3. AGENCY AND PARTNERSHIP LAW

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AGENCY LAW

3.1 There are three decisions in the year of review that touched on agency principles, none of which, however, are particularly controversial.

3.2 In *Teo Chee Wei Kelvin v Wong Lulong Wilson*,[1] a central issue was whether there was an agency relationship between the claimant, Teo Chee Wei Kelvin ("Kelvin"), and the first defendant, Wong Lulong Wilson ("Wilson"). Kelvin had urgent need for funds and owned a valuable Porsche 911 Carrera S Coupe car which he was prepared to utilise for that purpose. Kelvin had approached Wilson for help. Wilson did procure funds for Kelvin, but there was a dispute between them as to whether these funds were obtained via a loan secured on the car, or from an outright sale of the car. The car was ultimately repossessed by a third-party financier. It was therefore necessary to first determine the true nature of the transaction as that would affect Kelvin's right to exert ownership over the car and would also be crucial in delineating the extent of Wilson's liability to Kelvin.

3.3 The General Division of the High Court ("General Division") found, on the facts, that the funds had been procured via a secured loan. The funds were initially provided by Automobili KK Pte Ltd, a company

1 [2025] SGHC 210.

controlled by Wilson, and the car was transferred to Automobili KK Pte Ltd as security. Subsequently, however, the car was transferred with Kelvin's knowledge to the second defendant, Crowdex Global Pte Ltd ("Crowdex") (another company which Wilson controlled), allegedly for the purposes of securing funds at a lower interest rate. Unbeknownst to Kelvin, however, Crowdex used the car as security for its own indebtedness to the third-party financier. Kelvin's claim against Wilson was thus for breach of fiduciary duties as his agent.

3.4 The court applied the test for agency as set out in *Tjong Very Sumito v Chan Sing En*.[2] There, the High Court had stated that the "essence"[3] of agency was the consent of both the principal and the agent to be in an agency relationship:[4]

> An agency is the fiduciary relationship that arises when one person, the principal, manifests assent to another person, the agent, that the agent shall act on the principal's behalf and be subject to the principal's control, and the agent manifests assent or otherwise consents so to act. … Thus, the two core elements of an agency relationship appear to be (a) consent of both the principal and agent; and (b) authority conferred or power granted to the agent to legally bind the principal … The concomitant duties of an agent are only triggered by the power and authority granted to him by the principal.

3.5 The court concluded that, on the evidence, there was indeed an agency relationship between Kelvin and Wilson. Kelvin had conferred the necessary authority on Wilson to legally bind him in connection with dealings relating to the use of the car as security.

3.6 It is trite that agents stand in a fiduciary relationship *vis-à-vis* their principals because they have undertaken to act for and on behalf of another.[5] It follows, then, that Wilson, as agent, owed a duty of loyalty to his principal which enjoined him from profiting from his position as agent, and from placing himself in a position in which his interests would conflict with those of his principal. In the present case, the car had been transferred to Crowdex to be used solely as security to procure a loan for Kelvin. Wilson had, however, caused the car to be used to secure Crowdex's own liability. The court therefore concluded that, in

2 [2012] 3 SLR 953.
3 *Tjong Very Sumito v Chan Sing En* [2012] 3 SLR 953 at [146].
4 *Tjong Very Sumito v Chan Sing En* [2012] 3 SLR 953 at [145]. *Tjong Very Sumito v Chan Sing En* [2012] 3 SLR 953 at [145] was affirmed by *Alwie Handoyo v Tjong Very Sumito* [2013] 4 SLR 308 at [147].
5 Peter G Watts & FMB Reynolds, *Bowstead and Reynolds On Agency* (Sweet & Maxwell, 23rd Ed, 2023) at para 1–015.

acting for this collateral purpose, Wilson had breached his duty of loyalty towards Kelvin.[6]

