

## Case Note

Case note **Singapore**

Case name. **Chwee Kin Keong v Digilandmall.com Pte Ltd**

Case No.s **Suit 202/2003/E** (for the first instance), **CA/30/2004** (for the appeal)

Name and level of courts **High Court of Singapore** (at first instance), **Singapore Court of Appeal**

Member of courts **VK Rajah, JC** (for the first instance), **Chao Hick Tin JA, Kan Ting Chiu J, Yong Pung How CJ**

Date of verdicts **12 April 2004, 13 January 2005**

Lawyers present **Tan Sok Ling, Malcolm Tan and Mohan Das Vijayaratnam (Tan S L and Partners) for plaintiffs, Philip Fong Yeng Fatt and Doris Chia Ming Lai (Harry Elias Partnership) for defendant, Malcolm Tan (Tan S L and Partners) for appellant, Philip Fong, Doris Chia and Navin Joseph Lobo (Harry Elias Partnership) for respondent, Assoc Prof Daniel Seng as amicus curiae**

### Brief Facts

In early 2003, web sites operated by Digilandmall advertised colour laser printers at a price of US\$45, which normally sold for around US\$2,000. This arose because a set of figures, which were used in a training session, were inadvertently uploaded on the relevant web sites. It did not take long for internet web sites to spread the news of the fantastic colour laser printer prices. Over the course of the next few days, until the error was discovered, 784 individuals placed 1,008 purchase orders for over 4,086 laser printers. Of these, six individuals placed 18 orders for a total of 1,606 laser printers. If the orders were completed, these individuals would have been entitled to US\$3.2 million worth of printers for a little more than US\$64,000. Not surprisingly, Digilandmall chose to not honour the orders. These six individuals eventually brought the present action against Digilandmall. In the first instance, Judicial Commissioner VK Rajah rendered his judgment in early April 2004. The judge found for the defendants on the grounds of unilateral mistake. The plaintiffs appealed the decision to the Singapore Court of Appeal, which gave its judgment in January 2005.

Section 13(8) of the Electronic Transactions Act which provides “(n)othing in this section shall affect the law of agency or the law on the formation of contracts” recognizes that the law of agency and that pertaining to the formation of contracts continue to apply to electronic transactions. As we shall see, these two operated as opposing poles in the present case.

### Behind the Appeal

At the heart of the appeal, the six individuals disputed that they had the requisite levels of knowledge. The Court of Appeal rejected that contention, as the fact of knowledge has to be discovered from the surrounding circumstances. The Court of Appeal gave an example of Nelsonian knowledge or “wilful blindness or shutting one’s eyes to the obvious”. By this, the court meant that customers with blinkered attitudes would not impress the court with their claims of lack of knowledge. The Court of Appeal also noted that it was not possible to be exhaustive, but it was prepared to be sensible in deciding what circumstances would give rise to situations in which customers should ask whether there was indeed a mistake.

### Evidence presented at first instance

As matters of appeal seldom re-open questions of fact, the evidence presented at the court of first instance was crucial. Part of the evidence included internet chat links (likely to be instant messaging conversations) and e-mails. There was little dispute whether these chat links and e-mails were admissible. Section 35 of the Evidence Act clearly provides for the admissibility of computer output under various circumstances. For example:

“computer output is tendered in evidence for any purpose whatsoever, such output shall be admissible ... and it is shown by the party tendering such output that (i) there is no reasonable ground for believing that the output is inaccurate because of improper use of the

computer and that no reason exists to doubt or suspect the truth or reliability of the output; and (ii) there is reasonable ground to believe that at all material times the computer was operating properly, or if not, that in any respect in which it was not operating properly or out of operation, the accuracy of the output was not affected by such circumstances.”

Although they did not constitute elements leading to the formation of the contract, nevertheless they were elements leading to the vitiation of the contract.

This evidence revealed that the appellants were aware of a possible mistake, and some had conducted price research and legal research in the middle of the night. The trial judge noted that it was perhaps a case of “poetic justice” that the ICQ chat session of the plaintiffs and the plaintiffs’ exchange of e-mails played a significant role in undermining their credibility and claims.

With this evidence, the Court of Appeal was satisfied that all six individuals had the requisite levels of knowledge to allow Digiland to claim relief on the basis of unilateral mistake.

### **Unsuccessful e-contracts arguments**

Of additional interest, the Court of Appeal also noted that Digiland raised thorough arguments on the formation of e-contracts that were eventually unsuccessful. These included an argument that the use of automated e-mail software responses meant there was no proper contract. These arguments essentially run counter to having a seamless e-commerce operation. In particular, the High Court affirmed that Section 13 of the Electronic Transactions Act of Singapore deems that a message by a party’s automated computer system originates from the party itself. Section 13(2)(b) provides that “(a)s between the originator and the addressee, an electronic record is deemed to be that of the originator if it was sent by an information system programmed by or on behalf of the originator to operate automatically”.

The fact that the acceptance was automatically generated by computer software therefore cannot exonerate Digiland from responsibility. It was Digiland’s computer system, and Digiland had programmed the software for the computer system. This point reinforces the classic discussion in e-contract law whether a computer has the

requisite ability to form the intention to contract. Applying the principles of agency, it is clear that a computer can do so as an agent of the contracting party. As Digiland failed in this part of their arguments, the Court of Appeal decided that they should bear part of the costs.

### **Conclusion**

In conclusion, the courts in Singapore have once again reaffirmed the sanctity of contracts formed over the internet and the applicability of the same rules which apply to off-line contracts to on-line contracts. In particular, the courts have not allowed parties who deliberately shut their eyes to the mistakes of others to benefit. While it is rare for faceless and impersonal online contracts to reveal the state of mind of the parties, this decision reminds us that in spite of attempts to create immutable contracts, the basic principles of the law of obligations still continue to apply.

*Reported by Bryan Tan, Singapore correspondent*