

Singapore Telecommunications Ltd v Starhub Cable Vision Ltd (formerly known as Singapore Cable Vision Ltd)
[2007] SGHC 118

Case Number : Suit 634/2003, SUM 2745/2007
Decision Date : 20 July 2007
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : Sean Tan and Cheryl Koh (Tan Kok Quan Partnership) for the plaintiff; Philip Jeyaretnam SC, Edric Pan and Sun Rhu-Shi (Rodyk & Davidson) for the defendant
Parties : Singapore Telecommunications Ltd — Starhub Cable Vision Ltd (formerly known as Singapore Cable Vision Ltd)

20 July 2007

Kan Ting Chiu J:

The background

1 The plaintiff in this action, Singapore Telecommunications Limited, has filed an expedited appeal against the orders I made on 27 June 2007 in the plaintiff's application SUM 2745 of 2007 filed on 26 June 2007 in connection with assessment of damages.

2 The plaintiff and the defendant, Starhub Cable Vision Ltd, had entered into a network leasing agreement whereby the defendant leased from the plaintiff fibres in the network of ducts and fibres owned by the plaintiff. Subsequently, the plaintiff discovered that the defendant had "tapped" the plaintiff's fibres to provide cable vision services to some of its customers. The plaintiff sued the defendant. At the trial, it succeeded on the issue of liability, but no damages were awarded. On appeal to the Court of Appeal, the Court ordered on 6 February 2006 that the defendant pay the plaintiff damages to be assessed.

3 On 2 February 2007, the parties appeared before the Registrar at a pre-trial conference for directions on the assessment of damages, and the Registrar ordered that the parties file and exchange affidavits of evidence-in-chief by 21 May 2007.

4 Regrettably, no dates for the assessment of damages have been fixed because of a series of applications for extension of time made by the plaintiff.

The first extension – SUM 2173 of 2007

5 The plaintiff sought an extension of time to file its affidavits of evidence-in-chief. In its application in SUM 2173 of 2007 filed on 17 May 2007, it sought an order that:

the date for the filing and exchange of parties' affidavits of evidence-in-chief be extended from 21 May 2007 to six (6) weeks from the date of the Order to be made herein;

6 An affidavit was filed by Mr Sean Patrick Slattery ("Slattery") on 17 May 2007 in support of the application. He deposed that the defendant had made recent disclosures of documents and that:

9. Without having fully reviewed all the documents disclosed by the Defendants, the Plaintiffs are not able to file and exchange their Affidavits of Evidence-in-Chief by the deadline set by the Court, i.e., by 21 May 2007. Not giving the Plaintiffs sufficient time to review these documents would be unfair and prejudicial to the Plaintiffs.

7 I found merit in the application, as parties should have sufficient time to study all relevant documents before they file their affidavits of evidence-in-chief. However, I did not feel that a six-week extension was necessary, and I ordered that the affidavits of evidence-in-chief be filed by 6 June 2007 and affidavits in reply by 13 June 2007. There were no appeals from this order.

The second extension – SUM 2437 of 2007

8 However, the plaintiff did not comply with those extended deadlines. On 6 June 2007 (the last day for filing the affidavits of evidence-in-chief), it filed another application, SUM 2437 of 2007, for a two-week extension.

9 Slattery filed another affidavit on 8 June 2007 and deposed that:

5. I refer to my 12th Affidavit filed on 17 May 2007. Following His Honour Justice Kan's Order made on 23 May 2007 for the Plaintiffs to be granted a two-week extension of time to file and serve their Affidavits of Evidence-in-Chief, the Plaintiffs have been reviewing the documents recently disclosed by the Defendants in their 5th and 6th Supplementary Lists of Documents, as well as the documents disclosed by the Defendants under cover of the Defendants' solicitors' letter dated 16 May 2007. Unfortunately, due to the sheer number of new properties, the Plaintiffs have not been able to complete their review and consequently their Affidavits of Evidence-in-Chief. The Plaintiffs are seeking this extension of time in order to complete this exercise.

10 This application was heard on 13 June 2007. The defendant opposed the application. It was anxious that the assessment of damages not be delayed because its expert would be away from Singapore from 15 October 2007, and it wanted the assessment to be heard before then.

