

Chua Chian Ya v Music & Movements (S) Pte Ltd (formerly known as M & M Music
Publishing)
[2009] SGHC 75

Case Number : OS 937/2008
Decision Date : 31 March 2009
Tribunal/Court : High Court
Coram : Lai Siu Chiu J
Counsel Name(s) : Jonathan Yuen with Shahiran Ibrahim and Samuel Seow (Samuel Seow Law Corporation) for the plaintiff; K Nadarajan (Aequitas Law LLP) for the defendant
Parties : Chua Chian Ya — Music & Movements (S) Pte Ltd (formerly known as M & M Music Publishing)

31 March 2009

Lai Siu Chiu J:

1 In this Originating Summons ("the OS") Chua Chian Ya ("the plaintiff") applied to court for a declaration against Music & Movements (S) Pte Ltd ("the defendant" or "the company") that the defendant no longer owned songs she had composed and which were the subject matter of two agreements signed between the parties.

2 I dismissed the plaintiff's application and she has filed a notice of appeal (in Civil Appeal No.167 of 2008) against my decision.

The affidavits

3 The relevant facts are extracted from the parties' affidavits. The plaintiff is a singer songwriter who is more popularly known as Tanya Chua in the entertainment world. She had signed an agreement dated 18 September 2002 with the defendant ("the first agreement") wherein she agreed to write/compose songs ("Compositions") exclusively for the defendant which business is in music publishing (and described as "the publisher" in the first agreement). The first agreement covered the entire world (defined in Schedule A as "the Licensed Territory"). It was for an initial period of three years in consideration of an advance royalty payment of \$20,000 to the plaintiff from the defendant. The defendant agreed to collect royalties on the Compositions and pay the same to the plaintiff in accordance with the formula stipulated in cl 6.1(a) and set out in [\[4\]](#) below. There was a clause to renew the term for a further period of two years by mutual agreement.

4 The more salient clauses of the first agreement are the following:

3 The Writer hereby irrevocably and absolutely assigns, conveys and grants to the Publisher, its successors and assigns all rights and interests of every kind, nature and description in and to the Composition created by the Writer during the term of this Agreement.....

6.1 The Publisher shall pay to the Writer the fees and royalties specified in Schedule A attached hereto with respect to the Compositions.

(a) The fees and royalties provided for herein shall be computed on one hundred percent (100%) of earnings of the Compositions actually received and credited into the Publisher's

account, less after allowing for the following deductions:-

- (i) standard commission actually retained by the performing and/or mechanical societies in the Licensed Territory;
- (ii) VAT and other taxes required to be deducted in any part of the Licensed Territory;
- (iii) administrative fees retained by foreign affiliates, sub-publishers, co-publishers, licensees or agents of the Publisher; and
- (iv) any amounts paid by way of remuneration to arrangers, adaptors, translators and writers of new or revised lyrics referred to in clause 3(e).

6.2 Payment of all fees and royalties payable to the Publisher hereunder shall be made within sixty (60) days from June 30th and December 31st of each year for any and all income accrued from the Composition during the preceding six (6) months accompanied by the statement set forth in Paragraph 7 hereof. Such statements shall be deemed received unless otherwise notified in writing within 120 days from the end of each accounting period i.e. 31st October and 30 April.

6.3 The Writer shall collaborate with the Publisher in giving all necessary instructions to the performing right societies, mechanical rights societies or other collection agencies, as the case maybe, concerning the agreed divisions of fees and royalties hereunder and the payment thereof.

6.4 All sums payable to the Writer shall be subject to government permission to make remittance whenever such permission is required. All payments shall be subjected to deduction or withholding of income taxes or other taxes required to be deducted to withheld under the laws of any part of the Licensed Territory.

