

Supreme Court of the Kingdom of Thailand

S.C. 9452/2011

Anucha Saengraruai v. GMM Grammy Public Company Limited, et al.

Court : Supreme Court

Case : Criminal

Date of Judgment : November 1, 2011

Plaintiff : Anucha Saengraruai

Defendants : GMM Grammy Public Company Limited (1st)
Paiboon Damrongchaitham (2nd)
Kamolsak Suntanon (3rd)
Payat Puwichai (4th)
Athit Sarachutha (5th)
Sinsap Eampenkae (6th)

Concept : Copyright infringement

Statue : The Trademarks Act B.E. 2534 (1991) section 109

Panel of Justices

Maitree Sriarun , Aram Senamontri, Dhajaphan Prabhudhanitisarn

Case Background

The plaintiff claimed that it was a creator and the copyright owner of ten songs. The plaintiff has delivered two copies of demo tapes containing those songs to the first defendant for consideration. The first defendant later informed the plaintiff that the songs were not approved and had returned the demo tapes to the plaintiff. The plaintiff claimed that between August 2001 and October 2003 the six defendants jointly copied the two demo tapes before returning them to the plaintiff and jointly re-recorded the songs for singer Palapol Polgongseng's fourth album titled "the Drizzling Day." The defendants, without the plaintiff's consent, made the songs available to the public for commercial benefit. The plaintiff requested the court to hold the defendants criminally liable for copyright infringement.

The six defendants pleaded not guilty.

Procedural History

The Central Intellectual Property and International Trade Court dismissed the case.

The plaintiff appealed to the Supreme Court.

The Intellectual Property and International Trade Division of the Supreme Court upheld the judgment of the lower court.

Issue

Were the songs in the first defendant's album "the Drizzling Day" a copy or modification of the plaintiff's songs?

Rationale

During the trial, Virat Yutaworn, a renowned composer and a music teacher, and Wanitch Charungkijanan, a freelance writer, whom the defendants summoned as witnesses; both asserted that upon comparing the lyrics of the plaintiff's and the defendants' songs in dispute, they found that the songs were totally different and there was no evidence that the defendants' songs were copied or modified from those of the plaintiff. Meanwhile, Supunya Chomjinda, a literary specialist whom the plaintiff summoned as a witness, admitted that each song of both parties had different meaning and could not be recognized if one was a copy or modification of another. Moreover, Somsong Gonnaga, another witness summoned by the plaintiff, responded during the cross-examination that when he first listened to the defendants' songs, he did not think they were similar to those of the plaintiff.

According to the criminal standards of proof, the defendants will be convicted of copyright infringement only if the plaintiff can prove beyond reasonable doubt that the defendants had copied or modified the plaintiff's songs. However, there was the plaintiff alone who testified in favor of his own that the defendants had copied or modified the plaintiff's songs, whereas other witnesses on the defendants' side testified to the contrary. Moreover, the testimonies of plaintiff's witnesses even corresponded with the defendants' arguments. Thus, the evidences produced by the plaintiff were insufficient to hold that the defendants had copied or modified the plaintiff's songs and should be criminally liable. The appeal shall be dismissed.

Keyword: musical work, copy or modify

Summarized and translated by Non Tuntapong

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