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Corporate Defamation 企業誹謗

Reputation is very important for a corporation especially a publicly listed company. Loss and Damage caused by defamation to a corporation can be substantial. Defamation will damage the image of a corporation and may even cause business losses. A corporation which was defamed is entitled to seek damages. In the Hong Kong case of *Far East Engineering Services Ltd v Choy Yau Chiu (HCA 2146/2004)*, Far East Engineering Services Ltd (“Company”) was awarded damages by the Court for the defamatory statements made by the defendant which claimed that the Company was involved in corruption.

1. Definition of Defamation 誹謗的法律定義

Defamation against a corporation is defined as the publication of false statement(s) about the corporation that tends to lower the reputation of that corporation. We take the Hong Kong case of *Candace Guidance Signage Limited v. Halitect Tactile & Signage Company Limited (HCA 138/2006)* for illustration. Company A (a business competitor of the company B) sent emails to their common customers, alleging that the products of company B were defective. The allegation was untrue and therefore the statements in the emails amounted to defamation. Company B was awarded damages.

Defamation has two forms: (1) libel (永久形式誹謗), if the defamatory statement was published in writing or some other permanent form (e.g. a defamation article in newspaper); and (2) slander (短暫形式誹謗), if the defamatory statement was published by word of mouth or some other temporary form (e.g. defamatory conversations).

2. Elements to Establish a Defamation Claim 申索誹謗的法律元素

If your answers to the following legal questions are “yes”, you may establish a defamation claim:

- (1) Is the statement false?
- (2) When ordinary person reads or listens to the statement, will he conclude that the meaning of the statement tends to “lower the reputation of the corporation in the estimation of right thinking members of society generally”?
- (3) Did the defendant publish the statement to at least a single third person? Is there, by legal definition, a publication of the statement (i.e. the statement had been read, heard or seen by someone, other than the defendant and the claimant)?

(4) Does the statement expressly refer to the particular corporation? Alternatively, an ordinary reader or ordinary listener would understand that the statement refers to the particular corporation?

3. Recoverable damages in defamation cases 法律上取得的賠償

If a corporation establishes a defamation claim, it is entitled to receive money damages and/or obtain an injunction to stop the repetition of the defamatory statement. The following are some of the factors that the Court normally takes into account in assessing the amount of damages:

- (1) the seriousness of the defamation;
- (2) the extent of publication;
- (3) the effect of the publication;
- (4) the extent of the corporation reputation;
- (5) the conduct of the defendant; and
- (6) the conduct of the claimant.

Punitive damages (懲罰賠償) are sometimes available in defamation cases in order that the defendant can be “punished”. In the UK case of *John v MGN (1997) Q.B. 586*, the court awarded punitive damages of £50,000 when there was clear evidence that the defendant did not believe the statement was true and yet the defendant calculated that it would financially gain from publication despite the possible payment of legal damages payable to the claimant.

4. Legal Defences for Defamatory Claim 誹謗申索的法律辯護理由

It will be helpful to know some of the common legal defences that a defendant may put forward against defamation.

Justification (有理可據)

It is a defence if the defendant can prove the defamatory meanings of the statement are substantially true. Other considerations, such as whether the defendant acted maliciously or had known that the statement was false, are irrelevant if the defendant can establish the defence of justification. In other words, the corporation would not be entitled to recover damages if the defendant was simply telling the truth.

In the Hong Kong case of *Mak Shiu Tong v Yue Kwok Ying and Another (FACV No. 4/2004)*, the defendant pleaded justification as the defence to the defamatory statements given by himself which were published in a magazine. The evidence provided by the defendant however was insufficient to prove that the defamatory meanings of the statements are true. The defendant thus failed to rely on justification as his defence.

Fair Comment (公允評論)

“Fair Comment” is a defence if the defendant can prove the following criteria:

- (1) the comment is made on a matter of public interest (公眾利益);
- (2) the comment is recognized as a comment (評語), i.e. expression of opinion (意見表達), as distinct from an imputation of fact (事實);
- (3) the comment is (i) based on facts which are true; or (ii) matters which are protected by privilege (法律上毋需公開的事情);
- (4) the comment has indicated explicitly or implicitly the facts on which the comment had been made; and
- (5) the comment is one which could have been made by an honest person, however prejudiced he might be.

In the Hong Kong case of *Albert Cheng and Lam Yuk Wah v Tse Wai Chun Paul* (FACV No. 12/2000), the defendants pleaded fair comments as one of their defences. The statements made by the defendants, which were broadcast on the radio, alleged that the plaintiff had acted unprofessionally and unethically as a legal adviser. The Court concluded that the proof of malicious intention of the defendants does not itself defeat the defence of fair comments advanced by the defendant. The defence of fair comments will be defeated only if the plaintiff can prove that the defendant did not honestly (真誠地) hold the view that he had expressed.

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