Megastar Entertainment Pte Ltd and Another v Odex Pte Ltd
[2005] SGHC 84

Case Number : Cr Rev 2/2005

Decision Date : 28 April 2005

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Kirpal Singh (Kirpal and Associates) for the petitioners; Lau Kok Keng and Siew Kum Hong (Rajah and Tann) for the respondent

Parties : Megastar Entertainment Pte Ltd; TS Digital Laser Pte Ltd (formerly known as J&H Digital Laser Pte Ltd) — Odex Pte Ltd

Criminal Procedure and Sentencing – Search warrants – Form – Whether search warrants issued under s 136(9) of Copyright Act defective, vague or lacking in proper particulars – Whether search warrants drafted in sufficiently specific and limiting terms – Whether use of categories and lists prohibited in framing of search warrants – Section 136(9) Copyright Act (Cap 63, 1999 Rev Ed)

Criminal Procedure and Sentencing – Search warrants – Scope of search warrants – Whether search warrants issued under s 136(9) of Copyright Act permitting seizure of documents evidencing infringement – Whether information recorded in electronic medium on computer hard disk drive falling within meaning of "document" – Sections 136(9), 136(12) Copyright Act (Cap 63, 1999 Rev Ed), s 378(3) Criminal Procedure Code (Cap 68, 1985 Rev Ed), s 3(1) Evidence Act (Cap 97, 1997 Rev Ed)

28 April 2005

Yong Pung How CJ:

1 This was a petition for criminal revision in respect of seven search warrants, Nos 63A to 69A of 2004 ("the search warrants"), issued to the respondent under s 136(9) of the Copyright Act (Cap 63, 1999 Rev Ed) ("the Copyright Act").

2 I dismissed the petition and give my reasons as follows.

The parties

3 The respondent is in the business of providing foreign television programmes, in particular, various well-known Japanese animation series (or more commonly known as "anime"), to local television stations for broadcasting, as well as distributing authorised copies of these programmes to retailers for sale to the public.

4 There was some dispute as to the true nature of the petitioners' business. The petitioners described themselves as private limited companies in the business of wholesale acquisition of copyright and licences in various films and drama series from overseas. On the other hand, the respondent asserted that the two petitioners were members of a group of related companies known as the "TS" group of companies, and that the petitioners were primarily engaged in retail sales of Digital Video Discs, also known as Digital Versatile Discs ("DVDs"), and Video Compact Discs ("VCDs") in various languages and genres to consumers at a number of retail outlets across Singapore.

The complaints and the issue and execution of the search warrants

5 On 8 September 2004, the respondent made seven complaints ("the complaints") under s 136(9) of the Copyright Act before a district judge sitting as the Chambers Magistrate in the

Subordinate Courts. Pursuant to the complaints, the district judge ordered the search warrants in relation to six units of the Lam Leong Building occupied by the petitioners, and a vehicle with the licence plate number YK5888T.

6 The Schedule to each of the search warrants read as follows:

> 1. Any unauthorised copies of the Odex Programmes (including but not limited to episodes of "Gundam Seed" and "Fruits Basket"), a non-exhaustive list of which is set out in Annex A herein, and any unauthorised copies of the AVPAS Programmes, a non-exhaustive list of which is set out in Annex B herein.
>
> 2. Any document (in whatever form, including but not limited to information existing in computer readable form, any computer and/or hard disk integral to any computer) or article constituting evidence of the commission of any offence under sections 136(1), (2) or (3) of the Copyright Act, in relation to the Odex Programmes and the AVPAS Programmes, by physical copy or by imaging.

7 The same day, from around 5.00pm onwards, the search warrants were executed and various items were seized from the petitioners' premises by the raiding party, which was comprised of representatives of the respondent; officers from the Intellectual Property Rights Branch of the Criminal Investigation Department, Singapore Police Force ("IPRB"); solicitors from M/s Rajah & Tann, the respondent's solicitors; private investigators from the firm, Commercial Investigations; and digital forensic experts from TechBiz FrisMan Pte Ltd ("TechBiz"). The items seized, which generally related to various Japanese anime titles such as "Gundam Seed", "Fruits Basket", "Gear Fighter Dendoh" and "s-CRY-ed", included numerous VCDs, DVDs, cardboard packaging, stickers and sleeve papers. Various other documents, notes transaction summaries, sales invoices and tax invoices were also seized from the petitioners' premises.

