

**Lee Kien Meng**  
v  
**Cintamani Frank**

**[2015] SGHC 109**

High Court — District Court Appeal No 48 of 2014

Chan Seng Onn J

17 February; 22 April 2015

*Contract — Formation — Party intended solicitors to be involved in handover of control of certain Facebook Pages — Whether binding contract formed*

*Personal Property — Ownership — Party seeking declaration that he was owner of certain Facebook Pages — Whether party had proprietary interest in these Facebook Pages*

#### Facts

The appellant, Lee Kien Meng (“Lee”), had considerable expertise in the field of digital social media. He was the sole shareholder and director of Senatus Pte Ltd (“Senatus”). Senatus was in the business of digital social media.

The respondent, Cintamani Frank (“Cintamani”), was an Indonesian businessman. He was the chairman and founder of Men’s Fashion Week (“MFW”) and Women’s Fashion Week (“WFW”) in Singapore. These were fashion events that were organised in 2011 and 2012. These two events were owned and organised by Cintamani through one of his companies, Fide Multimedia Pte Ltd (“Fide”).

In 2010, Senatus was engaged by Fide to promote MFW and WFW online through social media. Senatus was the “Official Online Media Partner” and was to drive social media awareness and visibility for the events to be held in 2011. At the same time, Lee was appointed the “Sponsorship Director” of MFW 2011 and the “Festival Director” of WFW 2011. There was no agreement for remuneration involved. Instead, there was a mutuality of interests in the arrangement. Both parties would get increased publicity and visibility by working together.

Lee set up “Facebook Pages”, “Twitter” accounts and even acquired the domain names for MFW 2011 and WFW 2011. Lee was the first administrator of the Facebook Pages. As the first administrator, Lee appointed Cintamani as another administrator. Subsequently, a few other staff members of Fide were appointed as administrators of the Facebook Pages. As a result of a falling out between Lee and Cintamani, the latter removed all the administrators of the Facebook Pages, including Lee on 28 March 2012.

On 4 April 2012, Lee sent an e-mail to Cintamani requesting for the restoration of his status as an administrator of the Facebook Pages. Cintamani replied via e-mail offering to hand over the Facebook pages to Lee so that the parties could part amicably. After some further correspondence, Lee requested for a specific date for the handing over of the Facebook Pages. Cintamani then replied that he wanted the matter to go through his lawyers. Lee claimed that it was not

necessary for lawyers to handle the matter but Cintamani was adamant that he wanted his lawyers to be involved. On 13 April 2012, Lee's solicitors wrote to Cintamani's solicitors requesting a draft agreement in respect of the handing over of the Facebook Pages. No such draft agreement was exchanged.

Lee then commenced legal proceedings claiming the following reliefs: (a) a declaration that he was the owner/sole administrator of the MFW and WFW Facebook Pages; (b) a declaration that Cintamani was to reinstate the Facebook pages and relinquish all rights and control to Lee; and (c) damages of \$250,000.

The district judge ("the DJ") dismissed Lee's claim in its entirety.

### **Held, dismissing the appeal:**

(1) Lee's case was based on a proprietary claim to the Facebook Pages as whole. In this regard, Lee married the Facebook Pages with the content uploaded by a user on the Facebook Page. This was patently incorrect. The Facebook Pages were the medium (albeit an intangible and online medium) through which the content was expressed. There was a clear distinction between the ownership of the copyright in the work and ownership of the tangible medium in which the work was expressed. In the present case, there was no submission by any party that because the medium here was intangible, a different principle should apply: at [20] and [21].

(2) A user had to first signify his agreement to the "Facebook Page Terms" ("Facebook Terms") and the Facebook's "Statement of Rights and Responsibility" ("the Statement") before he created a Facebook Page. It was apparent from the Facebook Terms and the Statement that the Facebook Pages itself were not owned by the user. As Facebook Inc was not a party to the proceedings, it was not necessary to find that it owned the Facebook Pages. It was sufficient to state that the DJ did not err in holding that Lee did not own the Facebook Pages: at [28] and [31].

(3) It was clear from the exchange between the parties from 4 April 2012 through to 7 April 2012 that, objectively, they had not intended to be contractually bound until a written agreement was entered into: at [37].