3.7 The second case, also a decision of the General Division, is *Gurbani & Co LLC v Paulus Tannos*.[7] Gurbani & Co LLC ("Gurbani"), a law practice, had obtained judgment for the unpaid costs of legal work that had been rendered on the instructions of the first defendant, Paulus Tannos ("Tannos"). That judgment remained unsatisfied, and the present proceedings were brought as part of Gurbani's attempts to obtain payment for the satisfaction of the judgment debt. To this end, Gurbani sought declarations, *inter alia*, that Tannos was the true and beneficial owner of a certain property which had been acquired by the third defendant, Noble Prime Investments Ltd ("Noble"), a company that was incorporated by Tannos. It was alleged that Noble had, as Tannos's agent, acquired the subject property on Tannos's behalf. The court accepted that Gurbani had shown that Tannos exercised general control over Noble and its affairs. The issue then was whether that sufficed, without more, to constitute Noble as an agent for Tannos in the acquisition of the property.

3.8 The principle that a duly incorporated company is an autonomous legal person, wholly separate from those who incorporated it, is fundamental to company law. This principle has been entrenched since the celebrated decision of *Aron Salomon v A Salomon and Co, Ltd*[8] (more commonly known as "*Salomon v A Salomon & Co Ltd*"). The fact that the company is under the absolute control of one person, whether legal or natural, or that there is a "predominant partner possessing an overwhelming influence and entitled practically to the whole of the [company's] profits"[9] does not alter this basic principle. Accordingly, it would be necessary to examine the "true legal relationship"[10] between the shareholder – even a controlling shareholder – and the company in order to determine if an agency relationship existed between them. As Lord Sumption observed in *Prest v Petrodel Resources Ltd*,[11] while the controller's control of the company could be a relevant factor for

6 Given Wong Lulong Wilson's controlling interest in Crowdex Global Pte Ltd and Crowdex Global Pte Ltd's interest in utilising the car for its own purposes, it may be said that Wong Lulong Wilson had also placed himself in a position of conflict in facilitating the transfer of the car for that end.
7 [2025] SGHC 177.
8 [1897] AC 22.
9 *Aron Salomon v A Salomon and Co, Ltd* [1897] AC 22 at 53.
10 *Prest v Petrodel Resources Ltd* [2013] 2 AC 415 at [32].
11 [2013] 2 AC 415.

consideration in this inquiry, it would not in itself be conclusive as to the issue.[12]

3.9 In the present case, the court held that the evidence fell short of showing that Noble had acquired the property as Tannos's agent, as there was no evidence as to who had orchestrated or directed the acquisition, or who had paid for the acquisition.[13] The court noted:[14]

> 47 … [A]ll that Gurbani has proven is that Mr Tannos owns and controls Noble. It is perfectly appropriate for individuals to incorporate companies and operate them as separate legal entities, even with the latter owning its own assets separate from the former. There is nothing inherently wrong with an individual taking advantage of the benefits of such incorporation …
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> 48 I therefore can only conclude that Mr Tannos owns and controls Noble.

3.10 The final case in the trilogy is *Glassberg, Jonathan William v UBS AG, Singapore Branch*,[15] which is also a decision of the General Division. Unlike the previous two cases where the very existence of an agency relationship had to be established, the present case concerned the scope of an employee's authority. The plaintiff was a "private banking"[16] customer of the defendant bank, UBS AG, Singapore Branch ("UBS"), and would place funds with UBS which were then invested. He was serviced on UBS's behalf by one Stephan Freh ("Freh"), who was a "client advisor"[17] employed by UBS. Pursuant to Freh's recommendation, the plaintiff had made a significant investment into a fund (referred to in the judgment as the Direct Lending Income Fund ("DLIF")). The fund turned out to be dubious and was subsequently liquidated on allegations of fraud. Having lost significant sums, the plaintiff claimed against UBS for, *inter alia*, breach of contract.