12 In the event that the Publisher fails to account and make payment hereunder or fails to perform any obligations required hereunder and in the event that such failure is not cured within thirty (30) days after written notice has been served on the Publisher, or in the event that the Publisher becomes inactive, ceases doing music publishing business or shall go into compulsory liquidation or bankruptcy, then and in any such events the Writer, in addition to such other rights or remedies which it may have at law or otherwise under this agreement, may elect to cancel or terminate this agreement without prejudice to any rights or claim it may have, and then all right in and to the Composition hereunder shall revert to the Writer and the Publisher may not thereafter exercise any rights hereunder.

5 Under Schedule B of the first agreement, the plaintiff assigned all her rights in the Compositions to the defendant.

6 Prior to the first agreement, the plaintiff's songs were published by a company called Ping Pong Music Publishing Singapore ("Ping Pong") under an agreement she had signed with Ping Pong dated 18 August 1999 ("the Ping Pong agreement"). The chief executive of Ping Pong was Lim Sek ("Lim") who was also the chief executive of the defendant. The defendant is the parent company of Ping Pong.

7 By another agreement dated 25 May 2005 ("the second agreement") signed by the parties, the first agreement was extended to at least 17 March 2007. As consideration, the plaintiff received an advance of \$40,000 from the defendant for royalties. The salient clauses of the second agreement state:

1 The Writer agrees to extend the Term of the Said Agreement at least to 17th March 2007 (hereinafter called the Extending Term”).

5 Immediately after the 17 March 2007, the Writer may, if she deems fit, have the option to continue with the Extended Term and agree to a new extended date, or agree to do so upon such other terms and conditions and/or amended terms and/or conditions as she may agree with the Publisher. If and unless a new agreement is executed in writing between the Writer and the Publisher, the Writer’s obligations as set out above and in prior agreements, in particular in the agreement dated 18 September 2002 and with M&M Music Publishing, shall cease immediately upon the termination of the Extended Term, in particular the obligations as set out in paragraphs 2, 3 and 4 of the agreement dated 18 September 2002. The Writer shall no longer be bound under any agreement, term and/or condition, with the Publisher, thereafter.

6 The obligations of the Publisher namely to promote, publish and to commercially exploit (“to exploit”) all Compositions (which shall mean to refer to the entire catalogue, list and set of songs as at 17 March 2007) so as to generate royalties, revenue and income therefrom and to pay the same to the Writer, shall survive 17 March 2007, and the Publisher shall undertake and shall continue to undertake to the Writer to expend all reasonable work and efforts to this end, and shall not neglect and/or fail to exploit any part, portion, or particular Composition.

7 Paragraph 12 shall survive 17 March 2007.

8 Except as hereby amended and extended, and provided for above, all of the terms and conditions of said Agreement referred to above shall remain and continue in full force and effect, in particular shall survive 17 March 2007.

8 The plaintiff asserted that when the Ping Pong agreement ended, the rights to the Compositions that she had assigned to Ping Pong reverted back to her. Similarly, as she opted not to extend the second agreement beyond 17 March 2007, all her rights and interests in the Compositions assigned to the defendant under the first and second agreements reverted to her absolutely.

9 The plaintiff complained that the defendant continued to exploit her rights and interests in the Compositions after 17 March 2007. Her solicitors had written to the defendant on 11 June 2007 to state the legal position to no avail. However, as a gesture of goodwill, she had allowed the defendant a final extension until 30 June 2007 in which to exploit her rights and interests in the Compositions.

10 The plaintiff also criticised the “cavalier fashion” in which the defendant declared that there were errors in its accounts on payments it had made to her over the years not to mention that it failed to meet the deadline for payment set out in cl 6.2 under the first agreement (see [\[4\]](#) above).

11 The plaintiff contended that the defendant had breached cl 12 of the first agreement in that the company had failed to properly account to her for the royalties it collected. Further, when she requested for accounts, the defendant was duty-bound but failed, to deliver the same to her in about 30 days from the date of her notice. Consequently, her solicitors by their letter dated 7 May 2008 to the defendant gave notice (under cl 15 of the first agreement) that the company owed a fiduciary duty to the plaintiff and was accountable to her for monies due to her under both agreements. The solicitors demanded that the defendant provide detailed and proper accounts for the period January 2005 to 31 December 2007, pointing out that the defendant’s email summary of accounts dated 18 March 2008 to them was inadequate.