(4) The problem with Lee's claim for loss suffered for the amount of time managing the Facebook Pages was that it was not his case that he would be remunerated for managing the Facebook Pages. There was no contract under which he would be remunerated for his time spent managing the Facebook Pages. The arrangement between Lee and Cintamani was based on a mutuality of interests. Lee and Senatus would benefit from the publicity received by their involvement in the MFW and WFW events: at [41].

[Observation: The entire question of whether the Facebook Pages was capable of constituting property or whether the rights over it could be described as proprietary was an exceedingly vexed one. However, as all parties proceeded on the assumption that it was capable of ownership, the court proceeded on that assumption. However, the court did not express a view either way. At the end of the day, the decision did not hinge on this: at [27].

It was the case that whoever owned the content prior to uploading it onto the Facebook Pages remained the owner once it was uploaded. However, since Lee's

case was not that he owned the content of the Facebook Pages, but that he owned the Facebook Pages itself, it was not necessary to deal with this particular issue. However, there seemed to be an issue as to who the proper plaintiff was. There was evidence before the lower court that Senatus had commissioned the taking of many photographs and videos at the MFW and WFW events. If this was the case, it would be that Senatus owned this content. Senatus was not a party to the proceedings. Although Senatus was wholly owned by Lee, at law they were distinct. But this was not material given that Lee's case did not rest on ownership of the content on the Facebook Pages: at [33].]

#### Case(s) referred to

*Asia Pacific Publishing Pte Ltd v Pioneers & Leaders (Publishers) Pte Ltd* [2011] 4 SLR 381 (refd)

*Class One Enterprises Pte Ltd v Motherland Movies (S) Pte Ltd* [1999] 1 SLR(R) 424; [2000] 3 SLR 229 (refd)

*National Provincial Bank Ltd v Ainsworth* [1965] AC 1175 (refd)

*Toh Eng Lan v Foong Fook Yue* [1998] 3 SLR(R) 833; [1999] 1 SLR 453 (refd)

*Yearworth v North Bristol NHS Trust* [2010] QB 1 (refd)

#### Legislation referred to

Copyright Act (Cap 63, 2006 Rev Ed) s 7A

*Beh Eng Siew and Suja Michelle Sasidharan (Lee Bon Leong & Co) for the appellant; Derek Kang Yu Hsien and Wong Wai Han (Rodyk & Davidson LLP) for the respondent; Leo Zhen Wei Lionel (WongPartnership LLP) as amicus curiae.*

22 April 2015

**Chan Seng Onn J:**

#### Introduction

1 This was an appeal brought by Lee Kien Meng (“the Appellant”) against the decision of the district judge (“the DJ”) who dismissed the Appellant’s claim in its entirety. After hearing submissions from the parties, I dismissed the appeal. I now give the reasons for my decision.

#### The facts

2 The Appellant had considerable expertise in the field of digital social media. He was the sole shareholder and director of Senatus Pte Ltd (“Senatus”). Senatus, a private company incorporated in Singapore, was in the business of digital social media. Senatus was engaged in, *inter alia*, web-hosting services, software applications development and online advertising. Senatus also operated an online magazine.

3 Cintamani Frank (“the Respondent”) was an Indonesian businessman. He was the chairman and founder of Men’s Fashion Week

(“MFW”) and Women’s Fashion Week (“WFW”) in Singapore. These were fashion events that were organised in 2011 and 2012. These events, which had corresponding fashion events held in major fashion capitals of the world, were premier events on the fashion calendar in Singapore. These two events were owned and organised by the Respondent through one of his companies, Fide Multimedia Pte Ltd (“Fide”).

4 In 2010, Senatus was engaged by Fide to promote MFW and WFW online through social media. Senatus was the “Official Online Media Partner” and was to drive social media awareness and visibility for the events to be held in 2011. At the same time, the Appellant was appointed the “Sponsorship Director” of MFW 2011 and the “Festival Director” of WFW 2011.

5 Crucially, there was no agreement for remuneration involved. The DJ observed that there was a mutuality of interests in the arrangement above. Both parties would get increased publicity and visibility by working together. The DJ also astutely pointed out that these were precious commodities in the fashion and social media circles.

6 The Appellant set up “Facebook Pages”, “Twitter” accounts and even acquired the domain names for MFW 2011 and WFW 2011. The Appellant was the first administrator of the Facebook Pages. As the first administrator, the Appellant appointed the Respondent as another administrator. Subsequently, a few other staff members of Fide were appointed as administrators of the Facebook Pages.

