IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1992] SGHC 55

Suit 110/1992

Between

Hung Ka Ho
Another

… Plaintiff

And

A-1 Office System Pte Ltd

… Defendant

GROUNDS OF DECISION

Civil Procedure; Civil Procedure — Privileges; Copyright — Infringement

Version No 1: 11 Sep 2026 (01:05 hrs)

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Hung Ka Ho and Another v A-1 Office System Pte Ltd

[1992] SGHC 55

Suit 110/1992
Kan Ting Chiu JC
07 March 1992

1 The plaintiffs` claim against the defendant company is for infringement of copyright, registered designs and passing-off in respect of some office panel systems and components and the trade literature relating to them. On 20 January 1992 they applied ex parte and obtained an Anton Piller order against the defendant company, including an order:

> *that the defendants do within 14 days from the service of this order upon them by a director duly authorized make and file an affidavit or affirmation setting forth so far as are known to the defendants the names and addresses of all persons, firms or companies:*
>
> (a) to whom the defendants have supplied;
>
> (b) from whom the defendants have obtained supply of;
>
> (c) to whom the defendants have placed orders for;
>
> (d) from whom the defendants have received orders for;
>
> *the infringing material which the defendant company was alleged to be dealing with.*

2 The defendant company did not supply the information. Instead, a summons-in-chambers was filed to discharge the order set out above. When the application came before me as an urgent application, I was informed that the

defendant company was already technically in contempt for not furnishing the information.

3 When counsel for the defendant company said that the defendant company was invoking the privilege against self-incrimination, I expressed reservations about making any finding on this issue without any facts being placed before me, as no affidavit was filed in support of the application. Counsel, nevertheless, proceeded with the application, and he did so on two grounds: firstly, that the order should not have been made ex parte, and secondly, that the order infringed the defendant company`s privilege against self-incrimination.

4 On the first ground, he relied on Bridge LJ`s judgment in the Court of Appeal in **Rank Film Distributors Ltd & Ors v Video Information Centre & Ors.** [1982] AC 380 What the learned judge said about Anton Piller orders made ex parte compelling answers to interrogatories and the privilege against self-incrimination must be read in full. He said [at pp 415-416]:

> *What then is the effect, in relation to the practice of making Anton Piller orders in copyright cases, of the conclusion that a copyright pirate may be entitled to claim privilege from incriminating himself? Clearly it cannot be to inhibit the making of ex parte orders requiring defendants to permit the immediate search for and seizure of infringing copies. Section 18 of the Copyright Act 1956 gives to the copyright owner proprietary rights in such copies and owners seeking to enforce proprietary rights whether by final or interlocutory order to recover their own property cannot be defeated by any claim of privilege. But very different considerations apply to those parts of an Anton Piller order which require the person to whom the order is addressed to give* ***forthwith*** *to the person serving the order answers to specified questions and disclosure of relevant documents. It has long been the practice of judges hearing oral evidence to warn witnesses who are in apparent danger of incriminating themselves that they are entitled to claim privilege from self-incrimination. It would not be practicable in my judgment, to embody an effective warning of that kind in a typical peremptory Anton Piller order in such terms as to ensure that the recipient of the order fairly*

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> *understood his position, what he was required to do and what were the options open to him. It must follow, I think, that the only satisfactory practice will be, when the court invited to make an Anton Piller order can see from the strength of the applicant`s evidence that the proposed defendant is in danger of self-incrimination, to abstain from making an order ex parte requiring* ***immediate*** *answers to questions or disclosure of documents. The practical consequence of this view may well be that whenever the evidence in a copyright case is strong enough to justify the making of an Anton Piller order it will also give rise to apprehension of self-incrimination on the part of the defendant so that the ex parte order will effectively have to be limited to authorizing the search for and seizure of infringing copies. This may be regrettable but seems to me inevitable. (Emphasis added.)*

5 The learned judge was referring to orders made ex parte which require immediate compliance. The thrust of his comments would be blunted if the defendant is in a position to be properly informed of his rights. If the order, instead of requiring immediate compliance, gives a reasonable period for compliance, the defendant would have time to seek legal advice before complying, and the opportunity to understand his position, to know what he is required to do and what options are open to him. He will also be able to file an urgent application to discharge, suspend or vary the order before the deadline for compliance, if he is so advised. I believe that it is for this reason that the practice has arisen not to order immediate compliance but to allow time for answering. In the present case, the defendant company had 14 days to do so. I am therefore of the view that Bridge LJ`s comments do not apply to orders which allow reasonable time for compliance.

6 I think the place of an ex parte order to answer interrogatories immediately within an Anton Piller order should also be considered. An Anton Piller order may comprise different orders. The principal order is that permitting plaintiffs to enter premises and remove material required as evidence. The

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ancillary orders include those for discovery of documents and for answering interrogatories.

