Tiananmen KTV & Lounge Pte Ltd and Others v Innoform Entertainment Pte Ltd [2013] SGCRT 1

Case Number : CT 1/2012

Decision Date : 26 February 2013

Tribunal/Court : Copyright Tribunal

Coram : James Leong; Toh Han Li; Andy Leck

Counsel Name(s) : Ross Tan from Rodyk & Davidson LLP for the applicants; Terence Tan Li-Chern from Dodwell & Company for the respondent.

Parties : Tiananmen KTV & Lounge Pte Ltd; Club Infinitude Pte Ltd; Grand Century Nite Club Pte Ltd; Oriental Supreme KTV Pte Ltd — Innoform Entertainment Pte Ltd

26 February 2013

District Judge James Leong (President):

Introduction

This was an application by the Respondent to strike out CT 1 of 2012 that was filed by the Applicants on 4 Sep 2012. At the conclusion of the hearing on 8 Jan 2013, the Tribunal allowed the application of the Respondent for striking out with costs (inclusive of disbursements) fixed at $ 3,500. On 22 Jan 2013, the Applicants filed a Notice Requesting Reference to the High Court. Accordingly, these are the Grounds of Decision of the Tribunal in relation to the striking out of CT 1 of 2012.

Background Facts

2 The Applicants provide karaoke and other entertainment services on their premises. The Respondent operates a "Karaoke-on-Demand" (KOD) licensing scheme that the Applicants require to operate their KOD system to display the cinematographic works of the record companies which the Respondent represent. CT 1 of 2012 is the application of the Applicants pursuant to section 163(2) of the Copyright Act (Cap 63) ("CA") for an order specifying the charges and conditions that the Tribunal considers reasonable in the circumstances in relation to the Applicants on the grounds that the charges and conditions imposed are unreasonable.

3 It is common ground that the parties in CT 1 of 2012 are the same as those in CT 1 of 2010, which was an earlier application by the Applicants under section 163 (2) of the CA to determine the reasonableness of the same KOD licence in question. The written decision of the Tribunal in CT 1 of 2010, dismissing the application, was dated 19 Oct 2011. Notwithstanding the decision of the Tribunal, the Applicants have not paid the licence fees since April 2011, which led to the Respondent commencing four actions in the Magistrates' Courts in 2012 for, *inter alia,* payment of the fees due and an injunction. In response to the Respondent's applications for summary judgment in the Magistrates' suits, the Applicants have highlighted, *inter alia,* that the question of *quantum meruit* was an issue that was pending before the Tribunal in CT 1 of 2012.

Respondent's Grounds for Striking Out

4. Counsel for the Respondent based his application to strike out on the following alternative grounds as set out at [1] of the Respondent's Skeletal Submissions dated 7 Dec 2012:

> *"1) that the order sought by the Applicants specifying the charges and the conditions that the Honourable Tribunal considers reasonable in the circumstances in relation to the Applicants have already been substantially and/or comprehensively determined in the Grounds of Decision dated 19 October 2011 for CT 1 of 2010 and the Applicants, at this time, are bound by that decision;*
>
> *2) further and/or in the alternative, CT 1 of 2012 ought to be struck out on the grounds of res judicata;*
>
> *3) further and/or in the alternative, that CT 1 of 2012 ought to be struck out on the grounds of issue estoppel;*
>
> *4) further and/or in the alternative, that the Copyright Act (Cap 63) precludes the Applicants from applying for an order from the Honourable Tribunal on the grounds as specified in their application; and/or*
>
> *5) further and/or in the alternative, that CT 1 of 2012, ought to be struck out, in the circumstances, for being frivolous, vexatious and/or an abuse of process.* "

Applicants' Grounds for Resisting the Striking Out

5 Counsel for the Applicants submitted that they were not precluded from applying to the Tribunal on the following grounds as set out in the Applicants' Submission dated 7 Nov 2012 at [2]:

> *"a The Applicants are entitled to make such an application before the Copyright Tribunal and the doctrine of res judicata or issue estoppel does not apply in the current proceedings.*
>
> *b. The Applicants seek a determination of the charges and the conditions which the Tribunal considers reasonable which has not been ascertained. "*

6 Counsel for the Applicants further submitted that for all intents and purposes, CT 1 of 2010 did not state whether the Respondent's fees was reasonable and therefore they were not prevented from applying again for a determination. At the very least, for the period commencing 2013 onwards, there was no licence granted at all and the application which relates to this period should not be struck out.

