Communication Design International Ltd *v* Swarovski Management Pte Ltd [2011] SGHC 110

Case Number : Suit No 452 of 2010

Decision Date : 29 April 2011

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : Eugene Thuraisingam and Mervyn Cheong (Stamford Law Corporation) for the plaintiff; N Sreenivasan and Muralli Rajaram (Straits Law Practice LLC) for the defendant.

Parties : Communication Design International Ltd — Swarovski Management Pte Ltd

Contract

29 April 2011

Woo Bih Li J:

Introduction

1 This was an action brought by Communication Design International Limited ("CDI") against Swarovski Management Pte Ltd ("Swarovski Management") claiming breach of an oral agreement that was allegedly entered into between the two parties in or around the year 2000. After hearing the evidence and parties' submissions at the end of the trial, I dismissed CDI's claim with costs. I now give my reasons for the decision.

The background facts

2 The plaintiff, CDI is a public limited company incorporated in Singapore and listed on the "Catalist" trading board of Singapore Exchange Limited. CDI operates a business of providing project management services including interior fitting outs for retail stores, international event management as well as the design, planning and construction of exhibition stands. The defendant, Swarovski Management, is a private limited company incorporated in Singapore and its principal activities are that of providing business and management consultancy services as well as retail sales. Operationally speaking, Swarovski Management acts as the regional headquarters for its head global office – Swarovski Aktiengesellschaft ("Swarovski AG"), which manufactures and retails exclusive crystal products and jewellery – in the Asian-Pacific market. As such, one of the broader functions of Swarovski Management was to facilitate dealings between retail outlets throughout the Asian-Pacific countries each falling under the direct control of a local company affiliated to Swarovski AG ("Swarovski VG") and third parties appointed to fit out a Swarovski VG.

3 It was not disputed that since about the year 2000, CDI began providing Swarovski Management with inventory purchasing and warehousing services in Singapore ("the inventory purchasing and warehousing services") in relation to display show cases and spare parts ("the Show Cases and Parts") manufactured by a third party known as Shopex BV. This was clear from the business dealings between CDI, Swarovski Management and the various Swarovski VGs in the Asian-Pacific region under the 'Red and Blue' design concept ("the R&B Concept") that was adopted by the Swarovski VGs for their outlets in the region until sometime in or around 2009.

4 According to CDI, it had initially purchased the Show Cases and Parts from Shopex based on estimates of actual requirements by each Swarovski VG. In view of the length of time it took for Shopex to ship the Show Cases and Parts, CDI could not wait for confirmed orders to be received from Swarovski VGs before placing orders with Shopex.

5 From about May or June 2008 to December 2008, CDI was provided with forecasts of projects from Swarovski Management in which Show Cases and Parts were to be supplied by CDI. The forecasts were then used by CDI to plan its purchases from Shopex so that CDI would hold sufficient stock to meet the requirements of the Swarovski VGs.

6 In 2009, CDI and Swarovski AG entered into a written agreement, known as the 'Shopfitter Services – Framework Agreement' ("the Framework Agreement"), which was expressed to be valid from 1 July 2009. [note: 1] With the Framework Agreement, CDI was to construct, manufacture and install shop fittings as specified by Swarovski AG for the latter's outlets while at the same time, purchasing the Show Cases and Parts from Shopex. For present purposes, it is apposite to reproduce clause 12 of the Framework Agreement which provided for the manner and consequences of terminating the Framework Agreement itself:

> 12. Termination
>
> This Framework Contract can be terminated by each Party individually in writing with a period of grace of 60 days. Any orders placed and accepted within this period of grace shall be fulfilled in accordance with this Framework Contract. For any orders placed stock level will be cleared.