3.11 Central to the plaintiff's contractual claim was that the terms and conditions for an additional service offered by UBS, referred to as the "APA Service", and to which the plaintiff had earlier subscribed, should apply to Freh's recommendation to the plaintiff to invest into the DLIF. The APA Service, which gave the plaintiff access to an investment specialist, was offered on terms that obliged UBS to "act diligently and carefully in providing investment advice".[18] These terms differed materially

12 *Prest v Petrodel Resources Ltd* [2013] 2 AC 415 at [32].
13 *Gurbani & Co LLC v Paulus Tannos* [2025] SGHC 177 at [43].
14 *Gurbani & Co LLC v Paulus Tannos* [2025] SGHC 177 at [47]–[48].
15 [2025] SGHC 4.
16 *Glassberg, Jonathan William v UBS AG, Singapore Branch* [2025] SGHC 4 at [1].
17 *Glassberg, Jonathan William v UBS AG, Singapore Branch* [2025] SGHC 4 at [50].
18 *Glassberg, Jonathan William v UBS AG, Singapore Branch* [2025] SGHC 4 at [22(a)].

from UBS's general contractual terms, which would have governed the plaintiff's investments with UBS if the APA Service terms did not apply. The general terms provided that UBS was not obliged to give advice or make recommendations to the plaintiff, but where it did so, this was done without any responsibility to the plaintiff. It was not disputed that UBS did not perform any due diligence in respect of the DLIF.

3.12 The issue whether the APA Service terms applied turned on whether Freh had acted within his authority in recommending the DLIF. The court held that Freh did not have *actual authority* to offer the DLIF as an investment to the plaintiff. This was because Freh was not authorised to offer investment options outside of UBS's product universe, and the plaintiff had, in earlier striking out proceedings, conceded that the DLIF fell outside of that universe.[19]

3.13 The question whether Freh nonetheless had *ostensible* authority to offer the DLIF depended on the plaintiff being able to show that UBS had "represented to the counterparty that the agent [had] such authority with the intention that the counterparty should rely on the representation and the counterparty [did] in fact rely on the representation".[20] In this connection, the court held that the mere fact that Freh was UBS's client advisor for the plaintiff and a senior employee was not determinative of his ostensible authority. The court stated that it was necessary to "consider what representations [had] in fact been made by the defendant to the plaintiff, with the intention that the plaintiff should rely on such representations".[21]

3.14 Two observations are proffered here. First, the court expressly disavowed that ostensible, or apparent, authority could be established merely on the basis of the agent's *position* with UBS. This, with respect, is necessarily correct. Whilst an agent's appointment to a particular position can amount to a representation that the agent is endowed with the usual authority that attaches to that position, what that "usual" authority is must be established from business practice or from the usages of trade.[22] In the present case, the plaintiff did not adduce evidence to demonstrate this but premised his case instead on his belief that he was in a relationship of trust with his client advisor, a relationship allegedly engineered by UBS.[23] This was, as the court concluded, clearly

19 *Glassberg, Jonathan William v UBS AG, Singapore Branch* [2025] SGHC 4 at [28].
20 *Glassberg, Jonathan William v UBS AG, Singapore Branch* [2025] SGHC 4 at [30].
21 *Glassberg, Jonathan William v UBS AG, Singapore Branch* [2025] SGHC 4 at [30].
22 Tan Cheng Han SC, *The Law of Agency* (Academy Publishing, 2nd Ed, 2017) at para 05.027.
23 *Glassberg, Jonathan William v UBS AG, Singapore Branch* [2025] SGHC 4 at [3] and [38].

insufficient to show "on a balance of probabilities that [UBS] represented to the plaintiff that [Freh] had authority to offer DLIF as an investment to the plaintiff".[24]

3.15 Secondly, the court required that any representation as to the agent's authority had to be made "with the intention that the plaintiff should rely on such representations".[25] This requirement for a deliberate representation may be traced to Lord Diplock's oft-cited judgment in *Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd*,[26] where he had stated as follows:[27]

