

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1994] SGHC 53

S1631/1991

Between

Merkmal (S) Pte Ltd

... Plaintiff

And

Nagoya Seriaku Co Ltd

... Defendant

GROUND OF DECISION

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Merkmal (S) Pte Ltd v Nagoya Seriaku Co Ltd

[1994] SGHC 53

S1631/1991
Warren Khoo L H J
02 March 1994

1 **Judgment:**

2 Coram : Warren Khoo J

3 C A V

4 J U D G M E N T

5 The plaintiffs are a company started in the latter part of 1989. Its founder and managing director, Mr Naotaro Inoue, had a mixed background of having been employed by a succession of Japanese companies, the more recent ones with trading connections in South East Asia, including Singapore. He had been stationed in Singapore for four years before he quit and started the company. Through this company, apart from engaging in a small way in the import and export business, he also went into what he called business consultancy, consisting of helping Japanese companies interested in exporting Japanese agricultural products to Singapore, and helping Japanese businesses in Singapore in their sales activities. The defendants are a Japanese company with their head office in Nagoya and a branch in Singapore. They were engaged in

the export of agricultural products from Japan to outlets in Singapore and in the sourcing of products and raw materials for their head office in Japan. They commenced business here in May 1990. Their general manager was Mr Akie. I think he was new to Singapore. Mr Okamura was the sales manager. He was certainly new to Singapore. He was here from May 1990 to May 1991, and was replaced by Mr Honobe, who came in March 1991.

6 A few months after the defendant company was set up, in September, Mr Inoue paid a courtesy call on Mr Akie. At that meeting and in subsequent meetings, the subject of promoting the defendants' business was discussed, and Mr Inoue told Mr Akie that he would be able to assist the defendants in expanding their business. According to Mr Inoue, he also told Mr Akie that he would be able to provide the defendants with management consultancy services. This action arose from disputes in regard to the payment for these services. The plaintiffs claim the sum of \$33,652 as balance of what Mr Inoue alleges is owed by the defendants in respect of such services, broken down (verbatim from the statement of claim) as follows:

7 (a) Professional service charge in \$12,500.00 respect of making the business plan at Nagoya Seiraku Singapore Branch

8 (b) Professional service charge in \$18,750.00 respect of making the short term business plan at Nagoya Seiraku Singapore Branch

9 (c) Service charge in respect of \$ 3,465.00 introducing Hisatomo Seafood Supply Pte Ltd

10 (d) Service charge in respect of \$ 1,287.00 introducing Sogo Department Stores (S) Pte Ltd

11 (e) Service charge in respect of \$20,400.00 introducing Spices of the Orient Pte Ltd

12 (f) Cancellation charge of company \$ 1,000.00 brochure

13 (g) Cancellation charge of catalogues \$ 1,250.00 of Coffee bags
_____ \$58,652.00

14 Less deposit paid \$25,000.00 \$33,652.00

15 In regard to item (a), it is not disputed that Mr Inoue prepared what was referred to in evidence as a long-term business plan for the defendants. It was a document consisting of 11 pages in Japanese, outlining a proposed strategy for the company. It was dated 25 December 1990, and was presented to Mr Akie on 3 January.

16 Later, in April 1991, according to Mr Inoue, the defendants asked him to prepare a short-term business plan. Mr Okamura and Mr Honobe gave him their ideas in their own handwriting, and according to Mr Inoue, he incorporated them in the plan which he prepared and presented to the defendants. Mr Okamura, however, says that Mr Inoue did not do anything of the kind. It was he, Okamura, who did the work, based on his ideas and Honobe's. Item (b) of the plaintiffs' claim refers to this short-term plan.

17 As for items (c) and (d), there is no dispute that Mr Inoue introduced Hisatomo Seafood Supply and Spices of the Orient to the defendants. He introduced Hisatomo to the defendants in the middle of January 1991 with a view to Hisatomo acting as the defendants' agents for distributing the defendants' seafood products to restaurants in Singapore. The purpose of the

introduction of Spices of the Orient was to enable the defendants to source, initially, curry powder for their head office for distribution in Japan. It appears from the evidence that Mr Inoue was quite extensively involved in the negotiations with Spices and in the follow-up actions. The introduction of Sogo (item c) was not so clear-cut, as the defendants contend that it was Mr Egashira of Hisatomo who introduced the defendants to Sogo. Mr Inoue's answer is that he was the one who introduced Egashira to the defendants in the first place.

18 Mr Inoue in evidence referred to services rendered in making contact with the Primary Production Department ("PPD") officials on the defendants' behalf and said that part of the costs of that work had been included in the January invoices. There is no claim for any work done in connection with the PPD after January.

19 Mr Inoue says that Mr Akie agreed on behalf of the defendants to pay for his services in helping to promote the defendants' business. However, he says Mr Akie told him that it would not do to present what he did for the defendants as consultancy services. The head office in Japan would not like it and it would also reflect poorly on Mr Akie. So, he says, the parties agreed that the plaintiffs were to be paid in the form of inflated bills for printing services for the company. The company was in need of printing materials from time to time, such as catalogues, sales leaflets, invoices and delivery order forms. Inoue would arrange for the printing of these materials, and would render estimates and bills inflated to incorporate, without showing them, his charges for these consultancy services rendered to the defendants. So what they agreed was that the charges would be paid as and when the defendants placed an order with his company for printed materials.

