

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2023] SGHC 138

Originating Claim No 466 of 2022 (Summons No 926 of 2023)

Between

Tiger Pictures Entertainment
Ltd

... Claimant

And

Encore Films Pte Ltd

... Defendant

And Between

Encore Films Pte Ltd

... Claimant in Counterclaim

And

Tiger Pictures Entertainment
Ltd

... Defendant in Counterclaim

FOUNDATIONS OF DECISION

[Intellectual Property — Copyright — Simplified process]

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Tiger Pictures Entertainment Ltd

v

Encore Films Pte Ltd

[2023] SGHC 138

General Division of the High Court — Originating Claim No 466 of 2022
(Summons No 926 of 2023)

Dedar Singh Gill J

21 April 2023

15 May 2023

Dedar Singh Gill J:

1 Summons No 926 of 2023 (“SUM 926”) concerned an application by the defendant, Encore Films Pte Ltd, for an order that the simplified process under Part 2 of the Supreme Court of Judicature (Intellectual Property) Rules 2022 (“the SCJ(IP)R”) does not apply to Originating Claim No 466 of 2022 (“OC 466”) brought by the claimant, Tiger Pictures Entertainment Ltd. I dismissed this application on 21 April 2023. As this is the first case which invokes the simplified process, I provide the full grounds to explain my decision.

Background facts

The parties

2 The claimant is a company incorporated in the People’s Republic of China. It is engaged in the business of selling and distributing films around the world.¹ The company is led by its President, Mr Yang Gang (also known as Mr Owen Young). It does not have any business presence or assets within Singapore.²

3 The defendant, on the other hand, is a Singapore company involved in the distribution of films in Singapore and other countries in Southeast Asia.³ It was founded in 2004 by Ms Joyce Lee, who remains the managing director of the defendant.⁴

The relationship of the parties prior to the dispute in OC 466

4 The commercial relationship between the parties began as early as 2021. At that time, the claimant was the exclusive licensee in respect of the distribution rights, the reproduction rights and the publicity rights (“the relevant rights”) to a Chinese movie titled “Hi! Mom”.⁵ These rights were granted to the claimant by the owner of the copyright in “Hi! Mom”, a Chinese company known as Beijing Jingxi Culture & Tourism Co Ltd (“Beijing Jingxi”).

¹ Claimant’s Written Submissions in HC/SUM 926/2023 dated 17 April 2023 (“CWS”) at para 5.

² Defendant’s Written Submissions in HC/SUM 926/2023 dated 17 April 2023 (“DWS”) at para 2.

³ DWS at para 3.

⁴ Affidavit of Lee Huei Hsien dated 31 March 2023 (“Lee’s Affidavit”) at paras 4 and 6.

⁵ CWS at para 28.

Thereafter, the claimant granted an exclusive licence to its related entity in Hong Kong, also known as Tiger Pictures Entertainment Ltd (“HK Tiger”), on materially similar terms.

5 HK Tiger then licensed the rights to “Hi! Mom” to a related entity of the defendant known as Passion Entertainment Ltd (“Passion”).⁶ This sub-licence was from March 2021 to March 2031.⁷ In turn, Passion sub-licensed the distribution rights to “Hi! Mom” to the defendant, who released the film in Singapore and Malaysia. According to the defendant, HK Tiger was fully paid all royalties which were due and no issues arose with the distribution of “Hi! Mom”.⁸

The background to the dispute in OC 466

6 The dispute in OC 466 revolves around the rights to a top-grossing Chinese film titled “Moon Man”. The owner of the copyright in “Moon Man” is a Chinese company known as Kaixin Mahua (“Kaixin”). Kaixin entered into a licence agreement with the claimant on 19 August 2022. This rendered the claimant the exclusive licensee in respect of the relevant rights to “Moon Man” in all jurisdictions worldwide except for the People’s Republic of China and the Republic of Korea.⁹ The arrangement was set to last from August 2022 to August 2033. According to the claimant, it granted HK Tiger an exclusive licence in respect of the relevant rights to “Moon Man”. This was purportedly

⁶ Lee’s Affidavit at para 8.

