

Malayan Law Journal Unreported/2001/Volume/IRENE NG v THE MALAYSIAN KENNEL ASSOCIATION - [2001] MLJU 126 - 14 April 2001

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[2001] MLJU 126

IRENE NG v THE MALAYSIAN KENNEL ASSOCIATION

HIGH COURT (KUALA LUMPUR)

K. C. VOHRAH, J

GUAMAN NO R1-22-02-2000

14 April 2001

Civil Procedure -- Injunction -- Interlocutory injunction -- To reinstate the plaintiff as a member of the defendant -- Whether grave damage would accrue to the plaintiff -- Whether special circumstances existed

S Siva with S M Sia (M/s Cheah Teh & Su), Jerald Gomez (M/s Jerald Gomez & Associates)

DECISION

The Malaysian Kennel Association (MKA) was incorporated under the Companies Enactment 1917 as a company limited by guarantee. The objectives of the MKA are to encourage and promote the importation, keeping and breeding of thorough breeds and other dogs and to protect and advance the interest of dog owners and importers to control dealing in dogs and generally to promote and advance canine interests in Malaysia.

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Those who wish to become members have to apply under the Articles to be members.

Irene Ng became a member of MKA in 1960 and became a life member until she was expelled from MKA in 2000.

She has filed a suit for several declarations which includes one that her expulsion from MKA is null and void and she prays for re-instatement as a member with full membership rights.

In a Summons-in-Chambers she has applied for an interlocutory mandatory injunction to be granted against MKA to re-instate herself "as member of the Defendant with all rights and interests attached thereto pending the outcome of the suit ..."

She breeds dogs to take part in International and National Dog Shows and she also breeds pure bred dogs and studs for the purpose of breeding. In 1999 she was the Chairperson of the Selangor FT Branch of the MKA. On 9.11.1999 a letter was sent to her intimating to her that disciplinary action

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was being taken against her under 3 charges. The 3 charges read as follows

"(a) Handing over of Mock Cheque to PAWS

On 26th September, 1999, at a Central Committee meeting, you as a Chairperson of the Selangor FT Branch

invited the President of the Malaysian Kennel Association to hand over a mock cheque to PAWS. The President accepted the invitation as the money was collected on behalf of the Malaysian Kennel Association at a fund raising event which was approved by the Central Committee. However the Central Committee of which you are a member decided that the ceremony should take place at the Malaysian Kennel Association

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premises. You were present at this meeting and you agreed with the decision.

The President was made aware vide minutes of your branch meeting held on 29th September 1999 that 2 of your committee members proposed that the invitation to the President be withdrawn. The President and the Central Committee felt this was ridiculous as the branch has no power whatsoever to overrule the decision of the Central Committee. The President then wrote to you a letter requesting a full report on this issue. In the meantime, the President requested you to postpone the handing over ceremony.

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However you defied the Central Committee's decision and ignored the President's letter and proceeded to hand over the cheque to PAWS on 15th October 1999.

The Central Committee is of the opinion that such conduct on your part renders you liable to disciplinary action under Article 12 of the Article of Association of the Malaysian Kennel Association.

(b) Fees for Obedience Classes

In your annual report presented at the Selangor/FT Branch Annual General Meeting held on 17th October, 1999, you claimed, among other things, that you and your branch committee were responsible for making obedience

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classes more affordable and that the Central Committee was responsible for raising the fees to RM 100.00, thereby making it unreasonably expensive.

As a Central committee member yourself, and having been in charge of obedience yourself for several years, you clearly knew that this statement was false. The Central Committee is of the opinion that your conduct in this case renders you to disciplinary action under Article 10A of the Article of Association of the Malaysian Kennel Association.

(c) Formation of Obedience Chapter

In your annual report of your branch for 1998-1999 you accused the

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Central Committee of doing things as they deem fit when they allowed the formation of the Pro-Tem Committee of the Obedience Chapter. You know this to be false as being a Central Committee member and being in charge of obedience for several years, you were always aware that it was not the Central Committee who wanted the Obedience Chapter. On the contrary, the Chapter was being formed at the request of the obedience people themselves and you were in fact instrumental in getting more than 50 obedience people to become Chapter members so that the Chapter could be formalized.

The Central committee is of the opinion that your conduct in this

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instance had brought disrepute to the Central Committee and to the Malaysian Kennel Association and renders you liable to disciplinary action under Article 10A of the Article of Association of the Malaysian Kennel Association."

