Children's Media Ltd and Others v Singapore Tourism Board
[2008] SGCA 45

Case Number : CA 83/2008

Decision Date : 14 November 2008

Tribunal/Court : Court of Appeal

Coram : Chan Sek Keong CJ; Andrew Phang Boon Leong JA; V K Rajah JA

Counsel Name(s) : Chelva Retnam Rajah SC, Lalitha Rajah, Srinivasan V N and Rahayu Mahzam (Heng, Leong & Srinivasan) for the appellants; Lok Vi Ming SC, Edric Pan, Loh Jen Wei, Joseph Lee and Jeanette Lim (Rodyk & Davidson) for the respondent

Parties : Children's Media Ltd; Tribute Third Millennium Limited; Anthony David Hollingsworth — Singapore Tourism Board

Companies – Incorporation of companies – Lifting corporate veil – Lack of good faith in transaction – Companies no more than puppets dancing to tune of corporator – Corporator treating companies' assets as his own – Whether proper case to hold corporator personally accountable for refund of moneys paid in transaction

Contract – Misrepresentation – Fraudulent – Appellant misrepresenting that he would be able to stage event – Event not staged – Whether rescission by trial judge for fraudulent misrepresentation valid

14 November 2008

V K Rajah JA (delivering the judgment of the court):

1 This is an appeal against the judgment of the trial judge ("the Judge") in Suit No 175 of 2006, *viz*, *Singapore Tourism Board v Children's Media Ltd* [2008] 3 SLR 981 ("the Judgment"). In her decision, the Judge awarded interlocutory judgment to the plaintiff ("the respondent") against the three defendants ("the first appellant", "the second appellant", and "the third appellant", respectively; collectively referred to as "the appellants").

2 The proceedings had arisen out of the failure on the part of the appellants to stage a mega event known as "Listen Live" ("the Event") in Singapore, for which the respondent had paid sums totalling $6,155,250. The obligation to stage the Event was contained in three consecutive agreements between the respondent and the first appellant ("the First Agreement", "the Second Agreement", and "the Third Agreement", respectively), each agreement superseding the previous agreement. Together with the execution of the Third Agreement, the respondent and the first appellant agreed to several terms set out in a letter ("the Side Letter").

3 This judgment is to be read together with the Judgment. As the material facts have been ably summarised by the Judge we gratefully adopt them. From the established facts, we note, in particular, that the third appellant was at all material times a director and the chief executive officer of both the first appellant and second appellant. The second appellant is the sole member and guarantor of the first appellant and the third appellant is the sole shareholder of the second appellant. It is plain to us from the evidence that the third appellant was not just the controlling mind of these entities, but that he also freely, and without inhibition, dealt with their assets as if they were his own. He was, in short, the alter ego of these entities.

4 The crucial issue in this matter, for our assessment, was the intention of the third appellant

when he entered into the Third Agreement (as well as the Side Letter) with the respondent. Was this a sham transaction procured by fraudulent misrepresentation(s) made by him? After carefully assessing the evidence, the Judge found that the third appellant had prior to the entry of the Third Agreement dishonestly misrepresented to the respondent that the core finance for the staging of the Event ("the Core Finance") in accordance with the Second Agreement had been secured (Judgment at [50]). This is entirely accurate. The third appellant had in fact concocted an elaborate charade assiduously achieved "by a combination of loans and financing arrangement with friendly and/or related parties" (*id*). The respondent was unfortunately duped into signing the Third Agreement in the belief that securing the necessary financing was no longer an obstacle that stood in the path of the staging of the Event.

5 We have also considered the documents referred to us by counsel for the appellants, in the course of the hearing, that purport to show the appellants' efforts to secure the Core Finance in accordance with the Third Agreement after the Third Agreement was entered into. With respect, these documents, on the whole, cannot even begin to substantiate this contention. On the contrary, the documents convey the contrary picture that no *reasonable efforts* were being made by the third appellant to secure the Core Finance at any time after he procured the Third Agreement. In fact, other documents showed that the appellants were working towards holding the Event in New York[note: 1], a fact they concealed from the respondent. This cannot but cast further doubts on the *bona fides* of the appellants' intention in staging the Event in Singapore when the Third Agreement was entered into.