⁷ CWS at para 29.

⁸ Lee’s Affidavit at para 8.

⁹ CWS at para 8.

done on terms which were materially similar to those in the claimant’s licence agreement with Kaixin.¹⁰

7 On or around 18 August 2022, Mr Young contacted Ms Lee on the social media platform, WeChat, to discuss the possibility of entering into a distribution agreement in respect of “Moon Man” in Singapore.¹¹ Ms Lee and Mr Young began negotiating the basic terms for the distribution of “Moon Man” over the following two days through WeChat and e-mail.¹²

8 On or around 22 August 2022, the claimant and HK Tiger provided the defendant with a download link to the encrypted digital cinema package for “Moon Man” as well as the distribution key delivery message (“the DKDM”) to decrypt the package files. This was done for the defendant to seek regulatory approval for the distribution of “Moon Man” in Singapore.¹³

9 On 31 August 2022, the defendant sent the first draft of the distribution agreement for “Moon Man” to the claimant and HK Tiger through e-mail.¹⁴ The agreement stipulated that Passion would be the distributor and that it would be granted “cinematic theatrical, non-theatrical and public video rights” in respect of “Moon Man” in Singapore from 31 August 2022 to 31 December 2022.¹⁵

10 The claimant and HK Tiger were, however, unable to accept the terms of this distribution agreement, in particular the defendant’s proposal for Passion

¹⁰ CWS at para 10.

¹¹ DWS at para 7.

¹² DWS at para 8; Lee’s Affidavit at para 12.

¹³ CWS at para 12; Lee’s Affidavit at para 14.

¹⁴ DWS at para 12.

¹⁵ CWS at para 13(2).

to be the distributor of the film. As such, they sent two revised drafts of the distribution agreement to the defendant on 1 and 7 September 2022. These drafts contained, *inter alia*, the claimant’s counter-proposal for the defendant to act as a guarantor for Passion.

11 On 8 September 2022, the defendant informed the claimant and HK Tiger through e-mail that “sneak” sessions for “Moon Man” had been planned from 9 to 11 September 2022 in Singapore. It also took the position that the parties had already entered into a binding distribution agreement. In reply, the claimant and HK Tiger disputed that an agreement had been reached and cautioned the defendant against proceeding with the “sneak” sessions. They also, through their lawyers, demanded that the defendant cease any exhibition or exploitation of the film until a written agreement was entered into. Subsequently, however, HK Tiger decided to grant the defendant the rights to organise and exhibit “Moon Man” solely for the purposes of the “sneak” sessions in Singapore.¹⁶

12 While further drafts of the distribution agreement were exchanged between the parties after 8 September 2022, the parties were unable to reach an agreement on key terms. As such, no written agreement was executed. In the meantime, the defendant contacted Kaixin to ascertain if Kaixin consented to the release of “Moon Man” in Singapore. In response, Kaixin allegedly agreed to the release of the film in Singapore.¹⁷

13 On 13 September 2022, the defendant informed the claimant’s lawyers that if they did not hear from them by 5pm that day, the defendant would assume

¹⁶ CWS at pp 5-6.

¹⁷ Lee’s Affidavit at para 24.

that they had no objections to the theatrical release of “Moon Man” on 15 September 2022.¹⁸ The claimant’s lawyers insisted, however, that no distribution agreement had been entered into between the parties. Nevertheless, the defendant’s lawyers stated in reply that a contract *had* been formed and that the defendant would release “Moon Man” for general screening in Singapore on 15 September 2022. This the defendant proceeded to do.¹⁹

14 On 16 December 2022, the claimant, as the exclusive licensee, commenced OC 466 claiming that the defendant had infringed its copyright in “Moon Man” by authorising third parties to cause the visual images and sounds of “Moon Man” to be seen and heard in public, by communicating “Moon Man” to the public, by making copies of “Moon Man” and/or authorising third parties to make copies of “Moon Man”.²⁰ The claimant took the position that all correspondence between the parties only constituted negotiations which were subject to and conditional upon the subsequent execution of a written agreement. Such an agreement never came to pass because parties were unable to agree on key terms.