7 In early April 2011, after MFW 2011 was held but before WFW 2011 (which was scheduled to be in October 2011), the Appellant approached the Respondent regarding advertising spots on Senatus’ online magazine. On 1 May 2011, Fide and Senatus entered into a written advertising contract under which Fide was to pay a total of \$60,000 for advertisements in the online magazine over a period of 12 months. In January 2012, before the 2012 season of MFW, the Appellant approached the Respondent regarding an increase in the price of the online advertising spots on Senatus’ online magazine. The proposed revision by the Appellant was for \$100,000 for a period of six months. The Respondent counter-offered with \$60,000 for a period of six months. The Appellant did not respond and nothing more was said of this matter.

8 As a result of a falling out between the Appellant and the Respondent, the Respondent removed all the administrators of the Facebook Pages, including the Appellant on 28 March 2012. At that time, any administrator of the Facebook Pages had the authority to add or remove another administrator. This included the authority to remove the very first administrator, which was what had happened.

9 On 4 April 2012, the Appellant sent an e-mail to the Respondent requesting for the restoration of his status as an administrator of the

Facebook Pages. On the same day, the Respondent replied via e-mail offering to hand over the Facebook Pages to the Appellant so that the parties could part amicably. After some further correspondence, the Appellant requested on 5 April 2012 for a specific date for the handing over of the Facebook Pages. The Respondent then replied that he wanted the matter to go through his lawyers. The Appellant claimed that it was not necessary for lawyers to handle the matter but the Respondent was adamant that he wanted his lawyers to be involved. On 13 April 2012, the Appellant's solicitors wrote to the Respondent's solicitors requesting a draft agreement in respect of the handing over of the Facebook Pages. No such draft agreement was exchanged. The status of the Facebook Pages was that they were "unpublished" which meant that only the administrators could access them.

10 The Appellant then commenced legal proceedings claiming the following reliefs:

- (a) a declaration that the Appellant was the owner/sole administrator of the MFW and WFW Facebook Pages;
- (b) a declaration that the Respondent was to reinstate the Facebook pages and relinquish all rights and control to the Appellant; and
- (c) damages of \$250,000.

### **The DJ's decision**

11 In dismissing the claim in its entirety, the DJ found that the Facebook Pages, apart from any content uploaded on the Facebook Pages, were not owned by the Appellant. The DJ also expressly found that Facebook Inc was the owner of the Facebook Pages. In this regard, the DJ described the nature of the Facebook Pages as follows:

20. What exactly is a facebook page? According to Facebook Inc., a facebook page is for business, organisations and brands to share their stories and connect with people. The facebook page can be customised by adding apps, posting stories, hosting events. Other people can get updates in 'news feeds'. Facebook pages can be created by an individual from a personal account. Facebook stipulates that only the official representative of an organisation, business or brand is permitted to create a facebook page.

12 The DJ referred to the "Facebook Page Terms" ("Facebook Terms") and Facebook's "Statement of Rights and Responsibility" ("the Statement") to conclude that it was Facebook Inc which owned the Facebook Pages. The DJ further found that any "rights" conferred by Facebook Inc on a user were in fact privileges and not rights in the strict sense of the word. The Appellant thus did not have a proprietary right to the Facebook Pages.

13 Next, the DJ found that there was no agreement to hand over control of the Facebook Pages. The DJ found that the objective evidence of the e-

mail exchange between the parties contained several indications that the parties had not intended to be contractually bound until a formal agreement was negotiated and signed. The evidence showed that the Respondent wanted the parties to agree on terms which had to be written out and negotiated through lawyers. The Respondent had clearly not agreed to any terms and had indicated several times in earlier e-mails that he wanted lawyers involved. The Appellant was aware of this and had even asked in an e-mail for the contact of the Appellant's lawyers.

14 In addition to the lack of an intention to be contractually bound, the DJ also found that there was no consideration provided by the Appellant in order to form an enforceable agreement to transfer control of the Facebook Pages. According to the DJ, the Appellant was not able to point to any detriment that he would suffer or benefit that he would confer on the Respondent.

15 Having found that the Appellant had no proprietary interest in the Facebook Pages and that there was no enforceable agreement to transfer control of the Facebook Pages, the DJ concluded that there was no basis on which to grant the declarations sought. The DJ also found that the evidence adduced of the Appellant's hourly rate and number of hours spent managing the Facebook Pages did not establish anything because it was not the Appellant's case that he would be paid for managing the Facebook Pages. The entire arrangement was based on a mutuality of interests in which Senatus and the Appellant would have benefitted from the publicity received by their involvement with the Respondent, Fide, MFW and WFW.