> An 'apparent' or 'ostensible' authority … is a legal relationship between the principal and the contractor created by a representation, made by the principal to the contractor, *intended to be and in fact acted upon by the contractor*, that the agent has authority to enter on behalf of the principal into a contract of a kind within the scope of the 'apparent' authority, so as to render the principal liable to perform any obligations imposed upon him by such contract. [emphasis added]

3.16 However, Lord Diplock had also recognised, in the same judgment, that operative representations can also be of a more general nature, arising out of the conduct of the principal in "permitting the agent to act in some way in the conduct of the principal's business with other persons".[28] By such conduct:[29]

> [T]he principal represents to *anyone who becomes aware that the agent is so acting* that the agent has authority to enter on behalf of the principal into contracts with other persons of the kind which an agent so acting in the conduct of his principal's business has usually 'actual' authority to enter into. [emphasis added]

3.17 Clearly, representations of such type will necessarily fall short of the sort of deliberateness that Lord Diplock's earlier statement might suggest. It has therefore been suggested that a literal understanding of Lord Diplock's earlier statement would be too narrow.[30]

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24 *Glassberg, Jonathan William v UBS AG, Singapore Branch* [2025] SGHC 4 at [38].
25 *Glassberg, Jonathan William v UBS AG, Singapore Branch* [2025] SGHC 4 at [31].
26 [1964] 2 QB 480.
27 *Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd* [1964] 2 QB 480 at 503.
28 *Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd* [1964] 2 QB 480 at 503.
29 *Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd* [1964] 2 QB 480 at 503–504.
30 Peter G Watts & FMB Reynolds, *Bowstead and Reynolds On Agency* (Sweet & Maxwell, 23rd Ed, 2023) at para 8–015.

PARTNERSHIP LAW

I. Existence of partnership

3.18 There was only one decision of note on partnership law in 2025. *Naszima Banu d/o MD Nassim v Khairoodin s/o Ali Bux*[31] involved a family dispute over a mini-mart business in Housing and Development Board ("HDB") premises in Tampines. The plaintiff claimed to be a partner in the business, but this was denied by the first defendant, who was the plaintiff's uncle. The mini-mart had been established in 1990 by the plaintiff's mother, her grandmother and a third partner. In 1992, the business faced financial difficulties. The court found[32] that the third partner then exited the partnership and the first defendant was invited to take over the business. He joined the firm ostensibly as a partner, but in fact he took sole control of the business, repaying its debts and managing it entirely on his own account. The two remaining founding partners agreed at that time to relinquish all equity and interest in the business, leaving the first defendant as the sole beneficial operator. Although they remained registered as partners,[33] they became "nominal" partners, *ie,* in name only. When, in 2002,[34] the plaintiff was registered as a partner – in substitution for her grandmother and mother, the latter of whom was facing bankruptcy – the court found on the evidence that this was done purely to protect the business from the Official Assignee, on the express understanding that the status quo would continue. The plaintiff made no capital contribution, played no part in management, received no profits, was never asked to share in losses, and raised no objection to any of this for 17 years.

3.19 Disputes between the parties arose from 2018, and the first defendant subsequently obtained a declaration that the firm had been dissolved with effect from November 2020. The plaintiff commenced the lawsuit against the first defendant and his sons in 2021, claiming a 50%

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31 [2025] SGDC 274.

32 The court, on the balance of probabilities, generally preferred the first defendant's version of the 1992 events: see *Naszima Banu d/o MD Nassim v Khairoodin s/o Ali Bux* [2025] SGDC 274 at [35] and [77].

33 While registration is not a precondition to becoming a partner, persons who have become partners in a partnership are required to be registered with the Accounting and Corporate Regulatory Authority (ACRA) under the Business Names Registration Act 2014 (2020 Rev Ed) (or its predecessor, the Business Registration Act (Cap 32, 2004 Rev Ed)).