15 On the other hand, the defendant’s position was that it did not infringe the copyright in “Moon Man” because Mr Young and Ms Lee had already entered into an agreement for the distribution of “Moon Man” in Singapore through their correspondence over WeChat and e-mail.²¹ The defendant also raised two counterclaims against the claimant:

¹⁸ CWS at para 21.

¹⁹ Lee’s Affidavit at para 25.

²⁰ Statement of Claim dated 16 December 2022 (“SOC”) at pp 6-8.

²¹ Lee’s Affidavit at para 12.

(a) that the claimant had made groundless threats against the defendant in breach of s 499 of the Copyright Act 2021;²² and

(b) that the claimant or HK Tiger had infringed the defendant’s copyright as the exclusive licensee of “Hi! Mom” by granting licences to the embassy of the People’s Republic of China to screen “Hi! Mom” in Singapore and Malaysia.²³

The parties’ cases in SUM 926

16 On 19 December 2022, the claimant filed a form electing for Part 2 of the SCJ(IP)R to apply and a form abandoning any claim for monetary relief in excess of \$500,000. This triggered the application of the simplified process in Part 2 of the SCJ(IP)R pursuant to r 5(1). The defendant took the view that the simplified process should not apply to OC 466 and filed SUM 926 on 21 April 2023.

17 According to the defendant, OC 466 involves factual issues which require a fact and context-sensitive inquiry.²⁴ The defendant argued that two of the five witnesses at the trial would likely be testifying in Mandarin via video-link from China. Such evidence would require interpretation.²⁵ It was also of the opinion that the witnesses would need to testify on a wide range of factual

²² Defence and Counterclaim dated 6 January 2023 (“Defence and Counterclaim”) at para 25.

²³ Defence and Counterclaim at para 28; Lee’s Affidavit at para 27.

²⁴ DWS at para 25.

²⁵ DWS at para 32.

issues.²⁶ It therefore submitted that the trial would realistically require four days.²⁷

18 Conversely, the claimant insisted that the simplified process should apply to OC 466. It submitted that the conditions set out in r 4(1) of the SCJ(IP)R, which determine whether an originating claim is suitable for resolution under the simplified process, were made out. Specifically, the subject matter in OC 466 is not particularly complex, the estimated length of trial is unlikely to exceed two days and the quantum in OC 466 would mean that it would not be cost effective for the claim to be heard otherwise than under the simplified process.²⁸

Whether OC 466 was a suitable case for determination under the simplified process

19 The primary issue in this application was thus whether OC 466 was a suitable case for determination under the simplified process in Part 2 of the SCJ(IP)R. This turned on whether the conditions set out in r 4(1) of the SCJ(IP)R were made out. Before I address the applicability of these conditions to the present facts, I pause to consider the origins of the simplified process and how it could come into play for certain intellectual property claims.

The history and objective of the simplified process

20 In 2015, the Ministry of Law appointed a committee (“the Committee”) to review the intellectual property dispute resolution system in Singapore in a bid to make this system more accessible, in particular for parties with fewer

²⁶ DWS at para 30.

²⁷ DWS at para 34.

²⁸ CWS at paras 37-42.

resources such as small and medium enterprises (“SMEs”). Having reviewed the intellectual property dispute resolution systems in other major jurisdictions, the Committee recommended, among other things, the establishment of a dual-track intellectual property division within the High Court. This would comprise a “normal track” and a “fast track”. According to a final report published by the Committee, cases on the “normal track” would proceed with the rigour of a full trial, whilst cases on the “fast track” would prioritise speed and cost-proportionality: see *Final Report: Review of Singapore’s IP Dispute Resolution Framework* (20 July 2016) (Chairperson: George Wei J) (“the Final Report”) at para 2.3.3. This meant that cases on the “fast track” would be subject to more rigorous court control, with stricter limitations on the length of proceedings and caps on the costs and damages recoverable.

