Datawork Pte Ltd v Cyberinc Pte Ltd
[2002] SGHC 132

Case Number : DCA 600033/2001

Decision Date : 25 June 2002

Tribunal/Court : High Court

Coram : Woo Bih Li JC

Counsel Name(s) : David Chan and Chua Sui Tong (Shook Lin & Bok) for the appellant in DCA 600033/2001 and respondent in DCA 600036/2001; Vinodh Coomaraswamy and David Chan (Shook Link & Bok) for the applicant in SIC No 600900 of 2002; Valerie Tan and Nadia Almenoar (Allen & Gledhill) for the respondent in DCA 600036/2001 and appellant in DCA 600036/2001 and respondent in SIC No 600900 of 2002

Parties : Datawork Pte Ltd — Cyberinc Pte Ltd

Judgment

GROUNDS OF DECISION

INTRODUCTION

1. The Plaintiff Datawork Pte Ltd (Datawork) is a company incorporated in Singapore and carries on business, inter alia, as a manufacturer and distributor of computer related products.

2. The Defendant Cyberinc Pte Ltd (Cyberinc) is also a company incorporated in Singapore and carries on business, inter alia, as a manufacturer of computer and telecommunication apparatus.

3. In about January 2000, the parties entered into an agreement in which Cyberinc appointed Datawork as the sole distributor of certain products of Cyberinc called Z-station, Z-media and Z-pac. The Z-pac comprised one Z-station and one or two Z-media. It is a mobile hand-held karaoke device.

4. The relevant terms of the Distributorship Agreement were:

(a) The distributorship would be for a minimum of six months plus one month.

(b) The minimum purchase quantity by Datawork was 3,000 units of Z-pac. If this target was reached, the distributorship would continue for another six months with another minimum quantity to be purchased.

(c) The commencement date of the sole distributorship was the date of the first delivery of the products.

(d) Datawork was obliged to order 1,000 units of Z-pac for the first three months.

5. There was also a provision i.e Clause 5 of Cyberincs obligations (Clause 5) which provided for Cyberinc to buy the unsold units from Datawork and its dealers should Cyberinc terminate the distributorship prior to its expiry. In view of the emphasis which Datawork placed on this provision, I set it out below:

> 5) In the event that CyberInc Pte Ltd decides to early terminate the sole distributorship agreement with Datawork Pte Ltd, it will have to buy up all the remaining stock of the

product from Datawork Pte Ltd and its dealers (if Datawork Pte Ltd deems necessary) at the same price Datawork Pte Ltd has paid to CyberInc Pte Ltd.

6. It was common ground that the first delivery of the products was on 31 March 2000. Hence the Distributorship Agreement commenced then and expired on 31 October 2000.

7. Datawork alleged that:

(a) In breach of the Distributorship Agreement, Cyberinc appointed TV Media Pte Ltd (TV Media) on or about September 2000 to distribute and/or sell and/or market the products.

(b) In so doing, Cyberinc had evidenced an intention not to be bound by the Distributorship Agreement and had repudiated the same.

(c) By an e-mail dated 5 October 2000, Datawork had accepted the repudiation and required Cyberinc to re-purchase the unsold products still in the possession of Datawork and/or its dealers.

(d) The acceptance of the repudiation was repeated on 12 December 2000 by a letter from Dataworks solicitors to Datawork.

8. Thus, in so far as the remaining products in the possession of Datawork and its dealers had not yet been paid for by Datawork, Cyberinc was effectively to take them back through the re-purchase. In so far as such products had already been paid for by Datawork, Cyberinc had to pay for them in its re-purchase.

9. There was also a claim for miscellaneous expenses but this was eventually resolved when the parties appeared before me. Hence, I need say no more about it.

10. The defence was that Datawork was granted only a sole distributorship instead of an exclusive distributorship. This meant that while Cyberinc could not legally have appointed another distributor, it could sell the products itself or through its own agents. Cyberinc had contracted with TV Media to, inter alia, produce a TV commercial to promote the products. TV Media would also sell the products at its outlets and such sales were made on behalf of Cyberinc for which TV Media would receive a commission.

11. Cyberinc also alleged that Datawork was estopped from alleging any breach by Cyberinc and that Datawork had acquiesced in Cyberincs intention to contract with TV Media. This was because Dataworks SC Ang had known of and had agreed to the same.

12. Lastly, Cyberinc denied that it was obliged to re-purchase the remaining products in the possession of Datawork and its dealers under Clause 5 as Cyberinc did not terminate the Distributorship Agreement.

13. Cyberinc also counterclaimed:

(a) payment from Datawork for the unpaid purchase price of 400 Z-pac units which had been delivered to Datawork,

(b) damages for 600 units which Datawork had ordered but did not want delivery of,

(c) damages for failure to order a minimum quantity of 3,000 units.

TRIAL JUDGES DECISION

14. The trial judge, District Judge Tan Peck Cheng, decided that Cyberinc was in breach of contract and there was no acquiescence by Datawork. However she also concluded that Clause 5 requiring Cyberinc to re-purchase the products from Datawork did not apply because it was not Cyberinc who terminated the Distributorship Agreement but Datawork and the provision applied only in the former, but not the latter, situation.

