

CITATION: JIANG v. SING TAO DAILY and HAI TAO LI, 2014 ONSC 287
COURT FILE NO.: CV-08-00362016
DATE: 20140425

ONTARIO

SUPERIOR COURT OF JUSTICE

STEWART J.

Nature of the Action

[1] The Plaintiff Bang Gu Jiang (“Jiang”), is a lawyer who carries on the practice of law in the City of Toronto.

[2] This action arises out of an article authored by the Defendant Hai Tao Li ("Hugh") and published on June 6, 2008 in the Canadian City Post, a Chinese-language weekly newspaper owned by the Defendant Sing Tao Daily Limited.

[3] Jiang seeks damages, including aggravated and punitive damages, for defamation as a result of this publication.

[4] The Defendants defend this action on several grounds. First, they deny that the article defamed Jiang in any way. Alternatively, they take the position that the contents of the article are substantially true. Further, they say that the article constitutes fair comment on a matter of public interest. In the further alternative, it is argued on behalf of the Defendants that the article constitutes reasonable communication on a matter of public interest.

Facts

[5] On May 12, 2008, a massive earthquake measuring 7.9 on the Richter scale devastated part of Sichuan Province (also known as the Szechuan region) in China. The earthquake killed or injured many inhabitants of the area and destroyed property, leaving several millions of people homeless.

[6] The response within the Chinese community in Toronto was swift, compassionate and impressive. A number of initiatives designed to respond to this crisis were undertaken.

[7] At the time, Jiang was President of the Szechuan Association of Canada. That volunteer organization joined together with several other community groups to organize a relief effort under the umbrella name of the Sichuan Earthquake Relief Committee. Jiang participated in meetings to discuss how they all might best help the victims of the earthquake.

[8] It was agreed that, among other things, a public concert would be staged in order to raise funds to be sent to China for the relief of victims of this disaster.

[9] Arrangements had to be made quickly for the concert as the need for aid was urgent. At first, most volunteers thought that the concert should be held at the Chinese Cultural Centre because there would be no cost imposed for use of this free venue. It was ultimately decided that the concert should be held at the Metro Toronto Convention Centre, a much larger facility which was more central and could accommodate a bigger audience of potential donors. This decision was not entirely without controversy.

[10] A small group of private individuals or entities apparently had indicated a willingness to contribute toward and cover the cost of the rental of the Metro Toronto Convention Centre premises and associated expenses. One such entity, the Sun Ling School of Dance, had offered to contribute close to \$4,000.00. This sum was not an outright cash donation, but was an “in-kind” donation of a deposit already been paid by the school to the Metro Toronto Convention Centre as a deposit for a commercial event which was not proceeding.

[11] The decision to hold the event at the Metro Convention Centre was not unanimous. Some members of the Relief Committee preferred the Chinese Cultural Centre venue and, presumably, the concept that all donations would go to earthquake victims.

[12] It was determined that the Szechuan Association of Canada would sponsor the event, and that the Relief Committee would provide assistance and support and would handle donations at the event.

[13] Jiang was involved in soliciting and obtaining some additional contributors to cover the expenses of the concert. Also involved in this effort was Gao Fei, a well-known concert promoter and volunteer.

[14] Bing Yi Zhang, a dentist, was approached by Gao Fei to solicit a donation which she willingly made. However, Bing Yi Zhang initially indicated that she did not want her name disclosed as she did not want others in the community to think that she was seeking publicity or

doing this for business promotion purposes. She later relented and received some recognition on stage for her generosity.

[15] Another individual to whom Jiang spoke was willing to donate to the cost of staging the event by covering any and all expenses not looked after by others. She did not want either her identity or amount donated to be disclosed.

[16] I take notice of the fact that in the world of charitable giving it is not uncommon for donors to wish to remain anonymous for reasons personal to them. This wish for anonymity may extend to their identities, their donations, or both. The charity benefitting from the largesse of such donors is obligated to respect that confidentiality to whatever extent is possible.

[17] It was planned that admission to the concert would be free, but donations would be solicited from those in attendance. All such donations were to be handled by the Relief Committee in accordance with its policy and protocol.

