IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[1993] SGCA 92

CA 152/1992

Between

Nova Management Pte Ltd

… *Appellant*

And

Amara Hotel Properties Pte Ltd
Another

… *Respondent*

GROUNDS OF DECISION

Contract — Illegality and public policy; Public Entertainment — Licensing — Musical entertainment

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Nova Management Pte Ltd v Amara Hotel Properties Pte Ltd and Another

[1993] SGCA 92

CA 152/1992
Karthigesu JA; L P Thean JA; Yong Pung How CJ
01 December 1993

1 The question before the court was the legality of an agreement between the first respondents (`Amara Hotel`) and the appellants (`Nova`) dated 8 July 1988 (`the agreement`) by the terms of which Nova agreed to operate for Amara Hotel a discotheque on the fourth level of Amara Hotel`s premises at 165 Tanjong Pagar Road, Singapore (`the discotheque`). The legality of the agreement turned on the interpretation of the Public Entertainments Act (Cap 257) (`the Act`) and the rules made thereunder, the Public Entertainment Rules 1969 (`the Rules`) in general, and s 3 of the Act and r 5 of the Rules in particular.

2 The learned judicial commissioner who tried this question decided `that the agreement was illegal and unenforceable as it contravened the Act and the Rules`. His judgment is reported at [1993] 2 SLR 289 . At the conclusion of the appeal we allowed it. Accordingly we set aside his judgment and ruled that the agreement was not illegal. Our reasons follow.

3 The relevant provisions of the agreement are the following:

preamble (c)

At the request of the operator, (Amara Hotel) the manager (Nova) will undertake the conversion of the premises (the discotheque) and the management and operations of the business in the premises subject to the terms and conditions herein contained.

clause 1.2

... the operator shall be responsible for applying for and obtaining the ... licence (to operate a discotheque) and maintaining it throughout the duration of the operating term ... Provided always the cost of such licence shall be borne by the manager.

clause 2.3(a)

The manager shall at the manager`s own cost and expense operate and manage the discotheque ...

clause 8.3

... the manager hereby agrees, covenants and undertakes to supervise, direct and, pursuant hereto, control the management and operation of the discotheque and shall render or supervise and pursuant hereto control the performance of all services and do or cause to be done all things reasonably necessary for the efficient effective and proper operation of the discotheque ...

clause 8.4

The parties hereto agree that, subject only to any express limitations which may be contained in this agreement, the manager shall have absolute discretion and control over the management and operation of the discotheque and the performance of the foregoing services ... the manager shall be acting only as agent for the operator and nothing in this agreement shall be construed as creating ... any other relationship between the parties hereto ... except that of principal and agent.

clause 16.1

The manager shall accord to the duly authorized officers, accountants, employees, agents and attorneys of the operator the right to enter upon any part of the discotheque at all reasonable times during the operating term, upon prior notice being given for the purpose of examining or inspecting the discotheque or examining or obtaining extracts from the books and records of the discotheque`s operation but the same shall be done with as little disturbance to the operation of the discotheque as possible.

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4 In compliance with cl 1.2 of the agreement Amara Hotel did apply for and were issued with a licence to operate the discotheque under the provisions of the Act and the Rules. The application for the licence was made in the name of Teo Kwee Chuan, the second respondent (`Teo`) who, at the material time, was a director of Amara Hotel and was described as such in the application form. The licence was issued in Teo`s name without any reference to his connection with Amara Hotel or for that matter to Nova.

5 In this connection it is necessary to refer to rr 3(2) and 5 of the Rules which provide as follows:

> *Rule 3(2)*
>
> *Where an application is made by a company or a firm, the application shall be countersigned by the person to whom it is desired the licence shall be issued.*
>
> *Rule 5*
>
> *No licensee shall transfer or lend his licence to any other person.*

6 The relevant sections of the Act, for present purposes, are the following:

> *Section 3*
>
> *No public entertainment shall be provided except -*
>
> (a) in an approved place; and
>
> (b) in accordance with a licence issued by the Licensing Officer.
>
> *Section 6*
>
> *If the Licensing Officer is satisfied that the responsibility for the observance of the conditions of a licence is intended to be shared between two or more persons he may require the application to be made in the names of as many such persons jointly as he thinks fit.*
>
> *Section 11(1)*
>
> *In respect of such classes of entertainment as the Minister may from time to time prescribe by notification in the* ***Gazette*** *and subject to such limits as may be thereby prescribed, the*

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> *Licensing Officer, before issuing a licence, may require the applicant, or, if there are several applicants, each applicant named by him for the purpose, to give security, either in the form of a cash deposit or by entering into a bond that the provisions of this Act and of the conditions of the licence issued will be duly observed.*
>
> *Section 18(1) and (2)*
>
> (1) Any person who provides or assists in providing any public entertainment not being a public entertainment exempted under section 15 -
>
> (a) without a licence issued under this Act;
>
> (b) while the licence is suspended;
>
> (c) in contravention of any condition of a licence; or
>
> (d) in contravention of this Act or any rules made thereunder,
>
> shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000.
>
> (2) For the purposes of this section no person shall be deemed to have provided or assisted in providing public entertainment merely by reason of his having taken part in the public entertainment provided.