15. The trial judge also decided that Datawork suffered only nominal damages as its sales of the products were not doing well in any event.

16. Accordingly, the trial judge fixed the damages for Cyberincs breach at S$2,500 to be paid by Cyberinc to Datawork and dismissed the other reliefs sought by Datawork. She also granted judgment against Datawork to pay Cyberinc the purchase price of the 400 units delivered but not yet paid for. The rest of the reliefs sought by Cyberinc were disallowed. Datawork was required to pay costs to Cyberinc which the trial judge fixed at S$18,000.

THE APPEALS

17. Datawork appealed to the High Court against that part of the trial judges decision which:

(a) ordered payment of only $2,500 to Datawork as damages,

(b) dismissed the other reliefs sought by Datawork,

(c) granted Cyberinc judgment for the purchase price of the 400 units, and

(d) costs.

18. Cyberinc also appealed to the High Court. Its appeal was against that part of the decision which:

(a) ordered Cyberinc to pay $2,500 as damages to Datawork,

(b) disallowed the rest of the reliefs sought by Cyberinc, and

(c) the quantum of costs fixed by the trial judge.

MY DECISION

19. Both appeals were heard by me on 13 May 2002. After hearing arguments, I dismissed the appeal by Datawork and allowed the appeal by Cyberinc in part (because Cyberincs computation of the balance number of units to make up the minimum quantity was incorrect). My decision meant that:

(a) Cyberinc was not in breach of contract and did not have to pay any damages to Datawork.

(b) Cyberinc was still entitled to be paid for the 400 units delivered to Datawork (an earlier batch of 300 units had been delivered and paid for already).

(c) Cyberinc was entitled to damages to be assessed in respect of 600 units which Datawork had ordered but did not want delivery of.

(d) Cyberinc was entitled to damages to be assessed for Dataworks failure to order 1,700 sets to

make up the minimum quantity of 3,000 units.

20. I also granted costs of Cyberincs appeal and of the hearing below to Cyberinc and costs of Dataworks appeal to Cyberinc.

MY REASONS

21. Although much time and effort was spent by both Counsel for Datawork and Cyberinc on arguments as to whether TV Media was or was not a distributor of Cyberinc and the interpretation of Clause 5, I decided the appeals on the ground that Datawork was estopped from alleging that Cyberinc was in breach of contract. Datawork had also acquiesced in the appointment of TV Media by Cyberinc to promote and sell the products.

22. On this issue, the trial judge had ruled against Cyberinc. I set out below the reasons why I reached the opposite conclusion.

23. Mr Tan Peng Khoon (PK Tan) had joined Cyberinc in September 1999. He was its Marketing Director. The managing director was Mr Ng Kai Kong (KK Ng).

24. Datawork is run by PK Tans sister Lucillia Tan Sok Cheng, also referred to as SC Ang, and their brother Larry Tan. It was PK Tan who introduced Datawork to Cyberinc as his sisters company. At all material times, all parties were aware of PK Tans relationship with SC Ang.

25. Consequently the Distributorship Agreement was entered into.

26. SC Ang did not dispute that she was aware of Cyberincs intention to use TV Media to promote and sell the products. Indeed, she learned of this from a meeting with KK Ng and her brother PK Tan. However she claimed that she had thought that TV Media would be buying the products from Datawork and not from Cyberinc.

27. In her Affidavit of Evidence-in-Chief (AEIC), she said at paras 32 and 33:

> 32. Sometime in or around the 2nd or 3rd week of September 2000, KK Ng and my brother came to the Plaintiffs offices to discuss advertising the Defendants products on television. They informed me that the Defendant was intending to advertise on television through TV Media . He gave me the impression that TV Media would be producing the advertisements and selling the Defendants products at their retail outlets as well as through mail order and that any sales by TV Media would be made from stock purchased from the Plaintiff. In effect, the impression which he gave me was that TV Media would purchase its stock from the Plaintiff directly. Given the practice in the previous marketing efforts outlined above and our understanding of both parties obligations under the Distribution Agreement, I naturally assumed that this would continue to be the case.
>
> 33. I was therefore quite pleased when I heard the news from KK Ng and my brother as I believed that our sales would improve after the advertisements. I had no reason to object to the advertisements as I understood that the terms of the Distribution Agreement would be adhered to by the Defendant.

28. KK Ngs evidence on this point was in para 42 of his AEIC where he said:

> 42. Thus, sometime in August 2000, PK, SC Ang and I had a meeting to discuss advertising through TV Media. I recall that SC Ang was pleased to hear about the

advertisement. She felt that any efforts to promote the product would be worth trying. She also expressed the view that if the product was put into the market, albeit by the Defendant, it would still increase awareness of the product and possibly boost the Plaintiffs own sales of the product.

[Emphasis added.]

29. In cross-examination, KK Ng accepted that he did not know whether SC Ang was aware that Cyberinc was selling the products directly to TV Media (NE 189). At NE 190, he also said:

Q: Because she does not know TV Media getting (sic) for defendant

A: That is possible but not 100% sure.

