



בבית המשפט העליון בשבתו כבית משפט לערעורים אזרחיים

ע"א 815/18
וערעור שכנגד

לפני:

כבוד השופט י' עמית
כבוד השופט ד' מינץ
כבוד השופט א' שטיין

בית המשפט העליון
מצא צדק
שהעתק זה נכון ומתאים למקור
06.11.19
תאריך
(5) מזכיר/אשית

1. Facebook Ireland Limited : המערערות והמשיבות שכנגד:
2. Facebook, Inc

נגד

1. אבי לן : המשיבים המערערים שכנגד:
2. עדי בנטוב-סילשי

הוגשה בקשה מטעם הצדדים מוסכמת לקבלת הערעור ולדחיית הערעור שכנגד



בשם המערערות והמשיבות שכנגד : עו"ד יעקב שרביט
בשם המשיבים והמערערים שכנגד : עו"ד גיא אופיר

פסק-דין

נוכח ההסכם אליו הגיעו הצדדים (מצורף ומסומן "א"), אנו מורים על קבלת הערעור ועל דחיית הערעור שכנגד, וזאת בהתאם למבואר בבקשה שבכותרת.

מובן כי אין בפסק דיננו זה, שניתן על פי הסכמת הצדדים וללא דיון לגופו, כדי לקבוע מסמרות לגופן של טענות שהועלו על ידי הצדדים.

משניתן פסק דין זה, פטור היועץ המשפטי מהגשת עמדתו.

כל צד יישא בהוצאותיו.

ניתן היום, ה' בחשוון התש"ף (3.11.2019).

שופט

שופט

שופט

ע"א 815/18

בבית המשפט העליון בירושלים
בשבתו כבית משפט לערעורים אזרחיים

בעניין: 1. Facebook, Inc.
2. Facebook Ireland Limited
ע"י ב"כ הרצוג פוקס נאמן, עורכי-דין
(על פי יפוי כח מוגבל לצרכי הליך זה)
מבית אסיה, רחוב ויצמן 4, תל אביב 6423904
טל': 03-6922020; פקסי: 03-6966464

המערעות

- נגד -

1. אבי לן
2. עדי בנטוב-סילשי
שניהם ע"י ב"כ משרד עוה"ד גיא אופיר
מרח' כנרת 5 (מגדל ב.ס.ר. 3), בני ברק 5126237
טל': 03-5323650; פקסי: 03-5325691

המשיבים

בקשה משותפת לקבלת הערעור ולדחיית הערעור-שכנגד

בהתאם להסכם שאליו הגיעו הצדדים (אשר העתקו מצורף לבקשה זו) הצדדים מבקשים מבית המשפט הנכבד להורות כדלהלן:

1. הערעור של המערעות יתקבל, ובכך יתבטל החלק בפסק דינו של ביהמ"ש קמא בת.א. 50870-05-15 לן ואח' נ' Facebook, Inc. ואח', מיום 14.12.2017 ("פסק הדין"), שקיבל את התביעה בחלקה בכך שקבע, בין היתר, כי הסרת הגישה לדף בשירות פייסבוק על ידי פייסבוק היתה שלא כדין.
2. הערעור-שכנגד של המשיבים על פסק הדין - יידחה.
3. כל צד יישא בהוצאותיו.

גיא אופיר, עו"ד
ב"כ המשיבים (והמעוררים שכנגד)

יעקב שרביט, עו"ד
ב"כ המערעות (והמשיבות שכנגד)

Handwritten initials and date: 3/10/19

Agreement

Made on 10 October 2019

Between: Facebook, Inc.
1601 Willow Road, Menlo Park, California
Facebook Ireland Limited
4 Grand Canal Square, Grand Canal Harbour, Dublin 2, Ireland
(Hereinafter: "Facebook Ireland"; collectively: "Facebook")
on the one hand

And

1. Avi Lan
2. Adi Bentov-Silashi
(Hereinafter: "Respondents")
Represtned by Guy Ophir Law Office
BSR 3 Tower, 12 fl, Kineret 5 Bnei Brak, Israel
Tel: 972-3-5323650 fax: 972-3-5325691

on the other hand

(together, the "Parties")

RECITALS

WHEREAS in January 2015 Facebook Ireland removed Respondents' Statusim Metzaitzim page (the "Page") from the Facebook service after it discovered that Respondents had breached Facebook's terms and policies by seeking remuneration in exchange for posting content on the Page;

WHEREAS in May 2015 Respondents filed a claim with the Tel Aviv-Jaffa District Court (Civil File 50870-05-15) requesting, *inter alia*, that Facebook reinstate the Page to the Facebook service (the "Claim") arguing, among other things, that they did not intentionally breach Facebook's terms and policies;

