

Polar Arts of Asia Pte Ltd v Hotline KTV Karaoke Lounge Pte Ltd and Another
[2004] SGHC 53

Case Number : Suit 1105/2002
Decision Date : 08 March 2004
Tribunal/Court : High Court
Coram : Thian Yee Sze SAR
Counsel Name(s) : Wee Jee Kin (Bogaars & Din) for the plaintiffs; Liew Teck Huat and Chua Hwee Ping (Niru & Co) for the 2nd defendants
Parties : Polar Arts of Asia Pte Ltd — Hotline KTV Karaoke Lounge Pte Ltd; Overseas Union Insurance Ltd

8 March 2004

Senior Assistant Registrar Thian Yee Sze:

This was an assessment of damages to 57 Chinese ancestral scrolls from the Qing Dynasty era. These were drawn on rice paper using "natural powder colours". The facts leading up to the claim are essentially undisputed for the purposes of the present assessment. The plaintiffs operate an art gallery, and sell among other pieces of art, Chinese ancestral scrolls. The first defendants operate a karaoke lounge in the premises directly above the plaintiffs' gallery. The second defendants are the first defendants' insurers under a Shop Multicover Policy.

2 On or about 14 March 2000, the plaintiffs discovered that there was water leakage from the false ceiling above the gallery. As result of water seepage, the said 57 Chinese ancestral scrolls sustained damage. The second defendants subsequently repudiated liability under their policy with the first defendants on or about 23 October 2001 on the ground of the first defendants' breach of a particular condition in the policy. On 17 September 2002, the plaintiffs commenced the present action against the first defendants only at the outset. As no appearance was entered by the first defendant, a Judgment in default of Appearance was entered against them on 7 October 2002. On 1 November 2002, the second defendants took out an application for leave to be joined as the second defendants on the basis that notwithstanding their earlier repudiation, they faced a potential liability should the plaintiffs bring a claim against them pursuant to the Third party (Rights Against Insurers) Act. The court granted the order for the second defendants to be joined to participate in the assessment of damages on 13 November 2002.

3 In assessing tortious damages, the aim is to put the plaintiff in the position he would have been had the tort not been committed – *restitutio in integrum*. In the words of Lord Blackburn in *Livingstone v Wawyards Coal Co* [1880] 5 AppCas 25 at 39, the court should award:

that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation.

In the case of damage to goods, the plaintiff is entitled to recover damages to the extent to which the value of the goods (in this case, paintings) has been reduced. In the present case, it was undisputed that the plaintiffs bought and sold Chinese ancestral scrolls. They did not keep the scrolls merely for enjoyment of their intrinsic or artistic value. As enunciated by the learned authors of Clerk and Lindsell on Torts (18th Edition (2000)) at page 1618:

The basic rule in the case of damage to goods is that the claimant is entitled to recover damages to the extent to which the value of the chattel has been reduced: ...

I agree with this statement. What presents more difficulty is the basis of ascertaining the reduced value. Both the plaintiffs and the second defendants accepted that the value to be determined was the market value of the paintings. They held diverged opinions on two issues: first, how the market value was to be determined; second, the quantum of the market value. To these issues I now turn.

4 Both parties engaged their own experts to give a valuation of the 57 paintings. The plaintiffs' expert was Mr Yang Ren Kai, a curator and the Honourary Director for the Centre of History of Arts in the Liaoning Provincial Museum. The second defendants' expert was Mdm Lim Sew Yong, an auctioneer and Managing Director of Raffles Fine Arts Auctioneers Pte Ltd. In their closing submissions, counsel delved into a great detail over the suitability of their respective experts in giving a valuation of the paintings, and the unsuitability of the other side's expert in this respect. I should stress that both Mr Yang and Mdm Lim are both undoubtedly very learned and knowledgeable about the Chinese art world. In my view, the issue was not whether either of the experts were suitably specialised or experienced in this field, but whether the parties used the correct method of arriving at the market value of the paintings.

5 How was the market value to be determined? Guidance can be gleaned from the old admiralty case of *The Ironmaster* [1859] Swab 441 on the issue of the market value of a lost ship upon a collision. It was held that, in the absence of a clear market value, the best evidence of value is the opinion of those who knew the vessel shortly before, the next best evidence is the opinion of those who are well conversant with shipping generally, while the original cost, the cost of repairs due and the sum at which insurance had been taken out, though evidence of value, were of inferior weight. The essence is to arrive at the best evidence of the market value of the damaged paintings.