30. PK Tan did not have an AEIC. He gave evidence for Datawork, and not Cyberinc which he had by then left. He said that SC Ang was told that TV Media was being used to help promote her sales (NE 72). He claimed that Cyberinc did not tell Datawork that it would be selling the products directly to TV Media. If it had told Datawork, Datawork would have jumped (NE 74). He was the one who had negotiated with TV Media on behalf of Cyberinc and who signed the agreement with TV Media but he claimed that the agreement with TV Media was a breach by Cyberinc of the Distributorship Agreement. He alleged that he did not protest to KK Ng because of fear over his own salary (NE 102).

31. The trial judges conclusion was as follows:

21. . With regard to paragraph 20(a), Mr K K Ngs evidence was that he did not tell Mdm Lucilla Tan ("Mrs S C Ang") that TV Media would be purchasing the products directly from the defendant or showed Mrs S C Ang the agreement with TV Media. He was not sure if Mrs S C Ang was aware. He assumed that the plaintiff must have known. He was asked if it was reasonable for Mrs S C Ang to assume that TV Media would obtain the products from her, he replied that it was. Mrs S C Ang in her evidence stated that she knew that the defendant was speaking to TV Media. She was pleased because she assumed that TV Media would be buying from her. I found Mrs S C Angs evidence credible and that there is no evidence to show that the plaintiff had acquiesced to the relationship between the defendant and TV Media.

32. I found it difficult to accept that PK Tan had thought that what Cyberinc was doing was in breach of the Distributorship Agreement and that he went ahead to negotiate and sign the agreement on behalf of Cyberinc with TV Media without even attempting to advise KK Ng that this would cause a breach of the Distributorship Agreement or informing his own sister, whom he had introduced to Cyberinc, about the true situation. After all, there was no evidence that KK Ng was trying to hide the truth about the sales from Cyberinc to TV Media and, in any event, he would have been foolish to think that he could get away with it given that he knew PK Tans relationship with SC Ang.

33. Secondly, KK Ng did not say that it was reasonable for SC Ang to assume that TV Media would obtain the products from Datawork. All he said was that it was possible that she had this assumption but he was not 100% sure (see NE 190 which I cited in para 29 above). In any event, even if KK Ng had said what was attributed to him by the trial judge, that would have been merely an opinion of his and not evidence of a fact which he had personal knowledge of.

34. Thirdly, and most importantly, the evidence of SC Ang as to when she first came to know that TV Media was obtaining the products directly from Cyberinc was highly improbable and was also contradicted by documentary evidence. I elaborate below.

35. In SC Angs AEIC, paras 34 to 35, she said:

> 34. On 24 September 2000, I saw the advertisement screened by TV Media on television for the first time. I clearly recall that the advertisement stated that the Defendants products were being sold through the retail outlets operated by TV Media. No mention was made of the Plaintiff or its authorised dealers.
>
> 35. I expected TV Media to contact the Plaintiff shortly after the advertisement was screened. As explained previously, I had been given the impression that we would be supplying TV Media with the Defendants products which TV Media managed to sell. However, nothing was heard from TV Media even after the advertisement was screened. I made several unsuccessful attempts to contact KK Ng and PK Tan to ask for an explanation. Finally, PK Tan returned my calls sometime towards the end of September 2000. It was only then that he informed me that the Defendant had been selling directly to TV Media and by passing the Plaintiff.
>
> [Emphasis added.]

First sub-point

36. It was common ground that SC Ang had considerable experience in her business. Yet, when she learned that TV Media would be appointed, she did not ask KK Ng or PK Tan as to when she should contact TV Media or when TV Media would be contacting Datawork to order the products from Datawork. There was also no query by her about the volume and timing of the purchases by TV Media from Datawork which would in turn affect the volume and timing of purchases by Datawork from Cyberinc. I found this lack of interest telling. It suggested that she must have known all along that TV Media were obtaining the products directly from Cyberinc.

Second sub-point

37. I found it incredulous that SC Ang could have been under the impression that TV Media would be contacting Datawork shortly after she noticed an advertisement by TV Media on television on 24 September 2000. The advertising campaign had already begun. The public were being urged to buy from TV Media. There was no suggestion that the public were told that the products would be on sale only in the future. Therefore the advertisements would suggest that the products were immediately available from TV Media. It was quite absurd for SC Ang to suggest that while the public were going to TV Medias outlets to buy the products, TV Media would not have the products and had still not contacted her to obtain the products. Indeed, by then, there was still no discussion between TV Media and Datawork even on the price which TV Media was supposed to pay for the products from Datawork. How then would TV Media know what price to adopt for its sales to the public?

Third sub-point

38. SC Angs assertion that she had assumed that TV Media would be contacting Datawork shortly after the advertisement to obtain the products was contradicted by a second e-mail from her on 5 October 2000, there being two e-mail from her on that day.

39. For completeness, I set out below the first e-mail she sent on 5 October 2000 at 10:58am and the second e-mail she sent on the same day at 2:44pm.

> First e-mail

Subject: Fw: Promotion partnership

Dear PK and KK,

I shall be writing to you by today the problems that we are currently facing in the distribution of Z-station and our decision to settle these problems.

