IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[1999] SGCA 63

CA 110/1999

Between

Sonica Industries Ltd

… *Appellant*

And

Fu Yu Manufacturing Ltd

… *Respondent*

GROUNDS OF DECISION

Evidence — Witnesses — Attendance

Version No 1: 29 Oct 2026 (23:45 hrs)

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Sonica Industries Ltd v Fu Yu Manufacturing Ltd

[1999] SGCA 63

CA 110/1999
Tan Lee Meng J; L P Thean JA
30 August 1999

1 (delivering the grounds of judgment of the court): This was an appeal against the decision of the High Court, in which the trial judge disallowed the plaintiffs` application for leave to allow two of their witnesses, Mr Koji Kawamura and Mr Paul Lee, to give evidence at the trial through the use of live video or television link facilities in the Technology Court. We allowed the appeal in relation to the evidence to be given by Mr Kawamura but not in relation to that to be given by Mr Paul Lee. We now give our reasons.

2 ***The facts***

3

4 The main action relates to the plaintiffs` claim against the defendants for damages for breach of contract. The cause papers were not before us. It appeared that the plaintiffs claimed that by a contract made between the plaintiffs and the defendants, the latter agreed to supply and deliver 87,500 units of Sonica Image Vision 1785 OSD monitors (`the monitors`) and that the monitors were intended for resale and delivery by the plaintiffs to their customer in the United States of America, namely, Kanematsu USA Inc (`Kanematsu`). It was alleged that there

was a breach of the contract by the defendants in that they failed to meet their delivery obligations to the plaintiffs which then led to Kanematsu cancelling their orders placed with the plaintiffs. The plaintiffs alleged that as a result they suffered loss of profits on the Kanematsu contract. In addition, Kanematsu, in a faxed letter to the plaintiffs dated 15 January 1999, threatened to claim against the plaintiffs the loss and damage it had suffered and the plaintiffs sought an indemnity from the defendants in this respect.

5 Prior to the event that gave rise to this appeal, the parties, on 28 May 1999, appeared before the assistant registrar on an application by the plaintiffs for an extension of time for filing the affidavit of evidence-in-chief of Mr Kawamura. At the hearing the learned assistant registrar made an order dispensing with Mr Kawamura`s affidavit of evidence-in-chief, and granted leave to Mr Kawamura to give oral evidence at the trial of the action. The learned assistant registrar also ordered the plaintiffs` solicitors to file and serve a detailed statement of the evidence to be given by Mr Kawamura by 11 June 1999, failing which the order would be struck out. This was duly complied with by the plaintiffs` solicitors.

6 The trial of the main action began on 12 July 1999. However, Mr Kawamura was not present in Singapore to give oral evidence. Instead, at the trial the plaintiffs made an application for leave to allow Mr Kawamura to give evidence through the use of live video or television link at the Technology Court. The plaintiffs also applied for the evidence of another witness, Mr Paul Lee, to be similarly given. The grounds of the applications were that these two witnesses were outside of Singapore and were unable to come to Singapore to give oral evidence at the trial of the action.

Version No 1: 29 Oct 2026 (23:45 hrs)

7 We deal first with the application with respect to Mr Kawamura`s evidence. Mr Kawamura was, at all material times, the manager of Kanematsu`s computers and communications division. Since business dealings between Kanematsu and the plaintiffs began in 1994, Mr Kawamura had always been the main person who dealt with the plaintiffs on behalf of Kanematsu. According to the plaintiffs, Mr Kawamura was acquainted with the contract said to have been made between the plaintiffs and Kanematsu, and was willing to give evidence in relation to it. His evidence on this aspect was relevant in ascertaining the measure of damages, should the plaintiffs succeed in their claim against the defendants on liability.

8 In addition, the plaintiffs alleged that Mr Kawamura`s evidence would establish another point. They said that two key officers of the defendants, Mr Stephen Ho and Mr Ivan Tan, went to Sunnyvale, California, to meet with Mr Kawamura and at the meeting they threatened Mr Kawamura about giving evidence for the plaintiffs in this suit. According to the plaintiffs, these improper threats were made in the presence of Mr Paul Lee, whose evidence was also sought to be given through live video or television link. Mr Paul Lee`s evidence pertained only to the credibility of Mr Kawamura and the defendants` witnesses in relation to the alleged threat to Mr Kawamura.

9 ***Decision below***

10

11 The trial judge refused the plaintiffs` application for leave to allow Mr Kawamura and Mr Paul Lee to give evidence via live video or television link. The plaintiffs immediately appealed against his decision. The appeal was expedited under O 57 r 20 of Rules of Court and was heard before us.