20 Mr Inoue also claims that he told Mr Akie that his charges would be \$190 an hour and that Mr Akie agreed to it. In the case of the introduction of Spices of the Orient, Mr Inoue claims that the agreement was for his fees to be paid by Spices adding on to their invoices for goods ordered by the defendants from Spices. At one point in the evidence, he said that he was to be paid 5% of the F O B price. In support of this, he referred to a letter from the defendants' head office to the Singapore branch in which the possibility of getting the help of Takahashi Trading in handling the transactions and the possibility of paying Takahashi 1.5% or 2% of the F O B price were mentioned. He admitted that he was not a shareholder or director of Takahashi, but he did not say what relationship existed between him and Takahashi. He did not explain how a proposed payment to Takahashi could be treated as an agreed payment to him or to the plaintiffs.

21 There were produced in the agreed bundle of documents certain documents purporting to be invoices for the supply of such printed materials dating from January to May 1991. All the invoices were paid, invariably quite promptly. I tabulate below the invoices included in the agreed bundle :

22	Invoice Date Date Subject Amount paid
23	1.4.91 Invoices, delivery \$ 3,8502.4.91 orders
24	3.4.91 Sales leaflets \$25,2809.4.91
25	22.4.91 Posters \$ 6,9259.5.91
26	25.5.91 Posters \$ 3,19027.5.91
27	12.6.91 Plastic folders with \$ 6,92617.6.91 inserts

28 Total\$46,171

29 On or about 8 January 1991, Mr Inoue gave defendants estimates for certain printing materials as follows:-

30 Company brochure \$21,450 Sales leaflets \$22,720 Plastic folders with inserts \$ 6,245

31 Total\$50,415

32 By a letter dated 20 February, 1991, the defendants placed an order. In the English translation of the letter, the items ordered are referred to as "company brochure", "sales catalogues" and "plastic holders for catalogues". No one bothered to explain, but I assume they are the same things as those in the estimates. On 21 February, a deposit of \$25,200, about half the total cost, was paid.

33 Mr Inoue says that all the sales leaflets were delivered in late March. Mr Akie says only 5 of the 6 kinds were delivered. It would appear that the invoice listed above dated 3 April 1991 was for these goods. In addition to complaining about paying for 6 kinds of sales leaflets while only 5 kinds were delivered, the defendants complain that some of the leaflets were misprinted; there were about 3,000 copies of these defective leaflets. This complaint forms part of their counterclaim.

34 As far as the catalogue holders (otherwise "plastic folders with inserts") are concerned, Mr Inoue says they were delivered around 13 June 1991, and payment was made on 22 June 1991.

35 It can be seen from the tabulation of invoices above that there was an invoice dated 12 June in respect of "plastic folders with inserts" that was paid on 17 June. It was all too typical of the way this case was conducted that no attempt was made to clarify whether this was the invoice for the same thing referred to by Mr Inoue.

36 As for the company brochure, it seems that some work was done on it, but the project was aborted. Mr Inoue says that the defendants cancelled the order, but the defendants said that he simply did not fulfil the order because he had found a new job. No payment was made. Hence the claim for "cancellation charge" of \$1,000.

37 The parties fell out. Either in May or June, Mr Akie asked for the reprinting of the defective sales leaflets and the return of the deposit of \$25,200. These are the subject of their counterclaim.

38 The defence

39 The defendants' position in regard to the plaintiffs' claim is that they never engaged the plaintiffs to provide what the plaintiffs call the consultancy services. They also deny that there was any agreement that the payment for the plaintiffs' services would be by adding on to the bills for printed materials to be ordered by the defendants, or by a percentage of the cost of goods to be ordered by defendants' head office from the Spices of the Orient. They say that Mr Inoue was keen on getting lucrative printing contracts from the defendants and it was in consideration of the prospect of the defendants giving him such contracts that he provided all the services he did. Since all the bills for the printing services had been paid, it follows that the plaintiffs cannot claim any more from them.

40 My views

41 I accept Mr Inoue's evidence that both parties expected that he would be paid for his services, and that his charges would be incorporated into the bills to be raised for the supply of printed materials to the defendants, and would be paid accordingly. However, there are several obstacles in the way of the plaintiffs' claim. First, the rate of charges. It is clear to me that no precise agreement had been reached as to how the plaintiffs' remuneration was to be calculated. I do not accept Mr Inoue's evidence that the parties had agreed that he would be paid at the rate of \$190 or at any other expressed rate. I do not believe that he kept time sheets, as he said he did. His evidence on the subject is most unsatisfactory. He gave evidence on the number of hours he had spent on each project, and said that he had only recently got that information from the time sheets, and yet he was not able to tell the court where exactly the time sheets were kept or what had happened to them. I also reject his evidence on how he was to be remunerated for the Spices of the Orient introductions. His reference to Takahashi's commission as his own was quite unsatisfactory, and inexplicable. The document he referred to simply does not support his allegation of any such an agreement to pay him.