The dispute

7 The circumstances that led to the dispute before me were as follows. Sometime in September 2009, Swarovski AG (the head global office) decided to adopt a new design concept called the 'Crystal Forest' concept ("CF Concept") for all its outlets globally, with the CF Concept slated to commence in phases starting March 2010. Quite naturally, the Show Cases and Parts for the R&B Concept differed from those that would be needed for the CF Concept in the Asian-Pacific region. Pursuant to the change of design concept, CDI and other third parties were invited to submit tenders to be considered as contractors for the rolling out of the CF Concept. As it turned out, CDI submitted its tender but was not selected when the tender evaluation stage was completed sometime in or around late 2009 or the beginning of 2010. [note: 2]

8 In the meantime, in September 2009, CDI was notified of the intended change from the R&B Concept to the CF Concept by Swarovski AG (the head global office). [note: 3] Subsequently in January 2010, Swarovski AG informed CDI that Swarovski Management would cease to engage CDI for its inventory purchasing and warehousing services in Singapore (see [3] above). In response, CDI asked that Swarovski Management fulfill its legal obligations, one of which was that Swarovski Management had allegedly agreed to be bound when it engaged CDI for its inventory purchasing and warehousing services in 2000. In particular, CDI alleged that an oral agreement ("the alleged Oral Agreement") had been entered into between the President and Chief Executive Officer of CDI, Mr David Bay, and the then director of Swarovski Management, Mr Robert Dell, who was also the Managing Director and Vice-President of Operations for Asia-Pacific of Swarovski AG at the time. The exact terms of the alleged Oral Agreement were claimed to be as follows: [note: 4]

> (1) CDI would purchase the Show Cases and Parts from Shopex BV and store the Show Cases and Parts in a warehouse in Singapore until needed by Swarovski Management;

(2) CDI would sell the Show Cases and Parts to Swarovski Management at a margin of 10%-15% above the price it paid to Shopex BV in SGD at the exchange rate of the relevant time (inclusive of freight charges for shipping the Show Cases and Parts to Singapore) as and when Swarovski Management required the Show Cases and Parts;

(3) CDI could only sell the Show Cases and Parts to Swarovski Management and to no other party; and

(4) In the event that the alleged Oral Agreement was to be terminated, Swarovski Management would purchase all the Show Cases and Parts in CDI's warehouse at the price at which CDI acquired the Show Cases and Parts from Shopex BV ("the Buy Back Term").

9 The existence of the Oral Agreement and, in particular, the Buy Back Term, was however, denied by Swarovski Management which refused to pay for the balance stock in CDI's warehouse. I should mention, for clarification, that the reference to CDI's warehouse was to a warehouse rented by CDI. As a result, CDI commenced legal action by way of a writ of summons on 23 June 2010 against Swarovski Management claiming the sum of $748,600.45 as the amount which CDI paid to Shopex for the Show Cases and Parts kept as balance stock in CDI's warehouse. In its Statement of Claim, CDI also made other corollary claims, namely (a) rental charges incurred by CDI for warehousing the balance Show Cases and Parts from January 2010 onwards and (b) insurance premiums paid by CDI for the balance Show Cases and Parts from January 2009 to June 2010 (on a pro-rated basis) and from June 2010 to June 2011. [note: 5]

10 These remedies sought were subsequently amended after Swarovski Management purchased some of the balance Show Cases and Parts on 1 September 2010 at the aggregate sum of 225,631.05 EUR following a series of correspondence exchanged between the parties' solicitors from 16 July 2010 to 30 August 2010. [note: 6] In the result, the remedies sought by CDI were amended to the following: [note: 7]

(a) The sum of $251,163.77 as the amount which CDI paid to Shopex for the remaining Show Cases and Parts.

(b) In relation to the Show Cases and Parts purchased by Swarovski Management from CDI on 1 September 2010, the difference between (i) the Singapore dollar equivalent of the EUR amount which CDI paid to Shopex using the exchange rate at the time of CDI's purchase from Shopex (inclusive of freight charges for shipping the Show Cases and Parts to Singapore), and (ii) $386,280.36 being the Singapore dollar equivalent of the aggregate sum of 225,631.05 EUR that was paid by Swarovski Management for the purchase of the Show Cases and Parts on 1 September 2010 using an exchange rate of S$1.712 to one EUR on 1 September 2010 as quoted by a local bank.

(c) Rental charges incurred by CDI for warehousing the Show Cases and Parts from January 2010 onwards.