The imaging of hard disk drives from the petitioners' computers

8 In addition to the items seized by the raiding party, representatives from TechBiz, the computer forensic experts engaged by the respondent for purposes of the raid, conducted various visual examinations and searches of the petitioners' computer systems on the premises and eventually imaged the hard disk drives of a database server computer, a file server computer, and four desktop computers belonging to the petitioners.

9 As explained in the affidavit of Kelvin Low, a director of TechBiz, "imaging" is a technical term that describes the process of creating an exact replica of the content of a storage device ("the original storage device"), such as a hard disk drive, on another storage device ("the imaged storage device"). Imaging is different from the ordinary copying of data from one hard disk drive to another. Through imaging, items of data on the original storage device, including dates, time stamps, deleted files, free space and other system artefacts, can be reproduced in their exact state and form on the imaged storage device. Subsequent phases of computer forensic work can then be performed on the imaged files on the imaged storage device, thus preserving the integrity of the data on the original storage device.

10 Following the raid, all the seized items, including the imaged hard disk drives, were retained by the IPRB.

Disagreements over the inspection of the imaged hard disk drives and the Consent Agreement

11 Following the parties' disagreement over the access, inspection and use of the information contained on the imaged hard disk drives, the parties recorded a Consent Agreement before the district judge on 12 January 2005 ("the Consent Agreement"). Under the Consent Agreement, the parties agreed to jointly conduct the extraction of files from the imaged hard disk drives at the IPRB, subject to an undertaking by the respondent not to use the information for collateral purposes. However, on 1 February 2005, the petitioners informed the district judge that they no longer wished to comply with the terms of the Consent Agreement, citing, *inter alia*, the present petition for criminal revision before the High Court.

Principles governing revision

12 The principles governing revision were set out in the case of *Ang Poh Chuan v PP* [1996] 1 SLR 326, where I held at 330, [17] that "there must be some serious injustice" and "generally it must be shown that there is something palpably wrong in the decision that strikes at its basis as an exercise of judicial power by the court below". Similarly, I made it clear in *Mohamed Hiraz Hassim v PP* [2005] 1 SLR 622 at [11] that "the court's powers of revision are exercised sparingly, and only if the court is satisfied that some serious injustice has been caused which warrants the exercise of its powers of revision".

13 Therefore, the onus was on the petitioners to satisfy the court that some serious injustice had been caused that warranted the exercise of the court's powers of revision.

Issues on criminal revision

14 The petitioners' arguments for criminal revision were that the respondent's complaints and search warrants were defective in that:

(a) They were too vague and lacked proper particulars;

(b) The scope under para 1 of the Schedule of items to be seized was too vague and lacked proper particulars;

(c) The scope under para 2 of the Schedule of the documents to be seized was too vague and lacked proper particulars; and

(d) Under para 2 of the Schedule, the scope of the documents to be seized in respect of the "information existing in computer readable form, any computer and/or hard disk integral to any computer … by physical copy or by imaging" was too vague and lacked proper particulars and was generally too wide.

15 In addition to the arguments in respect of the complaints and search warrants, the petitioners alleged that the respondent was their "trade rival" and argued for restrictions on the manner in which the respondent could access the information obtained from the imaged hard disk drives. The respondent in turn argued that it did not engage in any form of retail sales, whereas it alleged that the petitioners and their related companies in the TS group were primarily engaged in retail sales and thus would not be competitors or trade rivals to the respondent. I was of the view that the question of whether or not the parties were "trade rivals" fell outside the ambit of the present proceedings for revision, because such arguments concerned matters that were not yet conclusively determined by the court below. The respondent also alleged that the petitioners' refusal to comply with the Consent Agreement of 12 January 2005 amounted to contempt of court, and that the petition for revision should not be heard due to the petitioners' alleged contempt of court.

However, I was similarly of the view that the petitioners' alleged contempt of court, and any consequences thereof, was also a matter that remained open for determination by the court below, which lay outside the scope of the present proceedings for revision.

16 Accordingly, I proceeded to hear the criminal revision in respect of the validity of the complaints and the search warrants against the petitioners.