42 Secondly, between January and June 1991, quite a few invoices for printing materials were raised and paid. No evidence was led at all as to how much he had included in these invoices, totalling \$46,171, for his consultancy services. He comes to court on the mere allegation that what he is claiming now has not been included in any of these invoices. I think his allegation must be treated with some reservations. For one thing, in so far as Mr Inoue has put dates to the services that he rendered, i.e. the preparation of the business plans and the introductions to the various business concerns, these were all in the period January to April 1991. On his own evidence, that the charges for his services

would be incorporated when orders for printed materials were made, one would have expected that all the services he rendered during the period up to June would have been incorporated in the invoices rendered up to June. He has not told the court exactly what services have not been included in these invoices. Another reason why I think caution is called for is that Mr Inoue has shown himself to be quite unreliable on the materials points I have earlier mentioned, i.e. in regard to the time sheets and how he was to be remunerated for the Spices of the Orient introductions.

43 For these reasons, I feel constrained to reject the items (a) to (e) of the plaintiffs' claim.

44 I think however that the plaintiffs should be entitled to recover on a quantum meruit basis for the work which they did on the company brochure. I accept that the brochure was for use in Japan and in Singapore. Mr Inoue did enough work to produce drafts in Japanese. As a result of the deterioration of the relationship, in regard to which on the state of the evidence it is impossible to say who should bear responsibility, I think it is reasonable to allow the plaintiffs' claim of \$1,000 on a quantum meruit basis. As for the claim for cancellation of the order for catalogues for coffee bags, I do not think that it has been proved. The plaintiffs also claim that they are entitled to further remuneration in respect of the preparation of the business plans and the introduction of Spices of the Orient based on the future profits of the defendants. I do not think it has been proved that there was ever any agreement reached on such remuneration, and I reject the claim. At the end of the day, therefore, the plaintiffs have succeeded in recovering only \$1,000 on their claims.

45 I do not think that the defendants' witnesses are any better. To a man, they all said that the defendants never engaged Inoue to render services except

printing services, and that all the charges due for the printing services had been paid. Even Mr Honobe, who was not here in Singapore at the time, was able to say that the defendants never agreed to pay for the introductions and the preparation of the business plan. It is the defendants' case that Mr Inoue rendered the help he did because he and the defendants' officers were on very friendly terms at the time and he had an eye on the lucrative printing contracts. The defendants' witnesses refrained from going through the invoices that had been produced to support their position that the invoices did not incorporate the charges for Mr Inoue's consultancy services. Why in a period of six months should such a substantial sum of at least some \$46,000 be incurred for printed services, they did not bother to explain. I come to the conclusion that there is more than a grain of truth in what Mr Inoue said, that the defendants' officers in Singapore did not wish to officially acknowledge that they were paying Mr Inoue to help them in the promotion of the defendants' business. Now that the case has been brought out into the open, it must be equally embarrassing for them to acknowledge that and to tell the court the full story.

46 The toeing of the party line landed their witnesses in some awkward positions in the witness box. Mr Akie says he does not remember having asked Mr Inoue to prepare a long-term business plan, but he acknowledges that he did receive one personally from him. The preparation of the business plan obviously entailed a substantial amount of thought and work, and it strikes me as strange that Inoue would have done it without a request from the defendants. As for the short term plan, Mr Akie said that he just found it on his desk one day. Strangely, he said he did not know where it came from and he did not ask.

47 Mr Okamura had trouble explaining why if the defendants had not engaged Mr Inoue to help them in their business he, Okamura, should have sent Inoue a minute of a meeting referring to a whole host of business matters, e g

the price and quantity of the spice to be ordered, and when to change the source. Mr Okamura simply said that Inoue asked him to find out about these matters.

48 It is quite clear to me that the defendants' witnesses have not told me the whole truth about the business arrangements between the defendants and the plaintiffs. However, independently of their oral evidence, it is undisputed that a sum of \$25,200 was paid to the plaintiffs as deposit for the production of, among other things, the sales leaflets. The parties have also agreed that the defendants are entitled to be compensated for the defective sales leaflets in the sum of \$6,780. In the result, despite the unsatisfactory evidence adduced on behalf of the defendants on other matters, I think it is right that I should allow the defendants' counterclaim in the sum of \$31,980, made up of these two sums. The \$1,000 awarded to the plaintiffs should be set off against this award, and there should be judgment for the defendants in the sum of \$31,880 with only one set of costs for both claim and counterclaim. In view of the fact that the defendants, like the plaintiffs, have conducted their case in a most unsatisfactory manner, concealing more than they revealed, I order that they shall have only half of those costs.

Warren Khoo L H J

Devadas Naidu for the plaintiffs
Ranvir Kumar Singh for the defendants