21 These proposed reforms to Singapore’s intellectual property dispute resolution system were made the subject of a public consultation held by the Ministry of Law in 2018. These reforms were well-received. The feedback received from practitioners revealed that intellectual property litigation tended to be more expensive than other forms of litigation, given its specialised and highly technical nature. This meant that the option of litigation could well remain out of reach for certain (smaller) enterprises which might need to turn to the courts to protect their intellectual property rights.

22 These ideas regarding the “fast track” eventually took the form of the simplified process in Part 2 of the SCJ(IP)R, which came into force on 1 April 2022. Cases which are found suitable for resolution under the simplified process will receive all directions, as far as practicable, at a single case conference and be subject to fixed and capped costs. The rationale behind the simplified process has not changed since its conception in 2015. It is to ensure that “parties may continue to access the courts in a cost-effective and expeditious manner”, which

“will be especially useful for less well-resourced parties such as individuals and SMEs, who may otherwise be unable to enforce their valid [intellectual property] rights”: see *Singapore Parliamentary Debates, Official Report* (5 August 2019) vol 94 (Mr Edwin Tong Chun Fai, Senior Minister of State for Law).

23 It should be noted that the simplified process bears much similarity with the function of the Intellectual Property Enterprise Court (“the IPEC”) in the UK. As observed by the Committee in the Final Report, the IPEC is a specialised court within the Chancery Division of the High Court of England and Wales. It imposes limits on costs, damages and the length of proceedings, and ensures that cases benefit from early and active case management. Pertinently, the IPEC also takes into account similar factors in deciding if a case should be transferred to or from the IPEC: see *77M Limited v Ordnance Survey Limited and others* [2017] EWHC 1501 (IPEC) at [1]–[3] citing the UK Civil Procedure Rules, Practice Direction 30 at paras 9.1 and 9.2.

The applicability of the simplified process

24 The simplified process under Part 2 of the SCJ(IP)R may be triggered in one of two ways. The first is set out in r 5 of the SCJ(IP)R. This rule states that a claimant may trigger the application of the simplified process by filing and serving a form electing for the application of Part 2 and a form to abandon any claim for monetary relief in excess of \$500,000. Once these forms have been filed, a defendant who intends to make a counterclaim must respond in one of the ways set out in r 5(2) to indicate whether it agrees or disagrees to the application of the simplified process. In any case, despite the election by the claimant for the simplified process to apply, the court may make an order otherwise. In deciding whether to do so, the court must invariably consider the

factors listed in r 4 of the SCJ(IP)R which determine the suitability of a case for the simplified process.

25 The second way to trigger the simplified process is set out in r 6(2) of the SCJ(IP)R. This rule provides that the court may, on its own motion or on the application of a party, order a case to be resolved pursuant to the simplified process. It follows that the court should only make such an order when the relevant conditions under r 4(1) are satisfied. Given that claimants may unilaterally trigger the application of the simplified process through the first method above, it is more likely that defendants will be the primary parties availing themselves of the process in r 6(2) of the SCJ(IP)R.

Application to the present case

26 The claimant in this case invoked the simplified process by serving the relevant forms stipulated in r 5(1). The defendant then made the present application for an order that the simplified process does not apply to OC 466. As mentioned above, the court will assess the suitability of a case for the simplified process pursuant to the conditions listed in r 4(1). This rule lists three cumulative conditions which must be fulfilled:

- (a) the dispute must involve an intellectual property right;
- (b) the monetary relief claimed by each party (whether in relation to an intellectual property right or otherwise) in the action does not or is not likely to exceed \$500,000 *or* all parties agree to the application of Part 2; and
- (c) the suitability of the case for the simplified process having regard to the following factors:

- (i) whether a party can only afford to bring or defend the claim under the simplified process;
- (ii) the complexity of the issues;
- (iii) whether the estimated length of the trial is likely to exceed two days; and
- (iv) any other relevant matter.