34 *Naszima Banu d/o MD Nassim v Khairoodin s/o Ali Bux* [2025] SGDC 274 at [12] refers to the mother and grandmother exiting the partnership in "2022", but this must be a typographical error for "2002" (*cf Naszima Banu d/o MD Nassim v Khairoodin s/o Ali Bux* [2025] SGDC 274 at [40(b)] and [40(e)]).

share in the mini-mart's profits from 2003 to 2020 on the basis that she had remained a dormant partner throughout that period. She further claimed in effect that the first defendant had breached his fiduciary duty as a partner by treating the business and assets as his own. Georgina Lum DJ in the District Court gave judgment for the defendants.

3.20 The main legal issue was whether the plaintiff was a genuine partner within the meaning of s 1(1) of the Partnership Act,[35] (*ie*, whether she and the first defendant had been "carrying on a business in common with a view of profit"),[36] or was merely a nominal partner. The court applied the well-established holistic test derived from *Davis v Davis*[37] and adopted by the Court of Appeal in *Chua Ka Seng v Boonchai Sompolpong*:[38] all the circumstances must be considered together, without undue weight being attached to any single factor, and an inference drawn from them as a whole. The court also drew on *Chiam Heng Hsien v Chiam Heng Chow*[39] for the proposition that consent to the admission of a partner must be ascertained objectively, and on *Ang Kin Chiew v Ang Boon Chye*[40] for the factors relevant to distinguishing a genuine partner from a nominal partner.

3.21 Applying that approach to the facts, the court in *Naszima Banu d/o MD Nassim v Khairoodin s/o Ali Bux*[41] held that there had been no partnership within the meaning of the Partnership Act at any material time. The first defendant had never operated the mini-mart on behalf of anyone else; the business was entirely his own. The plaintiff's Accounting and Corporate Regulatory Authority ("ACRA") registration, various documents (including correspondence with the HDB) indicating a 50% partnership share in the mini-mart, and a single tax declaration apportioning profits to the plaintiff in 2004 were all insufficient to displace the weight of the other factual evidence. As the court observed, ACRA's registration of a party as a partner is strong *prima facie* evidence of that status but does not estop co-partners from proving the contrary.[42] The purported 50% profit allocation in the 2004 tax declaration was inconsistent with the business's accounts for that year, was never repeated, and had been made without the plaintiff's knowledge. Documents reflecting a shareholding are not inconsistent with nominal partner status; they do not, of themselves, evidence equity or consent to

35 Cap 391, 1994 Rev Ed.
36 *Naszima Banu d/o MD Nassim v Khairoodin s/o Ali Bux* [2025] SGDC 274 at [18].
37 [1894] 1 Ch 393.
38 [1993] 1 SLR(R) 17.
39 [2015] 4 SLR 180.
40 [2006] SGHC 59.
41 [2025] SGDC 274.
42 See *Sivagami Achi v P R M Ramanathan Chettiar* [1959] MLJ 221.

a genuine partnership. The court opined that s 15 of the Partnership Act, which states that representations by a partner are evidence against the firm, is directed to claims by a third party against the firm rather than to internal disputes within the firm.[43]

3.22 The decision is a reminder that registration under the Business Names legislation, and the paper trail that accompanies it, are not a substitute for considering the whole substance of the relationship. Where the totality of the circumstances – absence of capital contribution, exclusion from management, no sharing of profits or losses over a prolonged period, and acquiescence in that state of affairs – points consistently to one person operating a business as his own, the court will not be deflected by formal records to the contrary. Partnership arises fundamentally from agreement: a nominal partner, registered for reasons of family convenience or to ward off third party creditors, acquires no equity rights by virtue of the registration alone.

43 *Naszima Banu d/o MD Nassim v Khairoodin s/o Ali Bux* [2025] SGDC 274 at [63]–[65].