

Wong Wan Chin v Wang Choong Li (now or formerly trading as The Feline Bridal)
[2012] SGHC 24

Case Number : District Court Suit No 2358 of 2011 (RAS No 178 of 2011)
Decision Date : 01 February 2012
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Tan Chee Meng SC and Richway Ponnampalam (WongPartnership LLP) for the appellant/plaintiff; B Sham Kumar (APAC Law Corporation) for the respondent/defendant.
Parties : Wong Wan Chin — Wang Choong Li (now or formerly trading as The Feline Bridal)

Civil Procedure

1 February 2012

Judgment reserved.

Choo Han Teck J:

1 This is an appeal against the District Court's refusal to grant the appellant an injunction against the respondent from using the appellant's wedding photographs. Mr Tan Chee Meng SC also applied for leave to adduce a further affidavit by the appellant, the nature of which will be apparent shortly. The appellant, according to Mr Tan SC, was at all material times a celebrity and one of a pair of singers known as "Roxy" in Hong Kong. Counsel submitted that when the appellant was getting married she decided to find a bridal shop in Singapore to provide the wedding dress. She wants to avoid publicity in Hong Kong. She chose the respondent which carries on the business of bridal salon under the name and style of "The Feline Bridal" in River Valley Road.

2 In August 2009 the appellant contracted with the respondent to provide her with various dresses, suits, and other services relating to her wedding. She collected several dress on 18 October 2009 for use in London. It was for a "pre-wedding photo-shoot", a modern practice in which the bride-to-be dons various outfits, including the wedding dress and poses for photographs with her fiancé. Some, like the appellant would have theirs taken in a foreign country. In this case, the bride, though from Hong Kong, had her "photo-shoot" in London. When the appellant returned she handed a DVD of the photographs taken in London to the respondent. This was presumably prior to her wedding which took place on 29 December 2009. When the appellant went to return the dresses in January 2010 she found that there was a coffee table book with photographs of her London photo-shoots in it. A year later, in February 2011, the appellant found out that the respondent had displayed her photographs in a wedding exhibition of bridal saloons. The appellant thus sued the respondent in the District Court for infringement of copyright for she claimed ownership of the copyright to the photographs. She quantified her loss on the basis that she receives about \$85,000 a year in publicity endorsements. The appellant then applied for an interim injunction which was dismissed by the District Judge on 26 September 2011.

3 Before me, counsel submitted that the District Judge relied strongly on the failure to make full and frank disclosure. The material in question was the "collection form" from the respondent in respect of the dresses that the appellant took. On that form were written by hand, words "recording a sponsorship of the rental of the items". Thus counsel applied to adduce a fresh affidavit from the appellant to say that this was not disclosed on advice of her solicitors then acting for her. The

solicitor was put on notice of this application. He disputed the allegation and maintained that he only advised that the collection form need not be disclosed in the pleadings.

4 I am of the view that it does not matter that the non-disclosure was upon advice. It is also not clear to me that this was indeed the case presently, but even if it were, the applicant must bear the consequences of the non-disclosure. I would not allow an applicant to fill in the occluded material only after it became clear that it was relevant and that the court found it material. For this reason I am dismissing the application to adduce evidence that the non-disclosure was on advice. The appellant has to take issue with her solicitors elsewhere.

5 Reverting to the collection form, the words on the collection form read as follows:

Sponsor for photoshoot Rental FOC

Dry cleaning charge in return for CD photos as sample book

I think that these words and the fact that the appellant handed the DVD of her photo-shoot to the respondent suggest that the respondent may have a strong defence of consent or contract. Furthermore, counsel admitted that the photographer had not deposed any affidavit to state that the copyright has been assigned to or is retained by the appellant. On the whole, I am of the view that the interim injunction was properly dismissed. Counsel's argument is founded mainly on the balance of convenience, but I think that the balance of convenience is not in the appellant's favour, and in any event, the balance of convenience is only one of the factors. The court below took into account the fact that the appellant took more than a year to assert her alleged copyright and loss of privacy. I agree that the delay was a material factor in this case. Another important factor is whether the appellant had a strong arguable case. A third factor is the adequacy of damages. I am of the view that damages was quantifiable and adequate in this case. In any event, it would appear that it will not exceed \$250,000 since the appellant had chosen to sue in the District Court. Mr Tan SC argued that the loss of privacy is a form of unquantifiable damage but did not explain the decision to limit her claim in the District Court. The instances of a breach of copyright are myriad and one cannot compare a breach of copyright in the present circumstances with one, say, of a breach of a copyright of a book or a secret formula. There is also a difference between a breach of a copyright and a loss of privacy. As to the latter, the loss of privacy is a question of degree and extent. The photographs were taken for the appellant in public and similar shots could have been taken by bystanders and posted on social media. In the present circumstances, the photographs in question might be personal but were not as private as counsel argued. In my view, the appellant's grievance in this case was probably more pecuniary matter than a matter of loss of privacy.

6 Finally, in applications for interim injunctions the rules of equity require the applicant to be totally candid. That is what "full and frank" means in the phrase "full and frank disclosure". It excuses inadvertent mistakes but falsehood whether intentionally created or carelessly allowed to pass will warrant a court to dismiss the application. In paragraph 24 of the lower court's decision, the court found that the appellant was not truthful in claiming that the dresses (described as "gowns") in the collection form were the same as the ones in the invoices which she had rented at an earlier date. For all the reasons above this appeal is dismissed. I will hear the question of costs at a later date.

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