In spite of this, I would like to bring to your attention the opportunity that CyberInc can work with this company, Field Catering & Supplies Pte Ltd, a $500,000 paid up capital company. They have already bought 4 sets of Z-station, normal version from us at $257.50/= each and tested it. Now, they are coming back to us on this proposal which I think is a good opportunity to create the awareness but of course with modifications and monitoring from your side. Gerard Lim is the brand manager. His HP: 9 7506305. His tel: 759 1771. If you are contacting him directly to discuss the matter, please let me know so that I would know how to talk to him if he called me.

Bye.

S.C.Ang

Datawork Pte Ltd

Second e-mail

Subject: Termination of sole distributorship of Z-station in Singapore

Dear KK & PK

On 24th September 2000, TV Media Pte Ltd has begun the screening of its advertisement of Z-station on TCS - channel 5. This meant that Cyberinc would have sold the Z-station to them much earlier on. This in turn meant that Cyberinc has broken one of the major clauses in the letter of understanding. Under the term duration of sole distributorship and quantity commitment of the letter of understanding, it stated the sole distributorship will be for a minimum period of seven months beginning from the date of first receipt of the stock of Z-station from Cyberinc which is 30th March 2000. The exclusive period should only expire on 29-10-2000. This demonstrated the fact that Cyberinc has decided to terminate the sole distributorship agreement.

Under number 5 of the list of things that Cyber Inc Pte Ltd must do as stated in the letter of understanding is as follows: in the event that CyberInc Pte Ltd decides to early terminate the sole distributorship agreement with Datawork Pte Ltd, it will have to buy up all the remaining stock of the product from Datawork Pte Ltd and its dealers (If Datawork Pte Ltd deems necessary) at the same price Datawork Pte Ltd has paid to CyberInc Pte Ltd.

We have thought about the past few months business relationship with your company and the above-mentioned clause, we have decided to exercise it, i.e to demand CyberInc Pte Ltd to buy up the remaining stock of Datawork and its dealers. However if CyberInc would like to continue to sell to the dealers, Datawork, with the consent of the dealers, will go with CyberInc to visit the dealers to expedite the taking over of dealers.

We look forward to (*sic*) letting us know when we can return the products to your company and also about your decision with regards to the dealers. Thank you.

Yours truly,

S.C.Ang

Datawork Pte Ltd

[Emphasis added.]

40. The second e-mail from SC Ang clearly stated that when TV Media had begun to screen the advertisement, This meant that Cyberinc would have sold the Z-station to them much earlier on [my emphasis]. This was a logical assertion but it contradicted what SC Ang had said in her AEIC.

41. Mr David Chan, Counsel for Datawork, submitted that this sentence in the second e-mail was the result of SC Angs subsequent telephone discussion with PK Tan in which PK Tan informed her that Cyberinc had been selling direct to TV Media and by-passing Datawork. However, the second e-mail did not attribute this knowledge to any telephone discussion with PK Tan. On the contrary, the second e-mail attributed this knowledge to logic and there was no mention of any recent telephone discussion with PK Tan.

Fourth sub-point

42. The first e-mail from SC Ang on 5 October 2000 to PK Tan and KK Ng was also revealing. It reinforced a point made by Ms Valerie Tan, Counsel for Cyberinc, that Datawork was having difficulty in effecting sales of the products and was looking for a way out.

43. The first e-mail suggested that Datawork was going to make a proposal and there was no hint therein that Datawork had thought that Cyberinc was in breach of contract even though, by then, 10 to 11 days had lapsed after SC Ang had first noticed the advertisement of TV Media on 24 September 2000 and TV Media had not contacted Datawork to make purchases.

44. About 3 hours later, the substance and tone of the second e-mail was significantly different. The heading of the second e-mail was also different from the first. The second e-mail was not the anticipated follow-up from the first. In my view, Datawork had by then changed its mind and decided to use the sale by TV Media as an excuse to get out of the Distributorship Agreement and to require Cyberinc to re-purchase the products in the possession of Datawork and its dealers.

Summary

45. With respect, the trial judge did not consider the points I have mentioned above and the two e-mail from SC Ang of 5 October 2000. In my view, her conclusion was plainly wrong.

46. In the circumstances, it was clear to me that SC Ang and Datawork were aware and had acquiesced in TV Medias involvement in the promotion of the products as well as the purchase thereof from Cyberinc. They were even enthusiastic about the involvement of TV Media as they had thought that this would give a boost to their own flagging sales. Datawork was also estopped from alleging a breach of contract arising from the sales of the products by Cyberinc to TV Media.

SUBSEQUENT DEVELOPMENTS - SUMMONS-IN-CHAMBERS NO 600900 OF 2002

47. Subsequent to my decision, Datawork sought to appeal against my decision.

48. Section 34(2) of the Supreme Court of Judicature Act (Cap 322) (SCJA) states:

(2) Except with the leave of the Court of Appeal or a Judge, no appeal shall be brought to the Court of Appeal in any of the following cases:

(a) where the amount or value of the subject-matter at the trial is $250,000

49. It was common ground that the jurisdiction of the District Court is $250,000 and that this figure was inserted as an amendment in the SCJA to meet the increase in the jurisdiction of the District Court to $250,000.

