that it is inevitable that some contents of the witness statements may overlap. Provided that the overlapped parts are relevant and will not prolong the trial unnecessarily, the Court should not do the editing, which will cost more costs and time and even further disputes as well. In fact, the defendant's evidence on the personal details and other facts about the two witnesses will be challenged by the plaintiff's counsel as hearsay, in which case it will be better for the two witnesses to give their own account of the fact themselves. Having considered the two further witness statements, I consider that they are relatively short and for better case management, the further witness statements should simply be admitted as evidence. As to the witnesses' view whether the letters are defamatory, the plaintiff relies upon paragraphs 34.25 and 35.7 of Gatley on Libel and Slander (11th Edition), which say that if the claimant relies on the natural and ordinary meaning of the words, no evidence is admissible by the defendant as to their meaning. The defendant argues that the views are relevant to the issues whether the alleged or any damage was caused to the plaintiff's reputation and the amount of damages. With respect, I consider that they are more akin to the determination of liability rather than the quantum. The reason for the admissibility of the evidence seems clear that whether the words in their ordinary meanings are defamatory is an issue for the jury's determination. The witnesses should give evidence on the facts of the matter, not their opinions. I decide that the sentence I do not find their contents

defamatory against Pui Kun. in paragraph 22 of Chui Tak Yiu s witness statement and in paragraph 17 of Chui Suk Man Michelle s witness statement be deleted. Subject to this, I give leave to the defendant to serve the two further witness statements. I have given directions to the solicitors for the parties to give me the costs schedule together with their objections for my summary assessment of the costs. Now in the afternoon on 25 May 2011, the day before the delivery of my Decision, I have not received the schedules of costs from the parties. I therefore proceed to determine the costs, the quantum of which has to be dealt with in the next hearing unless the parties are, in the meantime, able to agree the sum themselves. Since the defendant has succeeded substantially, the costs should follow the event. The plaintiff succeeds to strike out the sentences of the two further witness statements. Taking all these into account, I order that the defendant is entitled to 95% of the costs of the application, including the costs reserved and the preparation of the written submissions for the disposal on paper. This is an order nisi, to be made absolute 14 days after the pronouncement of this Decision on 26 May 2011. Order 62 rule 5B(6). At 4:30 p.m. I have received the schedules of costs with the respective objections against each other s proposed costs. Having considered the defendant s schedule of costs and the plaintiff s objection, I round off the figure at \$45,000.00 to be the assessed costs to the defendant. If either party is not satisfied with the order nisi or this assessed sum, an application for review can be made by way of a summons within 14 days from the date of this Decision, 26 May 2011, with time estimate of 30 minutes before me. I shall make an order in terms of the following: Subject to the deletion of the sentence I do not find their contents defamatory against Pui Kun. from the two further witness statements, leave to the defendant to serve the two further witness statements within 7 days from the date hereof; An order nisi that 95% of the costs of the application, including all costs related thereto and reserved, be to the defendant, the assessed sum being \$45,000.00. (K.W. Lung) Registrar, High Court 1udk |qcVQ hjX\* hjX\* hjX\* h,dw h,dw ytjX\* gdjX\* yj\Q ht\*@ ht\*@ ht\*@ h'>w yuougYOY ht\*@ 1udk J K L M N O P Q R S T U V ytjX\* [Content\_Types].xml Iw}, \$yi} \_rels/.rels theme/theme/themeManager.xml K Y, sQ}# theme/theme/theme1.xml w toc'v )I` n 3Vq%'#q x}r :T'ZaG I u3 L+M2 e\O\* \$\*c? )6-r IqbJ#x ,AGm T[XF64 E)` # R>QD =(K& =al- 4vfa 0%M0 theme/theme/\_rels/themeManager.xml.rels 5 6?\$Q K(M&\$R(.1 [Content\_Types].xmlPK \_rels/.relsPK theme/theme/themeManager.xmlPK theme/theme/theme1.xmlPK theme/theme/\_rels/themeManager.xml.relsPK <?xml version="1.0" encoding="UTF-8" standalone="yes"?> <a:clrMap xmlns:a="http://schemas.openxmlformats.org/drawingml/2006/main" bg1="lt1" tx1="dk1" bg2="lt2" tx2="dk2" accent1="accent1" accent2="accent2" accent3="accent3" accent4="accent4" accent5="accent5" accent6="accent6" hlink="hlink" folHlink="folHlink"/> Z6p uwR\ @gzs4 @gzs ~\ \$H & 6" CACV Jeannie MY MokSo Normal.dotm setup Microsoft Office Word Judiciary CACV Title <b:Sources SelectedStyle="\APA.XSL" StyleName="APA" xmlns:b="http://schemas.openxmlformats.org/officeDocument/2006/bibliography" xmlns="http://schemas.openxmlformats.org/officeDocument/2006/bibliography"></b:Sources> <?xml version="1.0" encoding="UTF-8" standalone="no"?> <ds:datastoreItem ds:itemID="{52F8AEA0-EDFD-4E0C-A214-4862038169E0}" xmlns:ds="http://schemas.openxmlformats.org/officeDocument/2006/customXml"><ds:schemaRefs><ds:schemaRef ds:uri="http://schemas.openxmlformats.org/officeDocument/2006/bibliography"/></ds:schemaRefs></ds:datastoreItem> Microsoft Office

---

Word 97-2003 Document MSWordDoc Word.Document.8

---

### Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

**ORIGINAL SOURCE**      [https://legalref.judiciary.hk/lrs/common/ju/ju\\_frame.jsp?DIS=76636](https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=76636)

**CASE PAGE**              <https://chat.esheria.ai/case-law/hong-kong/chui-pui-kun-v-chui-wai-kwan-2011>

Prepared on 27 October 2026 · Esheria