(d) Insurance premiums paid by CDI for the Show Cases and Parts from January 2009 to June 2010 (on a pro-rated basis) and from June 2010 to June 2011.

(e) Costs and expenses incurred by CDI for the publication of advertisements for the sale of the remaining Show Cases and Parts.

The issue and evidence

The issue and evidence

11 The main dispute was whether there was indeed an agreement on the Buy Back Term.

12 The evidence that emerged during the trial for CDI's case was briefly as follows. CDI's first witness, Mr Dell, testified that he was positive there were negotiations which took place between Mr Bay of CDI and him for over a year prior to the conclusion of the alleged Oral Agreement. [note: 8] Mr Dell also averred that although the alleged Oral Agreement was never reduced into writing as such, there "must have been" written communication (*ie*, emails, letters, memos or faxes) evidencing the discussions between him and Mr Bay during the period of negotiations, albeit those documents (according to Mr Dell) could no longer be traced at the time of trial (which was around eleven years later). [note: 9] CDI's second witness, Mr Bay, while acknowledging that the alleged Oral Agreement itself was never evidenced in writing, similarly gave evidence that negotiations took place in or around early 2000. [note: 10] Lastly, CDI's third witness, Mr Lim Chon Pio, was called to give evidence that he was verbally informed by Mr Bay in or around early 2000 that CDI and Swarovski Management had entered into the Oral Agreement containing the four terms alleged by CDI [note: 11] in the dispute (see [8] above).

13 As for Swarovski Management, counsel sought to elicit from Mr Dell's cross-examination that Mr Dell's evidence in court was coloured by the fact that he had become a shareholder of CDI as well as one of the directors of CDI after leaving Swarovski Management in 2006. [note: 12]

The decision

14 It is trite as a matter of general principle that a plaintiff bears the burden of proving its case on a balance of probabilities. CDI had the benefit of evidence from both Mr Dell and Mr Bay. On the other hand, the evidence relied on by CDI in support of the existence of the alleged Oral Agreement was purely oral and uncorroborated by any documentary evidence.

15 I noted that there were several inconsistencies between the evidence given by Mr Dell and Mr Bay during the trial. For instance, Mr Dell in his cross-examination claimed that all four terms of the alleged Oral Agreement (see [8] above) were agreed to on separate occasions. [note: 13] On the other hand, Mr Bay testified that all four terms were agreed to at the same time. Further, the actual date when the alleged Oral Agreement was concluded appeared to be indeterminate from Mr Dell's and Mr Bay's evidence. On the one hand, Mr Dell said that the alleged Oral Agreement was finalised in or around February 2000 after a period of lengthy negotiations between him and Mr Bay. [note: 14] Yet, on the other hand, Mr Bay's evidence under cross-examination indicated that the negotiations for the alleged Oral Agreement took place between CDI and Swarovski Management in 2000 through to 2001. [note: 15]

16 Mr Bay also said that the Buy Back Term was to be "reconfirmed" by Mr Dell after Mr Dell had spoken to his headquarters and obtained their agreement to it. Mr Dell did tell him that his headquarters had agreed to this term. [note: 16] This led to an important inconsistency in CDI's evidence because Mr Dell said that he did not tell anybody else in the Swarovski group about the Buy Back Term. [note: 17]

17 This brings me to the next point. Mr Dell said that he disclosed the first three terms to others in Swarovski Management but not the Buy Back Term. [note: 18] I found this evidence strange, to say the least. Why should he keep the Buy Back Term to himself? No explanation was given for this

unusual omission unless the Buy Back Term was not discussed or agreed to as alleged.

18 Mr Dell also had difficulty in explaining why the Oral Agreement and in particular, the Buy Back Term, was not documented in a written agreement. On the one hand, he said during cross-examination that at that time he did not want to tie Swarovski Management down to a formal contract. He even agreed that basically Mr Bay had to trust him. He did not intend the Buy Back Term to be legally binding. [note: 19] Then in re-examination, he suggested that what he had meant was that it was an oral agreement and not a formal contract but it was nevertheless one that could be upheld in court. [note: 20] It seemed to me that this part of Mr Dell's evidence could mean that there was only a gentleman's agreement on the Buy Back Term which was not intended to be legally binding. That would have been sufficient for the purpose of Swarovski Management. Nevertheless, I was of the view that there was in fact no agreement on the Buy Back Term in the first place. That was why Mr Dell had difficulty explaining why he did not tell anyone else in Swarovski Management about it and why it was not documented in a written agreement.

