



HERBERT
SMITH
FREEHILLS

**SINGAPORE INSTITUTE OF LEGAL EDUCATION -
2024 PART B COURSE**

**COMPARATIVE LAWS
FACT PATTERN**

You have been approached for advice by Sophie Publishing Limited ("**SP**"), based in Jakarta.

SP publishes a very successful women's monthly magazine, (Her)Story, which was launched three years ago by founder and CEO Sophie Ahmad as a more intelligent alternative to the usual titles. It combines fashion and lifestyle with more thought-provoking articles. (Her)Story's success is largely credited to its forward-thinking editor, Veronique Moreau, who will shortly be leaving the magazine to work for a rival publisher. Her departure was announced publicly on 28 June 2024.

Ms Moreau's departure has provoked anger on the part of a major new advertiser, Suey Mak Mak ("**SMM**"), a Thai-based designer leather goods brand which has become a household name in Thailand, Singapore, and Malaysia, and is now trying to break into the Indonesian market. Advertising in publications that appeal to its target market of young, upwardly mobile professionals is crucial to its strategy.

SMM entered into a one-year advertising contract with SP on 1 June 2024. The first edition containing SMM's advertising has already gone to print, but SMM is threatening to pull out from the remaining editions. SMM is demanding to know when Ms Moreau gave SP the notice of her resignation.

In a phone call received by Ms Ahmad shortly after the announcement of Ms Moreau's departure, SMM's owner and creative director (Madeleine Zhang) claimed she made it clear from the outset that SMM was interested in advertising in (Her)Story because of Ms Moreau's sophisticated editorial style, which was closely aligned to SMM's own sophisticated brand image, and she saw Ms Moreau as essential to the deal. She is particularly angry because Ms Moreau was closely involved in the discussions with SMM and gave presentations about her plans for the magazine over the next 12 months. Ms Zhang says that if SP had known that Ms Moreau was leaving, as it must have known by the time the contract was signed, SMM should have been told. Ms Zhang says that SP and Sophie Ahmad have deliberately tricked and cheated her and they should not be allowed to get away with such terrible behaviour.

Sophie Ahmad agrees that Ms Zhang referred to having been attracted to Ms Moreau's reputation and editorial style, but she doesn't recall anything about Ms Moreau being essential to the deal. She tells you that editors frequently move magazines after a couple of years or so, and SMM's experienced marketing team would have been well aware of this.

Ms Moreau did not give formal notice of her resignation until shortly after the contract with SMM was signed. However, she sent an email to Mr Wijaya (the lawyer), copied to Sophie Ahmad, two weeks beforehand, which said she intended to leave but recognised that news of her departure would not help the negotiations with SMM, and so she was planning to hold back giving formal notice until after the deal was concluded. She said she was letting SP know in advance so that Sophie Ahmad would have maximum time to think about continuity planning.

Mr Wijaya tells you that on receipt of this email he received a WhatsApp message from Ms Ahmad asking him as to what she should do and he immediately replied to Ms Ahmad advising her not to respond to Ms Moreau, so he does not believe there was any further email discussion on the issue.

Based on these facts, Mr Wijaya would like your initial advice both generally and in particular on the questions listed below. However, he is concerned about costs so does not want at this stage to



provide you with a full copy of the agreement. He would just like you to advise at the moment based on the information and the extracts from the agreement reproduced below.

You should assume that Mr Wijaya has no familiarity with Indonesian law and no previous experience of disputes.

- (1) Will SMM be able to unilaterally terminate the agreement on its own?
 - a. If yes, would your answer be different if the agreement is governed by Indonesian law?
 - b. If not, what other grounds could SMM use to get out of the agreement? Can SMM invalidate the contract?
- (2) If SMM decides to bring a formal claim against SP, what is the likely basis on which it will formulate its claims?
- (3) Is SP entitled to payment of the monthly fees even if SMM does not place further ads? If the answer is yes:
 - a. on what basis and how should SP claim it in any proceedings if SMM refuses to pay;
 - b. would your answer be different if the agreement is governed by Singapore law?
- (4) SMM commenced proceedings against SP in the Central Jakarta District Court seeking, amongst others, termination of the agreement, and for any other relief in accordance with the principles of fairness and justice (*ex aequo et bono*). However, SMM had identified SP wrongly in the claim forms. The Court bailiff nonetheless served the claim forms on SP.
 - a. Should SP challenge the Court's jurisdiction on the basis that the wrong party was identified, and if your answer is yes, why? If not, what steps should SP take in the Central Jakarta District Court or anywhere else?
 - b. Suppose SP brings a counterclaim for the monthly fees, could the Court refuse to award that claim even if it finds the agreement to be valid and binding, and if so, on what basis?
 - c. In the proceedings before the Central Jakarta District Court, can SMM demand or compel SP to produce the communications (i) sent by Ms Moreau to Mr Wijaya and Ms Ahmad, and (ii) the WhatsApp messages between Mr Wijaya and Ms Ahmad?
 - i. Would your answer be different if the request was made in the HK seated ICC arbitration?
 - ii. Suppose the Central Jakarta District Court ordered / directed SP to produce these communications. Can SP refuse to produce them and on what grounds?
 - d. Can SP claim for its legal costs in the proceedings?



Extracts from SP / SMM Contract

The extracts from the contract that Mr Wijaya has provided are:

Clause 8:

- 8.1 By the dates set out in schedule 1 to this agreement, SMM shall provide Promotional Material (as more particularly described in Schedule 2 to this Agreement) to appear in each edition of the Magazine during the Contract Period.
- 8.2 For each edition of the Magazine in which the Promotional Material appears, SMM shall pay a fee of US\$100,000 in accordance with the payment terms set out in clause 9 below.
- 8.3 If SMM fails to provide Promotional Material for any edition of the Magazine in accordance with clause 8.1 above, SP shall not be required to carry SMM's Promotional Material in the relevant edition, but SMM shall still be required to pay the fee of US\$100,000.

Clause 15

- 15.1 This agreement constitutes the entire agreement between the parties in relation to its subject matter and supersedes any previous agreement between the parties, whether written or oral, in respect thereto and, without prejudice to the generality of the foregoing, excludes any warranty, condition or other undertaking implied at law or by custom, usage or course of dealing.
- 15.2 Each party confirms that in entering into this agreement it has not relied on any statement, representation, assurance, warranty or commitment that is not expressly set out in this agreement.
- 15.3 Each party agrees that it shall have no right or remedy for misrepresentation or unlawful act or otherwise.

Clause 17

- 17.1 This agreement shall be governed by and construed in accordance with Thai law.

Clause 18

Any dispute arising out of or in connection with this contract shall be resolved by negotiation in good faith between the parties, failing which it may be referred to and finally resolved by arbitration in Hong Kong under the ICC Rules, which Rules are deemed to be incorporated by reference into this clause. The language to be used in the arbitration shall be English.