50. In view of s 34(2), Datawork applied for leave to appeal against my decision to the Court of Appeal by way of Summons-in-Chambers No 600900 of 2002. However, at the first hearing of this application on 31 May 2002, Mr Vinodh Coomaraswamy, who was appearing with Mr David Chan for Datawork, made an oral application for a declaration that no leave was necessary. However, if leave was necessary, then, he would seek leave to appeal. As this oral application took his opponent by surprise, I adjourned the application to a date to be fixed.

51. At the next hearing on 12 June 2002, Mr Coomaraswamy proceeded with both points. After hearing arguments, I decided that leave was required but that no such leave should be granted. Accordingly, I dismissed the application with costs.

ARGUMENTS FOR DATAWORK

52. As I have mentioned, Mr Coomaraswamys first position was that no leave was required under s 34(2) SCJA. He mounted his argument in the following manner.

53. In Dataworks claim, it was seeking:

(a) a declaration that Cyberinc was obliged to purchase the unsold products held by Datawork and its dealers pursuant to the Clause 5 which I have mentioned

(b) an order that Cyberinc pay US$32,819 for the purchase under Clause 5

(c) alternatively, damages for loss suffered as a result of Cyberincs breach of the Distributorship Agreement.

54. In Cyberincs counterclaim, it was seeking:

(a) US$58,318.60 being the price of the 400 units of Z-pac which had been delivered to Datawork but had remained unpaid

(b) damages for Dataworks failure to purchase 1,000 units of Z-pac within the first three months

(c) damages for Dataworks failure to order the minimum quantity of 3,000 units.

55. Cyberinc had alleged that its damages exceeded S$250,000 but as its counterclaim was filed in the District Court and not in the High Court, the District Court would not grant it judgment and the assessment would not be for a sum which would exceed $250,000, after taking into account the US$58,318.60.

56. Mr Coomaraswamy submitted that as Cyberincs damages had not yet been assessed, I should adopt the maximum amount under the District Court jurisdiction as the putative amount of its damages, including the US$58,318.60. Taking the difference between this maximum amount i.e S$250,000 on the one hand

and the US$32,819 which Datawork itself was claiming on the other hand, the resultant figure would be in excess of S$250,000. This was the value of the subject matter for the purpose of s 34(2)(a) and, therefore, no leave to appeal was required.

57. Mr Coomaraswamy relied on 2 cases, *Augustine & anor v Goh Siam Yong* [1992] 1 SLR 767 and the Malaysian case of *Yai Yen Hon v Teng Ah Kok & Sim Huat Sdn Bhd* [1997] 1 MLJ 136.

58. In the *Augustine* case, the respondent commenced an action in the Magistrates Court to recover damages in respect of a traffic accident. The appellants did not enter an appearance and the respondent obtained interlocutory judgment with damages to be assessed. Such damages were assessed by a deputy registrar of the subordinate courts at $4,780.89. The appellants appealed to a district judge-in-chambers who reduced the damages to $1,177.50. The respondent filed a notice of appeal to the High Court against the reduced assessment.

59. The appellants applied to strike out the notice of appeal on the ground that under O 55 r 1(5) of the Subordinate Courts Rules 1986, the respondent had no right of appeal. This application was heard by the Deputy Registrar of the High Court who made no order on the application so as to allow the respondent to apply to a judge of the High Court for a declaration that she had such a right of appeal. After hearing arguments, that declaration was made and the appellants then appealed to the Court of Appeal against that declaration.

60. The Court of Appeal dismissed the appeal because O 55 r 1(5) was ultra vives the then s 21 SCJA. The arguments and the ruling on the effect of the then s 21 SCJA on O 55 r 1(5) were not relevant to the case before me. However, one of the arguments raised by the appellants in that case was that the respondent would in any event require leave to appeal under the then s 21(1) SCJA. That provision stated:

> (1) Subject to the provisions of this or any other written law, an appeal shall lie to the High Court from a decision of a District Court or Magistrates Court in any suit or action for the recovery of immovable property or in any civil cause or matter where the amount in dispute or the value of the subject matter exceeds $2,000 or with the leave of the High Court if under that amount.

The appellants there contended that since the district judge-in-chambers had reduced the damages to $1,177.50, that was the amount in dispute. The Court of Appeal disagreed with that contention and held that as the respondent was disputing the reduction in the original order made by the deputy registrar, the amount in dispute was the difference between the $4,780.89 assessed by the deputy registrar and the $1,177.50 allowed by the district judge i.e $3,603.39.

61. However the facts in that case were different from those before me. First, the provisions were different, i.e one pertained to the then s 21(1) SCJA while the present case pertained to the current s 34(2)(a) SCJA which was a different provision.

62. Secondly, and more importantly, that was not a case involving a counterclaim as well.

63. As for the Malaysian case of *Yai Yen Hon*, that case was one in which leave to appeal was required when the amount or value of the subject matter of the claim was less than RM100,000. There, the plaintiffs claim was well in excess of RM100,000 but the High Court gave judgment to the plaintiff for RM62,400. The Federal Court held that whether or not there was a right of appeal depended on the value of the claim and not the amount given by the trial judge.

64. As can be seen, the provision in that case was different and the facts were also different. Again, there was no counterclaim there.

