

SUPREME COURT OF SINGAPORE

08 February 2017

Media Summary

**Singapore International Commercial Court Suit No 4 of 2016
(HC Summons No 2940 of 2016 and SIC Summons No 4 of 2017)
Arris Solutions, Inc and others v Asian Broadcasting Network (M) Sdn Bhd
[2017] SGHC(I) 01**

1 The Plaintiffs claimed a total of RM 48,682,944.26, interest and costs against the Defendant for the supply and service of media entertainment and digital communications equipment under eight contracts (“the Agreements”). The Plaintiffs alleged that the Third Plaintiff had entered into seven of the Agreements with the Defendant and that the Second Plaintiff had entered into the remaining Agreement with the Defendant. The First Plaintiff claimed as assignee of the debt owing by the Defendant to the Third Plaintiff.

2 The Plaintiffs applied for summary judgment on the ground that the Defendant had no defence.

3 The Defendant did not dispute that the equipment was supplied or that the services were rendered pursuant to the Agreements. Nor did the Defendant contend that that the goods were not fit for purpose or that the services were in any way inadequate. The sole defence was that the Defendant had contracted with General Instrument Corporation (“GIC”) and a subsidiary of GIC, Motorola Mobility General Instrument Malaysia Sdn Bhd (“Motorola Malaysia”), instead of the Second and Third Plaintiffs. The Defendant put the Plaintiffs to proof that they were the parties entitled to be paid these sums.

4 Each Agreement contained two material clauses. First, an applicable law clause which provided that each Agreement was governed by Singapore law “for every purpose”. Secondly, a clause which prohibited the assignment of rights and duties under each Agreement without the prior written consent of the other contracting party, such consent not to be unnecessarily withheld or delayed.

5 The Plaintiffs initially sought to argue that the debts owed by the Defendant to the Third Plaintiff under the Agreements had been assigned to the First Plaintiff. The Defendant contested the assignment. It was found that there was no evidence that the Defendant’s prior written consent was sought, far less obtained, for the assignment. The Plaintiffs secondary argument that the assignment was effective in equity failed. In *Linden Gardens Trust Ltd v. Lenesta Sludge Disposals Ltd* [1994] 1 AC 85, a decision which has subsequently been applied in Singapore in *Total English Learning Global Pte Ltd v Kids Counsel Pte Ltd* [2014] SGHC 258, it was held that, in such circumstances, the purported assignment would not bind the contracting party whose consent was not obtained.

6 As the Third Plaintiff had not claimed any relief in the proceedings, the Plaintiffs applied for and obtained leave to amend their Statement of Claim to add an alternative claim by the Third Plaintiff in the event the First Plaintiff’s claim on an assignment failed. The Defendants were also given leave to amend the Defence.

7 The Plaintiffs provided proof that the Second Plaintiff was the same company as Motorola Malaysia and all that occurred had been two changes of name. They also provided evidence that the Third Plaintiff had absorbed a wholly owned subsidiary and changed its name. An opinion was provided by a Delaware lawyer that the Third Plaintiff was the same entity as that previously known as GIC.

8 At the final hearing on 9 January 2017, the Defendant unexpectedly sought a stay of the proceedings and a stay of execution against the Defendant's assets, on the basis that it had obtained an order from the Malaysian High Court on 23 November 2016 staying all present, pending or future proceedings for the Defendant to put a scheme of arrangement into effect. A meeting of the creditors had been fixed for 23 February 2017.

9 The SICC recognised that whilst there was an inherent power to stay proceedings and execution where there were foreign winding up or rehabilitation proceedings, citing *Beluga Chartering GmbH (In Liquidation) & Ors v Beluga Projects (Singapore) Pte Ltd (In Liquidation) & Anor* [2014] 2 SLR 815 and *Re Taisoo Suk* [2016] SGHC 195, it was a matter of discretion whether to do so based on all the relevant considerations and facts of the case. The court will normally do so to render assistance to such foreign proceedings.

10 On the facts of this case, no assistance would be rendered by staying the proceedings. The Defendant had taken a position in Malaysia which was inconsistent with that which it had taken in Singapore. In these proceedings, the Defendant had not accepted that the sums were due to the Plaintiffs whereas in Malaysia it appeared to be prepared to accept that they were for the purposes of the proposed scheme. However, other creditors or the scheme administrator may disagree. It would not assist the foreign rehabilitation proceedings to implement a scheme of arrangement when the issue of whether the Plaintiffs are creditors of the Defendant for these substantial sums was still disputed. The parties had chosen to litigate in Singapore, thereby submitting to jurisdiction, and had put all the relevant evidence before the SICC. The Agreements were governed by Singapore law "for every purpose". It would be incumbent for the court to determine whether the Defendant owed monies to the Plaintiffs. This would in fact aid the rehabilitation proceedings in Malaysia. In the circumstances, the stay of proceedings was refused.

11 As the Defendant had no defence to the claims of the Second and Third Plaintiffs, judgment was entered for the Second and Third Plaintiffs for the sums claimed together with interest at 5.33% per annum from the date of the writ to the date of payment. The First Plaintiff's claim against the Defendant was dismissed as there was no valid assignment of the debt.

12 It was common ground between the parties that any execution would have to take place in Malaysia where the Defendant's assets were located. In view of the foreign rehabilitation proceedings and the stay order of the Malaysian High Court, the SICC imposed a stay of execution of the judgments pending the outcome of the Defendant's application for a scheme of arrangement in Malaysia. The parties were granted liberty to apply generally, especially in the event that the scheme of arrangement failed to materialise.

Costs of the proceedings were also awarded against the Defendant.

This summary is provided to assist in the understanding of the Court's judgment. It is not intended to be a substitute for the reasons of the Court.
