IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1992] SGHC 330

Suit 1587/1991

Between

Nova Management Pte Ltd

… *Plaintiff*

And

Amara Hotel Properties Pte Ltd
Another

… *Defendant*

GROUNDS OF DECISION

Civil Procedure — Costs; Contract — Illegality and public policy

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

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

[1992] SGHC 330

Suit 1587/1991
G P Selvam JC
24 December 1992

1 The question before me was: Whether an agreement for the management of a discotheque by the plaintiffs was illegal and therefore void ab initio and/or unenforceable. The operation of a discotheque requires a licence under the Public Entertainments Act (Cap 257) (`the Act`) and the rules made under the Act - the Public Entertainments Rules 1969 (`the Rules`).

2 The answer to the question has implications beyond this case because the answer will apply to a number of other statutes requiring the licencing of business which they regulate.

3 **The management agreement**

4 The first defendants own a building where they run the Amara Hotel. The building is situated at 165 Tanjong Pagar Road, Singapore. In addition to the hotel the building includes a shopping complex. The first defendants were desirous of converting the fourth level of the building which was originally designed as a shopping unit into a discotheque. They, however, did not have the know-how to set up and operate a discotheque. The plaintiffs were a member of

a group which possessed extensive experience and reputation in the management of discotheques. So at the request of the first defendants the plaintiffs agreed to convert the premises into a discotheque, and upon completion manage and operate it.

5 The agreement between the plaintiffs and the first defendants was made on 8 July 1988. The base operating term under the agreement was a period of 36 months commencing on the formal opening of the discotheque. Clause 23 of the agreement gave the plaintiffs the right to extend the base operating term for a further term of three years provided certain conditions were satisfied.

6 **The Public Entertainments Act**

7 The Act was enacted to provide for the regulation of public entertainments. Section 3 of the Act provides:

> *No public entertainment shall be provided except -*
>
> (a) in an approved place; and
>
> (b) in accordance with a [public entertainment] licence issued by the Licensing Officer.

8 Under s 18, any person who provides or assists in providing any public entertainment without a licence under the Act or in contravention of any condition of a licence or the Act or any rules made thereunder commits an offence punishable by a fine of up to $5,000. A licence issued under the Act has a maximum life span of 12 months. It is not renewable as of right. The licence in effect is a suitability certificate for the provider of public entertainment to operate a discotheque. And therefore the licence holder is personally responsible for the observance of the conditions of a licence. For this reason the licence is

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issued only to a natural person irrespective of whether the application for it was made by a natural person or by a company or a firm which provides the public entertainment.

9 Rule 5 of the Rules says: `No licensee shall transfer or lend his licence to any other person.`

10 **The first defendants` position under the agreement**

11 By the terms of the agreement the first defendants were required `to obtain the unconditional approval of the relevant authority for change of use of premises from shop to discotheque`. This of course was for the start-up of the discotheque.

12 When the discotheque was set up and ready for operation, the first defendants became `responsible for applying for and obtaining the licence and maintaining it throughout the duration of the operating term`. The first defendants were required to adduce proof to the plaintiffs that they had obtained the licence to operate the discotheque and to sell alcoholic liquor for consumption in the discotheque up to 3am daily. The cost of the licence, however, was to be paid by the plaintiffs.

13 **The plaintiffs` position**

14 The principal duties imposed on the first plaintiffs by the agreement are set out below:

> (a) The plaintiffs, at their own cost and expense, were to operate and manage the discotheque.

> (b) They were to provide and secure for consumption in the discotheque beverage and food. The plaintiffs were given the right to decide the prices.
>
> (c) The plaintiffs were required to employ and pay an adequate staff for the purpose of operating the discotheque to provide the necessary furniture, sound equipment, light fittings and other paraphernalia for use in the discotheque.
>
> (d) The plaintiffs were required to use the premises solely for carrying on the business of a fully licensed discotheque and for all activities in connection with such business.

15 The agreement further provided that subject only to any express limitation contained in the agreement the plaintiffs had control over the management and operation of the discotheque and the provision of the services set out in the agreement. It also said that the plaintiffs, in performing their obligations under the agreement, were to be free from interruption or disturbance and to be able to take any action needed to ensure such freedom. If the operation of the discotheque were interrupted or discontinued as a result of the loss or forfeiture of the licence for any reason whatsoever, the agreement was not terminated but the plaintiffs were entitled to apply for such licence as may be necessary for the operation of the discotheque and the sale of liquor. I shall refer to this as `the cl 9 right`.