Version No 1: 29 Oct 2026 (23:45 hrs)

12 ***The appeal***

13

14 The general principle is that the evidence of a witness is to be given orally and in person in open court. This principle, subject to a number of exceptions, is found in O 38 r 1 of the Rules of Court which provides:

> *Subject to these Rules and the Evidence Act (Chapter 97), and any other written law relating to evidence, any fact required to be proved at the trial of any action begun by writ by the evidence of witnesses shall be proved by examination of the witnesses in open court.*

15 **Section 62A, Evidence Act**

16 Section 62A of the Evidence Act (Cap 97, 1997 Ed) (`the Act`) is an exception to this general principle, and provides that ***with leave of the court*** a person may give evidence through live video or television link. Subsection (1) of s 62A of the Act prescribes four grounds for an application to the court for such leave and is as follows:

> (1) Notwithstanding any other provision of this Act, a person may, with leave of the court, give evidence through a live video or live television link in any proceedings, other than proceedings in a criminal matter, if -
>
> (a) the witness is below the age of 16 years;
>
> (b) it is expressly agreed between the parties to the proceedings that evidence may be so given;
>
> (c) the witness is outside Singapore; or
>
> (d) the court is satisfied that it is expedient in the interests of justice to do so.

17 **Application under s 62A**

Version No 1: 29 Oct 2026 (23:45 hrs)

18 In this case, the application was made on the ground that the two witnesses were outside Singapore and were unable to come to Singapore to give oral evidence. Thus, para (c) of s 62A(1) was satisfied. That, of course, was not the end of the matter. The court must have regard to all the circumstances of the case, including the three particular circumstances described in sub-s (2) of s 62A of the Act. Subsection (2) provides:

> *In considering whether to grant leave for a witness outside Singapore to give evidence by live video or live television link under this section, the court shall have regard to all the circumstances of the case including the following:*
>
> (a) the reasons for the witness being unable to give evidence in Singapore;
>
> (b) the administrative and technical facilities and arrangements made at the place where the witness is to give his evidence; and
>
> (c) whether any party to the proceedings would be unfairly prejudiced.

19 One of the defendants` objections to the plaintiffs` application for leave to use the live video or television link was that the plaintiffs had not adduced sufficient evidence of their efforts made to secure Mr Kawamura`s presence in Singapore. The defendants pointed out that the plaintiffs had had ample time to make arrangements for the attendance of Mr Kawamura at the trial in Singapore, but they had failed to do so. On this point, it appeared that there was evidence that the plaintiffs had contacted Mr Kawamura several times and had tried to arrange for him to come to Singapore. The plaintiffs` managing director, one Tan Peng Khoon, said in his affidavit that he had made `several arrangements to invite Mr Kawamura down to Singapore` but that these arrangements did not crystallise. The defendants argued that this evidence alone was insufficient to show any genuine concerted effort to secure Kawamura`s attendance of the trial.

Version No 1: 29 Oct 2026 (23:45 hrs)

However, they had not shown what else the plaintiffs could and should have done to secure the attendance of Mr Kawamura.

20 The fact remained that Mr Kawamura had always been located overseas, and in particular in California. To come to Singapore to give evidence for the plaintiffs at the trial, Mr Kawamura had to make a special arrangement for the purpose. It must be remembered that Mr Kawamura was not in any way obliged to give evidence on behalf of the plaintiffs. Indeed, Mr Kawamura is an employee of Kanematsu, and according to the plaintiffs, Kanematsu has made a claim against the plaintiffs and is therefore in some degree of contention with them. Clearly, the plaintiffs have no control over Mr Kawamura and can only rely on his willingness to help them. In all the circumstances, we were of the view that the plaintiffs had made the necessary attempts to secure Mr Kawamura`s presence in Singapore for the purpose of the trial but without any success.

21 The recourse of taking out a writ of subpoena against Mr Kawamura was not available to the plaintiffs in this case, as under O 38 r 18(2) of the Rules of Court a writ of subpoena cannot be served on any person outside the jurisdiction. There was clearly no way for the plaintiffs to compel Mr Kawamura to travel to Singapore to give evidence, if he refused to do so, as apparently he did. Of course, it was open to the plaintiffs to make an application under O 39 r 2 of the Rules of Court for an order that letters of request be issued and sent to the appropriate judicial authority in California seeking Mr Kawamura`s examination on oath there. However, the plaintiffs were entitled to choose to use another means of adducing the evidence of Mr Kawamura instead.