### **Arguments of the parties**

16 The Appellants arguments on appeal were as follows:

(a) The DJ erred in that he failed to consider that the content owned by the users of Facebook included the "Page" that they created. As Facebook Inc was unable to create or manage a Facebook Page on behalf of a user, it clearly delineated a legal proprietary right that the user had in the "Page". The Appellant thus had a proprietary right in the Facebook Pages.

(b) There was a duly concluded agreement between the parties via the e-mails sent on 4 and 5 April 2012. The lawyers were to merely formalise the terms that had already been agreed upon. Further, there was consideration furnished because the Appellant was unable to add content and communicate on the Facebook Pages and he had lost an opportunity to gain publicity by covering the MFW and WFW events. The Appellant had also agreed not to use the Facebook Pages or post content related to the MFW event once the Facebook Pages were returned. According to the Appellant, this was a benefit derived by the

Respondent from the agreement and was sufficient to constitute consideration.

(c) Finally, the Appellant also submitted that the Facebook Pages were ranked first on the search engine “Google” and there was therefore a loss for the effort and work done by the Appellant in achieving those separate rankings which was totally lost when the Facebook Pages were unpublished.

17 The Respondent’s arguments largely mirrored the decision of the DJ. I would not repeat them here.

18 I also had the benefit of submissions from the *amicus curiae*, Mr Lionel Leo (“Mr Leo”), which were exceedingly helpful. At appropriate junctures in the course of my grounds, I would revisit his submissions.

### Issues on appeal

19 The issues that had to be decided on appeal were:

- (a) whether the Appellant had proprietary right in the Facebook Pages;
- (b) whether there was an enforceable agreement between the parties to transfer control of the Facebook Pages from the Respondent to the Appellant; and
- (c) whether there was a ground for recovery for the loss from the effort and work done in relation to the Facebook Pages.

### My decision

#### ***Whether the Appellant had proprietary right in the Facebook Pages***

20 The Appellant’s case was based on a proprietary claim to the Facebook Pages as whole. In this regard, the Appellant married the Facebook Pages with the content uploaded by a user on the Facebook Page. The Appellant claimed “that the content and information a . . . user own[ed] include[d] [the] pages created and photos/videos posted on such pages”. He thus sought a declaration that he was the owner of the Facebook Pages, in and of itself.

21 This was patently incorrect. The Facebook Pages were the medium (albeit an intangible and online medium) through which the content was expressed. There was a clear distinction between the ownership of the copyright in the work and ownership of the tangible medium in which the work was expressed (see Ng-Loy Wee Loon, *Law of Intellectual Property in Singapore* (2nd Ed, 2014) at para 7.1.4). In this regard, Mr Leo referred me to *Class One Enterprises Pte Ltd v Motherland Movies (S) Pte Ltd* [1999] 1 SLR(R) 424 where I had struck out a plaintiff’s action in conversion. There the plaintiff had failed to recognise the distinction between the

physical video cassette tapes and the licensed programmes recorded on those tapes. In the present case, there was no submission by any party that because the medium here was intangible, a different principle should apply. I therefore first proceeded to consider the Appellant's case on the basis of ownership of the Facebook Pages, quite apart from any content.

22 The first question which struck me at the outset was whether or not the Facebook Pages, which were the medium on which the content was uploaded, could be the subject of property, and whether, in layman parlance, it could be considered "property". This necessarily took one deep into theoretical conceptions of property, either as the "thing" itself or the bundle of rights asserted over the "thing" (see Kevin Gray, *Property in Thin Air* (1991) 50 Cambridge LJ 252 at 252). Even if property was conceived as a bundle of rights over the "thing", there were some "things" to which property (and hence ownership) cannot be asserted.