65. In addition, it seemed to me that despite Mr Coomaraswamys submission, his approach was not one in which the difference between what Datawork might obtain and what Cyberinc might obtain is taken. What he had done was to add the two together to derive a higher figure in excess of $250,000.

66. As for the existence of the counterclaim, Mr Coomaraswamy submitted that even though there was a counterclaim by Cyberinc, this arose from the same facts and it was not possible to separate one from the other. He stressed that I should take into account the entire subject matter of the suit and not just the value of Dataworks claim. According to him, the reference to a trial in s 34(2) SCJA includes a case where there is a claim and counterclaim heard in one trial.

67. Mr Coomaraswamy further submitted that this was not a case in which Datawork might obtain judgment for US$32,819 on the one hand, and, on the other hand, Cyberinc might obtain judgment for US$58,318.60 and damages so that the amount adjudged to Datawork would effectively abate the amount adjudged to Cyberinc. It was like an all or nothing scenario. Either Datawork would obtain judgment for US$32,819 or Cyberinc would obtain judgment for US$58,318.60 and damages. In his submission, this reinforced his argument that the difference between what Datawork might obtain and what Cyberinc might obtain was the amount or value of the subject matter at the trial.

68. Mr Coomaraswamys alternative position was that if leave to appeal was required, then such leave ought to be granted to Datawork.

69. In *Lee Kuan Yew v Tang Liang Hong* [1997] 3 SLR 489, the Court of Appeal considered whether leave to appeal should be granted in respect of an order of costs under s 34(2)(b) SCJA. After referring to Justice Lai Kew Chais judgment in *Anthony s/o Savarimiuthu v Soh Chuan Tin* [1989] SLR 607, Chief Justice Yong Pung How enunciated three limbs to be considered when leave to appeal is sought:

> (a) prima facie case of error,
>
> (b) question of general principle decided for the first time,
>
> (c) question of importance upon which further argument and a decision of a higher tribunal would be to the public advantage.

70. Mr Coomaraswamy submitted that there was a prime facie case of error of law or an important question of law for the Court of Appeal to decide. It was not clear to me whether the latter was under the second or third limb enunciated by Yong CJ.

71. As regards the alleged important question of law, Mr Coomaraswamy submitted that it was important to establish how the High Court, sitting as an intermediate appellate court, should approach findings of fact by a District Court. According to him, the High Court, as an appellate court, may be required to approach findings of facts differently from the Court of Appeal as the latter was the final appellate court. While the Court of Appeal can in certain situations find itself to be in as good a position as the trial judge to determine facts, Mr Coomaraswamy was suggesting that the High Court, sitting as an appellate court, should be even slower to find itself in as good a position as the trial judge to determine facts. He submitted that while the precise test for the High Court was difficult to formulate, the High Court should only reverse the finding of a trial judge if the finding was manifestly erroneous or in some way perverse. He emphasized that the High Courts intermediate role will become more important as the jurisdiction of the District Court increases in future.

72. As regards the alleged error of law, Mr Coomaraswamy relied on two local cases for the proposition that a trial judges finding of fact should not be disturbed unless he was plainly wrong. They were *Seah Ting*

Soon v Indonesian Tractors Co Pte Ltd [2001] 1 SLR 521 and *Peh Eng Leng v Pek Eng Leong* [1996] 2 SLR 305. However, that principle was not in issue. Besides, in the case of *Peh Eng Leng*, Karthigesu JA said that the evidence of a witness should be tested against inherent probabilities or improbabilities and against uncontroverted facts (see p 312 at H/I of the report). Mr Coomaraswamy did not dispute this principle but he submitted that the finding of the trial judge would stand up to scrutiny even when so tested.

73. He also relied on a decision of the Australian High Court in *Baumgartner v Baumgartner* 76 ALR 75 for the proposition that it was not legitimate for an appellate court to ignore the resolution of conflicting evidence by a trial judge and to draw inferences from the surrounding area of common ground only.

ARGUMENTS FOR CYBERINC

74. Ms Tan submitted that as regards the issue whether leave to appeal was required, Dataworks own application was initially for leave to be granted.

75. Secondly, she relied on s 9A (1) Interpretation Act (Cap 1) which provides that:

> 9A. (1) In the interpretation of a provision of a written law, an interpretation that would promote the purpose or object underlying the written law (whether that purpose or object is expressly stated in the written law or not) shall be preferred to an interpretation that would not promote that purpose or object.

76. Thirdly, under s 9A(3), a speech made in Parliament by a Minister on the occasion of the moving of a Bill and any relevant material in any official record of debates in Parliament could be considered in the interpretation of a provision of written law.

