

HONG KONG / JUDGMENT

LDB SALES CO LTD v. GERMAIN ELECTRONIC LTD AND OTHERS

COURT

Court of First Instance

DECIDED

7 February 2007

CASE / FILE NUMBER

HCA5439/2001

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bjbj ~UfJ HCA5439/2001 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE ACTION NO.5439 OF 2001

BETWEEN LDB SALES COMPANY LIMITED Plaintiff and GERMAIN ELECTRONIC LIMITED 1st Defendant CHAN YING KIT PETER 2nd Defendant CHAN TAI LAI YUNG 3rd Defendant LOUIE CHAN 4th Defendant

Before : Hon Burrell J in Chambers Date of Hearing : 1 February 2007 Date of Decision : 7 February 2007

D E C I S I O N

AUTONUMOUT There are three summonses before the court. Firstly, a plaintiff's discovery summons dated 20 September 2005; secondly, a defendant's summons seeking the withdrawal of the plaintiff's request for interrogatories dated 13 October 2006 and thirdly, a defendant's summons dated 17 January 2007 seeking an unless order for non-compliance of a court order for discovery against the plaintiff made on 20 June 2005. AUTONUMOUT This case has now been part-heard for almost two years. A scheduled date for the resumption of the trial was vacated by consent because interlocutory matters had not been resolved. Whilst it has been part-heard, there has been an inordinate number of interlocutory applications, a surfeit of correspondence and an overdose of affirmations. The whole history of the matter, to date, has been fraught, prolix, at times bad tempered and at times blinkered. AUTONUMOUT It is hoped that my orders in these summonses will bring these particular issues to an end and the parties can concentrate on preparing for trial (which I have directed shall re-commence ab initio), agreeing as much as

possible and engaging in settlement talks. AUTONUMOUT The present position is that both sides say the other has failed to discharge its discovery obligations, both sides say the other has failed to comply with court orders, both sides disbelieve the other when they say they have discovered everything they can or should, and both sides believe the other has documents that it should have disclosed but has failed to do so. AUTONUMOUT The underlying reasons for the orders which follow are that : I am satisfied that, in general terms, there is a sufficiency of documents discovered (on these summonses) for the matter to proceed to trial. In many respects the parties have failed to establish a real necessity for the discovery they seek. The plaintiff s pleaded case seems to be clearly confined to alleged sales to and not to other unknown third parties. Any attacks on the credibility of witnesses arising out of what documents have or have not been in a party s possession can be adequately mounted on the basis of all the discovery, correspondence and affirmations made to date. In view of the affirmations and correspondence which have been exchanged thus far any order requiring a party to make further verifying affirmations would add little or nothing to the relevant and useful evidence in the case and would be an unnecessary waste of time and money. AUTONUMOUT

Orders

:

- (a) The plaintiff s discovery summons dated 20 September 2005 is dismissed save in respect of Item (A)(9) in the Schedule. The defendants have 14 days from the date of this decision in which to comply. This is not on an unless basis.
- (b) The defendants summons seeking the withdrawal of the plaintiff s request for interrogatories is granted. In all the circumstances, the answers already given are sufficient insofar as they relate the matters in issue.
- (c) The defendants discovery summons for an unless order seeking compliance of the court order dated 20 June 2005 is dismissed. In all the circumstances, the answers already given are sufficient. AUTONUMOUT On the question of costs, I am going to take the unusual course of reserving all costs until after the disposition of this action at first instance. After final judgment, I shall require a schedule of all outstanding costs matters which will require an (approximately) one hour hearing to resolve. It is a case in which it would be more desirable to hear all the evidence before deciding on costs issues in many of the interlocutory proceedings. One of the issues which will merit consideration is whether the parties themselves should bear all the costs of the lengthy correspondence between solicitors (some of which has inadvisedly been copied to the court) which at times has been acrimonious and unprofessional. (M.P. Burrell) Judge of the Court of First Instance High Court Miss Winnie Tsui, instructed by Messrs Siao, Wen & Leung, for the Plaintiff Mr Clive Grossman, SC and Miss Priscilla Wong, instructed by Messrs Zeko Mok & Co., for the 1st to 4th Defendants PAGE - PAGE A B C D E F G H I J K L M N O P Q R S T U V 1udk 1udk H I J K L M N O P Q R S T U V (#p# (#p# &`#\$ 4or~ Rs~/ (Q\*<< ,DGpH ~ B; <(z&; NFaF4\ B[UN` (BQ VhrLO ,7)a~D ^|r ~ B; ,7)a NFaF (BQ B[UN D\$ti \TvV UH2 & 6" ABC.dot setup Microsoft Word

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