6 Like the Judge, we have also been deeply troubled by the patent lack of effort made by the appellants to secure the artistes and broadcasters after the Second Agreement was signed. The appellants may, of course, argue that they did eventually secure the first batches of core artistes and broadcasters under the Second Agreement, but having perused the evidence, we are of the view that this cannot be properly substantiated. It is but another example of the appellants' carefully orchestrated pretence, as there was in fact hardly any objective evidence to show that the artistes and broadcasters they had purported to secure had indeed been secured. Further, it also bears mention that even after the Third Agreement was signed, no further steps whatsoever were taken by the appellants to secure the services or co-operation of any "fresh" artistes or broadcasters to participate in the Event. It is not significant that on 27 August 2006, not long after the Third Agreement was signed, the appellants terminated the services of an agency they had expressly contracted with on 1 August 2006 to procure artistes for the Event. No further arrangements were thereafter made with any other agency to secure artistes for the postponed Event.

7 The appellants also contended that under the Third Agreement, they were only required to secure the services of the artistes and broadcasters after the confirmation of the Core Finance. However, they would have had to secure the first batch of core artistes and broadcasters a mere 10 days after confirming the Core Finance (see cll 3.7, 3.9–3.11 of the Third Agreement). In other words, if they were genuine in their attempts to secure the artistes and broadcasters, they would have had to be working towards this objective concurrently with the procurement of the Core Finance. This was not done. It therefore seems to us an irresistible inference that the third appellant had no intention whatsoever to stage the Event in Singapore when he entered into the Third Agreement in the name of the first appellant. The objective evidence of the steps (or, more precisely, the lack thereof) taken by the appellants after the Third Agreement was signed decidedly bears this out. The shenanigans relating to the staging of the Event in New York only serve to reinforce this view. To sum up, when the Third Agreement was entered into, the third appellant's sole pre-occupation was to avoid any subsequent legal liability for him and the related entities. This conclusion is amply supported by the evidence before us. Given the background events when the Third Agreement was signed it is inconceivable that the respondent would have entered into such an undertaking except on a

representation by the third appellant that the Event *could and would* be staged.

8 The Judge concluded (Judgment at [150]–[151]):

> 150 The third [appellant] knew he could not/would not refund the [respondent's] sponsorship sums. He also knew he was unable to stage the Event even if it was postponed from the period of 16 September 2005 to 1 October 2005 (under the Second Agreement) to 7-8 April 2006 (under the Third Agreement) as he had led the [respondent] to believe. ...
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> 151 The [respondent] unfortunately, accepted the third [appellant's] word and agreed to the removal of the refund provision in cl 8.2, unaware that less than a month earlier, the third [appellant] had transferred the entire balance of the sponsorship sums from the first [appellant's] account to that of the second [appellant] and in August 2005, he had instructed third parties like Ng and Paul Kerr to stop work on the Event. As the third [appellant] terminated the Third Agreement on 5 January 2006, the [appellants'] repeated assertions and submissions that they always intended to hold the Event rings hollow. The third [appellant] never intended to hold the Event at all. It speaks volumes of the third [appellant's] abilities and credibility that to-date, the Event scheduled to be held in New York in July has not taken place.

We see no basis to interfere with these findings of fact. The Judge had not erred in setting aside the Third Agreement and the Side Letter.

9 We are also satisfied that the third appellant more than fully appreciated that the moneys paid to the first appellant were for a very specific purpose and that there was an unequivocal obligation to refund the moneys in full to the respondent if the Event was not staged. While we would not (and need not) go as far as the Judge in some of her strictures about the third appellant's conduct and testimony, we can say without any diffidence that there are more than ample grounds to determine that this is a proper case (given the lack of the third appellant's *bona fides* to stage the Event when he entered into the Third Agreement on the behalf of the first appellant and his several earlier misrepresentations), to hold him personally accountable for the refund of the monies. The first and second appellants were no more than corporate puppets compliantly dancing to the tune of the third appellant. He treated their assets as his own. Their liabilities arising from the failure to stage the Event should now also be his.

10 In the result, we dismiss the appeal with costs and the usual consequential orders.

[note: 1]See, *eg*, Respondent's Supplemental Core Bundle at pp 51– 54.