

Virgin Mobile (Singapore) Pte Ltd v Virgin Store (Singapore) Pte Ltd (formerly known as
Optimum Pte Ltd)
[2002] SGHC 181

Case Number : Suit 733/2002, SIC 2285/2002
Decision Date : 14 August 2002
Tribunal/Court : High Court
Coram : Choo Han Teck JC
Counsel Name(s) : Thio Ying Ying, Lim Siew Khim and Kelvin Lee Ming Hui (Kelvin Chia Partnership) for the plaintiffs; Lawrence Quahe (Harry Elias Partnership) for the defendants
Parties : Virgin Mobile (Singapore) Pte Ltd — Virgin Store (Singapore) Pte Ltd (formerly known as Optimum Pte Ltd)

Civil Procedure – Injunctions – Application for interim mareva injunction – Risk of dissipation of assets – Whether any basis for grant of application

Judgment

GROUNDS OF DECISION

1. This was an application by the plaintiffs for an interim mareva injunction against the defendants. The plaintiffs are licensees of the "Virgin Mobile" mark, the "Virgin" signature, and the "Virgin Mobile" logo. They are the suppliers of mobile telephones, accessories and mobile airtime services. The parties have referred to these collectively as "VMS Products". The defendants are the franchisees of the business name "Virgin Store" in Singapore, and were obliged by various agreements to operate what the parties describe as "life-style concept stores". Generally, it means that the defendant will operate stores selling Virgin Mobile products such as the VMS Products, as well as running a caf and providing other ancillary services to its customers. The agreement in dispute presently is the Authorised Retailer Agreement which the defendants signed with the plaintiffs.

2. By the terms of the said agreement, the plaintiffs would supply mobile telephones to the defendants for retail sale by them (the defendants). The defendants were obliged to submit regular six-monthly rolling forecasts of sales. The plaintiffs alleged that in breach of the agreement, the defendants had not done so. More importantly, the plaintiffs aver that the defendants had not paid the plaintiffs' invoices since December 2001. The amount outstanding is \$2,746,399.64. The defendants deny that they were in breach of agreement and say that they have a counter-claim based on misrepresentation and estoppel. The facts and circumstances relating to the breach and counter-claim are not straightforward. However, it is not necessary to deal with them in this application save on the point as to whether the claims are spurious. That point cannot be determined until full arguments are heard.

3. When the application was first heard before me, it was by way of an *ex parte* application, but it was served on the defendants' solicitors who attended the hearing. The ground advanced at that time by Mrs. Thio on behalf of the plaintiffs was that the amount owing cannot be disputed because they are money subject to a trust created by contract, and that unless restrained, the defendants may dissipate the money in their bank accounts. However, I could see nothing in the affidavits of Ross Anthony Cormack, Lim Teck Liang and Cheong Aik Hock, filed in support of the mareva application that indicates what the danger of dissipation was, or why an urgent order ought to be made. It transpired at the hearing that the defendants had not separated the income they received from sales of the plaintiffs' products into a trust account. On this basis, I directions for the filing of affidavits for the purpose of the *inter parte* hearing.

4. In the meantime, Mrs. Thio filed an application for an order for an injunction pending the *inter parte* hearing. The basis of her application was that the money that was supposed to be in the trust account cannot be taken by the defendants in any event, and that since the money can be identified, an order for the injunction ought to be made. I need only make two points briefly. First, Mr. Quahe argued on behalf of the defendants that there is no trust account or money because of the unlawful termination of contract by the plaintiffs. Secondly, even if there were money due to the plaintiffs, the fact that no trust account actually had been created means that there is no identifiable trust money for the injunction to apply. I dismissed the application without prejudice, of course, to hearing full arguments at the *inter parte* stage. On the basis of the situation at present, I dismissed the plaintiffs' application for an injunction pending the *inter parte* hearing.

5. Mrs. Thio asked for leave to present further argument on this point on the basis of various authorities, principally, *Re Stehelin & Stahlknecht Ex Parte The Central Agency Glasgow* [1893] 1 SSLR 78, *Re Hallet's Estate* L.R. 13 Ch D 696, and *Geh Cheng Hooi v Equipment Dynamics Sdn Bhd* [1991] 1 MLJ 293. The point made in these cases is that even though trust property has been mixed with the defendants' own property, the law will allow tracing to be done in order to extract the trust property from the mixed lot. Initially, I had indicated that had the trust fund been clearly established I would have granted the injunction sought. However, subsequently, in reviewing the case when Mrs. Thio made her second application before me, I formed the view that in the overall circumstances, an injunction pending the *inter parte* hearing would not be justified. The case is complicated in fact and law. What does appear clear at the moment is that there is no sufficient evidence of dissipation other than the use of the defendants' money in the ordinary course of business. Mr. Quahe submitted that if the defendants' accounts are frozen their business will collapse because they would not be able to pay rent and staff salary. Furthermore, he re-emphasized the submission that the obligation to maintain the trust is being challenged by the defendants. In the circumstances, I am of the view that the balance of convenience lay in not granting the injunction until the case may be more fully argued.

6. For the reasons above, the plaintiffs' application for an injunction order pending the hearing of the *inter parte* application was dismissed.

Sgd:

Choo Han Teck

Judicial Commissioner

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