19 There was other evidence which militated against the existence of any agreement on the Buy Back Term.

20 A prospectus dated 11 January 2006 was issued in respect of CDI when it wanted to go public. Page 80 thereof was on Inventory Management. A sentence thereunder stated:

> As at the Latest Practicable Date, we do not have any inventory obsolescence policy as the inventories procured for each programme are fully consumed by the end of the programme.

21 The inventories were for the use of the Swarovski group. I agreed with the suggestion for Swarovski Management that if there was an agreement on the Buy Back Term, the prospectus would have referred to that agreement instead of saying that inventories would be fully consumed by the end of the programme.

22 Interestingly, Mr Bay said that he had disclosed the Oral Agreement, including the Buy Back Term, to one Tay Hui Meng of Stirling Coleman who was the issue manager but this person was not called by CDI to give evidence. [note: 21] I drew an adverse inference against CDI for that omission.

23 As for the Framework Agreement entered into in 2009, there was an annexure thereto which provided for CDI to keep a minimum stock of the Show Cases and Parts. Swarovski Management agreed for the trial that it was liable to buy back the minimum stock kept, even though this obligation was not expressly mentioned, but not the balance. There was no provision in the Framework Agreement for Swarovski Management to buy back any outstanding stock held by CDI.

24 It was suggested for CDI that the Framework Agreement was separate from the Oral Agreement concluded in or about 2000 and that the Framework Agreement did not supersede the Oral Agreement. I had my doubts about this suggestion but even if it were true, the point was that Mr Dell had said that it was Mr Bay who had raised the Buy Back Term and who had also previously asked for a written agreement (in 2000) but Mr Dell had declined as he did not want to commit Swarovski Management to a formal contract (see 18). If it was true that Mr Bay had previously been pressing for a written agreement, then the discussions on the Framework Agreement in 2009 represented the best opportunity for him, or anyone else in CDI, to raise the issue with Swarovski Management again about putting the Buy Back Term in writing either as part of the Framework Agreement or separately in another written agreement. However, this was not raised.

Conclusion

25 For all the reasons stated above, I found that CDI had failed to establish an agreement on the Buy Back Term. As such, this necessarily meant that CDI's other corollary claims pertaining to losses, insurance premiums and costs and expenses (see [10] above) must also fail. Accordingly, CDI's claims were dismissed with costs.

[note: 1] Mr Thibault Paul Antoine Marie De Gaulejac's Affidavit of Evidence in Chief ("AEIC"), p 43

[note: 2] Mr Jochen Schmidt's AEIC, p 12 para 32

[note: 3] Mr Thibault Paul Antoine Marie De Gaulejac's AEIC, p 15 para 43

[note: 4] Plaintiff's Bundle of AEIC, pp 4, 156-7, 232-3

[note: 5] Setting Down Bundle ("SDB"), pp 6-7

[note: 6] SDB p 45, paras 12.3 and 12.4

[note: 7] SDB, pp 46-7

[note: 8] Notes of Evidence ("NE"), Day 1 p 33

[note: 9] *Ibid*

[note: 10] Plaintiff's AEIC, p 156, para 7

[note: 11] NE, Day 2 p 77

[note: 12] NE, Day 1 p 9

[note: 13] NE, Day 2 p 10

[note: 14] NE, Day 2 p 11

[note: 15] NE, Day 2 p 50

[note: 16] NE, Day 2 p 65

[note: 17] NE, Day 2 p 12

[note: 18] NE, Day 2 p 19

[note: 19] NE, Day 2 pp 22-23 and 30

[note: 20] NE, Day 2 pp 31-32

[note: 21] NE, Day 2 p 61