77. She then referred to the speech of the Minister of Law on s 34(2)(a) as cited in the judgment of L P Thean JA in *Spandeck Engineering (S) Pte Ltd v Yong Qiang Construction* [1999] 4 SLR 401 and Thean JAs summary of the purpose of s 34(2)(a):

> 15 Prior to the amendments made by the Supreme Court of Judicature (Amendment) Act 1998, s 34(2) read as follows:
>
> (2) Except with the leave of the Court of Appeal or a Judge, no appeal shall be brought to the Court of Appeal in any of the following cases:
>
> (a) where the amount or value of the subject-matter at the trial is $30,000 or less;
>
> The amending Act of 1998 amended para (a) by deleting the sum of $30,000 and substituting therefor the words $250,000 or such other amount as may be specified by an order made under subsection (3). All that the amendment did was to increase the monetary limit from $30,000 to $250,000 and no other changes were made. However, the underlying purpose of this amendment was to bring it in line with the jurisdiction of the District Court. The jurisdiction of the District Court had as from 1 August 1997, been increased to $250,000 and the amendment made to s 34(2)(a) in 1998 was to bring it in line with the increased jurisdiction of the District Court and to allow an appeal to be brought to this court only where leave to appeal is obtained from this court or a judge of the High Court. This was evident from the speech of the Minister for Law, Professor Jayakumar, when he moved the Second Reading of the Supreme Court of Judicature (Amendment) Bill on 26 November 1998. He said:
>
> > On 1 August 1997, the District Courts jurisdiction in civil matters was raised from $100,000 to $250,000 In view of the

> enhanced District Courts jurisdiction to $250,000 in civil matters, the Chief Justice has proposed that the existing $30,000 limit in s 34(2)(a) be raised to $250,000. In other words, bring its limit in line with the enhancement. If the limit is not raised to $250,000, District Court cases of less than $250,000 can first go on appeal to the High Court and then Court of Appeal. This would strain the limited resources of the Court of Appeal.

16 It seemed to us abundantly clear that the intention of Parliament in making the amendment to s 34(2)(a) of the SCJA was to limit the right of appeal to this court. Hence, in any appeal from the decision of the High Court, in which the value of the subject matter involved does not exceed $250,000, leave to appeal must be obtained either from this court or a judge of the High Court.

78. To reinforce the above summary, Ms Tan referred to a speech by a Member of Parliament Mr R. Ravindran in the Singapore Parliament Report when the appropriate Bill was being debated. In Parliament No 9, Session No 1, Volume No 69, Sitting No 11 of 26 November 1998, Mr Ravindran said (at column 1634):

> Sir, the effect of the present limits is that cases within the jurisdiction of the Magistrates Court are appealable as of right to the High Court, but are not appealable as of right to the Court of Appeal. This is a two-tier system. This position is satisfactory, as there is no real need for a three tier-system for Magistrate Court suits.
>
> Sir, cases within the jurisdiction of the District Courts are appealable as of right to the High Court and are also appealable as of right to the Court of Appeal. This position is unsatisfactory as there is a three-tier system and it is not something that is really needed. Indeed, the proposed amendments may have been intended to do away with this anomaly. Cases within the jurisdiction of the High Court are appealable as of right to the Court of Appeal. Here again, there is a two tier system. This position is satisfactory and was consciously adopted with the cessation of appeals to the Privy Council.

79. It seemed to me that this view was implicit in the intention to limit the right of appeal from a decision of the District Court to primarily the High Court. Indeed this was also recognised by Chao Hick Tin JA in para 13 of his judgment in *Tan Chiang Brothers Marble (S) Pte Ltd v Permasteelisa Pacific Holdings Ltd* [2002] 2 SLR 225 where he said, Implicit in the scheme of things is that there should, as a rule, be only one tier of appeal ..

80. As for the argument that the court should assume, for present purposes, that Cyberinc would obtain the maximum sum under the District Courts jurisdiction after the assessment of damages, Ms Tan submitted that it was uncertain how much Cyberinc would actually get. She argued that Mr Coomaraswamys argument would inject uncertainty. She also submitted that such an argument would cause an unworkable or impracticable or inconvenient result.

81. Lastly, Ms Tan adopted a point from a question that I had posed to Mr Coomaraswamy. She submitted that if the cross-claim was by way of a separate action, the argument of Mr Coomaraswamy of taking into account each figure to obtain the difference must fail as there were two separate actions. The fact that the cross-claim was mounted as a counterclaim in the same action should not give rise to a different outcome.

82. As regards the question as to whether leave to appeal, if required, should be granted, Ms Tan did not advance any submission thereon.

MY REASONS ON DATAWORKS APPLICATION

83. I was of the view that Mr Coomaraswamy was not wrong in adopting the maximum sum under the District Courts jurisdiction for the purpose of his argument in relation to s 34(2)(a). After all, Cyberinc had in its affidavit alleged its damages to be more than the $250,000 maximum sum. The situation would be different if Cyberinc was alleging a sum much less than the maximum for its damages. I did not think that this approach was injecting an uncertainty or would cause an unworkable or impracticable or inconvenient result. It may be based on an assumption but the purpose was to inject some certainty into the present application and not the other way around. On the contrary, Ms Tans suggestion that one should wait until the assessment was concluded would itself inject uncertainty and cause an unworkable or impracticable or inconvenient result. This is because the dead-line to appeal will often be earlier than the conclusion of the assessment. Furthermore, after the assessment, there might be a further appeal or appeals. In any event, for the reasons stated below, it did not matter whether the maximum sum was used or the actual sum granted to Cyberinc was used.

84. In my view, the case of *Augustine* and the Malaysian case of *Yai Yen Hon* were not relevant for the reasons I have mentioned.