[18] Zhang Jing, a member of the Relief Committee, gave evidence to describe his involvement in the donations management. The general approach taken by Relief Committee was to make information as to donations and expenses public. As the Relief Committee is a registered charity, it issues charitable tax receipts to donors.

[19] On May 23, 2008, the concert took place as planned at the Metro Toronto Convention Centre. It was very well-attended. It ultimately succeeded in raising pledges for donations totaling over \$100,000.00 for earthquake victims' relief. The event raised more money than any of the other fundraising events referred to in the evidence, and significantly more than the events held at the Chinese Cultural Centre on May 27, 2008 and at Nathan Phillips Square on May 31, 2008. Even when the expenses of staging the concert and the inevitable failure of some individuals to honour their pledges are taken into account, the concert must be seen as having been hugely successful and very profitable.

[20] Jiang gave of her time unselfishly to ensure the May 23, 2008 fundraising event went off smoothly. She was one of several individuals and donors who were invited on the stage to speak publicly to those in attendance and to be recognized for her contribution.

[21] At the concert, Jiang was approached briefly by Hugh. He asked her questions about the cost of putting on the concert and where the money had come from. Although Jiang later had no specific detailed recall of the encounter, Hugh testified that Jiang replied that it was not convenient for her to have the conversation with him as the concert was about to begin. I find that this conversation as related by Hugh in his evidence took place as described.

[22] Wanting to follow up on their brief conversation at the concert, Hugh subsequently called Jiang's office and left a message for her to call him back. This call was not returned by Jiang.

[23] A few days later, while they were both exiting a fundraising event being held at the Chinese Cultural Centre, Hugh approached Jiang again with questions about the degree of disclosure of expenses and the degree of transparency with respect to donations made at the May 23, 2008 concert event.

[24] Jiang admitted that she was somewhat flustered and a bit annoyed by this sudden questioning by Hugh in such a public place. Many other people were around them on their way out of the building. She also admitted that she did not, and felt she could not, give Hugh the specific information he was seeking at that time. Indeed, she was rather abrupt in her response, and asked Hugh why he persisted in asking these questions and advised him that the information was not yet available.

[25] Although there is little in the way of dispute as to this encounter, I find that how it transpired and what was said was in basic accordance with the description provided by Hugh in his evidence at trial. As is his practice, Hugh made notes of the conversation very shortly following this interview attempt.

[26] On June 6, 2008, an article appeared in the City Post and on its website authored by Hugh. Appended hereto as Schedule "A" is a certified translation of the text of the article from Chinese into English which has been agreed to by the parties as being accurate.

[27] The article was published on the front page of the City Post. It was accompanied by a variety of at least eight photographs from the concert and various meetings, including one of Jiang taken while she was speaking to the concert audience, as well as donation boxes. The headline reads: "Should the Earthquake Donation Accounting be Made Public?"

[28] The points raised in the article were the subject of later discussion on a popular website and on a radio talk show hosted by Hugh. Although these communications were referred to at the trial, Jiang has restricted her claim to the defamation allegedly caused by the article itself. No separate libel is claimed by her.

[29] Six days after the article was published, Bang Gu Jiang served a Notice of Libel on the Defendants.

Issues

- A.** Does the article defame Bang Gu Jiang?
- B.** Are the contents of the article substantially true?
- C.** Is the article fair comment on a matter of public interest?
- D.** Does the article constitute reasonable communication on a matter of public interest?
- E.** Was the article published maliciously?
- F.** What damages have been sustained by Bang Gu Jiang as a result of this alleged defamation?

Issue A: Does the article defame Bang Gu Jiang?

[30] Words are defamatory if they tend to cause the Plaintiff to be regarded by reasonable persons with hatred, contempt, fear or ridicule. Words are also defamatory if they impute to the

Plaintiff improper and disreputable conduct or lower the Plaintiff in the estimation of right-thinking members of society generally (see: *Botiuk v. Toronto Free Press Publications Ltd.*, [1995] 3 S.C.R. 3).

