

Federal Court



Cour fédérale

Date: 20110301

Docket: T-1276-10

Citation: 2011 FC 247

Vancouver, British Columbia, March 1, 2011

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

**LOUIS VUITTON MALLETTIER S.A.;
LOUIS VUITTON CANADA, INC.;
BURBERRY LIMITED; and
BURBERRY CANADA INC.**

Plaintiffs

and

**SINGGA ENTERPRISES (CANADA) INC.,
LISA LAM and KENNY KO (ALSO KNOWN
AS WAI SHING LO and SHING WAI LO),
COLLECTIVELY DOING BUSINESS AS
SINGGA ENTERPRISES CANADA INC.;
YUN JAUN GUO (ALSO KNOWN AS
JESSIE GUO and YUN JUAN JESSIE GUO),
DOING BUSINESS AS CARNATION FASHION
COMPANY; and MONICA MAC (ALSO KNOWN
AS JIA XIN MAI MAC and MONICA JIA XIN
MAI MAC), PABLO LIANG, REBECCA MAC
and GORDON CHAN (ALSO KNOWN AS
HUNG BING CHAN), COLLECTIVELY DOING
BUSINESS AS ALTEC PRODUCTIONS**

Defendants

REASONS FOR ORDER AND ORDER

I. Overview

[1] Requirements, including those on timing, laid down by the Court, both pursuant to the Rules and by Order, are not merely targets to be attempted, but are to be observed, both because delay may cause prejudice and because litigation must come to a timely conclusion. To ignore orders of a case management judge or prothonotary is an abuse of process, an abuse which can be dealt with by dismissing the pleadings by which a party seeks to obtain the aid of the Court. (*Zazula v Canada*, 2003 FCT 612, 234 FTR 222 at para 7; *Haylock v Norwegian Cruise Lines Ltd*, 2005 FC 501, 272 FTR 150 at para 15; *Pioneer Grain Co v Far Eastern Shipping Co*, 181 FTR 161, [2000] FCJ No 245 at para 8, aff'g 94 ACWS (3d) 456, [1999] FCJ No 1968 (FCTD)).

[2] Striking out a defence will only be ordered where the conduct involved amounts to an abuse of process. In this matter, the Defendant's inaction in this proceeding has amounted to an abuse of process and the appropriate remedy is to strike its Statement of Defence and have it noted in default.

[3] Rule 120 of the *Federal Courts Rules* clearly requires that a corporation be represented by a solicitor, unless the Court orders otherwise. One Defendant, Singga Enterprises (Canada) Inc. (Singga), has brought no motion nor submitted any evidence of any intention or any necessity for the corporation not to be represented by a solicitor in these proceedings. Instead, its own counsel was required to bring a motion, based on hearsay, to have himself removed from the record because of a lack of instructions from his client, resulting in this Court's Order of February 9, 2011; furthermore, Singga has not participated in this proceeding nor provided any instructions to its counsel since December 23, 2010. Singga has not corresponded in any way with the Plaintiffs in an

effort to resolve the issue of its lack of counsel regarding this proceeding (Rule 210, *Federal Courts Rules*).

II. Introduction

[4] This decision is subsequent to a motion to strike the Statement of Defence of the Defendant, Singga Enterprises (Canada) Inc. (Singga), and to have Singga noted in default in this proceeding.

[5] In addition, the Court has an inherent jurisdiction to dismiss a proceeding when orders of a prothonotary or a case management judge were ignored.

III. Background

[6] In an action which was issued on August 5, 2010, the Plaintiffs allege that the Defendants, including Singga, have imported, distributed, offered for sale and sold in Canada counterfeit Louis Vuitton and Burberry merchandise. The Plaintiffs allege that the Defendants have infringed the exclusive rights of the Plaintiffs with respect to various trade-marks owned by Louis Vuitton and Burberry, as well as copyrights owned by Louis Vuitton. Specifically, the Plaintiffs allege that the activities of the Defendants are contrary to sections 7(b), 7(c), 19, 20 and 22 of the *Trade-marks Act* and sections 3 and 27 of the *Copyright Act*. The Plaintiffs seek damages and equitable relief with respect to the infringement of the Plaintiffs' intellectual property rights. Singga was served with the Statement of Claim through its director (the Defendant, Lisa Lam) on August 17, 2010 (Court Record, Document 6).

