

Supreme Court of the Kingdom of Thailand

S.C. 5446/2011

Mainsail Entertainment Company Limited, et al. v. Thanin Chor. Sorrapong, et al.

Court : Supreme Court

Case : Civil

Date of judgment : June 27, 2011

Plaintiffs : Mainsail Entertainment Company Limited (1st)
Krisdar Paleewongs (2nd)

Defendants : Thanin Chor. Sorapong (1st)
Maker Head Company Limited (2nd)
MGA Company Limited (3rd)

Concepts : Intellectual Property, Copyright

Statue : Copyright Act B.E. 2537 (1994) sections 8, 10, 27

Panel of Justices

Dhajaphan Prabhudhanitisarn, Aram Senamontri, Prinya Deepadung

Case Background

The first plaintiff is a limited company of whom the second plaintiff is the authorized director. The plaintiffs claimed that the second plaintiff, a musician and a composer, created the melody and arranged the songs; “Mai Tong Ma Eek Chai Mai” (I Shouldn’t Come Here Again?), “Kra Sip” (Whisper), and “Louk Gai” (Chick); which were

copyrighted musical works and made available to the public in 1999. The plaintiffs claimed that the defendants have jointly infringed their copyright by reproducing or adapting, and making available to the public of those three songs for commercial benefit. The plaintiffs therefore demanded compensation for the damages from the defendants.

The defendants argued that the second defendant had hired Society Music Company Limited, of whom the first defendant was the authorized director, to produce ten songs. The first defendant, on behalf of Society Music Company Limited, hired the second plaintiff to produce three songs for the benefit of the second defendant, which were the three songs in dispute. The second plaintiff had been aware that the second defendant would be the copyright owner of the songs produced. As the copyright owner, the second defendant therefore was entitled to license the rights in relation to the three songs to the third defendant to reproduce, adapt, record, and made the songs available to the public for commercial benefit.

Procedural History

The Central Intellectual Property and International Trade Court held that the second plaintiff was the owner of copyright in the melody and arrangement of tunes of the three songs in dispute and ordered the three defendants to jointly compensate the second plaintiff. However, the court dismissed the first plaintiff's claim.

The second and the third defendants appealed to the Supreme Court.

The Supreme Court upheld the judgment of the lower court.

Issue

Is the second defendant the copyright owner of the musical works; melody and arrangement of the three songs created by the second plaintiff on the grounds of the contract whereby the second plaintiff was hired to produce the songs for the second defendant?

Rationale

The second plaintiff had worked with the first defendant before and knew that the first defendant was hired by the second defendant to produce musical works. Normally, after the first defendant delivered the assigned work to the second defendant, the second plaintiff would enter into a hire contract for song production with the second defendant, which is the second defendant's general practice with every music producer.

In this case, it was found that after the first defendant delivered the master tapes of ten songs to the second defendant, contracts stipulating that the second defendant agreed to hire the second plaintiff to compose and arrange the three songs in dispute and a delivery memo were printed out. However, neither of the parties had signed in the contracts and memo.

Whereas the defendants could not rebut otherwise, the facts adduced *ex parte* by the second plaintiff are irrefutable that the first defendant had informed the second plaintiff that; the hire contract between the second defendant and the second plaintiff would be concluded only when the second defendant approved the songs produced by the second plaintiff of which the first defendant could not guarantee the approval. However, the second plaintiff was never informed as to whether or not the songs were approved, until they were recorded and sold to the public.

The second and the third defendants, however, produced no evidence as per the agreement between the first defendant and the second plaintiff that the songs would be produced for the benefit of either the first or the second defendant.

According to the first defendant's letter demanding the remuneration for the song production from the second defendant, the amount of money and the name of each

composer to whom the second defendant was obliged to pay were stipulated therein. Nonetheless, the name of the second plaintiff did not appear in such letter.

Taking into account all the presented evidences and facts, the court finds that the second defendant had not yet agreed to hire the second plaintiff to create musical works; to compose the melody and to arrange the three songs in dispute. Hence, there were no grounds on which the second defendant can claim copyright in such musical works under section 10 of the Copyright Act B.E. 2537 (1994). In this regards, the second plaintiff is therefore the copyright owner in the musical works as he is a Thai national and a creator of them, according to section 8 of the Copyright Act B.E. 2537 (1994). Consequently, it is held that the second plaintiff's copyrighted musical works had been infringed by the defendants through reproduction and communication to public, under section 27(1) and (2) of the Copyright Act B.E. 2537 (1994). The judgment of the Central Intellectual Property and International Trade shall be affirmed.

Keywords Copyright – compensation

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