She responded to the charges at the hearing before the Committee. By a letter dated 8.3.2000 the Committee found Irene guilty as charged and suspended her for a period of 1 year subject to conditions which were attached. The said suspension was to take effect if she confirmed the acceptance of the conditions failing which she would be expelled

from MKA.

She responded through her solicitors by a letter dated 24.5.2000 that "the grounds were invalid, baseless and devoid of reasoning and (were) contrary to the principles of natural justice."

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Irene in seeking the injunction states she is unable to exercise any of her rights and/or privileges as a member pending the outcome of the suit as membership in the MKA is essential to enable her to continue to breed pure thorough breeds and studs and to have due certification of their pedigree and that in Malaysia there is no alternate Association which has international recognition or promotes and/or is involved in similar activities as MKA.

She averred she would be severely prejudiced if she is unable to continue her profession and interest and/or to have the same curtailed as a result of her lack of membership in MKA and in the circumstances, she believed that damages are an inadequate remedy and that there would be little prejudice if the mandatory injunction is given.

In the absence of special circumstances an interlocutory injunction would not be granted unless the case was clear and one which could be decided at once (see *Jakeman v South West Thames Regional Health Authority* [1990] 1 RLR 62)

Again an injunction ordering MKA to re-instate her as member can only be granted if Irene can show a strong probability upon the facts that, if the mandatory injunction is not granted, grave damage will accrue to her and

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that monetary compensation will not be an adequate remedy if that damage does happen (see *Redland Bricks Ltd v Morris* [1970] AC 632 and also *Harold Stephen & Co Ltd v Post Office* [1977] 1 WLR 1172).

In regard to charge (a) for having acted in defiance of the Central Committee's decision to adjourn the presentation of the mock cheque Irene denies having received the memorandum of the Committee relating to that matter and has argued that the disciplinary proceedings were flawed and that no evidence in respect of the memorandum having been sent to her was led during the inquiry. Her submission is that she did not defy the Central Committee's decision.

It has also been argued that the expulsion by MKA of Irene on all 3 charges is a nullity as charges (b) and (c) permit suspension at most. It was also submitted that charges (b) and (c) (both charges in respect of making statements that tarnish or denigrate MKA's reputation) relate to statements made in the Branch Chairman's annual report which was approved by the Branch Committee on the proposal of Dr. Fonseka, the man who filed an affidavit in reply to Irene's present application for injunction. There is allegation that charges (b) and (c) were preferred against Irene as an

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afterthought and there is *mala fides* in singling out Irene for disciplinary action when in fact the Branch supported the statements. It was also argued that the expulsion was unjust punishment. It was further argued that there will be no additional expenditure incurred by MKA if the mandatory injunction is granted and also that it would be difficult to compensate Irene for loss of membership rights pending outcome of the trial.

All these matters are disputed by MKA. MKA's submission is, and I agree with it, that the Court has limited power to interfere with powers exercised by domestic tribunals which are not bound by the rules of evidence and that the decision of such a tribunal cannot be attacked on the ground that it is against the weight of evidence provided that the accused person has notice of what he is accused of and is given an opportunity of being heard and the decision was honestly arrived at if he had a full opportunity of being heard (see *Maclean v The Workers' Union* (1929) 1 Ch D 603). As to the issue of nullity of the expulsion order in view of the fact that charges (a) and (b) only permit expulsion at most, without going into the merits whether the decision was honestly arrived at, if charge (a) was made out she could be expelled under charge (a) and all punishments under charges (b) and (c) would be subsumed under the greater punishment.

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It has not been demonstrated that damage let alone grave damage will accrue to Irene. It is not her case that she has lost her livelihood. What however is averred by her not being a member of MKA is that she would be unable to continue her

profession to breed pure thorough breeds and studs and to have due certification of this pedigree. That is contested by MKA; the *prima facie* evidence seems to show that she would be able to breed them and have due certification as a non-member and that she will not be prevented from so doing that.

It is not averred that she is unable to breed and sell her thorough breed dogs. If she has suffered loss through her not being a member or because her dogs were not certified that would be a matter of damages but I hardly think the damages would be grave damages.

Whether the charges were proper charges, whether they were *ultra virus* the Articles of Association of MKA or Branch By-laws, whether rules of natural justice were breached, whether the Central Committee acted *bona fide* or honestly are matters for Irene to show at the trial of the case. For the

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moment I cannot see there has been a clear case made out for the injunction to issue. Application dismissed with costs.