

**NUS Faculty of Law**

**B.A. Mallal Moots Competition 2018**

**PRELIMINARY ROUND MOOT PROBLEM**

**IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

Suit No. 456789/2018/A

Between

**Jack Keeng**

... Plaintiff

And

**1. Crumply Kat**

**2. Lee Lee Sing**

**3. Piu Dee Pye**

... Defendants

**Coram: Ander Sun Kooper J.**

*Gabriel Specter and Donna Rafferty (Macht & Paulsen LLP) for the Plaintiff*

*Louis Hoffman and Sheila Harris (Litt & Sazam LLC) for the 1<sup>st</sup> Defendant*

*Meghan & Henry Sussex (Gingers & Co) for the 2<sup>nd</sup> Defendant*

*Nick, Joe and Priyanka (Jonas Lawyers LLC) for the 3<sup>rd</sup> Defendant*

**GROUNDINGS FOR DECISION**

1. Social media has changed the world of commerce and marketing. Unfettered by old school traditions, etiquette, and ethics, the pervasiveness of social media has changed how business is done. Yet when wrongs are committed, it is important that the law steps in to rein in the hordes of wild and unconsidered comments, tweets and posts that can have such a pervasive and harmful effect on people's lives and livelihoods.
2. All the parties to this suit are known as social media influencers, people with huge followings in social media that hang on to their every post, tweet, meme and (the now-defunct) vine. Government support for entrepreneurship and the fastest internet connection speeds in the world brought the world's top social media influencers to set up residence in Singapore over the past several years. The Plaintiff and all the Defendants reside within the jurisdiction.
3. The Plaintiff has been portrayed by his counsel as apparently the most wholesome among social media influencers, popular because of his benign appearance and the optical illusions

and tricks that have amused and entertained many. His platform is different from the others, there is no beauty or fitness regime, no social commentary, no racial profiling, and no trends. It is magic, entertainment and wholesome fun. His success has give him the support of many advertisers and raised him high in the ranks of social media influencers of the past 3 years.

4. Starting in early 2017, the Plaintiff landed a series of lucrative exclusives related to the Stain Lea universe of comic book characters that were part of a movie franchise of unparalleled proportions. The surge in his popularity was so remarkable that Fobbes magazine featured him on its cover and he was named Dime Person of the Year by the popular magazine.
5. Over a period of 12 days starting on 25 December 2017, 16 of the top 20 social media influencers, posted, tweeted and otherwise distributed a series of poorly doctored memes of the Plaintiff, showing him engaged in all manner of vices, including taking drugs, performing acts of animal cruelty, and causing egregious damage to the environment. The posts were accompanied by a popular hashtag #2good2btrue. The Plaintiff's evidence is that the posts were retweeted an average of 1,500 times.
6. As a credit to his resilience, the deluge of online vilification against the Plaintiff did not affect him emotionally. He remained upbeat and continued to develop and post his usual material. There was an outpouring of sympathy for the Plaintiff from his followers, all expressing dismay at the attack and speculating on the reason for the attack by what appeared to otherwise be a disparate group of influencers, many of whom did not even appear to have ever met face to face. Between 25 December 2017 and 15 January 2018, the Plaintiff gained an increase of 20% in followers. There was no significant change in the followers of any of the defendants nor any other social media influencers who had participated in the concerted attack.
7. On 6 January 2018, Stain Lea withdrew his support for the Plaintiff, losing the Plaintiff approximately SGD50 million in potential earnings from the Stain Lea contract. Stain Lea did not award a similar exclusive contract to any other social media influencer. Social entertainment news and trade and industry reports revealed that Stain Lea no longer wished to be associated with what he termed "an usual outlier in a field of outliers". While Lea did not believe that the Plaintiff engaged in any of the unpleasant acts that he was portrayed as having committed, Lea was of the view that it would harm his franchise to be promoted by someone that so many of the top social media influencers clearly disliked.
8. The Plaintiff's action against the Defendants is based on tort. The Plaintiff's counsel advanced the argument that the Defendants had acted in concert to injure the Plaintiff without justification. Relying on the Court of Appeal decision in *EFT Holdings, Inc & Anor v Marinteknik Shipbuilders (S) Pte Ltd & Anor* [2013] SGCA 64, Plaintiff's counsel submitted that the Defendants should be liable in damages to the Plaintiff for their intentional conspiracy to injure the Plaintiff by unlawful means, namely by posting deliberate falsehoods about the Plaintiff. Plaintiff's counsel also made an alternative argument that the Defendants had committed an economic tort against the Plaintiff by taking action to deliberately injure the Plaintiff, albeit by lawful means.
9. It was agreed at trial that the question of damages would be addressed at a later stage of the

proceedings. After hearing arguments from all parties, I dismissed all of the Plaintiff's claims. I found as a fact that, on a balance of probabilities, based on the proximity in time and space and the similarity of the messages conveyed by the Defendants in their social media posts, that there was sufficient evidence of collusion to create and distribute the falsehoods about the Plaintiff. I also found that there was an intention on the part of the Defendants and 10 others, who were not named in the suit, to spread falsehoods about the Plaintiff. I also found that the intention on the part of the Defendants was to harm the Plaintiff, irrespective whether it was specifically in relation to reducing his popularity or to cause him to lose the Stain Lea exclusivity.

10. However, the modality of the falsehoods, their rank amateurishness, and the fact that all the defendants made it clear in all their posts that their posts were falsehoods fell far below the mark of unlawful conduct sufficient to establish the tort. I found that there was no breach of Singapore law in their posts. In my view, the means employed were lawful, as their conduct neither amounted to criminal wrongs nor civil wrongs sufficient to amount to unlawful means conspiracy. As the Court of Appeal held, there can be no unlawfulness simply from the fact that the defendants worked together. This falls within the class of cases where the defendants have acted in their own self-interest to take down a particularly successful competitor, through lawful means, and I agree with the Court of Appeal in *EFT* that that, alone, cannot constitute a tort. It can only be the cost of doing business in this highly interconnected and easily influenced world.

ANDER SUN KOOPER J.

20 August 2018

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Note to Competitors :

The appeal is only against the decision of the learned Judge in rejecting the Plaintiff's tortious claim and the conclusions of law that lead to that rejection. There is no appeal against any of the findings of fact made by the Judge. Without any admission as to the findings on collusion, all the Defendants have agreed that as there are aligned on the legal issues, they will jointly appoint one counsel to respond on their behalf in the appeal.