23 To illustrate the point, in *Yearworth v North Bristol NHS Trust* [2010] QB 1 ("*Yearworth*"), a novel question arose in the English Court of Appeal about bailment in respect of damage to bodily substances, namely semen, which certain men had produced for their possible later use and which the defendant had promised to freeze and to store. The pertinent discussion (at [28], [30] and [31]) by Lord Judge, Lord Chief Justice of England and Wales was:

28 A decision whether something is capable of being owned cannot be reached in a vacuum. It must be reached in context; and in this section of our judgment the context is whether an action in tort may be brought for loss of the sperm consequent upon breach of the trust's duty to take reasonable care of it. The concept of ownership is no more than a convenient global description of different collections of rights held by persons over physical and other things. In his classic essay on 'Ownership' (*Oxford Essays in Jurisprudence*, (1961), p 107, editor A G Guest, ch V) Professor A M Honoré identified 11 standard incidents of ownership but stressed that not all of them had to be present for ownership to arise. He suggested that the second incident was 'the right to use' and he added, at p 116, that:

'The right (liberty) to use at one's discretion has rightly been recognised as a cardinal feature of ownership and the fact that ... certain limitations on use also fall within the standard incidents of ownership does not detract from its importance...'

We have no doubt that, in deciding whether sperm is capable of being owned for the purpose which we have identified, part of our enquiry must be into the existence or otherwise of a nexus between the incident of ownership most strongly demonstrated by the facts of the case (surely here the right, albeit limited, of the men to use the sperm) and the nature of the damage consequent upon the breach of the duty of care (here, their inability to use it notwithstanding that this was the specific purpose for which it was generated).

...



*A living human body*

30 ‘Dominus membrorum suorum nemo videtur’ (no one is to be regarded as the owner of his own limbs): Ulpian, Edict, D 9 2 13 pr. The common law has always adopted the same principle: a living human body is incapable of being owned. An allied principle is that a person does not even ‘possess’ his body or any part of it: *R v. Bentham* [2005] [2005] 1 WLR 1057. Notwithstanding these principles, the law compensates by making an elaborate series of rules for the protection of the body and bodily autonomy: see, eg, *Airedale NHS Trust v Bland* [1993] AC 789. One consequence of the principles, albeit not recognised until the nineteenth century, is that, if our bodies cannot be our own property, it follows that they cannot be the property of other persons; and that therefore we cannot sell ourselves, or be sold, to others. Another consequence is that, if we do not own our bodies, we have no right to destroy them, i.e. to commit suicide; in this respect it was necessary for Parliament, by s.1 of the Suicide Act 1961, to legislate the necessary reform to the criminal law.

*A human corpse*

31 In his *Institutes of the Laws of England*, mostly published in 1641, after his death, Sir Edward Coke wrote, Part III (1797 ed), p 203 that the ‘burial of the Cadaver is *nullius in bonis* [in the goods of no one] and belongs to ecclesiastical cognizance’. In his *Commentaries on the Laws of England*, published in 1765, Sir William Blackstone wrote, 15th ed (1809), Book II, ch 28, p 429) that:

‘...though the heir has a property in the monuments and escutcheons of his ancestors, yet he has none in their bodies or ashes; nor can he bring any civil action against such as indecently at least, if not impiously, violate and disturb their remains, when dead and buried... [But] if any one in taking up a dead body steals the shroud or other apparel, it will be felony; for the property thereof remains in the executor, or whoever was at the charge of the funeral.’

There were at least three reasons for the rule that a corpse was incapable of being owned. First, in that there could be no ownership of a human body when alive, why should death trigger ownership of it? Second, as implied by Coke and Blackstone, the body was the temple of the Holy Ghost and it would be sacrilegious to do other than to bury it and let it remain buried: see for example, *In re Estate of Johnson* (1938) 7 NYS 2d 81. Thirdly, it was strongly in the interests of public health not to allow persons to make cross-claims to the ownership of a corpse: in the words of Higgins J in his dissenting judgment in *Doodeward v. Spence* (1908) 6 CLR 406, 422 in the High Court of Australia, there was an ‘imperious necessity for speedy burial’.

24 There were normative reasons why, traditionally, a human corpse was incapable of being the subject of property at common law. However, the English Court of Appeal held that there was a gratuitous bailment of the sperm and consequently a breach by the defendant of a specific promise extended by them to the men. The sperm was therefore the property of the men for the purposes of their claims in tort and bailment (see *Yearworth*

at [60]). Therefore at common law, there were some “things” which were not capable of being the subject of property. When considering the Facebook Pages devoid of content, I was not referring to the infrastructure by which the Facebook Pages came into existence in the first place via Facebook Inc’s website (www.facebook.com), the back-end engines, codes (which drove the back-end engines), pre-installed custom functionalities designed for each category of brand, business and organisation (which included icons, buttons and other features for page users to customise their page). These would usually be protected by the law of intellectual property. I had in my mind the bare medium, which was the Facebook Page, through which content was published. This was what the Appellant was claiming a proprietary interest in. It also seemed to me that the value in these Facebook Pages was the followers/fans it had. For the MFW Facebook Page there were at one time 13,000 followers/fans while the WFW Facebook Page had 3,300 followers/fans. It was this follower/fan base that was valuable to the parties. It was not clear to me if the Facebook Pages could, or perhaps should, be the subject of property. There was the possibility of infinite proliferation of these Facebook Pages and other issues that had to be thoroughly considered.