Whether the respondent's complaints were defective

17 The burden was on the petitioners to show that the complaints were defective in some way. However, the petitioners were not able to give any explanation as to why the complaints may have been defective. When asked in court to explain the petitioners' allegations against the complaints, counsel for the petitioners skirted the issue, claiming instead that the complaints were "vague" and that only a small percentage of the information seized was relevant to the alleged copyright infringement. I was not in the least persuaded by these arguments. The petitioners offered no further explanation or elaboration on how the respondent's complaints might have actually been "vague" or otherwise "lacking in particulars". Accordingly, I was of the view that the petition for revision in respect of the complaints remained nothing more than a bare assertion, and that it was completely devoid of merit.

Whether the search warrants were defective, vague or lacked proper particulars

18 The petitioners made various claims to the effect that the search warrants were defective, arguing that the scope of the search warrants was vague and lacked proper particulars. The petitioners' claims were without merit. I found that the respondent's search warrants were not vague or lacking in proper particulars at all. The wording of the Schedule to the search warrants was, in fact, drafted in sufficiently specific and limiting terms. Moreover, I found that the search warrants essentially complied with the requirements of s 136(9) of the Copyright Act, which reads:

> If information is given upon oath to a court that there is reasonable cause for suspecting that there is in any premises any article or document which is evidence that an offence under subsection (1), (2), (3) or (4) has been committed, the court may issue, either unconditionally or subject to such conditions as the court thinks fit, a warrant authorising a police officer to enter and search the premises for the articles and documents which are specified in the warrant, and to seize such articles and documents found at the premises.

19 Paragraph 1 of the Schedule to the search warrants (in [6] above) limited the seizure of infringing items to unauthorised copies of Odex programmes and unauthorised copies of Anti Video Piracy Association, Singapore ("AVPAS") programmes. The Schedule also made reference to two non-exclusive lists of Odex and AVPAS programmes comprising a total of 149 Japanese anime titles, and these lists were enclosed together with the search warrants. Paragraph 2 of the search warrants allowed the seizure of "[a]ny document … or article constituting evidence of the commission of any offence under … the Copyright Act". Thus, the wording of the Schedule effectively confined the search and seizure to any infringing copies of Odex programmes and the AVPAS programmes, as well as any documents evidencing such infringement. Thus, I was of the view that the Schedule was not drafted in excessively wide terms.

20 In a letter from IPRB to the respondent's solicitors dated 4 February 2005, the Head of the IPRB confirmed that the standard wording that IPRB uses in its applications for search warrants was as follows:

> Any articles or documents (meaning anything in which information of any description is recorded, including but not limited to information existing in computer readable form, any computer or hard disk integral to any computer) which evidence that an offence under section 136 of the Copyright Act, Chapter 63 has been committed, by physical copy or by imaging, in relation to the [*name of relevant copyright work*].

21 The wording of para 2 of the Schedule to the search warrants was essentially similar to the above standard clause supplied by the IPRB. Although I was mindful that the standard clause supplied by the IPRB was not necessarily conclusive in itself, I noted that in the absence of evidence to the contrary, para 2 of the Schedule was in line with standard practices for search warrants carried out in accordance with s 136(9) of the Copyright Act.

22 In any event, I observed that any questions as to the use of general categories or lists in defining the items seizable under a search warrant would have since been quickly laid to rest following the Copyright (Amendment) Act 2004 (Act 52 of 2004) ("the 2004 amendments"), which amended s 136(9) of the Copyright Act to expressly allow search and seizure of articles and documents specified in the search warrant "whether specifically or in any general category".

23 I noted, however, that the 2004 amendments only came into operation on 1 January 2005, whereas the search warrants were granted on 8 September 2004. Therefore, the applicable formulation of s 136(9) of the Copyright Act, for purposes of the present proceedings, was in the 1999 Revised Edition of the Copyright Act, which did not contain the phrase "whether specifically or in any general category". Nonetheless, I was of the view that the earlier formulation of s 136(9) of the Copyright Act did not, in any case, prohibit the use of such categories and lists in the framing of search warrants.

24 The burden had been on the petitioners to show that the search warrants were vague or lacking in particulars and that some serious injustice had been caused by the issue and/or execution of the search warrants. However, the petitioners did not give any valid reasons to support their claims. Indeed, from a review of the statutory provisions above and the search warrants themselves, I found paras 1 and 2 of the Schedule to the search warrants to be in accordance with s 136(9) of the Copyright Act. I was therefore of the view that there was no reason to interfere with the search warrants.

