19 March 2020

CASE NOTE – CONTRACT

3 Corporate Services Pte Ltd v Grabtaxi Holdings Pte. Ltd. [2020] SGHC 17

The High Court of Singapore recently made it clear that cybersquatting is contrary to public policy, and a cyber squatter seeking to enforce a contract for the sale and purchase of a domain name would not be able to so, as a matter of public policy.

Background

The Plaintiff, 3 Corporate Services Pte Ltd, is a Singapore incorporated company that on record with the Accounting and Corporate Regulatory Authority, provides management consultancy services and manages web portals. The Defendant, Grabtaxi Holdings Pte. Ltd, is part of a group of companies engaged in the business of providing ride-hailing and logistics services under the name GRAB.

The Plaintiff commenced proceedings for damages or the specific performance of a contract, asserting that the Defendant had reneged on an agreement to pay the Plaintiff a sum of US$250,000 for the purchase of the domain name "grab.co.id" ("**Domain Name**") as evidenced by an offer letter issued by the Defendant ("**Offer Letter**").

The Defendant, on the other hand, argued that:

(1) the Offer Letter was not a valid and enforceable contract, as not all the preconditions in the Offer Letter were satisfied. In particular, the Plaintiff did not satisfy the third precondition of the Offer Letter which required the Plaintiff to own the Domain Name; instead the Domain Name was owned by another entity called Top3; and

(2) even if the Offer Letter was binding, the Plaintiff had not suffered any loss or damage. In any case, the contract was unenforceable as the Plaintiff had engaged in cybersquatting, which is contrary to public policy. The Defendant adduced evidence that the Plaintiff was engaged in a scheme with Top3 to register numerous domain names of well-known companies or personalities as a pre-emptive measure and demand extortionate amounts from these companies and personalities at a later date.

Findings

On the issue of whether the Offer Letter was a valid and enforceable contract, the Court found that it was not possible for the Plaintiff to enforce it as the Plaintiff did not own the Domain Name. Further, even if such Offer Letter was binding, the Plaintiff would not be able to obtain specific performance, since this was an equitable remedy and the Plaintiff did not go to court with clean hands. The Plaintiff also failed to prove that it suffered any loss.

On the issue of cybersquatting, the Court found in *obiter* that the Plaintiff was a cyber squatter that engaged in the deliberate, bad faith abusive registration of domain names in violation of rights in trademarks and service marks. It relied on three English cases on passing off and trademark infringement involving cybersquatting on domain names, including the description of the phenomenon of cybersquatting in *Global Projects Management Ltd v Citigroup Inc and others* [2005] EWHC 2663 (Ch):

> "*Persons with no connection with a well-known business name would find some permutation containing the name and a suffix,* ***but where that particular permutation had not been registered by the real owner of the business.*** *The person concerned would then register that permutation himself and* ***try to make money through being bought out by the true owner****."*

The Court's view that the Plaintiff was a cyber squatter was reinforced by the fact that the Plaintiff had met the indicia of abusive registration of domain names set out in the Final Report of the WIPO Internet Domain Name Process titled "*The Management of Internet Names and Addresses: Intellectual Property Issues*", namely: (1) the domain name was identical or misleadingly similar to a trade or service mark in which the complainant has rights; (2) the holder of the domain name had no rights or legitimate interests in respect of the domain name; and (3) the domain name had been registered and used in bad faith.

The Plaintiff tried to argue in closing submissions that it was not appropriate to establish cybersquatting or abusive registration as a new head of public policy at common law and the Court should be cautious of minting new rules when legislature has not considered the matter. The Court rejected this on the basis that in the current world where the reach of the Internet is wide, abuse and/or illegal usage of domain names needs to be controlled and/or curbed.

Comment

This decision provides useful guidance on how the practice of cybersquatting is viewed by the courts in Singapore as an objectionable commercial practice and how cybersquatting can render a contract unenforceable on ground of public policy. It is also a victory for all brand owners against opportunistic cyber squatters.

We wish to express our thanks to Geraldine Tan and Practice Trainee Zachary Foo for their contributions to this case note.