25 If one were to instead look at the nature of the rights one had in the “thing”, to answer the question, there were also difficulties. Lord Wilberforce, in *National Provincial Bank Ltd v Ainsworth* [1965] AC 1175 at 1247–1248, provided the essential characteristics of a proprietary right (cited with approval by the Court of Appeal in *Toh Eng Lan v Foong Fook Yue* [1998] 3 SLR(R) 833):

... Before a right or an interest can be admitted into the category of property, or of a right affecting property, it must be definable, identifiable by third parties, capable in its nature of assumption by third parties, and have some degree of permanence or stability. ...

26 Prof Kevin Gray, in his article, “Property in Thin Air” (1991) 50 Cambridge LJ 252 at 292–293 persuasively pointed out:

The classic common law criteria of ‘property’ have tended to rest a twin emphasis on the assignability of the benefits inherent in a resource and on the relative permanence of those benefits if unassigned. Before a right can be admitted within the category of ‘property’ it must, according to Lord Wilberforce in *National Provincial Bank Ltd. v. Ainsworth*, be ‘definable, identifiable by third parties, capable in its nature of assumption by third parties, and have some degree of permanence or stability.’ This preoccupation with assignability of benefit and the enforceability of burden doubtless owes much to the fact that the formative phases of the common law concept of property coincided with a remarkable culture of bargain and exchange. Non-transferable rights or rights which failed on transfer were simply not ‘property’. Within the crucible of transfer lawyers affected to demarcate rights of ‘property’ from rights founded in contract and tort or, for that matter, from human rights and civil liberties. Only brief reflection is

required in order to perceive the horrible circularity of such hallmarks of ‘property’. If naively we ask which rights are proprietary, we are told that they are those rights which are assignable to and enforceable against third parties. When we then ask which rights these may be, we are told that they comprise, of course, the rights which are traditionally identified as ‘proprietary’. ‘Property’ is ‘property’ because it is ‘property’: property status and proprietary consequence confuse each other in a deadening embrace of cause and effect.

27 As observed, the entire question of whether the Facebook Pages was capable of constituting property or whether the rights over it could be described as proprietary was an exceedingly vexed one. However, as all parties before me (including the *amicus curiae*, Mr Leo) proceeded on the assumption that it was capable of ownership, I did the same. However, it should be made clear that I did not express a view either way. It also had to be pointed out that at the end of the day, my decision did not hinge on this.

28 The Appellant argued that since the Facebook Pages came into existence because of him, he was the owner. Without him clicking the “create” button, these Facebook Pages would never have been in existence. However, before creation, a user had to first signify his agreement to the Facebook Terms and the Statement. Therefore, in determining whether the Appellant was the owner of the Facebook Pages, reference had to be made to the Facebook Terms and the Statement.

29 I found that the DJ did not err in finding that the Appellant did not own these Facebook Pages. Firstly, the Facebook Terms stated at the very last line:

We reserve the right to reject or remove Pages for any reason. These terms are subject to change at any time.

Paragraph 4(9) of the Statement stated that users “will not transfer [their] account (including any Page or application [they] administer) to anyone without first getting [Facebook Inc’s] written permission”.

30 Facebook Inc’s unfettered right to remove the Facebook Pages and the fact that its consent was required before any transfer of the Facebook Pages was done was strongly suggestive of the fact that the Appellant did not own these Facebook Pages. If it did, it would not require the consent of Facebook Inc before it transferred the Facebook Pages and Facebook Inc would not be able to remove the Facebook Pages at its own discretion.

31 Furthermore, para 2 of the Statement provided that:

[Facebook users] own all of the content and information [they] post on Facebook, and [they] can control how it is shared through [their] privacy and application settings.

