

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1991] SGHC 4

Suit 2529/1986

Between

Ting Peng Yew

... Plaintiff

And

Singapore Envelopes Co Pte
Ltd

... Defendant

GROUND OF DECISION

Copyright — Infringement

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Ting Peng Yew v Singapore Envelopes Co Pte Ltd

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Suit 2529/1986
Goh Joon Seng J
07 January 1991

1 Cur Adv Vult

2 The plaintiff is an artist and is the author of 12 pieces of artistic metal sculpture known as `metalsculp`.

3 The defendant is a company dealing in envelopes. They received 350 pieces of table calendars for the year 1986 which contained reproductions of the plaintiff's said works. The calendars were distributed free by the defendant to its customers.

4 When the unauthorized reproductions came to the knowledge of the plaintiff, the plaintiff commenced proceedings on 27 March 1986 claiming damages and loss. For loss of licence fee, the plaintiff claimed a sum of \$124,180 being twice the price at which the metalin question were offered for sale (but none was sold) at an exhibition in Australia. Interlocutory judgment was entered against the defendant by the registrar on 9 January 1987. The defendant's appeal against the said interlocutory judgment was dismissed by Mr Justice Lai Kew Chai in chambers on 6 August 1987. The learned judge ordered, inter alia, `that the defendant do pay to the plaintiff damages to be assessed by

the registrar for infringement of the plaintiff's copyrights in all the 12 artistic works. The claim then came before the registrar for assessment. On 11 March 1989, the learned registrar assessed damages in respect of licence fee at \$62,385 and interest at 6% pa from 27 March 1986. The defendant thereupon appealed on 13 March 1989 against the said assessment. The plaintiff cross-appealed against the assessment of the value of the works at \$41,590 and also contended that the award based on one and a half times thereof was low. He further appealed against the refusal of the learned registrar to make any award for injury to the reputation of the plaintiff.

5 In the statement of claim, the respective prices of the artistic works infringed are listed as follows:

Artwork Price

(1) *Vision* \$4,200

(2) Chinese Heritage II (Geomancy) 5,250

(3) The Force 1,800

(4) Waves II 1,020

(5) Moonlight 25,000

(6) Nirvana 1,600

(7) Life's Harvest 6,000

(8) Kelong II 2,640

(9) Chinese Heritage I (the 8 trigram) 5,250

(10) Horizon 3,750

(11) Time Zone 4,200

(12) Summer 2,700

Total 62,090

6 These prices were based on the prices offered for the sale of these artworks (except for Nirvana and Moonlight) at an exhibition in Australia converted at an exchange rate of A\$1 to S\$1.50. As stated earlier none of these artworks, the subject matter of the infringement, was sold at the exhibition in Perth, Australia in November 1985. Many were however sold in Singapore at prices well below that of the prices posted at the exhibition. I append below the actual prices at which a number of these works were sold by the plaintiff by way of replicas and prints at or close to the time of the infringement.

7 For replicas:

Artwork Price at which it was sold

- (1) The Force \$1,440 (see PB14)
- (2) Waves II \$660 (see PYT3 & N/E p 24)
- (3) Nirvana \$1,600 less 30% (see PB15)
- (4) Kelong II \$1,800 less 30% (see PB15)
- (5) Chinese Heritage I \$1,190 (see PYT7).
- (The 8 trigram) Sold as original
- (6) Summer (See PYT7. Sold as original.) \$1,050

8 For prints:

Artwork Price at which it was sold

- (1) Vision 50 pieces were sold for \$15 each and 1 piece sold for \$55 (see PYT8)
- (2) Moonlight 50 pieces at \$11 per piece (see PYT8)
- (3) Life's Harvest 1 piece at \$120 complete with frame and 50 pieces at \$15 per piece without frame (see PYT8)
- (4) Time Zone 50 pieces at \$15 each (see PTY8)

9 On the `Moonlight` for which no price had been posted at the Australian exhibition as the same was stated to be `not for sale`, the plaintiff values it at \$25,000. Up to the time of the appeal before me, there is no evidence that it had been sold. This was the plaintiff's first piece of work in 1978 (see p 4 of the notes of evidence). In my view this valuation at \$25,000 reflects more the sentimental value attached to it by the plaintiff rather than its intrinsic value to a buyer. On `Horizon` there is also no evidence of actual sale. On `Chinese Heritage II (Geomancy)` there is no evidence of sale. It was valued by the plaintiff at \$5,250, that is at the same price as `Chinese Heritage I` which was sold for only \$1,190.

10 Based on the actual sales of some of the artworks in Singapore listed above and on the plaintiff's own comparative pricing, I assess the value of the 12 artworks at \$15,000.

11 The plaintiff is claiming for loss of licence fee at twice the value of the artworks infringed. The plaintiff has offered to grant licences to use his artworks at one and a half times the price of the works. See PB21 at which he agreed to a licence for \$1,275 for a painting priced at \$850. The same rate of one and a half times also appeared in PB22 in which he offered a licence fee of \$12,900 for six pieces of water colour paintings priced for a total of \$8,600. The reason for the plaintiff's claim for licence fee at twice the price appears at pp 4-5 of the notes of evidence:

Quotation of \$2.75 per copy as royalty and requested for S\$1.275 per image for copyright fees.

Second proposal. Painting cost \$850 per piece.

In proposal 1, I asked for \$1,275 per image and that the value of artwork was \$850. Therefore licence fee is only one and half times in 1985.

The reason why I am asking for double the value now is because this is a water-colour painting but the art form in the calendars are of a different kind, ie made of copper and metal.

Refer to p 21 PB.

The reason why there is no maximum limit if the original is purchased which something which I cannot remember.

Refer to p 20 PB.

I am asking for royalty of \$2.75 per copy. The calendars referred to are table calendars.

Refer to p 22 PB.

Bon Voyage's letter to Art Offices dated 3 January 1986. We were approached by Art Offices for a quotation.

The total amounts to \$1,600 + \$7,000 = \$8,600 and licence fees of \$12,900.

Licence fee is one and a half times the value of the artworks.

12 Bearing in mind that only 350 copies of calendars are involved, a licence fee of one and a half times the value is more than reasonable. I see no reason why the rate should be any different due to the different art form. I therefore allow the defendant's appeal and award the plaintiff the sum of \$22,500 by way of loss of licence fee. This sum is to carry interest at 6% pa from the date of filing of the writ.

13 I dismiss the plaintiff's cross-appeals. The defendant is awarded costs of the appeal.

14 ***Appeal allowed; cross-appeals dismissed .***

Goh Joon Seng J

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Lok Vi Ming (Rodyk & Davidson) for the plaintiff
Tan Hin Tat (Sim Hill Tan & Wong) for the defendant
