

Defamation: When a drama is just a drama

It is common for fictional works to contain stylistic and creative choices and the use of artistic licence. The question arises whether there is a limit to such creativity where life events intersect with such creativity.

This situation arose in respect of a drama series, titled Scammer. Scammer is a fictional story, portraying a character (Joe), a 20-something working professional in Kuala Lumpur, who engages in criminal acts such as money laundering. In the Drama, Joe drives a green Mercedes Benz, with a number plate, "DU 17". "DU 17" was a stylistic choice, bearing close resemblance to DUIT, which is "*money*" in Bahasa Malaysia.

Unfortunately for the producers and broadcasters of this drama series, the car licence plate "DU 17" belonged to the Plaintiff in this suit. The Plaintiff took umbrage at "DU 17" being used in the drama series. He launched a claim in defamation, claiming that the character, Joe, would be regarded by viewers of the drama series to be a reference to him, the Plaintiff, as he drives a car bearing the licence plate "DU 17".

Applications to strike out the claim were filed by all Defendants. The basis was, amongst others, that no claim in defamation could lie on the pleaded facts as the use of "DU 17" was in a fictional drama; it did not and could not be a reference to the Plaintiff; that the Plaintiff bore no resemblance to the character Joe, whether in description, age and job, and even in the model of car driven; that the drama was clearly depicted as a fictional drama, with no basis to persons or events in real life.

The High Court allowed the applications to strike out and struck out the suit summarily.

The key takeaways from the High Court's decision are as follows:

- A claim in defamation does not lie in respect of a fictional drama, particularly where there are clear distinctions between the character portrayed and the Plaintiff.

Dispute Resolution Update

JUNE 2022

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- A claim in defamation must be sufficiently particularised; the Plaintiff only identified the episodes where the characters “DU 17” appeared, without particularising the plea of defamation.

This is a welcome decision for the creative talent that entertains the Malaysian public with creative and fictional content. It stems the attempt to restrict creative content by claims of defamation where there is little or no nexus between the fictional drama and real-life events such as to cause any defamatory imputation to arise.

Should you have any enquiries on the case or on defamation matters more generally, you may direct them to Ms Shanti Mogan at shanti@shearndelamore.com or Ms Denise Choo at denisechoo@shearndelamore.com.

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