

SOMASEKARAM
v
LANKA BELL (PVT.) LTD.

SUPREME COURT
NIHAL JAYASINGHE, J.
NIMAL DISSANAYAKE, J.
GAMINI AMARATUNGA, J.
SC (CHC) 16/2000
HC CIVIL 28/97 (3)
MAY 17, 21, 2007
AUGUST 5, 2007

Code of Intellectual Property Act 52 of 1979 – Permission granted by Surveyor General to produce A-Z Street Guide Map – Copyright acquired? Ownership of the copyright with the Surveyor General?

The appellant made an application to the Surveyor General for permission to produce a A-Z street guide map for selected cities/Greater Colombo.

The defendant-respondent caused to be published in several newspapers a reproduction of several parts of the map in the form of advertisement without the consent/permission of the appellant.

Action was instituted by the appellant, alleging that the respondent has violated his rights under Act 52 of 1979, and contended that the appellant had made several modifications and alterations to the map of the Surveyor General that conferred originally to his work.

The High Court dismissed the application holding that the work is a mere alteration of the Surveyor General's Plan without any creativity that defies originality.

On appeal to the Supreme Court.

Held:

The ownership of the copyright in the map remained with the Surveyor General.

APPEAL from the judgment of the Commercial High Court.

M.A. Sumanthiran with A. Vamadeva for plaintiff-appellant.

Romesh de Silva PC with Dina Phillips for defendant-respondent.

Cur-adv-vult.

February 26, 2008

JAYASINGHE, J.

In or around 1993 the appellant made an application to the Surveyor General for permission to produce an A-Z street guide map of Greater Colombo and selected cities. The grant of permission was conditional upon payment of Royalties to the Surveyor General as per guidelines set out in a Gazette Notification. In or about 1994 the appellant produced an A-Z street guide map for which approval has been obtained. The appellant submitted that in view of the unique and distinct features in the said work, the said A-Z guide map is an original creation and acquired copyright; that in or about December 1996 and January 1997 the defendant-respondent caused to be published in several newspapers a reproduction of several parts of the said A-Z map in the form of an advertisement without the consent or permission of the appellant. The respondent then sought to settle the dispute that ensued and upon the failure to reach any compromise the appellant dispatched a letter of demand claiming damages for the unauthorized publication of the appellant's work and consequently instituted proceedings in the Commercial High Court alleging that the respondent company has violated his rights under the Code of Intellectual Property Act No. 52 of 1979. The main thrust of the

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appellant's argument is that the appellant had made several modifications and alterations to the map of the Surveyor General that conferred originality to his work and therefore is protected under the Code of Intellectual Property Act No. 52 of 1979 where all rights were reserved for the appellant.

The Commercial High Court came to a finding that the key issue for determination is whether the A-Z street guide map published by the appellant is an original work and held that the work of the appellant is a mere alteration of the Surveyor General's Plan without any creativity that defies originality. The Commercial High Court accordingly dismissed the application of the appellant.

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The present appeal is against the judgment of the Commercial High Court. It is the submission of the defendant-respondent that the Surveyor General's map which the petitioner admittedly used as the ground work for the creation of the impugned map was prepared by the Surveyor General's Department and the copyright is vested with the Surveyor General; that the appellant was permitted to use the map in his publication subject to the condition that limited number of copies would be published, that Royalties were payable and more importantly the insertion of an acknowledgement that the map is reproduced with permission of the Surveyor General and accordingly the ownership of the copyright in the map at all times remained with the Surveyor General. The defendant-respondent submitted that in the circumstances the appellant could not have had copyright in the said map.

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I considered the submissions of Counsel carefully and I am of the view that there is no merit in this appeal. The appeal is accordingly dismissed but without costs.

N.E. DISSANAYAKE, J. - I agree.

N.G. AMARATUNGA, J. - I agree.

Appeal dismissed.