

TORT

Negligence – Duty of care – Breach of duty of care – Causation – Employer and employee – Reference check – What is the standard of care of former employer in preparing reference form of former employee and whether there was breach of that duty

Ramesh s/o Krishnan v AXA Life Insurance Singapore Ltd

[2016] SGCA 47, Court of Appeal

Facts The appellant, Mr. Ramesh s/o Krishnan, was an adviser and financial services associate manager engaged by the respondent, his former principal, AXA Life Insurance Singapore Pte Ltd. Disagreements arose between the appellant and the respondent's management, which resulted in the resignation of the appellant. Shortly after, the appellant applied to join Prudential Assurance Company Singapore Pte Ltd ("Prudential"). Prudential had sent a reference check request to the respondent. The respondent replied providing information on his persistency ratio and compliance issues which reflected negatively on the appellant. Prudential then made the appellant an offer of employment subject to several conditions, including the successful clearance of his reference check and his fulfilment of the "Fitness and Proprietary" requirements under the Monetary Authority of Singapore's ("MAS") guidelines. Prudential continued to seek clarification from the respondent on the information provided but to no avail. Prudential withdrew its application and decided not to hire the appellant. The appellant then applied for a job at Tokio Marine Life Insurance Singapore Limited ("Tokio Marine") but was rejected after a similar reference check was sent by the respondent to Tokio Marine. The appellant sued the respondent on 3 three causes of action, namely, defamation, malicious falsehood and negligence. All three claims were dismissed. The appellant appealed against the decision on negligence.

Issue The main issues were (i) what is the standard of care expected of a former employer or principal in its preparation of a reference form for a former employee or agent; and (ii) whether there was a breach of that duty.

Held In allowing the appeal, the standard of care laid out was that an employer who writes a reference for an employee is obliged to exercise due care to ensure that the facts and opinions contained in the reference are true and accurate, and does not give an unfair or misleading overall impression of the employee, even if the discrete pieces of information which it contains are factually correct. There must also be disclosure of any information that relates to information which has already been provided, where to withhold such further information would render the information disclosed incomplete, inaccurate or unfair, and that complaints or other allegations against the employee which he was unaware of should not be included since he would not have been given an opportunity to explain or defend himself. Full and comprehensive reference is also not required. Thus, it was held that the respondent had breached the duty of care it owed to the appellant in providing the information set out in the reference check form as well as its subsequent correspondence with prudential and MAS, which caused Prudential to not employ the appellant.