

EVIDENCE

Documentary evidence – Privileged document – Investigative Due Diligence Report – Application for discovery, inspection and production of the Report – Legal profession privilege – Whether the Report was privileged – Evidence Act 1950, sections 126 and 129

Yeoh Eng Kong v. Goh Bak Ming & Ors

[2015] 7 CLJ 138, High Court

Facts The plaintiff had initiated a civil action against the defendants for conspiracy to injure him. An application for discovery, inspection and production of an Investigative Due Diligence Report ("the Report") against the 15th defendant ("the defendant") was filed by the plaintiff, who was the former director of the defendant. The Report was prepared by a firm of Advocates and Solicitors appointed by the defendant. When the plaintiff asked for a copy of the Report, the defendant requested the plaintiff to furnish an indemnity. Nevertheless, the plaintiff as a director was allowed to view the report and took his own notes without giving the required indemnity. The current application was made on the basis that the Report was relevant to the issues at the civil action and it also strengthened the plaintiff's case substantially. The defendant argued that the Report was a privileged document under the Evidence Act ("the Act").

Issue The issues to be considered were (i) whether the Report was a privileged document and (ii) whether the acts of the defendant amounted to a waiver of the privilege.

Held It was held, amongst others, that part of the report which contained a legal opinion was subject to legal profession privilege under section 129 of the Act, as it was a confidential solicitor-client communication produced by a firm of Advocates and Solicitors instructed by the defendant. Disclosure of privileged document by a client was protected under section 129 of the Act and that the disclosure may be made only if express consent was given by the client before trial, or when the client volunteered it as evidence in a court of law as a witness. Permission to view the document and request to furnish indemnity by the defendant did not constitute an express consent of disclosure.