

Flagship Agencies Pte Ltd (formerly known as Adena Trading & Engineering Pte Ltd) v BBQ Express Pte Ltd (formerly known as Meadowbake Delicatessen Pte Ltd)
[2001] SGHC 218

Case Number : DCA 600005/2001
Decision Date : 13 August 2001
Tribunal/Court : High Court
Coram : Choo Han Teck JC
Counsel Name(s) : Zaheer K Merchant and Sadique Marican [Madhavan Parnership] for Flagship Agencies Pte Ltd; Ling Tien Wah [Helen Yeo & Partners] for BBQ Express Pte Ltd
Parties : Flagship Agencies Pte Ltd (formerly known as Adena Trading & Engineering Pte Ltd) — BBQ Express Pte Ltd (formerly known as Meadowbake Delicatessen Pte Ltd)

JUDGMENT:

Grounds of Decision

1. These two appeals arose from the trial in District Court Suit No. 50401 of 1999 in which the plaintiff sued the defendant for the refund of various sums of money paid pursuant to a franchise agreement. The plaintiff averred that they had an option to withdraw (without penalty) from the agreement within three months. This was disputed by the defendant. The trial judge find in favour of the defendant. The plaintiff appealed, contending that the franchise agreement (both sides agreed that it was an oral contract) clearly provided an opt-out clause. In the course of counsel's submission, it became obvious that this appeal concerned a plain question of fact and one which hinged on the acceptance of the witnesses' testimonies. Counsel also sought to pull his case through by his argument that I should infer from the testimonies, and the unsigned franchise agreement, that the plaintiff's version must be true. I am unable to agree without the benefit of hearing the witnesses myself. I, therefore, am not satisfied that there was a clear error in the finding by the trial judge. The plaintiff's appeal is therefore dismissed.

2. I now turn to the defendant's appeal. The appeal was on the grounds that the trial judge erred in not granting various items of loss, and also that she erred in not giving effect to an express term of the contract (cl 24(1)) that the defendant purchase equipment from the plaintiff at their book value or fair market price whichever is lower.

3. Mr. Merchant on behalf of the plaintiff argued that the defendant did not particularize their damage in the counterclaim and cannot therefore be granted any orders in respect of the items claimed by them. Mr. Ling in reply argued that general damages require no particulars.

4. However, it seems to me that the items claimed by the defendant, namely, balance of renovation costs, reinstatement costs of the premises, monthly losses from the operation of the franchised outlet, and loss of royalties are special damages and ought to be pleaded. In *Perestrello v United Paint Co Ltd* [1969] 3 AER 479, 485 Lord Donovan held that damages which are capable of substantially exact calculation are what is commonly referred to as special damages. He stated that these are "no more than an example of damage which is 'special' in the sense that fairness to the defendant requires that it be pleaded". It is not unusual that the quantum of damages is to be ascertained at a later date after the court has ruled on the question of liability. But parties must appear at trial ready to argue both. It will not be fair to the defendant, therefore, if no particulars are pleaded for him to meet. In the present case, however, notwithstanding the lack of particulars, the plaintiff contested each of the defendant's counterclaim on merit at trial and, therefore, I am of the

view that no interference by me is warranted on appeal. The findings of the trial judge were again, findings of fact and I have no cause to upset any of those findings.

5. As to whether the judge was wrong to order "a straight line depreciation method over five years" to be used in calculating the cost of the one item she granted. The trial judge was not wrong to order a valuation under cl 24(1) of the unsigned franchise agreement having found as a fact that that was incorporated as a term of the contract. However, I am of the view that the order should be varied for clarity's sake by deleting the above sentence from the orders. Apart from this, the defendant's appeal is dismissed.

6. Each party is to bear his own costs.

Sgd:

Choo Han Teck
Judicial Commissioner

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