12 The plaintiff’s solicitors’ letter referred to cll 10.1, 10.5 and 15 of the first agreement. Those

provisions read:

10.1 A statement of all accounts shall be provided and delivered to the Writer by the Publisher whether or not any royalties or fees are then due to the Writer, and all monies due thereunder pursuant to Paragraph 6 hereof shall be paid by the Publisher to the Writer, by bank order or in cheque, in Singapore Dollars.

10.5 In the event of a dispute between the Writer and Publisher pursuant to this clause, the Writer shall have three months from the end of the 1 year mentioned in the preceding paragraph to file suit to remedy such a dispute. If the Writer fails to file suit within the said 3 months period, the Writer shall be forever barred from using in connection with claims pertaining to accounting periods for which Writer's rights have expired.

15 All notice, accounting or payment which either party hereto is required to desired to give to the other party shall be addressed to such other party's address first above set forth, or to the most recent of such other addresses as such party shall have designated in writing to the other party.

13 The defendant not surprisingly denied the plaintiff's allegations and disagreed with her interpretation of the first and second agreements. Lim filed two affidavits on the defendant's behalf to oppose the OS.

14 In his first affidavit, Lim deposed that it was the defendant who talent-spotted the plaintiff when she was a struggling artiste in the local pub circuit. The company offered to develop her career and groom her to be a professional singer. After making efforts for half a year and being rejected by Taiwanese record companies in that regard, the defendant advised the plaintiff to embark on a six months course in guitar-playing and to begin writing songs as it was then the trend to be both a singer as well as songwriter.

15 As a show of support for the plaintiff, the defendant spent close to \$40,000 to launch the plaintiff's first English compact disc ("CD") entitled "Bored" in 1997 knowing it would not be able to recoup the cost from sales. Subsequently, the defendant launched two other English CDs for the plaintiff entitled "Luck" and "Venus" again as money-losing ventures. (Lim was criticised by the plaintiff in her second affidavit for getting the title of her third CD wrong – it was called "Jupiter" not "Venus"). The defendant then proceeded in 1998 to sign the plaintiff with a Taiwanese recording label to position her as a regional songwriter. This was followed by her contract with Ping Pong in [\[6\]](#) a year later.

16 Lim decided to move the plaintiff's catalogue of Compositions from Ping Pong to the defendant and this resulted in the signing of the first and second agreements. He pointed out that under the second agreement, the plaintiff's percentage of royalties increased.

17 Lim revealed that in 2006, the plaintiff was nominated for awards in three categories in the 17th Taiwan Golden Melody Awards for her album entitled "Amphibian". They were for (i) best female singer (ii) best album producer and (iii) best album. She clinched the award for best female singer and thereafter attempted to terminate the two agreements with the defendant.

18 Lim alleged that the plaintiff became increasingly difficult to handle and she (as well as the plaintiff's mother) offended the press (which included a journalist from the magazine "8 days"), record labels and the defendant's own staff.

19 Lim deposed that the plaintiff raised in an email (for the first time) in November 2006, the issue of discrepancy in her January to June 2006 statement of royalties rendered by the defendant and demanded to terminate the second agreement. In that same email dated 14 November 2006, she demanded the return of her catalogue of Compositions from the defendant.

20 Lim detailed the process whereby the defendant collected royalties for the defendant from users of the Compositions and these included record labels, production houses and film companies from different countries. The defendant's administrator was tasked with tabulating the income derived from the total sales and usage of the Compositions. Royalties were customarily calculated either half yearly (for periods January-June and July-December) or sometimes quarterly. The statements were then checked and sent to the defendant within two months after the aforesaid qualifying periods. If there were no discrepancies, the payment of royalties would be distributed a month later.