Decision of the Tribunal

7 Although counsel for the Applicants and the Respondent did not raise this issue, as a creature of statute, the Tribunal was mindful of its jurisdiction and sought to establish that it was indeed empowered to deal with the Respondent's application for striking out. In this regard, we are satisfied that regulation 38(1) of the Copyright Tribunals (Procedure) Regulations (the "CTR") allowed us to hear the Respondent's striking out application. Regulation 31 of the CTR states:

> *"A party to a proceeding (other than an inquiry by a Tribunal under section 157 of the Act or an application to which regulation 37 applies) may apply to the Tribunal requesting the Tribunal to make an order with respect to any matter relating to the proceeding ..."* (emphasis added).

8. The Tribunal has jurisdiction over proposed and existing licensing schemes as prescribed by the CA. Section 160 of the CA relates to the reference of proposed licence schemes to the Tribunal by the licensor. Section 161 of the CA relates to the reference of existing licence schemes to the Tribunal and section 162 relates to the further reference of licence schemes under section 160 and 161 in stipulated circumstances. As for section 163, it relates to applications to the Tribunal in relation to licences. It is pertinent to note that unlike for sections 160 and 161 (proposed licence schemes and existing licence schemes respectively), section 162 does not provide for a further reference for licences under section 163.

9. The Tribunal sought and obtained the confirmation of the Applicants' counsel that the fees covered by CT 1 of 2012 are those incurred since 1 Apr 2011 (the fees having been paid by the Applicants for the period before that), although the application seemed to suggest that they were attempting to go back to Jul 2007. The Tribunal also sought and obtained the confirmation of the Applicants' counsel that the present application, like that in CT 1 of 2010, was also under section 163(2) of the CA. Counsel for the Applicants was unable to explain why the earlier CT 1 of 2010 was brought under section 163 of the CA (as opposed to section 162 of the CA) as both sides were represented by different solicitors in CT 1 of 2010.

10. The Applicants' counsel submitted that section 162 and section 163 are similar and there was a possible "loophole" in section 163 in not providing for further references of licences.

11. All things considered, the Tribunal was unable to accept this argument. In the Tribunal's view, the language of the CA is clear in its lack of an express provision under section 163 to enable further references for licences, unlike section 162.

12. The Tribunal's view was supported by the fact that similar legislation in the United Kingdom,[note: 1] Australia[note: 2] and Hong Kong [note: 3]mirror the Singapore position in allowing for future references of licence scheme applications (future and existing), but not for licences.

13. Accordingly, as the Tribunal in CT 1 of 2010 had already ruled on the licence in question under section 163 of the CA, this Tribunal was of the view that the Applicants were not at liberty to make a further reference as long as the licence subsisted. Any perceived hardship caused by the absence of such a further reference mechanism for individual licences in the CA is mitigated by the fact that the Applicants were at liberty to terminate the licence and apply afresh for the appropriate relief that they sought under the CA.

14. Even if the Tribunal was wrong in its interpretation of section 163 of the CA and parties were at liberty to make further references in the absence of an empowering provision, we would still have struck out CT 1 of 2012 as it was a premature application. Using the 12 month-period prescribed in section 162(2)(a) as a guide and considering that less than a year had elapsed in the period between 19 Oct 2011 (the decision in CT 1 of 2010) and 4 Sep 2012 (the application in CT 1 of 2012), the application was clearly premature. The Tribunal further notes that no material change in circumstances were highlighted by the Applicants, with the price and terms of the licence being exactly the same as it was before CT 1 of 2010.

15 Having essentially accepted the fourth ground put forward by the Respondent at [4] above that the CA precluded the Applicants from applying to the Tribunal for the orders sought, it was unnecessary for the Tribunal to consider the other grounds relied upon by the Respondent.

Conclusion

16. In light of all of the above, we struck out CT 1 of 2012 with costs fixed at $3,500.

[note: 1] Sections 117 to 123 of the UK Copyright, Designs and Patents Act 1988.

[note: 2] Sections 154 to 157 of the Australian Copyright Act 1968.

[note: 3] Sections 155 to 159 of the Hong Kong Copyright Ordinance.

BACK TO TOP