

TORT

Sexual harassment – Whether justified – Whether valid cause of action

Mohd Ridzwan bin Abdul Razak v Asmah Binti Hj Mohd Nor

[Civil Appeal No: 01(f) – 13 – 06/2013 (W)], Federal Court

Facts The plaintiff and the defendant were employees of a company ("the Company"). The defendant reported directly to the plaintiff. In July 2009, the defendant lodged a complaint ("the complaint") to the Chief Executive Officer of the Company claiming sexual harassment by the plaintiff. An inquiry was conducted, and although there was insufficient evidence to warrant disciplinary action, a strong administrative reprimand was issued to the plaintiff. Aggrieved by the complaint, the plaintiff, in December 2011 issued a writ against the defendant seeking, *inter alia*, a declaration that he had not sexually harassed her and that he had been defamed by her. The defendant filed her defence and also a counterclaim against the plaintiff. In her defence, the defendant particularised the sexual harassment. The defendant also pleaded that her allegations were upheld by their employer and that a serious disciplinary warning was issued to the plaintiff pursuant to the complaint. The defendant counterclaimed for damages predicated on sexual harassment. The High Court found that the plaintiff failed to prove his defamation claim against the defendant and allowed the defendant's counterclaim. This was upheld by the Court of Appeal. Aggrieved, the plaintiff appealed to the Federal Court.

Issues The main issue was whether there is a valid cause of action for a civil claim on the grounds of sexual harassment.

Held In dismissing the appeal and upholding the award of MYR120,000 to the defendant, the Federal Court held that there were sufficient reasons to import the tort of sexual harassment, especially since it was pleaded at the High Court. Furthermore, since the evidence was more than ample to establish this tort, the introduction of such tort was justified.

ZUL RAFIQUE & partners
{JUNE 2016 \ 01340394}