

Lim Thian Yew v Ong Suan Lay
[2009] SGHC 80

Case Number : D 4746/2006, RA 109/2008
Decision Date : 03 April 2009
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Suchitra Ragupathy (Rodyk & Davidson LLP) for the appellant; Yap Teong Liang (T L Yap & Associates) for the respondent
Parties : Lim Thian Yew — Ong Suan Lay
Civil Procedure

3 April 2009

Choo Han Teck J:

1 This was an appeal by the defendant (husband) against the dismissal of his appeal by the District Court judge below. The defendant first applied to expunge parts of his wife's affidavit in which she deposed to her discovery of some explicit photographs which she claimed supported her case that the defendant had committed adultery. Two of the photographs showed an unidentified woman performing oral sex on a man whose face could not be seen. One photograph showed a man that the plaintiff claimed was the defendant with his mouth on a woman's breast. The woman's face could not be seen. Miss Suchitra, counsel for the defendant, submitted that according to the defendant, that was a photograph of the plaintiff and the defendant before they were married. There were two photographs each of a different woman; both were shown in full frontal nudity. The defendant denied having any knowledge of these photographs. Miss Suchitra complained that details of the photographs were not disclosed to the court. Mr Yap, counsel for the plaintiff, submitted that the facts were not known to the plaintiff and she could only say that she found these photographs in the matrimonial flat and they could only have been his since they were not hers. Mr Yap repeated his arguments he made in the court below. Those arguments were accepted by the District Court judge who concluded in her Grounds of Decision that "the photographs exhibited by [the plaintiff] are indeed relevant and material to her case. One of the issues at the trial will be whether the photographs were taken before the marriage as alleged by the defendant." I too agree with Mr Yap and the judge below that the photographs will be relevant at the trial. If the issue was one of infidelity, photographs of this nature will be relevant as part of the overall evidence for the trial judge's consideration. The mere possession of sexually explicit photographs may not be sufficient to prove the plaintiff's case unless they show the defendant with another woman; but how relevant they might be will depend on the full evidence and the submissions made to the trial judge. It is sufficient at this point to recognise that the photographs in issue in this appeal will likely be relevant for the trial. In this regard, the defendant's appeal was dismissed.

2 However, having allowed the photographs to be admitted, the defendant must be permitted to amend his defence and file an affidavit to deny and present his version of the evidence concerning those photographs. In this regard, Mr Yap again repeated the plaintiff's arguments below. Counsel argued that the defendant had not previously denied that the photographs existed and that his previous position was simply that they were taken before their marriage. In reply to Miss Suchitra, Mr Yap contended that there was no reason why the defendant should be given an opportunity to give details of his defence when he had confidently made his stand without seeing the photographs or

asking for discovery. He said that the application to reply by way of affidavit was only made now that he had seen the damage that the photographs might do to his case. It did appear that the defendant could have been more alert or diligent in discovery before making the bold denials previously made. The point, however, is that this is not the trial and the court at this stage should not judge the validity of the defence until the evidence is heard. Since there is still time for the plaintiff to file a response if necessary, I allowed this part of the appeal. Similarly, I also allowed the defendant's appeal to reply by affidavit to the part of the plaintiff's affidavit in which she gave details of how the defendant injured her shoulder. Miss Suchitra submitted that the details were false because the defendant will adduce evidence to show that the plaintiff injured her shoulder in an accident. These are all disputes of fact and would be critical to the parties' respective cases. The trial judge will be better placed to assess the veracity of the parties and the strength of the evidence than either the judge hearing the interlocutory application or this court on appeal.

3 For the reasons above I varied the orders of the court below and gave directions on the filing of the amendment to the pleadings as well as the filing of a further affidavit each.

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