

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Suit No. No. X of 20XX

Between

LIZZY FIZZY

... Plaintiff

And

JOSEPH FIZZY

... Defendant

Coram: Desiderius Erasmus J.

Isabella Marie Swan and Edward Anthony Masen (Eclipse LLC) for the Plaintiff.
Sulpicia Caius and Didyme Athenodora Marcus (Volturi & Partners) for the Defendant.

GROUNDINGS FOR DECISION

1. The love a parent has for a child is sacrosanct, unconditional and pure. It is a tragedy when a parent abuses his position of power and brings a child up to know nothing but perversion and assault.
2. This is the Plaintiff's claim against the Defendant for sexual assault and breach of fiduciary duty. The Plaintiff seeks damages from the Defendant for the injury and suffering that he has inflicted upon her, and in particular seeks an accounting of all the profits that he has made as a result of his exploitation of her.
3. At the end of the trial, I found in favour of the Plaintiff. I understand that the Defendant has appealed against the part of my decision relating to the limitation period, which turn solely on my decision on the existence of a fiduciary relationship between the Plaintiff and the Defendant. These are the grounds for my decision.
4. The Plaintiff is the Defendant's only child. She was born in 1990 and her mother died in childbirth. The Defendant raised the Plaintiff as a single father and lavished all his love and attention on her. Unfortunately this love and attention went beyond what anyone with morality would consider acceptable. Between the ages of 13 and 18, the Plaintiff was the subject of the Defendant's sexual attention.
5. The Defendant's power and influence over the Plaintiff was such that outwardly she lived a normal life as a school-going teenager. No one outside of the family home knew the perversions that the Plaintiff was going through.

While the Plaintiff came to know, around the age of 15, that her relationship with her father was abnormal, her love for her father was such that she felt a compelling need to keep their relationship a secret. The evidence of the Plaintiff's psychiatrists and expert witnesses called in her favour is that this was purely a manifestation of the Defendant's overwhelming influence on the Plaintiff. The Plaintiff was aware of the wrong and the damage that was being inflicted upon her, but did nothing about it.

6. When the Plaintiff turned 18, the Defendant sent the Plaintiff to an all-female boarding school in Switzerland to complete her education. She obtained a degree in poetry and fine arts and returned home to Singapore to continue with live with her father. The Defendant no longer sought the Plaintiff out to satisfy his sexual needs. The Plaintiff, on the other hand, became extremely jealous of the Defendant's fiancée, Suzy Su, a woman from Sze Chuan Province in China who was the same age as the Plaintiff.
7. In January 2011, the Defendant suffered a serious of strokes as a result of which he was severely incapacitated physically. Mentally however, he was still alert. Before his stroke, he had changed his will to leave all his considerable wealth to Suzy Su, with a generous stipend to be paid to the Plaintiff from a trust fund that he had set up for her until she reached the age of 50.
8. Dissatisfied with this arrangement, the Plaintiff sought solace from a battery of psychiatrists. After a year of therapy, the Plaintiff was finally able to acknowledge that she had been the victim of sexual assault by her father, and that she had been severely damaged psychologically by that assault.
9. At around the same time, the Plaintiff also discovered, after searching through the Defendant's belongings, that the Defendant had made recordings of every one of their sexual trysts and had sold these recordings on an exclusive basis to people he knew. Produced in evidence were partial records of these transactions recorded on a computer found in the Defendant's home office, encrypted with a password that forensic evidence showed was the Defendant's password. The evidence showed that there were other records which the Defendant refused to produce.
10. Until he was felled by illness, the Defendant was a businessman who appeared to have done exceedingly well in his business. The evidence produced by the Plaintiff however raises some doubt as to whether all of his wealth can be attributable to his business or whether a part of it is attributable to his trade in child pornography, featuring his own daughter.
11. Unfortunately for the Plaintiff, by the time she made up her mind to take legal action against the Defendant for his assaults, the limitation period for actions relating to personal injury had expired. To counter this, the Plaintiff framed her action as a breach of fiduciary duty owed to her as a child by the

Defendant as her parent. In doing so, the Plaintiff relied on a series of Canadian decisions emanating from British Columbia and Nova Scotia. On the authority of the decision of the Supreme Court of Canada in *M (K) v. M (H)* [1992] 3 S.C.R. 6, 96 D.L.R. 4th 289, and the Hong Kong decision in *H v. Lau Ka Yee and the Catholic Diocese of Hong Kong* (HCPI 901/2004, 20 October 2006), I agreed with the Plaintiff that a fiduciary relationship can exist between a parent and a child so as to give rise to a claim for breach of fiduciary duty when the parent fails to fulfill his obligations as a fiduciary to his child. In so doing, I decline to adopt the position in Australia as set out in *Paramasivam v. Flynn* (1998) 90 F.C.R. 489, 160 A.L.R. 203, or New Zealand as set out in *H v.R.* [1996] N.Z.L.R. 299. While I accept that fiduciary relationships are typically considered only within the province of professional dealings such as between professionals and their clients, or bankers and their customers, I recognize the need in cases such as these that affirming the existence of a fiduciary relationship between a parent and a child or a guardian and a ward, is crucial to permitting due redress to be given to victims of severe deprecation. In so holding, I am supported by authority.

12. My considerations with respect to the sympathy that must lie with victims of sexual assault such as the Plaintiff were prompted in no small part by the helpful and illuminating discussion in Assoc. Prof. Margaret Fordham's article *Sexual Abuse And The Limitation Of Actions In Tort—A Case For Greater Flexibility?* [2008] S.J.L.S. 292. While Assoc. Prof. Fordham believes that Singapore courts would be likely to follow the UK and Australian position on this issue, I find that this case is a ripe one for the Courts to choose the path that leads most to justice.
13. The result of my decision is that this claim is not time-barred and the Plaintiff can recover under equity remedies for the breach of fiduciary duty.

Desiderius Erasmus J.
7 September 2019

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

Civil Appeal No. 6713 of 2019

Between

JOSEPH FIZZY

... Appellant

And

LIZZY FIZZY

... Respondent

In the matter of
Suit No. No. X of 20XX

Between

LIZZY FIZZY

... Plaintiff

And

JOSEPH FIZZY

... Defendant

NOTICE OF APPEAL

Take notice that the above-named Appellant, being dissatisfied with the decision of the Honourable Justice Desiderius Erasmus J. given at the High Court of Singapore on the 7th of September 2019, appeals to the Court of Appeal against such part only of the said decision as decides that there was a fiduciary relationship between the Plaintiff and the Defendant, so that the Plaintiff's claim is not time-barred under the Limitation Act.

Dated the 8th day of September, 2019.

Solicitors for the Appellant

To: a) The Court of Appeal for the Republic of Singapore
b) The Respondent, Lizzy Fizzy, Eclipse LLC.