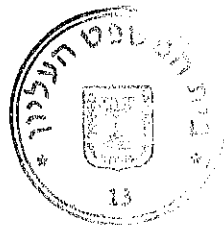
WHEREAS on December 14, 2017, the District Court (the Honorable Judge Rahamim Cohen) rendered a judgment, which granted the Claim, in part, by holding, *inter alia*, that Facebook Ireland's removal of access to the Page from the Facebook service was unlawful, and ordering Facebook Ireland to reinstate the Page to the Facebook service (the "Judgment"). The Judgment dismissed all other claims and remedies requested in the Claim;

WHEREAS on December 17, 2017, the District Court denied Facebook's motion to stay performance of the Judgment, and subsequently, on December 18, 2017, Facebook Ireland reinstated the Page to the Facebook service;

WHEREAS on January 28, 2018, Facebook filed with the Supreme Court an appeal against the Judgment, requesting reversal of the Judgment (the "Appeal");

WHEREAS on April 8, 2018, Respondents filed a Counter-Appeal against the part of the Judgment which denied the Claim (the "Counter-Appeal");

Handwritten signature and initials: SN



WHEREAS on January 9, 2018, Respondents filed with the Tel Aviv District Court another claim against, *inter alia*, Facebook (Civil File 18424-01-18) alleging intellectual property violations (the "Second Claim");

WHEREAS on June 20, 2019, a hearing on the Appeal and Counter-Appeal was held before the Supreme Court (the "Hearing"); and

WHEREAS the Parties have reached the following agreement (the "Agreement"), which brings the Appeal, the Counter-Appeal and the Second Claim to a complete and final resolution;

NOW, THEREFORE, THE PARTIES HAVE AGREED AS FOLLOWS:

AGREEMENT

Interpretation

1. The Recitals hereto constitute an integral part of this Agreement.
2. The titles and headings of this Agreement are for convenience only and shall not affect its construction.

Settlement

3. Respondents acknowledge and agree that: (i) they fundamentally breached Facebook's terms and policies by seeking remuneration in exchange for posting content on the Page although they argue that it was an unintentional breach; and (ii) Facebook Ireland's enforcement action in removing the Page from the Facebook service in 2015 was lawful.
4. The Parties will file with the Supreme Court a Joint Application to grant the Appeal and dismiss the Counter-Appeal (the "Joint Application"), in the form attached as Appendix A to this Agreement. The grant of the Appeal and the dismissal of the Counter-Appeal are conditions precedent to this Agreement. Further, in the event the Supreme Court denies the Joint Application for any reason, this Agreement shall be deemed null and void, and the Parties agree not to rely on the Agreement or make any claims based on the Agreement.
5. Within two business days after the Supreme Court grants the Appeal and dismisses the Counter-Appeal, Respondents will file with the Tel Aviv District Court a motion to dismiss the Second Claim in the form attached as Appendix B to this Agreement.
6. Subject to the above, and subject to the dismissal of the Second Claim and Respondents' undertakings as described in Section 7 below, Facebook, Inc. (the entity that currently operates the Facebook service for users domiciled in Israel) undertakes, on an *ex gratia* basis, not to remove the Page, despite Respondents' acknowledgment of their past violations of Facebook's terms and policies.
7. Moving forward, Respondents undertake to operate the Page in accordance with Facebook's terms and policies, as they are updated from time to time. Respondents acknowledge and agree that future violations of said terms and policies could result in the Facebook, Inc. taking action, SN)

[Handwritten signature]



including by removal of content, and suspension or disabling of the Page and/or their Facebook accounts, in full accordance with Facebook's terms and policies and, where required, taking into account applicable law. Facebook, Inc. will not take action against the Page or Respondents' accounts for violations that occurred prior to the signing of this Agreement.

- 8. In exchange for Facebook, Inc.'s undertakings, as described in Section 6 above, Respondents unconditionally release, waive, relinquish, and discharge Facebook and/or any of its subsidiaries and affiliates, (including directors, former directors, officers, employees, agents and shareholders, subsidiaries, affiliates or any other body in whichever capacity) from any and all past, present, legal, equitable, statutory or beneficial rights, claims, demands, liabilities, complaints, costs, or any other enforceable obligations (whether known or unknown) of every kind and nature in connection with, relating to, or arising out of the Claim and the Second Claim.

Variation

- 9. No variation of this Agreement shall be effective unless in writing and signed by or on behalf of each of the Parties.

