IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1999] SGHC 43

Suit 1866/1997

Between

Class One Enterprises Pte Ltd

… *Plaintiff*

And

Motherland Movies (S) Pte Ltd
Another

… *Defendant*

GROUNDS OF DECISION

Tort — Conversion

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Class One Enterprises Pte Ltd v Motherland Movies (S) Pte Ltd and Another

[1999] SGHC 43

Suit 1866/1997
Chan Seng Onn JC
12 February 1999

1 : The first defendants applied to strike out the plaintiffs` claim for conversion against them on the grounds (a) that it was not supported by the plaintiffs` own evidence, and (b) that the claim was frivolous, vexatious and an abuse of process. I allowed the application. The plaintiffs appealed. [The appeal was withdrawn - Ed.] I now give my reasons.

2 ***Background***

3 The plaintiffs were the sole and exclusive licensees at the material time from the Television Broadcast International Limited of Hong Kong (`TVB`) to grant sub-licences, distribute and reproduce Mandarin and Cantonese video materials and programmes (`licensed programmes`) produced by TVB in Singapore.

4 In the plaintiffs` statement of claim, it was alleged that the first defendants had unlawfully and without the plaintiffs` consent submitted to the Board of Film Censors (`the Board`) video cassette tapes bearing `B` certificates for a change of ownership from the plaintiffs to the first defendants. Thus, the

first defendants converted the video tapes and/or the materials recorded therein for their own use. The plaintiffs averred that the first defendants affixed `B` certificates in their name on the video tapes over or alongside the `B` certificates originally issued to the plaintiffs by the Board.

5 The first defendants were also alleged to have wrongfully, unlawfully and without the consent or knowledge from the plaintiffs, submitted to the Board video cassette tapes for a change of ownership of the `A` certificates. After obtaining `A` certificates in their name, the first defendants would affix them on the video tapes alongside or over the `B` certificates originally issued to the plaintiffs. With these `A` certificates on the tapes serving as the master copies, the first defendants apparently could apply for as many `B` certificates as they wanted for the video tapes produced from these `master` copies.

6 The plaintiffs` demanded delivery up by the first defendants of all the aforesaid tapes. As the first defendants refused to do so, the plaintiffs averred that they had converted or continued to convert the tapes and the material recorded therein for the first defendants` own use.

7 ***Defence of first defendants***

8 The first defendants alleged that they had lawfully purchased the video tapes from the second defendants for valuable consideration. The plaintiffs did not have any proprietary interest in the physical video cassette tapes.

9 Counsel for the first defendants submitted that the plaintiffs` conversion claim was based on their alleged wrongful acts of dealing with the plaintiffs` goods inconsistent with their right as the owner.

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10 ***What is the subject matter of the conversion and who is the owner of the goods?***

11 It was not very clear to me whether the subject matter of the conversion was the physical video cassette tapes or the licensed programmes recorded on the tapes or the certificates obtained by the plaintiffs from the Board, which were affixed on the tapes.

12 ***Conversion of the physical video tapes?***

13 From the evidence, it did not appear that the physical video tapes belonged to the plaintiffs. The plaintiffs were merely the licensees of the programmes recorded on the tapes. Since the first defendants purchased the tapes from the second defendants, I did not think that any case could be made out that the first defendants had converted the physical goods of the plaintiffs in the form of the tapes themselves.

14 The first defendants had pleaded that they had no knowledge of the contractual relationship between the plaintiffs and second defendants restricting the sale of tapes recorded with the licensed programmes. The first defendants were not privy to that contract, where the plaintiffs had granted a sub-licence to the second defendants allowing them to distribute and rent the licensed programmes recorded on the physical video tapes belonging to the second defendants.

15 Being the purchasers for value without notice, the first defendants had title to the physical video tapes.

16 ***Conversion of material recorded on the tapes?***

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17 The pre-recorded programmes on the tapes are not real property or chattels but intellectual property. I accepted the submission of the counsel for the first defendants that there is no precedent for conversion based on intellectual property. The proprietary right over intellectual property is copyright but the plaintiffs had not alleged any infringement of copyright. Plaintiffs` counsel confirmed to me that the claim against the first defendants was based on conversion.

18 In any case, the plaintiffs were not the copyright owners of the programmes but were mere licensees. The copyright owners were TVB and only they have the locus standi to maintain an action for such infringement.

19 ***Conversion of the certificates?***

20 Since conversion of the certificates was not pleaded, I need not consider this point. In any event, I did not think that the certificate issued by the Board conferred ownership either of the physical tape or the copyright of the material recorded on the tape to the person named in the certificate as the `owner`.

21 ***Conclusion***

22 Clearly, the plaintiffs` claim against the first defendants in conversion was misconceived. Accordingly, I struck out the plaintiffs` claim with costs to the first defendants.

23 It was not necessary for me to address the point raised by the first defendants that the plaintiffs had abused the process of court by commencing an action and obtaining an Anton Piller order against the first defendants solely

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to find out which of the plaintiffs` dealers had sold the tapes to the first defendants in breach of their dealers` sub-licence agreement.

24 **Outcome:**

25 Plaintiffs` claim dismissed.

Chan Seng Onn JC

Zaheer Merchant (Madhavan Louis & Partners) for the plaintiffs
Adrian Tan (Drew & Napier) for the first defendants
Chan Hian Young (Allen & Gledhill) for the second defendants

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