[7] In addition, one of the defendants requires particular attention due to the following: Singga served a Statement of Defence on September 16, 2010 (which was not filed with the Court until September 28, 2010). The Defence denies the majority of the allegations stated in the Statement of Claim. Singga, through its then counsel, served an Affidavit of Documents on October 28, 2010, which contained no listed relevant documents. After repeated inquiries by the Plaintiffs and an interim admission of relevant documents in its possession, Singga, through its then counsel, served a Supplemental Affidavit of Documents on December 23, 2010. (Statement of Defence Singga; Affidavit of Amy Jobson, paras 2, 8, 9, 11, 12 and 14; Exhibits A, G, H, J, K and M.).

[8] On December 13, 2010, the Plaintiffs served and filed a motion for summary trial of this matter including its affidavits in support thereof (Court Record, Document 27).

[9] On December 23, 2010, counsel for Singga advised the Plaintiffs of Singga's intention to act in person and, that same day, counsel for the Plaintiffs specifically reminded Singga itself that Federal Court Rule 120 requires corporations to be represented by counsel. More than once, counsel for the Plaintiffs sought confirmation from Singga and its counsel that an appropriate motion would be brought (Affidavit of Amy Jobson, paras 15, 16 and 17; Exhibits N, O and P).

[10] On January 26, 2011, the then counsel for the Singga Corporation, Mr. William Lim of Lim & Company, served a motion on the Plaintiffs for an order that he be removed as Singga's solicitor of record and that the Defendant Lam be appointed to represent Singga in this proceeding. The Plaintiffs filed their responding motion record with the Court on February 1, 2011, though Mr. Lim's motion was only filed with the Court on February 4, 2011 (with the Plaintiffs' Motion

Record thereafter being accepted for filing on February 4, 2011). The Plaintiffs consented to the removal of Mr. Lim as the solicitor of record for Singga but contested the appointment of Lam to represent Singga (Affidavit of Amy Jobson, para 18; Exhibit Q; Court Record, Documents 36-38, 40-42).

[11] The Affidavit filed by Mr. Lim in respect of his motion confirmed that he had not received any instructions from Singga since December 23, 2010, nor did he expect Singga to bring its own application for Lam to represent Singga itself (Affidavit of William Lim, sworn January 19, 2011).

[12] By Order of the Court dated February 9, 2011, Singga was ordered to serve and file a Notice of Appointment of Solicitor forthwith and no later than February 15, 2011, failing which the Plaintiffs were able, without further notice to make a request, to strike Singga's Statement of Defence.

[13] Mr. Lim has filed an Affidavit of Service confirming service of the February 9, 2011 Order on Singga by facsimile on February 10, 2011, and regular mail on February 17, 2011 (Court Record, Document 48).

[14] Singga has not served or filed a Notice of Appointment as required under the Order. At no time has Singga has not at any time corresponded with counsel for the Plaintiff since instructing Mr. Lim that Lam wished to represent Singga, including not serving any affidavit evidence to contest the Plaintiffs' motion for summary trial judgment (Affidavit of Amy Jobson, para 20, Tab 5).

IV. Analysis

[15] The Court agrees with counsel for the Plaintiffs that the Court does have the inherent procedural jurisdiction to control its own process from abuse, notwithstanding its rules and limiting statutory jurisdiction. This includes the inherent jurisdiction to impose sanctions for non-compliance with its orders or directions, including dismissal of a proceeding or dismissal of a defence (*Margem Chartering Co v Cosena S.R.L.*, [1997] 2 FC 1001, [1997] FCJ No 384 at para 20; *Canadian Slovak League v Canada*, 2003 FCA 369, 313 NR 319 at para 7).