Whether s 136(9) of the Copyright Act permits the seizure of documents evidencing infringement

25 The petitioners further claimed that s 136(9) of the Copyright Act permitted only the search and seizure of infringing items, but not of documents that merely evidenced the infringement. However, I found the above claim by the petitioners to be misconceived and wrong in law.

26 The petitioners placed great emphasis on the decision in *Lance Court Furnishings Pte Ltd v PP* [1993] 3 SLR 969 ("*Lance Court*"), where Kan Ting Chiu JC (as he then was) held, at 977, [33], that documents evidencing infringement without forming part of the infringement did not come under the ambit of s 136(9) of the Copyright Act (Cap 63, 1988 Rev Ed) ("the 1988 Act"), and hence were not seizable under a warrant issued under that provision:

> The scope of the warrants also came under criticism. The warrants authorized the seizure of not only the infringing fabrics, but also 'documents relating to the infringement of Anju/Woodridge Inc's copyright'. Section 136(9) empowers a magistrate to order the seizure of infringing copies of any matter in which copyright subsists and the plates and contrivances used or intended to be

used in the making of such infringing copies but not documents. Documents may be seized if they are in themselves the copyright infringement, eg pirated copies of literary works. *Documents evidencing infringement without forming part of the infringement, eg production, sale or stock records, do not come under the ambit of s 136(9) and should not be seizable under a warrant issued under that provision*. [emphasis added]

27 The petitioners also sought to rely on my decision in *SM Summit Holdings Ltd v PP* [1997] 3 SLR 922 ("*SM Summit*"), where I held at [82] that search warrants under s 136(9) of the 1988 Act did not allow for the seizure of documents even when such documents were directly connected with the infringing articles:

> As such, the dicta of Kan JC in Lance Court was correct. The same must apply in the case of s 136(9) of the Copyright Act which covers only the infringing copies of the work or subject-matter in which copyright subsists. Any search warrant for documents in relation to the copyright offence can only be sought for under s 61 [Criminal Procedure Code], which requires a higher burden to be placed on the applicants. [emphasis added]

28 However, the petitioners had failed to note that at the time of the decisions in *SM Summit* and *Lance Court*, s 136(9) of the 1988 Act confined the scope of search warrants to infringing copies and contrivances used in the manufacture of infringing copies. The old s 136(9) of the 1988 Act, as applied in *SM Summit* and *Lance Court*, read as follows:

> If information is given upon oath to a Magistrate that there is reasonable cause for suspecting that there are in any house, premises, vessel or other place *any infringing copies of a work or other subject-matter in which copyright subsists (or any plate or contrivance used or intended to be used for making such infringing copies or capable of being used for the purpose of making such infringing copies) by means of or in relation to which any offence under subsection (1), (2), (3) or (4) has been committed*, he may issue a warrant under his hand by virtue of which any police officer named or referred to in the warrant may enter the house, premises, vessel or other place and search for and seize any such copy, plate or contrivance … [emphasis added]

29 Not long after the decision in *SM Summit*, however, Parliament, by way of the Copyright (Amendment) Act 1998 (Act 6 of 1998), repealed and replaced the old s 136(9) of the 1988 Act to extend the scope of search warrants issued under the Act to cover all articles and documents evidencing copyright offences ("the 1998 amendments"). The expressed legislative intent behind the amendments was to allow for "more effective investigation and prosecution of copyright offences". During the Second Reading of the Copyright (Amendment) Bill 1998 on 19 February 1998, the Minister for Law, Prof S Jayakumar, elaborated on the amendments to s 136(9) of the Copyright Act (see *Singapore Parliamentary Debates, Official Report* vol 68 (19 February 1998) at col 315):

> *Changes to the Enforcement Provisions*
>
> If I may touch on the provisions relating to enforcement, the main **amendments** are:
>
> …
>
> (c) Clause 24(g) deletes and substitutes section 136(9) and introduces new sub-paragraphs (10) to (12) to regulate the seizure of articles and documents pursuant to a search warrant. In the existing **Act**, the execution of a search warrant is limited to only the pirated items themselves and the implements used for piracy. *The new section 136(9) will extend the scope of search warrants issued under the **Act** to cover all articles and*

documents which are evidence of ***copyright*** *offences.* This will enable a more effective investigation and prosecution of **copyright** offences.

