

Singapore Tourism Board v Children's Media Ltd and others
[2010] SGHC 234

Case Number : Suit No 175 of 2006 (Registrar's Appeal No 418 of 2009)
Decision Date : 13 August 2010
Tribunal/Court : High Court
Coram : Lee Seiu Kin J
Counsel Name(s) : Lok Vi Ming SC, Lee Sien Liang Joseph and Lim Shu-Shan Jeannette (Rodyk & Davidson LLP) for the plaintiff; Srinivasan s/o V Namasivayam and Rahayu Binte Mahzam (Heng Leong & Srinivasan) for the third defendant.
Parties : Singapore Tourism Board — Children's Media Ltd and others

Damages

13 August 2010

Lee Seiu Kin J:

Introduction

1 On 27 May 2008, Lai Siu Chiu J ("Lai J") gave interlocutory judgment in favour of the plaintiff against the three defendants in this action. Her written judgment is reported in [2008] 3 SLR(R) 981 ("the High Court Judgment"). Lai J ordered damages to the plaintiff to be assessed by the Registrar. All three defendants appealed and the Court of Appeal dismissed the appeal on 14 November 2008. The written judgment of the Court of Appeal is reported in [2009] 1 SLR(R) 524 ("the CA Judgment"). As the facts are amply set out in both judgments, I will not repeat them here.

2 The assistant registrar ("the AR"), in notice of assessment no 47 of 2009, heard evidence on damages and made the following orders:

(a) That judgment be entered for the plaintiff in the sum of \$6,661,092.07, the breakdown of which is as follows:

- (i) sponsorship sums of \$6,155,250.00 paid by the plaintiff to the 1st defendant;
- (ii) wasted man-hour costs in the sum of \$493,162.60;
- (iii) payment in the sum of \$7,585.20 to Conflo Marketing;
- (iv) payment in the sum of \$52.06 to SMG RCG;
- (v) payment in the sum of \$4,882.21 to Singapore Airlines; and
- (vi) payment in the sum of \$160.00 to Mr Patrick Tan.

(b) That cost of the assessment fixed at \$60,000.00 excluding reasonable disbursements to be paid forthwith by the defendants to the plaintiff.

(c) That the defendants pay the plaintiff pre-judgment interest as follows:

- (i) interest on the sponsorship sum of \$6,155,250.00 computed from 11 August 2005;
- (ii) interest on the wasted man-hours of \$493,162.60 computed from 5 January 2006;
- (iii) interest on the special damages computed from the date the expenses were disbursed; and
- (iv) any interest accruing up to 31 March 2007 to be computed at 6% per annum and any interest accruing from 1 April 2007 to be computed at 5.33% per annum.

3 The third defendant appealed before me against the decision of the AR. After hearing counsel for the parties on 8 February 2010, I dismissed the appeal and now give my grounds of decision.

Item a - \$6,155,250.00 Sponsorship Sum

4 Counsel for the third defendant, Mr Srinivasan, submitted that as Lai J had held that there was a Quistclose trust in respect of the \$6,155,250 ("the Sponsorship Sum") advanced by the plaintiff to the first defendant, the defendants were entitled to such legitimate expenses that they could prove had been incurred. However upon perusing the High Court Judgment at [158] and the CA Judgment at [9], there is no doubt that the order was for the refund of the Sponsorship Sum in full. Indeed the Court of Appeal had explicitly stated that "there was an unequivocal obligation to refund the moneys in full to the respondent if the Event was not staged". I noted also that both the High Court and Court of Appeal had noted that the defendants had no intention to stage the event in Singapore. Therefore the AR was correct in ordering the return of the Sponsorship Sum in full.

5 In any event, even if the third defendant's position was correct in principle, I did not see how it could be entitled to any expenses in the circumstances. Under the first agreement, the defendants would have been obliged to refund the Sponsorship Sum in full should the first defendant fail to confirm that it had raised core finance by a certain date. It was due to this failure that the plaintiff entered into the second agreement. However the court found that during this time the defendants were secretly making arrangements to stage the event in New York instead of Singapore. Indeed the Court of Appeal had described this as a "carefully orchestrated pretence" at [6] of the CA Judgment. Since the defendants had no intention of staging the event in Singapore, whatever expenses incurred could not have been for the purpose of staging the event in Singapore.

Item b - \$493,162.60 Wasted Man-hour cost

6 Mr Srinivasan did not dispute that that the sum of \$493,162.60 was expended by the plaintiff. His point was simply that most of these expenses were incurred before the third agreement had come in force. I did not agree with this argument as the third agreement had been rescinded by the court (at [161] of the High Court Judgment) and the position of the parties reverted to that of the second agreement. Given the finding by the court that the activities carried out by the defendants were nothing but a charade, or as the CA Judgment put it at [4], "an elaborate charade", the plaintiff had undertaken activities pursuant to the second agreement for nought. Therefore the defendants are liable for those expenses incurred by the plaintiff.

Conclusion

7 The third defendant's appeal was accordingly dismissed with costs.