21 By reason of the assignment by the plaintiff in the first and second agreements, the defendant was given the right to administer Compositions for the plaintiff (including promoting and selling the same to interested third parties and arranging to collect the moneys when the songs were actually used).

22 Lim explained that the defendant's administrator for the purpose of collecting royalties for its clients was not someone from the defendant's staff but usually someone from an international publishing house. In the plaintiff's case, the administrator was Warner-Chapell Music ("Warner-Chapell"). In other words, there were three parties in the relationship. The plaintiff was the composer, the defendant was the publisher while Warner-Chappell was the administrator. Lim added that the defendant had never stopped the plaintiff from developing a direct relationship with Warner-Chappell.

23 Lim explained it was customary that all the Compositions sold by the publisher would continue to be administered by the same publisher even if the songwriter moved to another publishing company. This was to acknowledge the continued work and moneys invested by the publisher to market and sell the Compositions in the first place.

24 However, there were instances where the writer/composer signed on with a new publishing company after the contract with the original publisher came to an end. In the event that the new publishing company wished to buy over the administrative rights of the composer's entire catalogue of songs, a sum of money was usually offered and it was the original publisher's prerogative whether or not to relinquish its rights over the catalogue of songs in return for the fee proposed.

25 Lim totally disagreed with the plaintiff's interpretation of the first agreement. He relied on cl 6 of the second agreement in [\[7\]](#) for his contention that the defendant's rights to the Compositions survived the expiry of the second agreement on 17 March 2007. That was the reason why the defendant's representative Jack Lim in his email dated 6 September 2007 to Warner-Chappell Hong Kong and Taiwan (exhibited in the plaintiff's first affidavit) instructed the latter to refrain from sending the plaintiff's unsold songs to potential buyers but to continue to promote her already sold works for future use as her past catalogue of published works survived the termination date of the second agreement. Consequently, her claim that she allowed the defendant to exploit her songs up to 30 June 2007 as a gesture of goodwill was completely misconceived.

26 Lim expressed anger at the plaintiff's conduct and for painting a skewed picture of what actually transpired between the parties over mere accounting errors. He criticised her (and her solicitors) for her haste in commencing the OS and for failing to disclose to the court relevant correspondence exchanged either between the parties or between the plaintiff's solicitors and the defendant prior to these proceedings.

27 Lim pointed out that the defendant's accounting errors benefited the plaintiff. Due to its accountant's oversight, the defendant omitted to deduct withholding tax under cl 6.4 of the first agreement (see [4] above) for royalties due to the plaintiff for 2005 to 2006 with the result that the plaintiff received more royalties than she should. He disputed the plaintiff's claim that she only found out the discrepancy from the defendant's email to her solicitors dated 3 April 2008 – the plaintiff had already raised the issue in her email of 14 November 2006 referred to in [19]. He asserted that all matters had been clarified and explained to the plaintiff even before her solicitors came into the picture on 11 April 2007. Prior thereto, the defendant had clarified the accounting errors in its statements of accounts and in correspondence between the parties from November 2006 to April 2007.

28 Lim revealed that on 23 August 2007, the defendant had even allowed the plaintiff's solicitors and their accountant to visit the defendant's premises to inspect the defendant's books of accounts pertaining to the discrepancies and their rectification. He said the defendant went out of its way to fulfil its obligations under cl 12 of the first agreement. He contended that the plaintiff's solicitors' notice dated 7 May 2008 in [11] was nothing more than a clever concoction to rely on cl 12 of the first agreement in the plaintiff's attempt to recover the rights from the defendant of her catalogue of Compositions.

