

SOUTH AFRICA / JUDGMENT

Chen and Another v China Express SA (Pty) Ltd and Others (11821/07) [2008] ZAGPHC 348 (17 June 2008) [2008] ZAGPHC 348

COURT
High Courts - Gauteng

BEFORE
S Potterill

CASE / FILE NUMBER
11821/07

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IN
THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL
PROVINCIAL DIVISION)

Case
number: 11821/07

In

the matter between:

DONG
CHEN FIRST APPLICANT
EASYDONE
INVESTMENTS CONSULTANTS CC SECOND APPLICANT
And
CHINA
EXPRESS SA (PTY) LTD FIRST RESPONDENT
CHINA
NEWS CC SECOND
RESPONDENT
AFRICAN
TIMES (PTY) LTD THIRD RESPONDENT
AFRICAN
TIMES PRINTING CC FOURTH RESPONDENT
MR
LIN
FIFTH RESPONDENT

JUDGMENT

Delivered: 17 June 2008

POTTERILL AJ

On 27 March 2007 this court issued a rule nisi restraining the first to fourth respondents "from publishing in the China Express SA, China News SA and the African Times newspaper or any other newspaper owned and/or controlled by them with words or allegations to the effect that the first and/or second applicants are fraudsters and/or participating in any fraudulent activities because the applicants refuse to pay an amount of R30 000.00 to Wang Fei and Xu Yongdong and because there is a stamp for use by a commissioner of oaths to certify that copies of documents are true copies of the original in the offices of the second applicant."

The fifth respondent was interdicted from "making any allegation that the first and second applicants are fraudsters and/or participating in any fraudulent activities because the applicants refuse to pay an

amount of R30 000.00 to Wang Fei and Xu Yongdong and because there is a stamp for use by a commissioner of oaths to certify that copies of documents are true copies of the original in the offices of the second applicant."

. The applicants request this rule nisi to be made a final order. The parties agree that the issue can be decided on the papers.

. There is and has been no opposition to this application by the first and second respondents.

. The rule nisi was granted on the following common cause facts:

During 2005 on request of a friend of first applicant he agreed to assist two of her employees to extend their work permits; The first applicant received an amount of R30 000.00 from the friend in order to render this service; The work permits could not be extended as they were false; The two employees requested their money back, but the first applicant was only prepared to pay back R9575.00. The first applicant avers the balance was utilized as expenses incurred in attempting to extend the work permits. The employees were later arrested as being illegal in South Africa. They were obviously upset and one again demanded the repayment of the R30 000.00, but refused to accept the amount of R9575.00 In March 2007 the fifth respondent holding a position as a clerk at the South African Chinese Community and Police Cooperation Centre and on request of the two employees went to see the first applicant to enquire about the permits and the monies. Nothing was resolved and on a later occasion he took the two employees to the first applicant in another attempt to resolve the matter, but to no avail. The fifth respondent then suggested a media conference on 27 March 2008 to mediate and resolve the matter. This evolved into a battle of words and nothing was resolved.

4.7 Despite receiving a telephone call from a woman claiming to be an attorney of the first applicant wherein the third respondent was warned not to print anything about the meeting or the first respondent and receiving a faxed notice of motion albeit it unsigned, the third respondent published an article about the meeting. It is conceded that nothing defamatory is contained in this article.

It is also not in dispute that the publishing or uttering of the words "fraud, fraudulent activities and the implication of using a stamp that the first applicant is not entitled to use", would be defamatory; infringing a clear right of the applicants.

It was also never disputed that the applicants had no other remedy. There will be no prejudice to the respondents if the order is made final. The first and second respondents did publish defamatory statements despite the interdict.

6 What is in dispute is whether there was and is any threat of publishing defamatory statements by third and fourth respondents. The question thus to be answered is whether the applicants have proved a well-grounded apprehension of injury. The first applicant avers that the third respondent intended to report on the meeting and the report would be one in which it would be stated that the "document which was produced at the conference was said to be not real, we therefore deduced that the application which was not signed could not be real." [Annexure AA] They however proceed to publish the fact that they were threatened with legal action and proceed with "{We first applicant} was frail in his heart yet he would like to try his best to manifest his insolence and regrettably, Mr Dong Chen does not understand this, maybe he thinks that if puts the good use of his unique skills by using the South African laws, even the media will have to give in like a lambkin. '[Annexure BB]. It is thus argued by the applicants that the third and fourth respondents would have published defamatory information had the interdict not been obtained.

MR Blom argues that on the papers there is no threat. In paragraphs 35 and 36 of the first applicant's founding affidavit he states:

"Notwithstanding the contents of annexure "D" the meeting progressed and the fifth respondent informed the reporters of the said newspapers that i was a fraudster because I took R30 000.00 from Wang Fei and Xu Yongdong without doing anything to assist in obtaining work permits and because of the presence of the aforesaid stand in the second respondent's office. The allegations are without any foundation and defamatory, but when asked whether the newspapers are going to carry the allegations made by fifth respondent, the newspaper reports (sic)confirmed same."

The third and fourth respondents deny that they made any threat to the first applicant at the meeting, but that a reporter from the second defendant did make threats.

This whole meeting should be seen in context; why would media attend a meeting if they are not going to write about it. They did in fact write about it, the question is whether third and fourth respondents would have written defamatory statements and will they continue to do so. The whole tenure of the meeting was to ventilate the complaint of the two employees trying to obtain

permits. The editor of the third respondent's deduction at the meeting was that the document/permit was not real and accordingly also the urgent application was unreal. His deduction was thus that anything to do with the applicants was unreal or fake. It is untenable that the purpose of the meeting was to mediate, why invite media to a mediation process. With the media there it could only be that the media would have a story to publish. In view of the fact that the editor of the third respondent at the end of the meeting deduced that the documents were fake or unreal publication would have expressed such a view. From these facts the applicants have proved that they have a reasonable apprehension that injury would result, they do not have to prove that injury will follow.

7 As for the fifth respondent he has the job of "policing" and or mediating. He called the "meeting" and he made sure the media was present. He refused to cancel the "meeting." He denies that he made any threats or remarks against the applicants. He states that it was to be mediation, but in "BB" the reporter of the African Times, third respondent states that he was invited to a press conference, not mediation. He was the instigator of a press conference, not to mediate the problem but to expose the problem. In paragraph 28 he states: 7 could see that they were not getting anywhere by arguing and suggested that a media conference be called in order for the opposing parties to state their case and answer any questions which might be put to either party as this was an issue which was pertinent to the Chinese Community as there were insinuations that all was not in order And as it was an issue of public interest, the media would be in a position to publish whatever facts they chose to arise from the meeting, "{my emphasis}

The question is, do the applicants have a well grounded apprehension that the fifth respondent will utter defamatory statements. On the fifth respondents own version he had to assist the two employees with their problem, he could not solve the problem so he called a press conference to expose the problem, i.e. to expose the first applicant Calling a press conference would not only expose the first applicant, but would seen objectively ruin his business, just as the first applicant averred the fifth respondent threatened to do. In all these

circumstances the applicants have a well-grounded apprehension that the fifth respondent will utter words of defamatory nature to expose the applicants. The applicants have a reasonable apprehension that injury would result.

8 I accordingly make the following order:

8.1 The rule nisi granted on 27 March 2008 is made final with costs to be paid jointly and severally by the respondents.

S Potterill: Acting Judge of the High Court

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