7 It will be seen from the clauses of the agreement we have set out above that Amara Hotel have delegated to Nova the absolute control, operation and management of the discotheque retaining to themselves, vide cl 16.1 of the agreement, the residual right of entry upon the discotheque at all reasonable times, albeit upon prior notice and with as little disturbance to the operation of the discotheque as is possible, for the purposes of inspecting the operation of the discotheque or for examining the books or records of the discotheque`s operation. Notwithstanding the delegation of the absolute control, operation and management of the discotheque, it would also have been noted that the contractual relationship of Amara Hotel and Nova is described in cl 8.4 as that of principal and agent. Clause 1.2 provided that it was Amara Hotel who were responsible for applying for and maintaining the licence for the operation of the

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discotheque which they obtained in the name of one of their directors, Teo, although the cost of such licence would be borne by Nova. Be all this so, by reason of the residual right of entry referred to above, the contractual relationship of principal and agent and the fact that the licence for the operation of the discotheque was held in the name of a representative of Amara Hotel thus reserving to themselves the ultimate control over the discotheque, and from a reading of the whole of the agreement, the scheme of the agreement, in our judgment, was that Amara Hotel were engaging the services of Nova to operate the discotheque at their premises for the benefit of their residents, which would also be open to the public.

8 It will also be seen from the sections of the Act we have set out above and rr 3(2) and 5 of the Rules that the scheme of the Act and the Rules is to issue the licence to a natural person or persons and to hold them responsible, under pain of the penalties provided in the Act, for the due performance of the public entertainment in accordance with the provisions of the Act, the Rules and the conditions of the licence.

9 In our judgment the learned judicial commissioner, with all due respect to him, was over-influenced by this aspect of the Act and the Rules and the contractual rights and obligations of the parties created by the agreement. This led him to say:

> *On a true construction of the agreement the plaintiffs [Nova] were obliged to provide entertainment to the public. That is clear beyond doubt from several of the provisions of the agreement and in particular those which I have recast earlier. The primary and predominant privilege that the plaintiffs enjoyed under the agreement was the right to provide entertainment to the public at their own cost and control. Further, the exclusive nature of the right was underpinned by the provision which gave them the `absolute discretion and control over the management and operation of the discotheque and the performance of the*

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> *services`. Unless the plaintiffs applied for and obtained a licence in the name of a person who was accountable to them, they transgressed s 3 of the Act by providing public entertainment without a licence. Section 3 does not permit the plaintiffs to provide the entertainment under a licence issued to someone who had no control over the mode and manner of the management and operation of the discotheque. The Act enjoined the plaintiffs to apply for the licence. In conclusion therefore the agreement set out a scheme for the plaintiffs to provide public entertainment under a licence issued to someone who was not their true representative.*

10 ... The provision in the agreement that the first defendant [Amara Hotel] `shall be responsible for applying for and obtaining the licence and maintaining it throughout the operating term` to enable the plaintiffs to operate the discotheque offended the purpose and context of s 3 of the Act and r 5 of the Rules.

11 We are unable to agree with the reasoning of the learned judicial commissioner. In particular, we are unable to agree with him that, in order not to transgress s 3 of the Act, the person in whose name a public entertainment licence has been issued must be `accountable` to the provider of the public entertainment. We are also unable to agree with the interpretation he placed on r 5 of the Rules. He said:

> *Rule 5 says that no licensee shall transfer or lend his licence to another person. In plain language it means that only the licensee may provide public entertainment and seek protection under a licence. A person who does not hold a licence may not provide entertainment. If the licensee permits another person to provide public entertainment under the aegis of his licence or aids such person in doing so he commits an offence under the Rules.*

12 Section 3 of the Act prohibits the providing of public entertainment except in the two circumstances specifically stated in the section, one of which is that there must be in existence, at the time the public entertainment is provided, `a licence issued by a Licensing Officer`. The penalty for a violation

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of this provision is contained in s 18(1) of the Act. Both ss 3 and 18 of the Act have been set out in full in the earlier part of this judgment.

