

Litigation Alert – Reputational Recovery

July 28, 2014

Cambodian Court Finds Blogger Guilty of Defamation

Last week, a British expat living in the Kingdom of Cambodia was convicted of defamation in the Phnom Penh Municipal Court for statements published on his personal blog relating to the director of a private investment firm. The case has implications for anyone doing business in the region and serves as an important reminder that, despite recent reforms, defamation remains a crime in certain pockets of Southeast Asia.

Background

Rupert Winchester is a journalist from the United Kingdom living in Cambodia, who maintains a personal blog called “The Mighty Penh.” In a June 4, 2013, blog entry titled “I Get Knocked Down,”¹ Winchester posted a photo of an orange colonial-era house, which was built at the turn of the 20th century a couple blocks from the Mekong River in Phnom Penh. Winchester claimed that Etienne Chenevier, a French property developer who serves as director of City Star Private Equity Asia (“City Star”), planned to raze the structure to make room for a seven-story condominium complex. According to the complaint, Chenevier informed Winchester by telephone that City Star had no intention to knock down the building: “Why would we knock down our own building . . . [I]f [you] print[] that I will sue [you].” After the conversation, Winchester posted on his blog, “Well I say you will [knock it down]. Knock yourself out, suing-wise, you cheap aggressive huckster.” Winchester also published an article containing similar statements about City Star in *The Phnom Penh Post*, where he was then working as an editor. *The Phnom Penh Post* subsequently issued a retraction. On June 7, 2013, Winchester removed the offending portions of his blog entry.

On July 27, 2013, Chenevier filed a complaint requesting criminal prosecution of Winchester. On July 24, 2014, Judge Ros Piseth found Winchester guilty of defamation, ordered him to pay \$25,000 in damages to Chenevier and imposed an additional \$2,000 fine. According to *The Cambodia Daily*, Judge Piseth stated, “[If you] say something bad about others it [could lead to] a defamation case.” Winchester intends to appeal the ruling.

Analysis

As early as February 2006, Cambodian Prime Minister Hun Sen called for the decriminalization of defamation.² That year, the National Assembly removed from the statute the possibility of imprisonment,

¹ Portions of the entry are still available at <https://goingphnomandon.wordpress.com/2013/06/04/i-get-knocked-down/>

² Ellen Nakashima, *Cambodia Moves Toward Openness*, Wash. Post, Mar. 10, 2006, <http://www.washingtonpost.com/wp-dyn/content/article/2006/03/09/AR2006030902149.html>

but declined to fully decriminalize defamation.³ As Chenevier's case makes clear, prosecutors in Cambodia continue to try defamation cases in criminal courts using the resources of the government.

Article 305 of the Cambodian Penal Code currently reads, "Defamation shall mean any allegation or charge made in bad faith which **tends** to injure the honor or reputation of a person or an institution." In other words, an individual can be convicted of the crime even if his or her statements do not result in actual damages, a necessary element of the civil cause of action in the United States.

The crime in its current form is broad enough to include statements published online regardless of the location of the author. Article 305 reaches statements made "by any means of audio-visual communications intended for the public." As a result, a U.K. citizen could be haled into a Cambodian criminal court by a French citizen who merely **resides** in Cambodia based on a showing that the blog entry was "published in Cambodia and read around the world." The implications of this decision could be significant for any individual or company doing business in Southeast Asia as Internet access and social media usage continue to surge in the region.

³ See Briefing Note, Cambodian Center for Human Rights, The Criminalization of Defamation and Freedom of Expression in Cambodia (May 2014), available at [www.cchrcambodia.org/admin/media/analysis/analysis/english/2014_05_27_CCHR_Briefing_Note_Defamation_in_Cambodia_\(ENG\).pdf](http://www.cchrcambodia.org/admin/media/analysis/analysis/english/2014_05_27_CCHR_Briefing_Note_Defamation_in_Cambodia_(ENG).pdf)

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