It was telling that the Statement made clear that the content of the Page was owned by the user. It did not state that the entire Page was owned by the

user. As I had earlier stated (see [21] above), there was a clear distinction between the content on the Facebook Pages and the Facebook Pages themselves. Paragraph 19(2) of the Statement provided that the Statement made up the “entire agreement between the parties regarding Facebook, and supersede[d] any prior agreement”. Paragraph 19(10) of the Statement also stated that “[Facebook Inc] reserve[d] all rights not expressly granted to [the user]”. It was therefore apparent that while the users retained ownership of the content, the Facebook Pages itself were not owned by the user. As Facebook Inc was not party to the proceedings, it was not necessary to find that it owned the Facebook Pages. It was sufficient to state that the DJ did not err in holding that the Appellant did not own the Facebook Pages.

32 I next turned to the content uploaded on the Facebook Pages. The content was clearly capable of ownership and was not owned by Facebook Inc. Paragraph 2(1) of the Statement:

For content that is covered by intellectual property rights, like photos and videos (IP content), [the user] specifically give[s] [Facebook Inc] the following permission, subject to [the user’s] privacy and application settings: [the user] grant[s] [Facebook Inc] a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use any IP content that [the user] post[s] on or in connection with Facebook (IP License). This IP License ends when [the user] delete[s] [the user’s] IP content or [the user’s] account unless [the user’s] content has been shared with others, and they have not deleted it.

33 It was therefore the case that whoever owned the content prior to uploading it onto the Facebook Pages remained the owner once it was uploaded. However, since the Appellant’s case was not that he owned the content of the Facebook Pages, but that he owned the Facebook Pages itself, it was not necessary for me to deal with this particular issue. However, it was pertinent to point out that there seemed to be an issue as to who the proper plaintiff was. There was evidence before the lower court that Senatus had commissioned the taking of many photographs and videos at the MFW and WFW events. If this was the case, it would be that Senatus owned this content. Senatus was not a party to the proceedings. Although Senatus was wholly owned by the Appellant, at law they were distinct. But this was not material given that the Appellant’s case did not rest on ownership of the content on the Facebook Pages.

34 Mr Leo also helpfully pointed out that apart from the content and the Facebook Pages, there was a third aspect which was neither considered by the parties nor the DJ. This was the fact that a user might claim copyright over the *manner* in which he uploaded the content on his Facebook Pages (regardless of any ownership rights to the content uploaded) on the basis that it was a compilation. Section 7A of the Copyright Act (Cap 63, 2006 Rev Ed) provided as follows:

**Literary works include compilation and computer program**

7A.—(1) For the purposes of this Act, ‘literary work’ includes —

- (a) a compilation in any form; and
  - (b) a computer program.
- (2) Any copyright subsisting in a compilation by virtue of Part III —
- (a) is limited to the selection or arrangement of its contents which constitutes an intellectual creation; and
  - (b) is in addition to, and independent of, any right subsisting by virtue of Part III, IV or XII in any relevant material or data contained in the compilation.

(3) For the purposes of this section —

‘compilation’ means —

- (a) a compilation, or table, consisting wholly of relevant materials or parts of relevant materials;
- (b) a compilation, or table, consisting partly of relevant materials or parts of relevant materials; or
- (c) a compilation, or table, of data other than relevant materials or parts of relevant materials,

which, by reason of the selection or arrangement of its contents, constitutes an intellectual creation;

‘relevant material’ means —

- (a) a work, including a computer program;
- (b) a sound recording;
- (c) a cinematograph film;
- (d) a published edition of a work;
- (e) a television or sound broadcast;
- (f) a cable programme; or
- (g) a recording of a performance within the meaning of Part XII.

In *Asia Pacific Publishing Pte Ltd v Pioneers & Leaders (Publishers) Pte Ltd* [2011] 4 SLR 381 (“*Asia Pacific Publishing*”), the Court of Appeal stated that the test for compilations was that of originality – whether there was sufficient amount of skill, labour and judgment involved in the creative process (at [33]). Therefore, it could have possibly been contended by the Appellant that the *manner* in which the content was uploaded, or as Mr Leo put it, the “aggregate” of what was posted (and presumably how it was posted) could lend itself to copyright protection as being a compilation.