13 In our judgment the word `licence` in both ss 3 and 18(1) of the Act is used in reference to the public entertainment itself and not in reference to the person or organization providing, or assisting in providing, the public entertainment, notwithstanding that the licence must be held in the name of a natural person. This is made clear by the wording of s 18(2) of the Act which excludes a person from the strictures of s 18(1) of the Act by the words `by reason of his having taken part in the public entertainment provided`. Were this not so, then, each and every person who takes part, or assists in taking part, in the public entertainment provided, in whatever capacity, must be in possession of a public entertainment licence issued by a Licensing Officer or else he will be subject to the penalties of s 18(1) of the Act. This is not what the Act and the Rules intended to prohibit. What the Act and the Rules intended to prohibit is the providing of public entertainment in respect of which there is no licence issued. The reason why the licence is issued in the name of a natural person is manifestly clear. It is so that he may be held accountable to the licensing authority for breaches of the Act, the Rules or the conditions of the licence.

14 It seems to us that the learned judicial commissioner was troubled by r 5 of the Rules which prohibits a transfer or lending of the licence to any other person. Its plain and ordinary meaning is that a licensee shall not transfer or lend the licence issued to him for the purpose of the public entertainment stated in the licence to another person for him to provide public entertainment other than the one for which it was issued. This interpretation is consistent with the interpretation we have given to s 3 of the Act. No licence is issued for providing public entertainment in a general sense. It must refer to a particular public

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entertainment. Otherwise, the licensing provisions would be rendered otiose, the purpose of which surely is `to provide for the regulation of public entertainments` as the Act clearly indicates. The regulation is the regulation of the public entertainment itself.

15 The learned judicial commissioner also founded his interpretation of the Act and the Rules on the `accountability` of the licensee, Teo, to the provider of the public entertainment, Nova, and the `control` the licensee, Teo, needed to have over the discotheque to assure compliance with the Act. We have already referred to that part of the learned judicial commissioner`s judgment where he alluded to this. He further addressed himself thus:

> *The plaintiffs [Nova] argued that there would be no contravention of the Act or the Rules because what was required was for the discotheque to have a licence and the agreement ensured that there would be one. That argument, in my view, is erroneous because a natural person who provides the public entertainment, or the natural person representing a company or firm providing it, is required to hold the licence. It is important to identify the person who will assume the obligation to comply with the terms and conditions of the licence under pain of punishment. Hence, the prohibition against transferring or lending it and thereby letting someone else have the permanent or temporary use of it.*

16 With respect to the learned judicial commissioner, we are unable to agree with this approach. We have already observed that in our judgment the reason for issuing the licence in the name of a natural person is to hold the licensee accountable to the licensing authorities for breaches of the Act, the Rules or the conditions of the licence. The Act and the Rules envisage the licensee`s accountability to the licensing authority. This is clear from the requirements of s 11 which empowers the Licensing Officer, in his discretion, in the classes of public entertainment as prescribed by the Minister, to require the licensee to furnish security or to enter into a bond to ensure due observance

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of the provisions of the Act, the Rules and the conditions of the licence, and if the licence is issued in the names of several natural persons (s 6 of the Act) that each licensee furnishes security or enters into a bond. This, in our judgment, cannot lead to the interpretation placed on s 3 of the Act by the learned judicial commissioner that `s 3 does not permit the plaintiffs [Nova] to provide the entertainment under a licence issued to someone who has no control over the mode and manner of the management and operation of the discotheque`. In our view, the Act and the Rules could not envisage `accountability` of the licensee to a third party.

17 `Accountability` and `control` in the sense referred to by the learned judicial commissioner are matters of contract between the licensee and the person, be he another natural person or a corporation or firm, engaged by the licensee to provide or `supply` (per Chan Sek Keong J [as he then was] in ***JB Jeyaretnam v PP*** 1 at p 132, col 1 at F) the public entertainment for which the licence is issued to the licensee. Such `accountability` and `control` is outside the purview of the Act and the Rules.

18 Adopting the interpretation we have given to s 3 of the Act and r 5 of the Rules, it could not be said, in our judgment, that the agreement is illegal. Clearly a licence was issued for the operation of a discotheque at the premises of Amara Hotel. The licence was held by Teo as the representative of Amara Hotel. By the terms of the agreement, Nova, as the agents of Amara Hotel, were engaged to operate the discotheque. There was no transference or lending of the licence to Nova. It is clear that under the Act the public entertainment can be provided by the licensee or by someone engaged by him for that purpose (see Chan Sek Keong J in ***JB Jeyaretnam v PP*** 1). There was no circumvention of s 3 of the Act or r 5 of the Rules or a breach of either of them. The public

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entertainment, namely, the discotheque provided by Nova at the premises of Amara Hotel as the agents of Amara Hotel, was covered by the licence issued to Teo as the representative of Amara Hotel.

19 It was for these reasons that we allowed this appeal. In our judgment, the agreement was not illegal. It was clearly enforceable between the parties.

20 ***Appeal dismissed.***

Karthigesu JA
L P Thean JA
Yong Pung How CJ

Lim Chor Pee and John Looi Teh Sung (Chor Pee & Co) for the appellants
James L Ponniah (Wong & Lim) for the respondents

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