IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1995] SGHC 257

Suit 388/1995, WP 133/1995, Interpleader Summons 7/1995

Between

Amara Hotel Properties Pte Ltd

… *Plaintiff*

And

Tremor Entertainment Pte Ltd

… *Defendant*

GROUNDS OF DECISION

Civil Procedure — Judgments and orders

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Amara Hotel Properties Pte Ltd v Tremor Entertainment Pte Ltd

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Suit 388/1995, WP 133/1995, Interpleader Summons 7/1995
G P Selvam J
01 November 1995

1 **Execution by the subordinate courts**

2 The question for determination in this case is a short point: whether a writ of possession of the High Court issued and realized after a writ of seizure and sale issued by the subordinate courts in respect of the same goods gains priority over the latter.

3 The facts are as follows. Christopher Raj Murthy, trading as CRM Audio Visual Design and Consultancy (CRM Audio), obtained judgment in the subordinate courts against Tremor Entertainment Pte Ltd (Tremor Entertainment). The claim was in respect of goods sold by the former to the latter. To enforce the judgment CRM Audio caused a writ of seizure and sale to be issued against Tremor Entertainment on 18 August 1994. The writ was executed and an auction had been scheduled on 24 September 1994. It was executed on goods in the unit occupied by Tremor Entertainment in the Amara Hotel building. The auction, however, had to be called off because an adverse claim was lodged by a third party, Biz-Link Trading Pte Ltd (Biz-Link) claiming to be the owners of the goods. Biz-Link said that they had purchased the goods

from Tremor Entertainment. The bailiff of the subordinate courts decided to wait until the determination by the court of the claim of Biz-Link. Eventually this adverse claim was dismissed in April 1995. However, no new auction date was fixed.

4 **Execution by the High Court**

5 In the meantime, Tremor Entertainment were behind with rental for the unit occupied by them. The landlords, Amara Hotel Properties Pte Ltd (Amara Hotel) obtained a writ of possession on 6 May 1995. Pursuant to the writ of possession and unaware of the previous writ of seizure and sale, the bailiff of the High Court seized the goods in the unit occupied by Tremor Entertainment.

6 During the execution, representatives of Amara Hotel were present. On this occasion, the execution of the subordinate courts`s writ of seizure and sale was unknown to all present. Later an auction was fixed for 2 June 1995.

7 Before the auction could take place, the bailiff went to the unit with the auctioneer and representatives of Amara Hotel. While sorting the items for auction the High Court, bailiff noticed a seal of the bailiff of the subordinate courts on one of the seized items. One of the representatives of Amara Hotel was informed of the seal of the subordinate courts. The bailiff of the High Court noticed no other seal. It occurred to him that the goods might have been seized by the bailiff of the subordinate courts. He therefore met the bailiff of the subordinate courts and informed him of the High Court execution. It was, nonetheless, agreed to proceed with the auction on 2 June 1995 as arrangements had already been made for the auction and expenses incurred.

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8 The goods seized were sold by auction on 2 June 1995 for a total price of $53,385. The total amount of the claim of CRM Audio was $28,770.96 and further interest until today. The total value of the goods that had been seized by the subordinate courts writ of seizure and sale was $32,146.50.

9 In these circumstances Amara Hotel challenged the claim of CRM Audio and asserted a prior right to the full proceeds. The sheriff took out an interpleader summons for the court`s determination of the issue.

10 **The decision**

11 Order 46 r 17(3)(f) provides as follows:

> *where there is more than one writ of execution in his hands against the same defendant, moneys available to satisfy the various execution creditors in the order of the priority of their writs according to the dates of issue.*

12 The rule presumes that priority is determined according to the time of issue of the writs of execution. This rule, of course, applies to writs of execution issued out of the High Court. There is a similar provision in the Rules of the Subordinate Courts as regards the writ of execution issued out of the subordinate courts. There is, however, no provision in either rules on the priority of writs of execution issued in both courts.

13 The principle of priority based on time is a rule of wider application and it was given statutory effect in s 26(1) of the Sale of Goods Act 1893 in the following words:

> *A writ of* ***fieri facias*** *or other writ of execution against goods shall bind the property in the goods of the execution debtor as from the time when the writ is delivered to the sheriff to be executed; and, for the better manifestation of such time, it shall be the duty of the sheriff, without fee, upon the receipt of any*

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> *such writ to endorse upon the back thereof the hour, day, month and year when he received the same.*

14 Provided that no such writ shall prejudice the title to such goods acquired by any person in good faith and for valuable consideration, unless such person had at the time when he acquired his title notice that such writ or any other writ by virtue of which the goods of the execution debtor might be seized or attached had been delivered to and remained unexecuted in the hands of the sheriff.

15 Order 46 r 17(3)(f) of the Rules of the Supreme Court and the Subordinate Courts is an acceptance of the general rule based on time. The general rule should therefore be appropriated to decide the priority between a High Court and a subordinate courts writ of execution.

16 It was contended for Amara Hotel that a writ of execution of the subordinate courts should be subordinated to that of the High Court on the ground that the latter is superior to the former. I cannot accept this argument. Claims are assigned to the High Court and the subordinate courts according to the size of the claim. It does not, however, mean that a final judgment of the subordinate courts is subordinate to another judgment of the High Court against the same debtor. They are of equal strength. I, therefore, cannot see any logic, convenience or justice in subordinating a subordinate courts judgment or writ of execution to that of the High Court.

17 Accordingly, I accept the contention of the sheriff and decide that all writs of execution be they High Court or subordinate courts, bind on the goods according to the time they are issued and delivered. In the result, the claim of CRM Audio shall rank above that of Amara Hotel.

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18 Order accordingly.

G P Selvam J

S Kunalen (Tan-Au Associates) for execution creditors
Lim Poh Choo (Alan Shankar & Lim) for the claimant
Koh Juat Jong and Chua Ser Ching for the sheriff

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