[31] Where words are said to be defamatory in their natural and ordinary meaning, this meaning must be determined from the perspective of ordinary sensible people without special knowledge, who are neither unusually suspicious nor unusually naive (see: *Lewis v. Daily Telegraph*, [1964] A.C. 234). In considering whether defamation has occurred, the words complained of should be viewed in full context as a whole. Statements should not be dissected and analyzed in fragments (see: *O'Malley v. O'Callaghan* (1992), 1 Alta. L.R. (Alta. Q.B.); *WIC Radio v. 2008 S.C.C.* 40 (S.C.C.)).

[32] Similarly, the defamatory meaning, or “sting”, of any words complained of is to be derived from the article read as a whole and in context.

[33] The article that is the subject of this action was written in the Chinese language and published to readers in the Chinese community. The Plaintiff submits that the article invited readers to question Jiang's integrity and suggested that she had mishandled or dealt improperly with charitable donations contributed for the people affected by the massive earthquake in the Sichuan province of China.

[34] The Plaintiff also submits that this Court must look beyond the translation to consider the full context in which the article was published. This context, it is argued, includes the particular sensitivities surrounding the national tragedy in Sichuan to which the Chinese community was responding at the time of publication.

[35] The Plaintiff urges upon the Court the conclusion that, read in its full context and including the headlines and photographs, the sting of the article is that Jiang engaged in misconduct relating to charitable donations made by members of the public at the 523 Relief Concert. It is also argued on behalf of Jiang that the article implies that the public should be suspicious of her for potentially using the donated funds to pay for event-related expenses, for being secretive or evasive, potentially unscrupulous, and exploitive of a national tragedy in China.

[36] In general, the article reported on questions which had been raised about the organization of the event at the Metro Toronto Convention Centre. It provided some information about the debate as to where the concert should be held and why. It suggested that some people believed that all expenses and revenues related to it, including those used to pay the costs of staging such an event, should be made public and that this had not yet been done.

[37] The article also suggested that transparency was lacking because organizers had not immediately made available to the press details of all financial information.

[38] In my view, Jiang has seized on snippets from the article, taken them entirely out of context and divorced from the surrounding events and distorted their meaning. By doing so, she has incorrectly characterized the words as defamatory of her.

[39] The article mentions Jiang in the context of her role as one of many volunteers involved in the organization of the concert. The article is not about her, but rather about the general issue of degree of disclosure by her and the concert organizers of the names of sponsors and amounts used to pay for the concert expenses.

[40] In my view, the backdrop and part of the context of the article is the controversy as to the preferred location of the concert. Some critics apparently would have preferred to have only one far less successful event held in a smaller but free venue such as the Chinese Cultural Centre. The controversy extended to engage a dispute about the decision to stage a major presentation at a large downtown Toronto venue that would charge a sizeable rental fee.

[41] Jiang takes particular offence to the question “Has anyone touched the donation?”. When viewed in context, this question is not referring to her specifically at all. Indeed, the question is so vague as to be somewhat meaningless. To the extent it means anything, it is a statement of the reason for the general demand for openness so that the public might be satisfied that all donations are being used to their best advantage.

[42] Jiang also points to the concluding paragraph of the article in which it is stated: “If activities in the Chinese community start with elevated spirit but end as a farce, then how the Chinese will again be motivated to contribute?”. In context, the word “farce” refers to the controversy and lack of unity in the Chinese community resulting from the decision to have two concerts and to use private sponsors to cover the costs of staging the event at the Metro Toronto Convention Centre. It is an expression of lamentation that these decisions have generated controversy and detracted from the need to focus on raising money to help earthquake victims.

[43] Perhaps ironically, the article fans the flames of this controversy and provides further distraction, but such is often the nature of news reporting and commentary.

[44] In summary, however, when the words in the article are read as a whole and in full context, I am of the view that they do not defame Jiang.

[45] This conclusion by me that the article is not defamatory of Jiang is finally dispository of the action. However, if I am wrong in this conclusion, I will proceed to consider the other defences raised.

Issue B: Are the contents of the article substantially true?

[46] Truth is a complete defence to an action for defamation. The test is substantial truth and it is therefore not necessary to prove the truth of each word. It is a sufficient defence if the substance of the allegations is justified (see: *Sidorsky v. CFCN Communications Ltd.* (1941), 23 Alta L.R. (3d) 116 Alta. Q.B.)).