16 **The dispute**

17 The plaintiffs set up the discotheque as required by the agreement. It formally opened for business as `Dreams Disco` on 21 December 1988. The plaintiffs operated it. The licence was applied for by the first defendants. The licence holder was a person nominated by the first defendants. At the material time the second defendant, a nominee of the first defendants, was the licence holder.

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18 In June 1991 the second defendant advised the authorities that he had no power to ensure the observance of the terms and conditions of the public entertainment licence he held. The authorities charged him in court and he was convicted and fined. No new licence was applied for and the existing licence was due to expire on 1 August 1991.

19 On 29 July 1991 the plaintiffs commenced this action alleging that the first defendants had terminated or attempted to terminate the agreement and procured the non-renewal of the public entertainment licence by causing the second defendant to refuse to apply for its renewal. Next it was alleged that the first defendants terminated the agreement without a valid ground.

20 Based on the above the plaintiffs claimed reliefs which included a declaration that the notice to terminate the agreement was null and void and an injunction to restrain the first defendants from acting on the notice of termination. The termination issue was not part of the proceedings before me. The plaintiffs further asked for:

> (i) an injunction to restrain the first defendants from writing or communicating with the Public Entertainments Licensing Unit or any matter relating to Dreams Disco without the consent of the plaintiffs; and
>
> (ii) an order that the first defendants do cause the second defendant or any one of its directors to apply for the renewal of the licence.

21 In the statement of claim the plaintiffs restated the cl 9 right but sought no relief based on that provision. Neither did they apply to the authorities for a licence to be issued in their own name. They wanted the defendants to apply for the licence.

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22 On 30 July 1991 the plaintiffs, on their undertaking to indemnify the first defendants against all consequences in respect of the employment of a Mr Jackson Koh as manager of Dreams Disco, obtained an order in the following terms:

> *The second defendant do forthwith withdraw the representations relating to Dreams Disco made through Cooma, Lau & Loh`s letter of 3 June 1991 to the licensing officer and that the first defendant do forthwith before 1 August 1991 apply to the Licensing Officer, Public Entertainment Licensing Unit, CID, for a public entertainment licence up to 3am for Dreams Disco in the name of Jackson Koh, Manager of Dreams Disco (who shall be employed immediately by the first defendant on secondment from the plaintiff and whose salary and employer`s contribution to CPF shall be reimbursed by the plaintiff to the first defendant.*

23 The defendants applied for a licence but it was not granted.

24 A defence was delivered by each of the defendants which was later amended. By the amended defence the first defendants asserted that the provision in the agreement which gave the right to the plaintiffs to apply for the licence was invalid, illegal and unenforceable unless the plaintiffs themselves became operators of the discotheque business. They further alleged that the licence was not renewed because the licensing authority was of the opinion that the second defendant was in breach of r 5. In addition, the first defendants contended that in compliance with the order of court dated 30 July 1991 they applied for a public entertainment licence to be issued to Mr Jackson Koh to operate a discotheque but the licensing authority refused the application. The plaintiffs, the first defendants further alleged, had no right to continue occupation of the premises after the refusal of the application for the licence.

25 The second defendant in his amended defence stated that by reason of the plaintiffs` failure to comply with the conditions of the licence issued to him

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he was prosecuted and convicted. Such failure of the plaintiffs and the plaintiffs` failure to apply for the licence in their own name was the reason for the non-renewal of the licence. Finally he also pleaded that the agreement was illegal and unenforceable.

26 **The decision**

27 The parties then took the matter to arbitration. But the arbitrator expressed the view that the illegality point should be tried as a preliminary issue. The parties agreed. And the matter came before me for the determination of the illegality issue. I tried the issue and decided that the agreement was illegal and unenforceable as it contravened the Act and the Rules. The full reasons for my decision follow.

28 On a true construction of the agreement the plaintiffs 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 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 that 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 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 has 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

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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.

29 Section 3 of the Act and r 5 of the Rules are two sides of the same concept. 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. The person who uses the licence of another commits an offence under the Act. The provision in the agreement that the first defendants `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 content of s 3 of the Act and r 5 of the Rules. The predominant right the plaintiffs asserted and the claim relief they sought was for the first defendants to obtain and maintain a licence for the plaintiffs to exclusively operate the discotheque with no interference from the defendants. The contract was illegal in that it aimed to do something which was prohibited by the Act and the Rules and therefore it is unenforceable in the manner sought by the plaintiffs.

30 The plaintiffs 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 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

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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.