35 It was Mr Leo’s submission that insofar as this “aggregate” of the content uploaded on the Facebook Pages was concerned, if the Appellant

independently created it and some creativity was exerted, copyright protection should be afforded to it. This was despite the fact that when it came to a Facebook Page, much of organisation was already in-built and accordingly the degree to which the “aggregate” of the content uploaded could be customised was far more limited than a normal website. Nevertheless, Mr Leo submitted that there certainly could be sufficient creativity in the way the “aggregate” of the content was presented on a Facebook Page to meet the threshold of creativity, which according to *Asia Pacific Publishing* (at [38]) was extremely low.

36 However, the Appellant’s case was not based on his copyright of the “aggregate” of the content posted as being a compilation. There were no submissions on this by either party as well. I therefore would not comment or give my views on this issue.

***Whether there was an enforceable agreement between the parties to transfer control of the Facebook Pages from the Respondent to the Appellant***

37 I also found that the DJ did not err in finding that there was no legally enforceable agreement to hand over control of the Facebook Pages. It was clear from the exchange between the parties from 4 April 2012 through to 7 April 2012 that, objectively, they had not intended to be contractually bound until a written agreement was entered into.

38 From the very outset, when transfer of control was discussed, the Respondent had made it clear that he wanted the matter to be handled by his lawyers. In his e-mail dated 5 April 2012, the Respondent stated, “I am afraid that I will have to insist that this matter be proceeded through my lawyers for good form and to avoid any other undisclosed expectations on your side.” The Appellant replied by saying he saw no need for lawyers to handle the matter. However, the Respondent was adamant that the matter should go through his lawyers. In his e-mail on 7 April 2012, the Respondent wrote:

2) Please let me know who will be acting as your legal representative for my offer to give you control of the MFW Facebook Page. There are terms that must be agreed and must be clearly written out prior to a handover. I am not prepared to do anything further without a clear, concise and explicit understanding. It is apparent now that we should have done this from the onset of our association.

On 13 April 2012, the Appellant’s solicitors then wrote to the Respondent’s solicitors. In their letter, it was stated:

Your client had indicated to our clients that he would be instructing you to let us have a draft agreement for our approval with regard to the handing over of the control of the Facebook pages.

39 It was therefore clear that the DJ did not err in holding that there was no enforceable agreement between the parties. Having found this, it was not necessary for me to consider if the Appellant had provided consideration for the agreement.

***Whether there was a ground for recovery for the loss from the effort and work done in relation to the Facebook Pages***

40 There was therefore no basis for the declaratory relief sought by the Appellant. He neither had a proprietary interest in the Facebook Pages nor did he have a legally enforceable agreement with the Respondent for the latter to hand over control of the Facebook Pages to the Appellant.

41 The Appellant also led evidence in the court below on the number of hours spent managing the Facebook Pages. He thus claimed that he suffered loss for which he should be compensated. The problem with this claim was that, as the DJ correctly noted, it was not his case that he would be remunerated for managing the Facebook Pages. There was no contract under which he would be remunerated for his time spent managing the Facebook Pages. The arrangement between the Appellant and Respondent was based on a mutuality of interests. The Appellant and Senatus would benefit from the publicity received by their involvement in the MFW and WFW events.

42 The fact that there was no agreement for the Appellant to be remunerated by the Respondent or Fide for work done in respect of the Facebook Pages was reinforced by the fact that where the parties intended for there to be remuneration, they had entered into a written agreement. This was seen in the written advertising contract between Senatus and Fide, entered into on 1 May 2011, where Fide agreed to pay a sum of \$60,000 over a period of 12 months for advertising spots in Senatus' online magazine. There was no such written agreement for remuneration for work done by the Appellant in respect of the Facebook Pages. There was therefore no basis on which to order damages for loss suffered by the Appellant for the work done in respect of the Facebook Pages.

**Conclusion**

43 In conclusion, I dismissed the appeal in its entirety. The DJ did not err in holding that there was no basis to grant the declarations sought by the Appellant since he did not have a proprietary interest in the Facebook Pages nor did the DJ err in finding that there was no concluded agreement between the Appellant and Respondent to transfer control of the Facebook Pages to the Appellant. There was also no basis for damages based on the hours of work done by the Appellant since there was no agreement that the Appellant would be remunerated based on the number of hours he spent working on the Facebook Pages.

44 After hearing the parties on costs, I fixed costs at \$18,000 (including disbursements) to be paid by the Appellant to the Respondent.

45 I am grateful to Mr Leo for his extremely helpful analysis of the legal and factual issues in this case.

Reported by Afzal Ali.

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