

HONG KONG / JUDGMENT

RAS INTERNATIONAL LTD v. ALPHA LOGISTICS (HK) LTD

COURT

District Court

DECIDED

15 January 2007

CASE / FILE NUMBER

DCCJ5176/2006

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bjbj DCCJ 5176/2006 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION CIVIL ACTION NO. 5176 OF 2006

BETWEEN RAS INTERNATIONAL LIMITED Plaintiff and ALPHA LOGISTICS (HK) LIMITED
Defendant

Coram : Deputy District Judge W. C. Li in Chambers (open to public) Date of Hearing : 9th January 2007 Date of Handing Down Decision : 15th January 2007 D E C I S I O N At all material times, the Plaintiff and the Defendant were intermediary freight forwarders registered under the Regulated Agents Regime set up and administered by the Civil Aviation Department pursuant to the provisions of the Aviation Security Ordinance, Cap. 494. The Plaintiff's claim was for the costs of 4 deliveries in which both the Plaintiff and the Defendant were intermediary freight forwarders in the chain of intermediary parties of which neither the Plaintiff and the Defendant were the consignee or the consignor. Contemporaneous invoices were issued by each of the intermediary parties in the chain, i.e. the respective carrier agent (BAS or Global Logistics) invoiced the Plaintiff, the Plaintiff invoiced the Defendant who in turn invoiced their customer, All in One, for payment. The Defendant refused to pay 4 invoices issued by the Plaintiff and a total sum of HK\$382,304.10 was claimed by the Plaintiff. An acknowledgement of Service of the Writ was filed by the Defendant. The Plaintiff took out the present Summons for summary judgment under Order 14 of the Rules of the District Court. The requirements of Order 14 Rule 2 had been complied with by the Plaintiff. The Plaintiff filed an affirmation to verify the facts of the Plaintiff's case and deposed to the belief that the Defendant had no defence to the Plaintiff's claim. The Defendant opposed the Plaintiff's application for summary judgment. No draft Defence was exhibited in the Defendant's affirmation. From the Defendant's affirmation, the Defendant was saying that the Defendant and the Plaintiff did not have a contractual relationship. In other words, the Defendant was not a party in the chain of intermediary forwarders and they had not

instructed the Plaintiff. They contended that in order for the Plaintiff to prove their relationship with the Defendant, the Plaintiff should show a Booking Form to show that the Defendant had instructed the Plaintiff to send the freights. The Plaintiff did not have a Booking Form for these 4 deliveries. The Defendant also claimed that prior to these 4 deliveries, they did not even know the Plaintiff. The Plaintiff case was that in some instances, instructions were given over the telephone and freights were urgently moved or sent out within a day or two. There would be no Booking Form for work done at short notices and invoices were then be sent to the previous intermediary forwarders for payment. It was clearly shown to the court that for each intermediary forwarder, there was profit margin of 50 cents per kilogram of the freight sent, and the chain of invoices issued amongst the intermediary forwarders reflected this. In the present case, the chain of invoices showed that after the freight were sent out, the Plaintiff invoiced the Defendant and the Defendant promptly invoiced their customer, All in One. We could see each way down the chain, the invoices showed a profit of 50 cents per kilogram of the freight sent. The absence of Booking Forms in this case was therefore of no help to the Defendant. The fact that the Defendant on receipt of the Plaintiff's 4 invoices promptly invoiced their own customer amply showed their inter-relationship, and the Defendant's knowledge and participation in the whole chain of intermediary forwarders in this case. The Defendant's contention that the Plaintiff was a stranger to them when the Plaintiff sent them the 4 invoices had also been shown to be incorrect and misleading. The Plaintiff's Credit Application Form in early June 2006 that had been sent and returned between the Plaintiff and the Defendant amply showed that there were dealings between them before these 4 invoices in early August 2006. The evidential link between the Plaintiff and the Defendant in these 4 transactions must lie in the Defendant's 4 invoices to their own customer, All in One. If the Defendant did not have a contractual relationship with the Plaintiff, the Defendant would not have invoiced their customer. To explain this, the Defendant alleged that one, Mr. Ivan Chan of their customer company, All in One, had used the Defendant's name (without the Defendant's consent) to make these transactions, and when the Defendant first received the Plaintiff's invoices, they called Mr. Ivan Chan on the telephone, and Mr. Ivan Chan told the Defendant that the Plaintiff's 4 invoices were done through the Defendant, so the Defendant invoiced All in One for the same. The Defendant later found out that it was a fraud committed by Mr. Ivan Chan of All in One, so they had then refused to pay the Plaintiff. No explanation was made as to why the Defendant had to ring Mr. Ivan Chan on the Plaintiff's invoices when there were nothing in these invoices to relate them to All in One or to Mr. Ivan Chan. The Defendant did not even ring the Plaintiff to enquire what these invoices were for. Neither did they check their own papers or references for the records of these transactions. Nevertheless the Defendant maintained that the Plaintiff was unknown to them hitherto. The mere assertion by the Defendant in an affirmation of a given situation does not by itself give rise to a right to defend, the Defendant must satisfy the court that he has a fair chance or reasonable probability of showing a real or bona fide defence, i.e. his evidence is reasonably capable of belief. ((BK Murjani & ors. v. Bank of India 1990) 1 HKLR 586 (C.A.)). Bare assertions of a credible defence are not sufficient, the Defendant must also condescend upon particulars and satisfy the court that there are reasonable grounds for advancing the defence. (Interform (Interior & Marble) Co Ltd v Far East Wagner Constructon Ltd (Unrep. CACV No. 59 of 1999). The Defendant's

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