85. It must be borne in mind that a counterclaim is a separate and independent action. If not for O 15 r 2(1) of the Rules of Court, a separate action would have to be filed separately. Order 15 r 2(1), however, enables, but does not compel, the separate action to be filed as a counterclaim in an existing action.

86. When the separate action is filed as a counterclaim, it does not cease to be a separate action in substance. Thus The Supreme Court Practice 1999 Volume 1 para 15/2/4 states:

> 15/2/4 **To what extent a counterclaim is an independent action** - A counterclaim is substantially a cross-action, not merely a defence to the plaintiffs claim. It must be of such a nature that the Court would have jurisdiction to entertain it as a separate action (*Bow McLachlan & Co. Ltd v. Ship Camosun* [1909] A.C. 597; *Williams v. Agius* [1914] A.C. 522). "A counterclaim is to be treated, for all purposes for which justice requires it to be so treated, as an independent action" (*per* Bowen L.J., in *Amon v. Bobbett* 22 Q.B.D. 543 at 548). If after the defendant has pleaded a counterclaim, the action of the plaintiff is for any reason stayed, discontinued or dismissed, the counterclaim may nevertheless be proceeded with (para. (3)). Thus, where the plaintiffs claim was held to be frivolous, the Court still granted the defendant the relief prayed for by his counterclaim (*Adams v. Adams* (1892) 45 Ch.D. 426; [1892] 1 Ch. 369). In short, for all purposes except those of execution, a claim and a counterclaim are two independent actions (*per* Lord Esher M.R., in *Stumore v. Campbell & Co.* [1892] 1 Q.B. 314 at 317) .
>
> [Emphasis added.]

87. Therefore, although, as a matter of procedural convenience, a claim and a counterclaim are dealt with together at the same directions stage and the same trial, they are still separate actions.

88. The reference in s 34(2)(a) to the amount or value of the subject matter at the trial must, in my view, be construed as referring to the trial of an action. In the context of a claim and counterclaim, the trial is of two actions. This interpretation would advance the purpose of the provision which is to restrict appeals from District Court actions to the Court of Appeal. After all, claims and counterclaims are a common feature of litigation and it could not have been the intention of Parliament to allow such appeals to proceed to the Court of Appeal as a matter of right when Parliaments intention was to restrict such appeals generally.

89. In addition, if Mr Coomaraswamys argument was accepted, it would result in an anomaly. When the cross-claim is filed as a counterclaim, the right of appeal to the Court of Appeal would be unimpeded.

However, if there were two separate actions, the right of appeal would be restricted. This could not be right even though I accepted that, generally, the two actions would be consolidated before the trial. However this would not always necessarily be the case.

90. As for the argument that either Datawork would obtain payment for the price of the products already paid for or Cyberinc would obtain payment of the unpaid purchase price and damages, I was of the view that such an argument militated against the conclusion that Mr Coomaraswamy was advocating. In such a scenario, only the higher of the two possible judgment sums should be taken instead of adding them up.

91. In any event, I was of the view that it did not matter whether one party must succeed and the other must fail or the situation was one in which each opposing party could succeed in its respective claims. Parliament did not intend for parties and the courts to engage in an exercise to determine which scenario was applicable for every claim and counterclaim in order to determine whether leave to appeal was required.

92. Accordingly, I concluded that Datawork was required to obtain leave to appeal to the Court of Appeal.

93. As for the issue whether leave to appeal should be granted, I was of the view that it was not open to Mr Coomaraswamy to advance the argument about the intermediate role of the High Court when his colleague, Mr David Chan, advanced a different argument before me when the appeal proper to the High Court was heard by me. In summary, Mr Chan had advocated only the trite principle that an appellate court should be slow in disturbing findings of fact of a trial court and Ms Tan did not dispute that principle.

94. In any event, the High Court is, as a rule, supposed to be the final appellate court for trials in the District Court. It is only in limited situations that an appeal may be made to the Court of Appeal. In emphasizing the likelihood of an increase in the District Courts jurisdiction, Mr Coomaraswamy was actually reminding me of the concern which led to the limiting of appeals from the District Court to the Court of Appeal.

95. Ultimately, I was of the view that however Mr Coomaraswamy sought to couch the applicable principle for an appellate High Court, it would not have made a difference to my conclusion. I was of the view that the finding of the trial judge was plainly wrong or, to use Mr Coomaraswamys words, was manifestly erroneous or perverse.

96. The truth of the matter was that my decision and the reasons for my decision did not involve any important question of law for the Court of Appeal to decide.

97. As for whether my decision involved an error of law, I was of the view that my decision was on the facts. However, Mr Coomaraswamy had to label it as an error of law to improve Dataworks chances of securing leave to appeal. For the reasons I have given as to why I reached a different conclusion from the trial judge, I could not agree that her conclusion could stand when tested against inherent probabilities or improbabilities and against uncontroverted facts.

98. I also did not think that the Australian case of *Baumgartner v Baumgartner* took the matter any further. I did not base my decision solely on what was common ground. With respect, my decision was based more on the application of facts and points which the trial judge had not considered.

99. Accordingly, leave to appeal was refused.

Sgd:

WOO BIH LI

JUDICIAL COMMISSIONER

SINGAPORE