29 Lim concluded his first affidavit by stating that in absolute monetary terms, the returns to the defendant from the plaintiff's catalogue of Compositions was negligible, when compared with the costs involved in terms of the staff it employed to administer her royalties. However, the defendant was contesting the plaintiff's application on principle as it wanted to exercise its rights under the two agreements. Although first Ping Pong and then the defendant were the very companies that helped to propel the plaintiff's song-writing career, she had disregarded what they had done for her and chosen to engage lawyers who were unreasonable and unfamiliar with industry practice. He complained that all that mattered to the plaintiff was her own selfish needs to have the Compositions under her own catalogue without regard for the sanctity of contracts.

30 In her second affidavit, the plaintiff refuted Lim's allegations against her. Relying on Lim's admission that the second agreement had terminated on 17 March 2007 as it was not further renewed, she questioned how the defendant's rights over the Compositions could survive the termination. The plaintiff relied on cl 5 (at [7]) of the second agreement for her argument that her obligations under the first agreement ceased as of 17 March 2007.

31 The plaintiff argued that it cannot be right that notwithstanding the contractual termination of the parties' relationship, the defendant could continue to exploit the Compositions indefinitely.

32 If indeed her repertoire of songs generated insignificant income for the defendant as Lim contended, the plaintiff questioned why the company insisted on continuing to exploit the Compositions; the defendant was not a charity after all.

33 The plaintiff then complained that the defendant had failed to account to her on how it had calculated her royalty payments and tax deductions. When her solicitors inquired in their letter dated 25 July 2008, Lim in his email reply to her lawyer Benjamin Mak dated 1 August 2008 had said:

As per your request 1, we are not obligated contractually to explain to you the formula used to compute the royalties. All these have been explained to your client and they are in accord with the present industry practise.

34 The defendant's second affidavit affirmed by Lim not unexpectedly took issue with the plaintiff's

second affidavit. Lim pointed out that cl 6 of the first agreement (at [\[4\]](#)) and cl 4 of the second agreement spelt out how royalties were to be calculated. The defendant had always followed those provisions when computing royalties without meeting any objections from the plaintiff. Overpayment discrepancies had been explained to the plaintiff's solicitors in 2007.

35 Lim contended that the defendant had always given full and complete accounts to the plaintiff not only by email but also by despatching hard copies to the plaintiff personally and thereafter to her solicitors as per her instructions. Further, the defendant had never prevented the plaintiff from contacting Warner-Chappell directly to verify the accuracy of the statements of accounts it had rendered to her.

36 Lim pointed out that the plaintiff was additionally aware of the timelines relating to receipt of periodic statements of accounts from Warner-Chappell. Each statement for the relevant half-yearly period was finalised around three months from the end of each half-year assessment. Accordingly, the statement for January-June 2008 was sent by the defendant to the plaintiff's solicitors on 15 September 2008 via email. Lim then exhibited an email dated 17 September 2008 from one Angela Chi to the general manager (Monica Lee) of Warner-Chappell (referring to the plaintiff) which stated:

According to the provision of our OP/SP contract between M&M and WCM TW, we provide royalty statements and payments twice a year, which is within 90 days after June 30th and December 31st ; actually that is also the royalty distribution provision that we are following with most of the writers or right owners

to support his evidence.

37 Lim deposed that he had informed the plaintiff's solicitors in an email of 1 August 2008 of the above timelines as the reason for the defendant's inability to meet the contractual timelines for rendering accounts. The plaintiff had in any case accepted the late statements in the past after the defendant had explained the reasons for the delay. The defendant was also aware that she checked with Warner-Chappell (Monica Lee) constantly.

38 To rebut the plaintiff's argument that the defendant cannot own the rights to the catalogue of Compositions in perpetuity, Lim exhibited an email to him from Jack Teo, the general manager of Universal Music Publishing Malaysia & Singapore) dated 8 September 2008 which said:

....with regards to exclusive songwriter agreement, I wish to confirm to you that it is our industry common practice for a music publisher to own the compositions perpetually even though the contract has expired. We shall continue to pay royalties twice a year to the songwriter for those compositions that he or she wrote during the contract term even though he or she has [sic] no longer with us.