Version No 1: 29 Oct 2026 (23:45 hrs)

22 In the English case of **Garcin & Ors v Amerindo Investment Advisors Ltd & Ors** [1991] 4 All ER 655[1991] 1 WLR 1140, Morritt J, on an application by the defendants for an order under the English RSC O 39 for letters of request be issued to the appropriate judicial authority in New York to examine on oath a witness in New York who refused to go England to give evidence, held that under RSC O 38 r 3 he had jurisdiction to make an order for the evidence to be given by live video link and accordingly he dismissed the defendants` application and made an order that the evidence of the witness be given by the witness on oath in New York with counsel in London examining him by means of a live video link. In the course of his judgment he said at p 1143:

> *Given that the evidence of the overseas witness is admissible, then its transmission to the court by means of the television linkage is, in my judgment, a manner in which such evidence is given so as to fall squarely within the words of O 38 r 3. I conclude therefore that I have jurisdiction to make the order sought.*

23 and later in his conclusion he said at p 1145:

> *... the opportunity ... to obtain the evidence of [the witness] by means of modern technology should be seized. It would be much cheaper than letters of request or evidence on commission. It will not now, and may never be necessary to have a substantial, if any, adjournment, and if in the event it proves to be an unsatisfactory method of obtaining evidence from [the witness] it will not preclude an order for letters of request or for evidence on commission hereafter.*

24 **Prejudice**

25 We next turn to the issue of whether the defendants would be prejudiced by allowing Mr Kawamura`s evidence to be given via live video or television link. The question of unfair prejudice is an overriding consideration in such an application. Subsection (5) of s 62A of the Act provides expressly that the court is not to make an order under that section, or to include a particular provision in

such an order, if to do so would be inconsistent with the court`s duty to ensure that the proceedings are conducted fairly to the parties to the proceedings.

26 In this case, we can see no prejudice to the defendants by an order allowing Mr Kawamura to give evidence via live video or television link. The plaintiffs have identified the particular facts and issues which could be proved by Mr Kawamura`s testimony. A statement of the evidence of Mr Kawamura had already been furnished to the defendants. The defendants would not be taken by surprise by the evidence that is intended to be led. There was also no objection that the evidence of Mr Kawamura would be very complicated or technical. The video or television link facilities would still allow the defendants` counsel to cross-examine Mr Kawamura on his evidence.

27 On the other hand, if the plaintiffs were refused leave to use the video or television link facilities, they would be unable to adduce critical evidence pertaining to the resale contract alleged to have been made with Kanematsu, as well as evidence on how Kanematsu came to cancel their orders with the plaintiffs. Apparently, the alleged contract for the resale was not otherwise evidenced by any purchase order, due to Kanematsu`s standard procedure. Mr Kawamura would be in a position to give relevant evidence on this point. We agreed with the plaintiffs that Mr Kawamura`s evidence on the resale contract was material in the main action. Leave should be given for such evidence to be adduced via video link, as no prejudice is thereby caused to the defendants.

28 One of the objections made on behalf of the defendants was that Mr Kawamura in giving his testimony, might well refer to documents not disclosed in the process of discovery. If such an event should arise, the trial judge is well equipped to handle it. It is fully within his competence to disallow it or admit it on such terms as he deems fit.

Version No 1: 29 Oct 2026 (23:45 hrs)

29 **Mr Paul Lee`s evidence**

30 As for the other witness, Mr Paul Lee, his evidence related solely to the alleged improper threat alleged to have been uttered to Mr Kawamura by the defendants` officers. This evidence was not material to the issues in the main action and related merely to the credibility of Mr Kawamura and the defendants` witnesses. At best, this evidence was only peripheral to the main issues in the trial, and we did not think that it justified an order allowing Mr Paul Lee to give evidence by live video or television link.

31 ***Conclusion***

32

33 Having balanced the positions of the plaintiffs and defendants in this case, and taking into account any potential prejudice that might be suffered by either party, we allowed the appeal and the application for leave to use the live video or television link facilities in the Technology Court in relation to the evidence of Mr Kawamura. We disallowed the appeal in relation to Mr Paul Lee`s evidence.

34 **Outcome:**

35 Appeal allowed in part.

Version No 1: 29 Oct 2026 (23:45 hrs)

Tan Lee Meng J
L P Thean JA

Jimmy Yim SC and Arul Rammiah (Drew and Napier) for the appellant
Tan Kok Quan SC and Kannan Ramesh (Lee & Lee) for the respondent

---

Version No 1: 29 Oct 2026 (23:45 hrs)