Case note **Singapore**

Case name **SM Integrated Transware Pte Ltd v Schenker Singapore (Pte) Ltd [2005] SGHC 58**

Name and level of court **High Court of Singapore**

Member of court **Judith Prakash J**

Date of decision **30 March 2005**

Counsel **Kannan Ramesh, Ang Wee Tiong and Dawn Chew (Tan Kok Quan Partnership) for the plaintiff; Boo Moh Cheh and Mohamed Ibrahim (Kurup and Boo) for the defendant**

Brief Facts

SM Integrated Transware (SMI) sought a new tenant for its warehouse and entered into negotiations with Schenker Singapore (Schenker). Negotiations took place over an extended length of time, and were partly oral and partly by way of e-mail. The parties discussed a letter of intent and a logistics services agreement in draft form, but never signed the documents. Eventually, Schenker withdrew from the negotiations. SMI claimed damages, but Schenker argued that there was no contract to form the basis of damages.

One of the issues that emerged was whether the chain of e-mails fulfilled the requirements of section 6(d) of the Civil Law Act ("CLA") for a promise or agreement or a memorandum or note thereof to be in writing and to be signed by the party, for a party to be bound by such an exchange of communications. Such e-mails, under Singapore's Electronic Transactions Act ("ETA"), would constitute electronic records and would not be denied legal effect solely on the ground that they are electronic records. Specifically, section 7 of the ETA provides that

> *"(w)here a rule of law requires information to be written, in writing, to be presented in writing or provides for certain consequences if it is not, an electronic record satisfies that rule of law if the information contained therein is accessible so as to be usable for subsequent reference".*

However, section 4(1)(d) of the ETA sets out that sections 6 to 9 of the ETA

> *"shall not apply to any rule of law requiring writing or signatures in …. any contract for the sale or other disposition of immovable property, or any interest in such property".*

Thus the court was faced with three questions:

1. Does section 4(1)(d) of the ETA necessarily preclude all e-mails from satisfying section 6(d) of the CLA?
2. Do the e-mails constitute a memorandum or note in writing?
3. Do the e-mails constitute a signature of the party to the agreement?

Turning to section 4(1)(d) of the ETA, the court ruled that its effect is that in respect of a contract for the sale or other disposition of immovable property, or any interest in such property, the provisions of the ETA that enable electronic records and signatures to satisfy legal requirements for writing and signature cannot be relied upon. That would be different from saying that by virtue of section 4(1)(d) of the ETA, the e-mails do not satisfy the requirements for writing and signature under section 6(d) of the CLA. Whether an e-mail can satisfy the requirements for writing and signature found in that provision will be decided by construing section 6(d) of the CLA itself.

The court found that the aim of the Statute of Frauds, which was the predecessor of the CLA, was to help protect people and their property against fraud and sharp practice by legislating that certain types of contracts could not be enforced unless there was written evidence of their existence and their terms. Recognising electronic correspondence as being "writing" for the purpose of section 6(d) of the CLA, would be entirely consonant with the aim of the CLA, as long as the existence of the writing can be proved.

The parties had readily admitted into evidence

the e-mails and their contents. The court found sufficient details of all the material terms of the contract in the exchange of the ten e-mails to satisfy the writing requirement of section 6(d) of the CLA.

The court also took a pragmatic approach to what is capable of fulfilling the signature requirement. The court took the view that the "signature" requirement has been very loosely interpreted: it need not be at the foot of the memorandum and it need not be a signature in the popular sense of the word, a printed slip may suffice if it contains the name of the defendant. The court accepted that a typewritten name in the e-mail is capable of constituting a signature. In relation to e-mails which did not have a signature in the form of a typewritten name, the court held that the name appearing next to the e-mail address in the sender identification field gave rise to an inference that the sender clearly intended to identify himself and omitted to type in his name as he knew that his name would appear in the e-mail message header.

Analysis

The court took a very pragmatic approach to the construction of the two pieces of legislation. Even though the ETA was drafted conservatively to exclude certain transactions, the commercial reality required that the transactions could still be carried out electronically if the parties intended it to be so, unless the statutory requirements were absolutely clear that it could not. The court also extended the interpretation of what would constitute a signature in an e-mail – many people set up their e-mail clients to state their name and e-mail address as part of the setup requirements (for instance, in Microsoft Outlook) and may not intend for such a feature to be used as personal identification. In a non-commercial context or if the sender had belonged to a different generation, he may have set up his account by using a nickname - this may not necessarily lead to the converse inference.

Reported by Bryan Tan, Singapore correspondent