39 Lim revealed that the plaintiff had signed a contract directly with Warner-Chappell and should therefore be familiar with the timing of when she would receive her royalty statements as this was a practice that had been followed for the past ten years that she had worked, first with Ping Pong and then with the defendant.

The decision

40 In presenting his arguments to the court in support of the OS, counsel for the plaintiff quite candidly admitted that his client sought to be released from the two agreements with the defendant in order to secure better deals.

41 I dismissed the OS as counsel for the plaintiff failed to present any cogent arguments to the court as to why cl 6 of the second agreement set out in [7] above did not survive the termination of the parties' contractual relationship after 17 March 2007. The plaintiff's arguments were a rehash of the contents in her two affidavits which were not only unconvincing but appeared to have been selectively included.

42 To elaborate, the plaintiff's affidavits contained self serving documents (either from herself or her lawyers) whilst the statements in Lim's affidavits were supported by third parties. Further, counsel for the defendant had pointed out various discrepancies in the plaintiff's affidavits that cast grave doubts on the *bona fides* of her case and which her counsel made no attempts to explain.

43 Counsel for the defendant argued that the purported notice from the plaintiff's solicitors dated 7 May 2008 in [11] asking for proper accounts from the defendant was only an excuse to rely on the 30 day notice period envisaged under cl 12 (see [4] above) of the first agreement. The notice disregarded the previous exchange of communication between the parties since 14 November 2006 when the plaintiff first raised the issue of errors in the accounts. The plaintiff did not disclose that the defendant had promptly referred the matter to Warner-Chappell on 25 November 2006 on the alleged discrepancies. The plaintiff had not disclosed the defendant further kept her informed (usually by email) of what transpired. It then turned out that the plaintiff had been overpaid due to the defendant's omission to deduct withholding tax from her royalties. In fact, the plaintiff had offered to repay the excess payment she received in her email dated 4 December 2006.

44 In her later email dated 26 December 2006, the plaintiff had even thanked the defendant after receiving its statements and indicated she had no wish to engage any lawyers. The defendant then allowed the plaintiff's solicitors and their accountant to inspect the defendant's books of accounts at its office in August 2007 (at [28]), conduct which was inconsistent with someone who had something to hide.

45 It seemed to me that the plaintiff was making the proverbial mountain out of a molehill in her complaint regarding errors in the accounts rendered by the defendant in her undisguised attempt to wriggle out of the second agreement's provisions, which cl 6 clearly survived its termination after 17 March 2007.

46 The plaintiff had argued that just as her contractual obligations with Ping Pong terminated when the first agreement came into existence, so too did her obligations under the second agreement after 17 March 2007. She overlooked the fact that Ping Pong's rights to her Compositions terminated because its parent company *viz* the defendant took over those rights, not that Ping Pong's rights ended with the termination of the Ping Pong agreement dated 18 August 1999.

47 Counsel for the plaintiff had cited a passage from the 3rd edition of Kim Lewison's authoritative text *The Law On Interpretation of Contracts*, which is to be found in the 4th edition (2007) Sweet & Maxwell at p 145 in relation to "the golden rule" of interpretation. The textbook quoted a passage from Lord Wensleydale's judgment in *Grey v Pearson* (1857) 6 HL Cas 61 at p 106) that stated:

In construing all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency but no further.

48 With respect, there is nothing in the wording of cl 6 of the second agreement that would give

rise to absurdity and inconsistency if the words were interpreted in their grammatical and ordinary meaning. The plaintiff appeared to have completely overlooked the fact that she would continue to be paid royalties (in perpetuity) by the defendant for the catalogue of Compositions that she had assigned to the company. It was not a situation where she was put into bondage by the defendant without any consideration or benefit to her.

Conclusion

49 The plaintiff quite clearly wanted to renege on her contractual obligations using a flimsy excuse that the defendant had breached cl 12 of the first agreement which it had not. The court should not condone such behaviour. For that reason, I dismissed the OS with costs to the defendant.

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