

EVIDENCE

Privilege – Legal Profession – Leak of privileged information – Application to expunge – Whether leaked information should be expunged – Law of Confidence – Application of the Evidence Act (Singapore) – Evidence Act (Singapore), section 2

HT S.R.L v Wee Shuo Woon
[2016] SGHC 15, High Court

Facts The plaintiff company sued the defendant, its former employee in the present suit, for breach of his employment contract. After the commencement of the suit, the computer systems of the plaintiff were hacked, which resulted in the uploading of emails between the plaintiff and their lawyers (“the Emails”) onto the Internet. The Emails contained legal advice, information, and materials concerning the present suit in which an express proviso that the Emails contained privileged and confidential information was inserted. Although there was no evidence to show that the defendant was involved in the hacking, he subsequently accessed the Emails on the Internet and used them in his application to strike out a bulk of the plaintiff’s claims. The Emails were referred and exhibited in the defendant’s affidavit in support of his application. The plaintiff applied for an order to expunge all references to such Emails. The application to expunge was allowed by the Assistant Registrar. Dissatisfied, the defendant appealed.

Issues The issues to be decided were (i) whether the present case was governed by the Evidence Act (Singapore) (“EA”); (ii) whether the common law provided any basis to grant the prayer to expunge; and (iii) whether the Emails should be expunged.

Held In dismissing the appeal, the High Court held that the EA did not apply as subsection 2(1)¹ states that the EA is limited to judicial proceedings only and did not extend to evidence in affidavit. However, subsection 2(2)² of the EA allowed the common law rules of evidence to be applied, provided that such rules were consistent with the EA. It was decided by the court that confidentiality was the legal basis to have the emails expunged. The Emails were protected by the law of confidence in this case, considering the plaintiff’s interests in the privileged information contained in such Emails, the circumstances surrounding the information leak as well as the manner in which the defendant came into possession of such documents.

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¹ Subsection 2(1) of the Evidence Act (Singapore) (Chapter 97) is similar to section 2 of the Malaysian Evidence Act 1950.

² There is no equivalent of subsection 2(2) of the Evidence Act (Singapore) (Chapter 97) in the Malaysian Evidence Act 1950.