7 Anton Piller orders to enter, search and seize arose out of the recognition that there are situations where a plaintiff should be permitted to seize and remove evidence from a defendant without prior notice lest the latter destroys or takes it out of the reach of the plaintiff. In respect of interrogatories, this consideration does not apply because intangible answers to questions are never at risk of being removed or destroyed, and notice of an application to issue interrogatories will not defeat its purpose. Thus when an order for interrogatories is sought on its own and not as part of an Anton Piller order, O 26 of the Rules of the Supreme Court 1970 (`the Rules`) requires it to be made inter partes.

8 For these reasons, some courts have rightly been reluctant to issue interrogatories requiring immediate compliance on ex parte applications for Anton Piller orders. Instead, they give the defendant time for compliance, so that he can be heard before he has to answer the interrogatories. I am of the view that there must be clear and compelling reasons before a defendant can be ordered to give immediate answers to interrogatories on an ex parte application. However, I do not agree that the order made ex parte in this case should be discharged.

9 On the question of privilege against self-incrimination, there is no doubt that the privilege is a part of the common law which applies to Singapore - see **Rank Film Distributors Ltd v Video Information Centre** [1982] AC 380 and **Riedel-de Haen AG v Liew Keng Pang** [1989] 2 MLJ 400

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10 For this privilege to be successfully invoked, the risk of self-incrimination must be `a real and appreciable risk, as distinct from a remote or insubstantial risk` (per Bridge LJ in **Rank Film** [1982] AC 380), it must not be `contrived, fanciful, or imagined` (per Lord Wilberforce in **Rank Film** [1982] AC 380), or, as Chan Sek Keong J put it in **Riedel-de Haen** [1989] 2 MLJ 400 `it must be shown that there is a real risk that the incriminating answer or answers would expose [the defendant] to arrest or prosecution for any criminal offence`. The jeopardy that the defendant may be exposed to has also to be considered. The House of Lords in **Rank Film** [1982] AC 380 expressed reluctance to uphold a claim for the privilege if the self-incrimination will only expose the defendant to petty or trivial charges carrying insubstantial penalties. A defendant seeking the protection of the privilege has therefore to show that he is being compelled to incriminate himself on a potential charge or charges which are not trivial and which carry penalties which are not insubstantial.

11 To satisfy these requirements, a defendant seeking to invoke the privilege will have to say that he has answers to the questions (since he cannot incriminate himself if he is unable to answer them), and that he believes that the answers will expose him to a real risk of prosecution. He is only excused from saying this if this is already evident in the plaintiff`s application for the Anton Piller order, or if judicial notice can be given to these facts. While it may be possible in some cases for judicial notice to be given to the potential offences, it cannot extend to the defendant`s ability to answer the questions or his intention to seek the protection of the privilege. These are matters of fact which the defendant should state together with the basis for the belief of the real risk of prosecution for some specific offence or classes of offences. After the defendant has made these averments, it is open to the applicant to dispute the

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defendant`s assertion and to show that his apprehensions are contrived or extravagant.

12 In this case, the defendant company did not file an affidavit in support of its application. The summons-in-chambers did not disclose the grounds on which the application was made. During the submissions, counsel said that the defendant company was relying on the privilege against self-incrimination and mentioned s 136 of the Copyright Act (Cap 63, 1988 Ed).

13 That is not sufficient. It has been held that in an application to suspend an Anton Piller order, evidence has to be adduced. Buckley LJ said in ***Hallmark Cards Inc v Image Arts Ltd*** :3

> *Whether the (Anton Piller) order should or should not be suspended may be a matter for the discretion of the judge to whom an application for that purpose is made. But it is, in my judgment, a discretion which ought to be exercised properly upon evidence, and should not be exercised in the absence of evidence and upon statements of counsel.*

14 The same requirement must also apply to applications to discharge Anton Piller orders.

15 This requirement is taken further by the Rules which require that evidence be given by affidavit in an application by summons. Order 38 r 2(2) stipulates that:

> *In any cause or matter begun by originating summons, originating motion or petition, and on any application made by summons or motion, evidence shall be given by affidavit unless in the case of any such cause, matter or application any provision of these Rules otherwise provides or the Court otherwise directs, but the Court may, on the application of any party, order the attendance for cross-examination of the person making any such affidavit, and where, after such an order has been made, the person in question does not attend, his affidavit shall not be used as evidence without the leave of the Court.*

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16 The combined effect of the decision and the rule is that the defendant company must give evidence in an affidavit to support its application, and cannot rely on the statements of its counsel. In the circumstances, I found that the defendant company had failed to discharge the burden on it, and I dismissed the application.

17 **Outcome:**

Kan Ting Chiu JC

Dedar Singh Gill (Drew & Napier) for the applicants/defendants
Tan Tee Jim and Chew Kherk Ying (Allen & Gledhill) for the respondents/ plaintiffs

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