11 I thought that there was little merit in this application compared to the first application. Nevertheless, I granted this application and ordered that the affidavits of evidence-in-chief be filed by 27 June 2007 and the replies by 4 July 2007. There were no appeals from this order. I expected that the parties would then move on towards the assessment of damages.

12 For that purpose, I broached the issue of having the Info-communications Development Authority of Singapore ("IDA") involved.

The IDA's involvement

13 I brought this up with the parties on 16 March 2007, and explained that as the IDA (and its predecessor the Telecommunications Authority of Singapore) was the authority dealing with the activities of the plaintiff and the defendant, and had played a role leading to the network leasing agreement that the parties signed, its views on the damages for the unauthorised tapping would be relevant and useful in the determination of the damages.

14 There was no indication from the plaintiff that it objected to the IDA's involvement and the defendant supported my proposal from the start. Subsequently, counsel for the IDA was also present when the matter was further discussed to define the role that the IDA was to play, as well as the

status of its input on 25 April, 28 May and 13 June, again without objection from anyone.

The third extension – SUM 2745 of 2007

15 The plaintiff failed to file its affidavits of evidence-in-chief again. Instead, it filed SUM 2745 of 2007 on 26 June 2007, one day before the affidavits of evidence-in-chief were ordered to be filed.

16 This application was stated to be for:

2. ... a final extension of time of two (2) weeks from the date of this Order for the parties to file and exchange their affidavits of evidence-in-chief, with consequential directions for the filing and exchange of the Plaintiffs' reply affidavits to the Defendants' affidavits of evidence-in-chief.

but actually the plaintiff wanted even more time. In an affidavit in support by Slattery, he deposed that:

3. There is a typographical error in prayer (2) of the Summons filed in this respect – the Plaintiffs are seeking a final extension of time of four (4) weeks from the time the Plaintiffs' application for determination of the preliminary issues (described in greater detail below), and any appeals in respect thereof, is heard and determined.

and gave the reason that:

5. The Plaintiffs intend to file an application for the Court to determine the following two (2) preliminary issues:

(a) whether the involvement of Info-communications Development Authority of Singapore ("IDA") is relevant to the issues to be determined at the hearing of the assessment of damages herein; and

(b) whether the Defendants are precluded from adducing any evidence of the rates that the Plaintiffs would have charged the Defendants for lease of the Plaintiffs' dark fibre to the Defendants to enable cable television services to be provided to properties other than Permitted Properties (as defined in the Statement of Claim herein), given that the rates for such lease had been filed with and approved by IDA, and the Plaintiffs could only have offered such rates to the Defendants.

17 This application came up for hearing on 27 June 2007 when I made orders, *inter alia*, that:

(a) affidavits of evidence-in-chief be filed and exchanged by 30 June 2007;

(b) the parties are to formulate and exchange by 4 July 2007 the proposed issues on which the IDA input was to be sought;

(c) the issues on which the IDA input was to be sought are to be settled before me on 11 July 2007;

(d) the parties are to supply documents and reports relevant to the issues to IDA by 18 July 2007

and I made an "unless" order that the proceedings for the assessment of damages be struck out upon the plaintiff's failure to comply with the foregoing orders. The plaintiff is appealing against these

orders.

18 When I made the orders, I had substantially rejected the plaintiff's application. I had extended the deadline for filing of the affidavits of evidence-in-chief to 30 June 2007 only to allow the plaintiff to file its affidavits of evidence-in-chief in time, without being in default.

19 I was not persuaded by the reasons put forward by the plaintiff. First, it had not said anything against the involvement of the IDA on the earlier occasions when it could have indicated its reservations. I cannot see that the input of the IDA, which is always understood to be non-binding on the parties and the court, would not be relevant or helpful to the assessment of damages in view of the IDA's knowledge and oversight of the industry. Secondly, there was no justification for the plaintiff not complying with my orders of 13 June 2007 just because it intended to file an application for the determination of those "preliminary issues". In fact, after it gave notice of its intention and up to the time of these grounds of decision, that was not followed up by the filing of an application, and no preliminary issues are scheduled to be argued and determined.

20 I considered that an "unless" order was necessary to ensure that there be no further delays and unmeritorious applications for extensions of time, and that the damages be assessed. It is ironic that it is the defendant, the party liable to pay damages, which has been ready to proceed with the assessment of damages, and that it is the plaintiff, the party which is to be paid the damages, which is the cause of the delays.

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