6 The valuation of art work is not a precise science. As Mr Yang echoed during his cross-examination, one could not say that a painting by Picasso which was valued at US \$25 million was expensive. Both Mr Yang and Mdm Lim gave a valuation of each painting based on the reserve price of the painting. Their means of arriving at the reserve price was different. The plaintiffs argued that the reserve price is not a fair indication of the market value, contrary to what Mdm Lim asserted. I did not agree with the plaintiffs' contention. I was of the view that the reserve price was the best evidence of the market value, bearing in mind the unique characteristics of the art market. On the contrary, neither the plaintiffs nor Mr Yang articulated precisely how they would arrive at the market value. Their evidence was, with respect, somewhat arbitrary and anecdotal in nature.

7 A fair amount of Mr Yang's oral evidence was centred around whether he premised his valuation on the photographs of the paintings or the paintings themselves. In his affidavit of evidence-in-chief, Mr Yang stated that he provided a valuation report on the paintings on what he could see from the photographs, which were in a damaged state. As he explained, because of the geographical distance, it was inconvenient at the time for him to view the paintings personally. Mr Yang elaborated during cross-examination that he gave his valuation from looking at the photographs, and that he could accurately come to a decision as to the value of the paintings on this basis. He said that it was not necessary to view the actual paintings themselves. Later, he clarified that he had, prior to the affirmation of his affidavit (which was more than a year after he completed the valuation) looked at the paintings. When asked if a particular painting could be sold in its damaged state, Mr Yang replied that he had to look at that painting before he could decide. Mdm Lim, on the other hand, viewed the actual paintings before arriving at her valuation. She stated that one had to look at the actual painting in order to give a more accurate valuation. After carefully weighing the evidence on this, I came to the conclusion that, although one could give an estimated valuation of

the paintings from photographs alone, in order to arrive at an accurate valuation, one had to view the actual paintings and base one's analysis on them. I was therefore more inclined to give more weight to Mdm Lim's assessment of the value of the paintings.

8 The plaintiffs disputed the second defendants' contention that the damaged paintings had some residual market value, depending on the extent of the damage. Mr Yang's full findings stated thus:

Each of the 57 Chinese paintings examined in this report is over one hundred years old. Although some of the paintings do not suffer from 100% water damage, the aesthetics and intrinsic value of the paintings has been lost completely as the restoration of paintings to the original state with Qing dynasty rice paper is no longer possible.

However, during cross-examination, Mr Yang conceded that paintings with some damage could be sold at a lower price, depending on the circumstances. In her valuation report, Mdm Lim classified the damaged paintings into three categories – "slightly damaged", "damaged" and "badly damaged". She opined that paintings which were "slightly damaged" were worth about 70% of the original valuation. Paintings which were "damaged" were worth about 50% of the original valuation. The "badly damaged" paintings were of no value. On the evidence presented to me, I agreed with Mdm Lim's assessment in this regard.

9 Having determined that the best evidence of the market value of the paintings was the reserve price of each painting, and that the paintings which were slightly damaged or damaged retained some market value, I then considered the second issue of the quantum of the market value. Given my findings and reasons set out above, and looking at the totality of the evidence of both Mr Yang and Mdm Lim, I agreed with Mdm Lim's assessment of what the market value was. Mdm Lim had given a range of figures in her valuation of each painting. The value of all the 57 paintings had they not been damaged was estimated at between S\$212,000 and S\$258,500. The value of those paintings which had a residual value after being damaged was estimated at between S\$41,300 and \$48,150. The loss in the market value of the paintings to the plaintiffs was hence between S\$163,850 (at the lower end of the scale, upon deducting S\$48,150 from S\$212,000) and S\$217,200 (at the higher end of the scale, upon deducting S\$41,300 from S\$258,500). I took the median value of the scale and assessed the loss of market value of the paintings incurred by the plaintiffs at S\$190,525.

10 The second defendants argued that the plaintiffs had failed to mitigate their losses in this regard as they had not sought to sell those paintings which were of diminished market value. There was a dearth of evidence to support the second defendants' contention. I found that the plaintiffs' inaction in this regard was not tantamount to them not mitigating their damages under the specific circumstances of this case.

11 The plaintiffs also claimed special damages in the sum of \$18,555.75 for, *inter alia*, expert fees, air tickets and hotels bills. The second defendants did not raise objections in this regard. I awarded the plaintiffs the full sum of special damages claimed.

12 For all the reasons above, I assessed damages to be awarded to the plaintiffs in the sum of S\$209,080.75, with interest on the said sum at a rate of 6% per annum from the date of the writ to the date of judgment. I would hear parties on the issue of costs.