[16] Federal Courts Rule 221(f) also allows the Court to strike a pleading where the pleading is an abuse of the process of the Court (Rule 221, *Federal Courts Rules*).

[17] The Defendant Singga's conduct in failing to serve and file an Appointment of Solicitor in the face of the February 9, 2011 Order by the Court constitutes an abuse of process, particularly when combined with Singga's prior deficiencies in documentary production and failure to participate in this proceeding.

[18] This case involves counterfeiting on the part of the Defendant Singga. Singga's course of conduct demonstrates a disregard for the court process: delay in proper documentary discovery, failure to appear or provide evidence on Mr. Lim's motion to have himself removed as counsel, and failure to ensure that a new solicitor was appointed as required by the Order of the Court dated February 9, 2011, notwithstanding the clear indication therein that the Plaintiffs would be entitled to seek to have its Statement of Defence struck.

[19] Therefore, pursuant to the inherent jurisdiction of the Court and Rule 221(f), the Singga's Statement of Defence is to be struck and Singga is to be noted in default of this proceeding.

[20] The Defendant Singga's conduct has resulted in the Plaintiffs incurring expenses.

[21] Costs fixed in the lump sum amount of \$1,000 are to be paid by Singga to the Plaintiffs forthwith (Rule 400, *Federal Courts Rules*).

ORDER

THIS COURT ORDERS:

1. Singga's Statement of Defence be struck and Singga be hereby noted in default of this proceeding.
2. The Plaintiffs be granted leave to bring a motion *ex parte* against Singga for default judgment and assessment of damages against Singga under Rule 210 of the *Federal Courts Rules*.
3. Service of this Order on the Singga be made within 10 (ten) days of the issuance of this Order by ordinary mail at 300 - 3665 Kingsway, Vancouver, B.C. V5R 5W2, and by facsimile at 604-438-2737.
4. Singga pay the Plaintiffs' costs of this motion in the lump sum amount of \$1,000 payable by Singga forthwith and in any event of the cause.

“Michel M.J. Shore”

Judge

TO: The Administrator
THE FEDERAL COURT

AND TO: Singga Enterprises (Canada) Inc.
300 – 3665 Kingsway
Vancouver, BC V5R 5W2

Lisa Lam
300 – 3665 Kingsway
Vancouver, BC V5R 5W2

Kenny Ko (also known as Wai Shing LO and Sing Wai LO)
300 – 3665 Kingsway
Vancouver, BC V5R 5W2

Yun Jaun GUO (also known as Jessie GUO and Yun Jaun Jessie GUO)
doing business as Carnation Fashion Company
101 – 3373 Kingsway
Vancouver, BC V5K 1Z2

Monica MAC (also known as Jia Xin MAC and Monica Jia Xin Mai MAC)
Pablo LIANG
Rebecca MAC
Gordon CHAN (also known as Hung Bing CHAN),
collectively doing business as Altec Productions

218 – 7357 Woodbine Avenue
Markham, Ontario
L3R 6L3

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-1276-10

STYLE OF CAUSE: LOUIS VUITTON MALLETIER S.A. et al.
v. SINGGA ENTERPRISES (CANADA) INC. et al.

PLACE OF HEARING: Vancouver, BC

DATE OF HEARING: February 28, 2011

**REASONS FOR ORDER
AND ORDER:** SHORE J.

DATED: March 1, 2011

APPEARANCES:

Karen F. MacDonald

FOR THE PLAINTIFFS

No one appearing

FOR THE DEFENDANTS

SOLICITORS OF RECORD:

Smart & Biggar
Vancouver, BC

FOR THE PLAINTIFFS

n/a

FOR THE DEFENDANTS