Notices

- 10. Any notice, claim or demand in connection with this Agreement to be given by one Party to the other shall be in writing. Any notice, claim, or demand pertaining to this Agreement shall be sent to the following address:

a. For Facebook:

Adv. Yaacov Sharvit
Herzog, Fox & Neeman
Asia House, 4 Weizmann St.
Tel Aviv 6423904, Israel

b. For Respondents:

Adv. Guy Ophir
BSR 3 Tower, 12 fl, Kineret 5 Bnei Brak, Israel
Tel: 972-3-5323650 fax: 972-3-5325691
www.ophirlaw.com

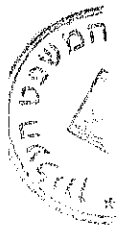
Costs

- 11. Each Party shall bear its own legal and other costs in connection with the negotiation and preparation of this Agreement. Facebook agrees, on an *ex gratia* basis, not to collect from Respondents the costs that it already paid them pursuant to the Judgment.



Handwritten notes and signatures: "SM", "2/6", and a signature.

Handwritten mark: "1077"



Entire Agreement

12. This Agreement supersedes any previous written or oral agreement between the Parties in relation to the Matters dealt with in this Agreement and comprises the entire agreement between the Parties relating to the subject matter of this Agreement and the Claim. Each Party acknowledges that it has not been induced to enter into this Agreement by any representation, warranty or undertaking that is not expressly incorporated herein.

IN WITNESS WHEREOF the Parties have executed this agreement:


Facebook Ireland Limited



Facebook, Inc.


Avi Lan



Adi Bentov-Silashi



Supreme Court in Jerusalem
Sitting as a Court of Civil Appeals

Civil Appeal 815/18

In the matter of: 1. Facebook Ireland Limited
 2. Facebook, Inc.
 Represented by Counsel, Herzog Fox & Neeman, Law Office
 (pursuant to a limited power of attorney for the purposes of this
 proceeding)
 Asia House, 4 Weizmann Street, Tel Aviv 6423904
 Tel.: 03-6922020; Fax: 03-6966464

The Appellants

v.

1. Avi Lan
2. Adi Bentov-Silashi
Represented by Counsel, Guy Ophir, Law Office
5 Kinneret Street (B.S.R. Tower 3), Bnei Brak 5126237
Tel.: 03-5323650 Fax: 03-5325691

The Respondents

Joint Application to Accept the Appeal and Dismiss the Counter-Appeal

In accordance with the agreement reached by the parties (a copy of which attached to this Application) the parties respectfully request that the Honorable Court order that:

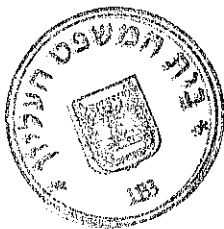
1. Appellants' appeal will be granted, thereby reversing the part of the judgment of the court of first instance in C.F. 50870-05-15 *Lan et al. v. Facebook, Inc. et al.*, dated December 14, 2017 (the "Judgment"), which accepted the claim in part by holding, *inter alia*, that Facebook's removal of access to the Page from the Facebook service was unlawful.
2. Respondents' counter-appeal against the Judgment will be dismissed.
3. Each party shall bear its own costs.

Yaacov Sharvit, Adv.

The Appellants' counsel

Guy Ophir, Adv.

The Respondents' counsel



SN
BG
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Appendix B

In the Tel Aviv
District Court

Civil File 18424-01-18

In the matter of:

1. Avi Lan
 2. Adi Bentov-Silashi
- Represented by Counsel, Guy Ophir, Law Office
5 Kinneret Street (B.S.R. Tower 3), Bnei Brak 5126237
Tel.: 03-5323650 Fax: 03-5325691

The Plaintiffs

v.

1. Facebook Ireland Limited
 2. Facebook, Inc.
- Represented by Counsel, Herzog Fox & Neeman, Law Office
(pursuant to a limited power of attorney for the purposes of this
proceeding)
Asia House, 4 Weizmann Street, Tel Aviv 6423904
Tel.: 03-6922020; Fax: 03-6966464

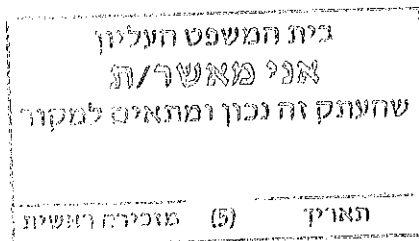
The Defendants

Consensual Motion for the Dismissal of the Claim

In accordance with the agreement reached by the parties:

1. The Honorable Court is hereby requested by the Plaintiffs to issue a Judgment dismissing the claim against the Defendants, without an order for costs, and to order the return of the court's fee in accordance with the regulations.
2. The motion is filed with the consent of Defendants' counsel, Adv. Yaacov Sharvit.

A copy of the said agreement is attached for the convenience of the Honorable Court.



Guy Ophir, Adv.

The Respondents' counsel



5/11
BC