31 The plaintiffs relied on **St John Shipping Corp v Joseph Rank Ltd** [1957] 1 QB 267[1956] 3 All ER 683[1956] 3 WLR 870 In this case shipowners who carried cargo under a bill of lading had overloaded the ship. Overloading was a criminal offence. The cargo, however, was safely carried and delivered but the cargo owners refused to pay the freight on the excess cargo. Devlin J held that the overloading, though unlawful, was not contemplated by the contract in that it could be performed legally. The shipowners were entitled to the freight even though they had performed the contract in an illegal manner. That case has no application to the present case because here the principal aim of the agreement which the plaintiff sought to enforce, namely, for the defendants to procure the licence for the plaintiffs` use clearly transgressed the Act and the Rules.

32 The agreement was drafted without proper understanding of the provisions of the Act and the Rules. But as Blackburn J put it in **Waugh v Morris** [1873] 8 LR QB 202 at p 208: `... where a contract is to do a thing which cannot be performed without a violation of the law it is void, whether the parties knew the law or not`. Here the performance of the provisions of the contract which the plaintiffs sought to enforce would result in the violation of the law. True, the plaintiffs themselves could have applied for a licence to be issued to a person nominated by them by exercising the cl 9 right. They, however, did not do so. Nor did they seek any legal relief under that clause. They sought to enforce those provisions which would inevitably offend the law. It is the duty of the court to decline to enforce a contract which on its face is illegal.

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33 Two Singapore cases, **Raymond Banham & Anor v Consolidated Hotels Ltd** [1976] 1 MLJ 5 decided by Winslow J and **John B Skilling & Ors v Consolidated Hotels Ltd** [1979] 2 MLJ 2 decided by the Court of Appeal, are analogous to the case at hand. In these two cases the defendants entered into agreements with foreign engineers for the provision of professional services in Singapore. Section 18 of the Professional Engineers Act made it an offence for any person to provide services as such unless he was registered as a professional engineer under that Act. Section 19 of the same Act made it an offence for any person to employ as a professional engineer any person who had not been registered under that Act. The plaintiffs in the two cases were not registered under that Act. It was held that the agreement in each case was illegal as it infringed the provisions of ss 18 and 19 of that Act.

34 The true principle in my judgment is neatly stated in Chitty on Contracts ***General Principles*** (26th Ed) para 1248: `Where a statute or statutory instrument prohibits the doing of work otherwise than under a licence, a contract under which unlicensed work is carried out will generally be unenforceable`. It is equally illegal for a party to aid and abet another by agreeing to lend his licence. Applying these principles I held that the agreement was unenforceable by the plaintiffs in these proceedings.

35 **Costs**

36 The decision I made effectively put an end to the entire proceedings. That gave rise to the question of costs of not only the proceedings relating to the determination of the preliminary point of law but also the entire proceedings.

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37 The normal rule is that costs follow the event. In this case it was argued for the plaintiffs that because the decision was based on illegality there should be no order as to costs. The authorities are not very helpful on the point. In two Canadian cases, the successful party who raised the issue of illegality was deprived of costs because he succeeded by setting up the illegality of the contract sued on. See **Ken`s Delivery & Trucking Ltd v Ott** [1940] 3 WWR 418 and **Pelletier v Imperial Oil Ltd** [1941] 3 WWR 739[1941] 4 DLR 732 There is a Singapore decision to the same effect: **Lim Xue Shan & Anor v Ong Kim Cheong** [1990] 3 MLJ 449

38 On the other hand, there are numerous cases where the successful defendant who raised the defence of illegality was awarded costs. These cases do not discuss or set out the principles on which costs were awarded.

39 In my view the successful defendant in principle should not be deprived of his costs merely because he raised the defence of illegality of the contract. The reasons are: first, the issue of costs does not germinate from the illegal contract but the conduct of litigation. The plaintiff who has been told that the contract he seeks to enforce is illegal should not have the benefit of court proceedings without having to pay the costs if he is held to be wrong in raising erroneous contentions. Secondly, the defendant by raising the illegality says that he no longer intends or wants to participate in an illegal contract. He should not be penalized for adopting such an attitude.

40 The defence of illegality, however, was raised at a very late stage by an amendment of the defence. Had it been raised at the outset much costs could have been saved. I therefore hold that the defendants shall be entitled to the costs

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of the proceedings limited to the trial of the point of law. There will be no order as to costs of all other proceedings.

41 **Outcome:**

42 Order accordingly.

G P Selvam JC

Lim Chor Pee (Chor Pee & Co) for the plaintiffs
James Ponniah (Wong & Lim) for the defendants

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