

Supreme Court of the Kingdom of Thailand

S.C.5446/2011

Mainsell entertainment Co. Ltd and others v. Thanin Chor. Sorrapong

Court : Supreme Court

Kind of Case : Civil case

Date of judgment : 2011/06/27

Plaintiff : 1. Mainsell entertainment Co. Ltd
2. Kitsada paleevong

Defendant : 1. Thanin Chor. Sorrapong
2. Maxgerhead Co. Ltd
3. M G A Co. Ltd

Area of Law : Intellectual Property Copyright

Statue : Copyright Act B.E.2537 (1994)

Panel of Justices

Thatchaphan Praphutnital- Aram Senamonti-Prarinya Dee-phadung

Background

Both plaintiffs filed and made amendment to the plaint that the first plaintiff was a company that had the second plaintiff as an authority to act on behalf of. The second defendant, a musician and a composer, created rhythm and arrangement of tunes the songs name ‘ maithongmaeekchaimhai’, ‘kasip’ and ‘loungkai’ which were musical work. All three defendants, together, infringed a copyright in rhythm and arrangement of tunes of all three songs.

Both plaintiffs brought the case before the court requesting the court to judge that both of them were the owner of a copyright in rhythm and arrangement of tunes of all three songs and ordered all three defendants to compensate. All three defendants pleaded to deny by the fact that the first defendant was the owner of these copyright by employing both plaintiffs to create these works and requested that the plaint be dismissed.

Issues

Where or not the second defendant was the owner of a copyright in rhythm and arrangement of tunes of all three songs by the contract that it employed the second plaintiff to create.

Procedure History

The Central Intellectual Property and International Trade Court held that the second plaintiff was the owner of a copyright in rhythm and arrangement of tunes of all three songs and ordered all three defendants to compensate.

The Supreme Court confirmed the judgment of the Central Intellectual Property and International Trade Court.

Analysis

The second plaintiff previously worked with the first defendant. The first defendant did music work for the second defendant. And after the first defendant delivered the work to the second defendant, the second plaintiff would sign an employment contract to compose music and a contract to remix the music including delivery documents, as seen in the Plaintiff's evidence files J.11 through J.13, with the second defendant, as is the case in this complaint. The second defendant acted the same way towards all those who offered music services for the second defendant. The significant details of the contract set out in these documents include particulars about how the second defendant hired the first plaintiff, with the second plaintiff composing and remixing the music for the first plaintiff by the second plaintiff. Moreover, there was a clause specifying the compensation, including special compensation based on sales for the contracted work. The rights were to belong to the second defendant, the hirer. In the matter of this case, after the first defendant, as Director with authority to act on behalf of Society Music Co., Ltd., delivered the work consisting of 10 original music tapes to the second defendant, as per the documents of delivery dated November 1, B.E. 2553, reference defendant's evidence files L. 8., contracts to compose music, contracts to remix music were prepared, along with documentation of the delivery of 3 songs between the second defendant, the hirer and the second plaintiff, the hired, reference plaintiff evidence files J. 14 through J. 16. These have the same information as the contracts to hire composition of music, contracts to remix music and the delivery documents as per the plaintiff's evidence files J. 11 through J.13, as mentioned above. However, the contracts and documentation regarding the music in this complaint, as per plaintiff's evidence files J.14 through J. 16, had not yet been signed by both the second defendant and the first plaintiff by means of the second plaintiff. This shows that the second defendant and the second plaintiff had not yet agreed to a contract according to documents in plaintiff's evidence files J.14 through J. 16. As for the case of the second defendant making a contract to hire Society Music Co., Ltd., by means of the first defendant to create and make instrumental music and dancing material according to the contracts in defendant's files L.7, it is a matter solely between the said company and both defendants. Besides this, according to the facts that the second plaintiff and both defendants operated in a certain way in regards to how the second plaintiff created music material for the first defendant, who did work for the second defendant, is to have the second plaintiff make a contract to hire the composition of music and a contract to remix music as had been the case as seen in plaintiff documents J.11 through J.13, as has been stated above. In that there was an agreement made regarding the important conditions of the contract together. However in this composition that the second

plaintiff created in all three songs in this complaint there was only the printing of the contracts as seen in plaintiff evidence files J.11 through J. 13, as stated. But there was no signature in the printed contracts as seen in plaintiffs evidence files J. 11 through J. 16. This was a deviation from what was the normal process of requiring the second plaintiff to sign the contract that had been printed up as seen in plaintiff's evidence file J.14 and J.16. This shows how the second plaintiff and the second defendant did not yet have an agreement to make a contract. The second defendant did not yet have a contract to hire the second plaintiff to create music and remix music for the three songs. This makes it groundless for the second defendant to have rights to the composition according to the Copyright Act B.E. 2537, Section 10. Therefore, the second defendant and the third defendant in taking the music and remixing 3 songs to organize as songs in a cassette tape and CDs to sell for marketing profit is a duplication and making it available to the music world with the copyright belonging to the second plaintiff without permission is a violation of the copyrights of the second plaintiff according to the Copyright Act 2537 Section 27 (1) and (2).

Keywords Copyright – compensation

Summarized and translated Soemsit Sirijaroensuk

Edited