Having applied my mind to these conditions, I took the view that OC 466 was, indeed, a suitable case. I shall address each of the three cumulative conditions in r 4(1) in turn.

27 First, OC 466 involves an intellectual property right, as it is a claim for copyright infringement brought by the claimant against the defendant. The first condition was thus fulfilled.

28 Second, while the defendant disagreed as to the applicability of the simplified process to OC 466, I was satisfied that the monetary relief claimed by each party in the action would not or was not likely to exceed \$500,000. On the claimant's end, it had filed and served the form to abandon any claim for monetary relief above \$500,000. On the defendant's end, I found that it was not likely that the monetary relief claimed for the counterclaims would exceed \$500,000 as the defendant had failed to particularise its purported losses.

29 In any case, I took the view that the defendant had no standing to bring its second counterclaim regarding the alleged infringement of copyright in "Hi! Mom". This was because the defendant was not an exclusive licensee within the meaning of s 103 of the Copyright Act 2021. Under this provision, an exclusive licence is a licence granted "by the *owner or prospective owner of the*

copyright” [emphasis added] authorising the licensee, to the exclusion of any other person, to do an act that the copyright owner would have the exclusive right to do. Here, the defendant was not an “exclusive licensee” as it had obtained its licence from Passion, which had in turn obtained its licence from HK Tiger, the original exclusive licensee.²⁹ It therefore followed that the defendant did not possess the standing conferred on exclusive licensees by the Copyright Act 2021 to bring an action against infringers: see s 153(1)(b) of the Copyright Act 2021; *Alliance Entertainment Singapore Pte Ltd v Sim Kay Teck and another* [2007] 2 SLR(R) 869 at [48].

30 For the defendant’s first counterclaim pertaining to the making of groundless threats, there was no indication that any loss had been sustained as a result of these threats. In fact, given that the defendant had proceeded to screen “Moon Man” in Singapore *as originally scheduled*,³⁰ it was clear that these threats did not cause the defendant to change its conduct or suffer loss in any way. The second condition was therefore satisfied.

31 Third, I found OC 466 suitable for the simplified process having regard to the relevant factors listed in r 4(1)(c) of the SCJ(IP)R. The analysis under the third condition necessitates a consideration of all the factors in totality. In particular, the court should, in my view, place greater emphasis on the factors which are expressly highlighted in rr 4(1)(c)(i) to 4(1)(c)(iii). On the first factor set out in r 4(1)(c)(i), the fact that a party can only afford to bring or defend a claim under the simplified process will very much favour the application of the simplified process. The converse, however, is not true – the mere fact that one or both parties can afford to litigate a claim through the normal route does not

²⁹ Defence and Counterclaim at pp 5-6.

³⁰ Lee’s Affidavit at para 25.

necessarily mean that the simplified process should *not* apply: see Angela Fox, *Intellectual Property Enterprise Court: Practice and Procedure* (Sweet & Maxwell, 3rd Ed, 2021) at para 3-005. In any event, most cases will likely turn on the two related factors set out in rr 4(1)(c)(ii) and 4(1)(c)(iii) – the complexity of the issues and the estimated length of the trial. If either of these factors points away from the suitability of a case for the simplified process, that should be a strong indication that such a case is indeed unsuitable. On the present facts, three interconnected factors were at play – the complexity of the issues, the estimated length of the trial and the quantum of the parties’ claims.

32 The issues in OC 466 are neither legally nor factually complex. The claimant’s case turns on a single question: whether there is a legally binding agreement between the claimant and the defendant which permitted the defendant to distribute “Moon Man” in Singapore. The facts which affect the court’s determination of this question are limited to the communications between Mr Young and Ms Lee, which are largely confined to the relevant WeChat messages and e-mails. On the other hand, the defendant’s counterclaims, as noted at [28]–[30] above, bore no merit.