[47] In considering this issue, I proceed on the footing that the lesser defamatory meanings as pleaded by the Defendants are the ones which prevail. Were I of the view that the article actually did defame Jiang, I would have accepted the lesser defamatory meanings advanced by the Defendants as being those which may be gleaned from the article.

[48] These lesser defamatory meanings are set out in paragraph 37(a) of the Amended Statement of Defence, as follows:

- (a) There is a lack of transparency in respect to the expenses involved in staging the 523 Charity Concert and the donations used to fund those expenses;
- (b) Members of the public have called for Jiang and the Association to disclose information about the expenses relating to the staging of the 523 Charity Concert and the donations used to fund these expenses;
- (c) There is a public controversy about whether information about the donations and expenses relating to the 523 Charity Concert should be made available to the public;
- (d) Jiang has refused to publicly disclose information about the expenses associated with the 523 Charity Concert and the donations used to fund these expenses;
- (e) As a result of Jiang's failure to disclose information about expenses, the media and the public is unable to scrutinize and examine the expenses associated with the 523 Charity Concert;
- (f) Jiang and the Association used donations to pay for production costs associated with staging the 523 Charity Concert at the Convention Centre; and,
- (g) Members of the public have questioned whether the 523 Charity Concert should have been held at the Convention Centre rather than at the Chinese Cultural Centre.

[49] When the article is read with reference to these lesser defamatory meaning, the contents of the article are substantially true. In particular, the evidence at trial discloses that:

- (a) There was a controversy about where the concert ought to have been held;
- (b) Complete information as to precisely what the concert expenses were and how they had been or were to be paid had not been made public;
- (c) There was disagreement about whether information concerning the concert expenses and donations should be made public; and
- (d) When asked, Jiang had not disclosed the full details of where the money came from and what the expenses were, making full scrutiny not possible.

[50] Accordingly, the contents of the article are substantially true. This conclusion provides a full defence to the claim.

Issue C: Is the article fair comment on a matter of public interest?

[51] A statement is protected by the defence of fair comment where it is on a matter of public interest, it is based on fact, it is recognizable as comment, and a person could honestly express the opinion on the proven facts. If a defendant establishes these factors, the “fair comment” defence may only be defeated if the plaintiff can prove express malice (see: *WIC Radio v. Simpson, supra*).

[52] These fund-raising efforts were a matter of intense public interest, especially to members of the Chinese-speaking community in Toronto. This conclusion is amply demonstrated by the evidence. Members of the community turned out in substantial numbers to attend the conference and make donations. A professional and meticulous system was devised to handle donations and to report on these to the public. The entire subject of the handling of these charitable donations was one of legitimate public interest.

[53] Similarly, the handling of the finances of the charitable fundraising efforts and the extent to which defaults are made public are matters of great interest to the public.

[54] The article reports on events which occurred but the tenor of the article is one of comment. The substance of the article expresses opinions which are of a nature that could be honestly held based on the proven facts.

[55] As a result, the facts of this case and the article permit a conclusion that the test in *WIC Radio v. Simpson* has been met. The article is fair comment on a matter of public interest and therefore is protected from a claim for damages for defamation.

Issue D: Does the article constitute reasonable communication of a matter of public interest?

[56] The purpose of the responsible communication defence is to provide a defence for defamatory misstatements of fact which cannot be proven as true but are communicated responsibly on a matter of public interest (see: *Grant v. Torstar Corp.*, 2009 S.C.C. 61 (S.C.C.)). This defence only becomes germane if it has demonstrated that there have been misstatements of fact which are both defamatory of Jiang and cannot be proven as true.

[57] For reasons set out above, I have found that there have been no defamatory or material misstatements of fact. If I am wrong in this conclusion, I nevertheless would consider this article to constitute reasonable communication on a matter of public interest.

[58] Hugh interviewed several participants in the fundraising efforts and personally attended organizing meetings and the May 23 concert as well as other events.

[59] Hugh put specific questions to Jiang about the issue of disclosure of concert expenses and gave her an opportunity to respond.

[60] Hugh gave Jiang an opportunity to set the record straight and to provide any clarifying explanation required. Jiang chose not to do so.