[emphasis added]

30 Thus, following the 1998 amendments, s 136(9) of the Copyright Act contained an express provision allowing for search warrants to encompass any articles or documents evidencing infringement:

> If information is given upon oath to a Magistrate that there is reasonable cause for suspecting that there is in any premises *any article or document which is evidence that an offence under subsection (1), (2), (3) or (4) has been committed*, the Magistrate may issue, either unconditionally or subject to such conditions as he thinks fit, a warrant authorising a police officer to enter and search the premises for the articles and documents which are specified in the warrant, and to seize such articles and documents found at the premises. [emphasis added]

31 In view of the 1998 amendments, it was clear that the position advocated by the petitioners was misconceived. There is no doubt that under the present law, documents evidencing infringement can be seized by a raiding party under a search warrant issued pursuant to 136(9) of the Copyright Act.

Whether s 136(9) of the Copyright Act permits the search, seizure and/or electronic imaging of hard disk drives

32 A further question was raised by the petitioners concerning whether the meaning of "documents evidencing infringement" was wide enough to encompass the respondent's imaging of the petitioners' hard disk drives and servers. In this regard, the petitioners objected to the wording of the Schedule contained within the search warrants relating to "information existing in computer readable form, any computer and/or hard disk integral to any computer … by physical copy or by imaging". The petitioners claimed that this wording was "too vague" and "too wide" and argued for the search warrants to be severed in this respect.

33 Contrary to the petitioners' claims, I found that the search and/or electronic imaging of the hard disk drives and servers was permitted under search warrants issued pursuant to s 136(9) of the Copyright Act, because the information recorded in an electronic medium (such as the hard disk drives) fell within the meaning of the word "document" for the purposes of the search warrants.

34 A "document" is defined in s 3(1) of the Evidence Act (Cap 97, 1997 Rev Ed) as "any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of those means intended to be used or which may be used for the purpose of recording that matter". Similarly, "document" is defined in s 378(3) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC") as including "in addition to a document in writing … any disc, tape, sound-track, or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom". Section 136(12) of the Copyright Act defines "document" as "anything in which information of any description is recorded".

35 I was of the view that the above definitions of the word "document" are all broad enough to encompass information recorded in an electronic medium or recording device, such as a hard disk drive installed in a desktop computer or server computer. Similarly, in *Roy S Selvarajah v PP* [1998] 3 SLR 517, I held at [44] that computer database records with the Data Processing Centre of

the Immigration Department were admissible as documents within the meaning of s 380 of the CPC.

36 I also found instructive the decision in *Grant v Southwestern and County Properties Ltd* [1975] Ch 185 where Walton J held at 197 that "the mere interposition of necessity of an instrument for deciphering the information" (such as a tape recorder in that case) would not make the medium on which information is stored any less of a "document". I was satisfied that the same reasoning applied to information contained in the hard disk drives in the present case.

37 Accordingly, I agreed with the decision in *Derby & Co Ltd v Weldon (No 9)* [1991] 1 WLR 652, which applied *Grant v Southwestern and County Properties Ltd*, where Vinelott J held at 658 that the definition of a "document" included computer files because "no clear dividing line can be drawn between digital tape recording messages and the database of a computer, on which information which has been fed into the computer is analysed and recorded in a variety of media in binary language".

38 Therefore, I was satisfied that the search warrants were valid and were properly executed in relation to the search and imaging of the information found on the hard disk drives of the petitioners' desktops and servers.

Conclusion

39 In my view, the petitioners had failed to show that the complaints or search warrants were defective in any way. The petitioners had also failed to show that any serious injustice had been caused by the scope or execution of the search warrants that authorised the seizure of documents evidencing the alleged infringement, or from the seizure, by way of imaging, of information existing in computer readable form on the hard disk drives of the petitioners' desktops and servers.

40 Accordingly, I dismissed the petition for revision, and being satisfied that this was an appropriate case for the exercise of the court's jurisdiction to award costs under s 262(1) of the CPC, I awarded the costs of the criminal revision to the respondent.

Petition dismissed.

Copyright © Government of Singapore.