33 The estimated length of the trial for OC 466 would also not exceed two days. This issue formed the main bone of contention between the parties. The claimant stated that it intended to call Mr Young as its sole witness and that Mr Young was willing to travel to Singapore to attend the trial in person.³¹ The defendant indicated its intention to call four witnesses – Ms Lee, Ms Shelin Ng (who is an employee of Passion), a representative from Kaixin and an expert witness. According to the defendant, at least four days were required for trial given that there was a need for interpretation for Mr Young and Kaixin’s

³¹ CWS at para 39(1).

representative, which would require additional time. Ms Lee, Ms Ng and the expert witness would also be required to testify on a wide range of factual issues. I disagreed with the defendant's contentions.

34 I indicated at the hearing that I was not inclined to permit the defendant to call its expert witness. The defendant argued that this witness, who was a third party experienced in the relevant trade custom, could testify that the sharing of the DKDM indicated that the licensor had already agreed for the relevant content to be distributed. I did not think that such testimony would be helpful in resolving the central legal question in this case. The existence of a trade custom pertaining to acts which are typically done *after* a particular type of contract has been entered into cannot be determinative of whether parties had indeed entered into such a contract in a specific case. To hold otherwise would be to fall victim to a logical fallacy. More importantly, it was clear that parties were still in the process of negotiating the key terms of a potential agreement at the point that the DKDM was sent to the defendant. This was evident from the fact that drafts of the distribution agreement were still being exchanged between the parties. I was therefore of the opinion that such expert evidence would not contribute to the central issue here. In any case, even if I was minded to allow the expert witness, the narrow point which he was called for was unlikely to take a substantial amount of time.

35 I was also not persuaded that the cross-examination of the remaining four witnesses would last more than two days. Mr Young was prepared to travel to Singapore to testify, thereby eliminating delays caused by the giving of evidence through video-link. The cross-examination of Ms Lee and Ms Ng would unlikely be lengthy as nearly all communications between Mr Young and

Ms Lee took place over WeChat text messages and e-mails.³² The defendant had also failed, in its submissions and in Ms Lee’s affidavit, to explain the relevance of Ms Ng’s testimony, given that the negotiations were primarily between Mr Young and Ms Lee. Similarly, Kaixin’s representative would only give evidence on the narrow point of whether Kaixin consented to the screening of “Moon Man” in Singapore or not.

36 Finally, I took the view that the quantum of the claimant’s claim in this case rendered it a suitable case for the simplified process. The claimant asserted that the total gross box office revenue for “Moon Man”, which the defendant reaped as a result of its infringing acts, amounted to at least \$153,905.54.³³ The claimant’s damages are likely to be less than this sum. To my mind, the claimant’s legal fees and the time it expends on this matter would be disproportionate to the value of its claim if OC 466 was not heard on the simplified process. In general, the lower the quantum of the claims involved, the more likely a case will be suitable for the simplified process.

37 Taking these factors in totality, I had no doubt that this was an appropriate case to be heard under the simplified process. As all three cumulative conditions in r 4(1) were fulfilled, I declined to make an order that the simplified process did not apply to OC 466. In other words, the case would proceed under Part 2 of the SCJ(IP)R.

Conclusion

38 It bears repeating that the ultimate purpose behind the simplified process is to increase access to justice by ensuring that costs and time spent are kept

³² CWS at para 39(2)(a).

³³ CWS at para 42.

proportionate to the complexity and value of a claim. This ensures that the resources of the judiciary and the parties are appropriately allocated. It also encourages intellectual property right holders to defend their intellectual property rights without the attendant fear of facing a long-drawn trial and a disproportionately large sum of costs (especially in the event they lose). In my view, the courts play a crucial role in facilitating this process. This involves actively identifying and moving suitable cases under the simplified process. To this end, I emphasise that parties should not be allowed to hold the courts hostage by insisting on dragging a relatively simple matter through the normal route. The courts should therefore be assiduous in examining and, necessarily, estimating the means of the parties, the complexity of the parties' respective claims and the time required for their resolution, even at an early stage of proceedings.

39 Finally, as I allowed OC 466 to proceed under the simplified process, I made no order for costs at this stage of the proceedings pursuant to r 9(2) of the SCJ(IP)R.

Dedar Singh Gill
Judge of the High Court

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