[61] The subject matter of the article involved issues of considerable public interest to the Chinese community in Toronto and the rest of Canada and, for that matter, the greater community.

[62] In my view, the trial evidence establishes that the test set out in *Grant v. Torstar, supra*, has been met in this case and, as a result, Jiang's action for defamation cannot succeed.

Issue E: Was the article published maliciously?

[63] Malice will defeat the fair comment and responsible journalism defences, but the onus to prove such malice is on Jiang.

[64] Jiang must demonstrate that malice was the predominant purpose behind the publication and that the Defendants knew the words were false at the time of publication (see: *Woods v. Plummer*, [1908] O.J. No. 164 (Ont. C.A.). Malice is not proven through evidence that the Defendants acted carelessly or negligently (see: *MacArthur v. Meuser* (1977), 146 D.L.R. (4th) 125 (Ont. Gen. Div.)).

[65] In my opinion, Jiang has failed to demonstrate the existence of any actual malice on the part of either Defendant.

[66] There was no indication in the evidence of any history of discord between the parties. There was no evidence of animus or ulterior motive adduced as against either Hugh or Sing Tao. All of the evidence adduced supports a conclusion that the facts were reported on fairly and opinions expressed were honestly held. Although one might well argue with the apparent suggestion that the identities of and amounts donated by persons who may have requested anonymity should be revealed despite such requests, this does not alter the conclusion that there is no evidence of actual malice.

[67] I am of the view that the evidence indicates that both Defendants acted with the purpose of informing the public about the issue and controversy over the costs of staging the concert.

[68] Accordingly, I find that there is no evidence of actual malice in the evidence that would defeat the defences otherwise available to the Defendants.

Issue F: What damages have been sustained by Bang Gu Jiang as a result of this alleged defamation?

[69] Libel damage awards should be based upon a rational attempt to measure in money terms the loss and injury the plaintiff has suffered (see: *Hodgson v. Canadian Newspapers Co.* (2000), 49 O.R. (3D) 161 (Ont. C.A.)).

[70] Although harm to Jiang's reputation may be presumed, there is no actual evidence of any serious damage done to her in this case by publication of the article.

[71] Jiang has not identified any loss of business or professional reputation. The Plaintiff could only identify two clients who spoke to her about the article, both of whom were

sympathetic to her. Huang Ying testified that after having read the article she still had trust in Jiang.

[72] Jiang was unable to identify any friends who stopped socializing with her as a result of the article, or any people who behaved differently toward her after the article was published.

[73] Jiang became a Director of the Chinese Professional Association of Canada after the publication of the offending article. Currently she is the Vice-President of that organization.

[74] In October 2009, Jiang was elected President of the Board of the China Canada Professional Association. She was re-elected to that position in 2011.

[75] At the end of 2008 Jiang received an award from a group of Chinese media organizations who wanted to publicly indicate appreciation for persons who made a significant contribution to the charitable efforts that occurred in 2008.

[76] In October 2012 Jiang received the Queen Elizabeth II Diamond Jubilee Award. In January 2013, she received an award from the Chinese Business Chamber as recognition of her community contributions.

[77] Accordingly, Jiang's reputation was stellar and impressive before the article was published, and remained so following that publication. There was no suggestion in the evidence that her reputation for honesty had been affected. If it might be even said that Hugh was reporting on complaints that Jiang was unforthcoming with demands for private information this respect for confidentiality is often seen as a valuable characteristic of legal counsel.

[78] Were the article considered to be defamatory and not saved by any of the defences raised, I would assess Jiang's damages at \$10,000.00.

[79] The facts of this case do not justify an award of aggravated or punitive damages.

Conclusion

[80] For the above reasons, the action is dismissed.

Costs

[81] If the parties cannot agree on costs, written submissions on that subject may be delivered by the Defendants within 30 days of the date of release of this decision, and by the Plaintiff within 15 days thereafter.

STEWART J.

Released: April 25, 2014

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ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

BANG GU JIANG

Plaintiff

– and –

**SING TAO DAILY LIMITED and
HAI TAO LI**

Defendants

REASONS FOR DECISION

STEWART J.

Released: April 25, 2014