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3. AGENCY AND PARTNERSHIP LAW

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AGENCY LAW

I. Concepts of authority

3.1 The basis of agency is the relationship between the principal and agent manifested in the "actual or real"[1] authority conferred on the agent by the principal to affect the latter's legal position. This notwithstanding, the acts of some person upon whom the principal has not conferred actual or real authority, may yet bind the principal by operation of the doctrine of ostensible or apparent authority. The *locus classicus* for the doctrine is Diplock LJ's statement in *Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd*:[2]

> [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. To the relationship so created the agent is a stranger. He need not be (although he generally is) aware of the existence

1 Tan Cheng Han, *The Law of Agency* (Academy Publishing, 2nd Ed, 2017) at para 03.013.
2 [1964] 2 QB 480.

> of the representation but he must not purport to make the agreement as principal himself.

Apparent "authority" is thus not real "authority" at all as it does not arise out of the agency relationship between the principal and his agent. Instead, it is the *principal's* representation to the contractor that provides the basis for his liability.

3.2 However, the realities of commercial dealings are such that the contractor is unlikely to rely on the agent's *actual* authority at the time of contracting. This is because the contractor is a stranger to that agency relationship. As Diplock LJ explained:[3]

> [The contractor's] information as to the [agent's] authority must be derived either from the principal or from the agent or from both, for they alone know what the agent's actual authority is. All that the contractor can know is what they tell him, which may or may not be true. In the ultimate analysis he relies either upon the representation of the principal, that is, apparent authority, or upon the representation of the agent, that is, warranty of authority.

Of course, where the agent is in fact authorised so that actual and apparent authority coincide, the principal is bound by the agent's acts without the need for the contractor to invoke the doctrine of apparent authority.

II. Companies and agency

3.3 His Lordship's observations take on added significance where a *corporate* principal is involved. It is of course trite that agency is central to the reification of companies and underpins the recognition of the company as a separate legal entity. In *Tesco Supermarkets Ltd v Nattrass*,[4] Lord Diplock explained the position as follows:

> A corporation is an abstraction. It is incapable itself of doing any physical act or being in any state of mind. Yet in law it is a person capable of exercising legal rights and of being subject to legal liabilities which may involve ascribing to it not only physical acts which are in reality done by a natural person on its behalf but also the mental state in which that person did them.

A. Apparent authority

3.4 A company therefore can only make representations through agents. Accordingly, for a corporate principal to be bound to a

3 *Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd* [1964] 2 QB 480 at 503.
4 [1972] AC 153 at 198.

transaction by virtue of apparent authority, it is additionally necessary for the contractor to show that the requisite representation was made to him by "some person or persons who have 'actual' authority from the corporation to make the representation".[5] As a general proposition, such actual authority would be located in those natural persons upon whom is conferred the authority to manage the company's business or at least that part of the company's business to which the relevant contract relates. Typically, this would be the board of directors, upon whom management powers are typically vested,[6] or a person such as the managing director of the company. A representation by the unauthorised agent himself as to his authority cannot, as a general rule, operate as a basis for a finding of apparent authority. As the Judicial Committee of the Privy Council noted in *Attorney-General for Ceylon v A D Silva*:[7]

> All 'ostensible' authority involves a representation by the principal as to the extent of the agent's authority. No representation by the agent as to the extent of his authority can amount to a 'holding out' by the principal.

3.5 A contractor found himself having to grapple with these issues in seeking to enforce a contract against a company before the High Court in *Baizanis, Georgios v Snap Innovations Pte Ltd*.[8] The salient facts may be briefly stated. The plaintiff contractor was persuaded by the representations of one Zee to invest in a cryptocurrency scheme which Zee had claimed was operated by the defendant company, Snap, in Vietnam. Snap was a company that provided information technology services. Zee was reflected on Snap's website as its "Director, Snap Vietnam" and he had "enticed" the plaintiff into making the investment by offering what appeared to be a "corporate guarantee" given by Snap which purported to indemnify the plaintiff against losses in the event of "internal fraud". This indemnity was contained in a "Service Agreement" ostensibly executed on Snap's behalf by Zee and one Ong. Ong was reflected on Snap's website as its "Director" but there was no indication that he was indeed a *de jure* director of Snap from the records maintained by the Accounting and Corporate Regulatory Authority. Zee subsequently absconded with the cryptocurrencies deposited by the plaintiff.

3.6 The plaintiff's claim against Snap, which depended in its entirety on the existence and validity of the Service Agreement, failed at the outset as the court found that the evidence submitted to prove the existence of the alleged contract was inadmissible. Nonetheless, the court

5 *Per* Diplock LJ in *Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd* [1964] 2 QB 480 at 504–505.
6 See s 157A of the Companies Act 1967 (2020 Rev Ed).
7 [1953] 1 AC 461.
8 [2024] SGHC 200.

proceeded to consider counsel's extensive submissions on the issue of Zee's and Ong's authority to act on Snap's behalf in connection with the Service Agreement, providing useful observations in particular on the operation of the doctrine of apparent authority.

B. Agency and section 25B Companies Act 1967

3.7 The plaintiff had sought to establish that both Zee and Ong possessed *actual* authority to bind Snap to the agreement by virtue of them being "unregistered directors".[9] Section 4 of the Companies Act 1967[10] ("CA") defines "director" as including persons who have not been formally appointed as directors but who intermeddle in company affairs either by influencing those who have been formally appointed to the board or by assuming directorial responsibilities. The court, however, found the evidence insufficient to establish that either Zee or Ong fell to be regarded as directors under the expanded definition in s 4. Further, the court dismissed as "flawed"[11] the plaintiff's attempt to rely on s 25B of the CA to "statutorily clothe"[12] Zee and Ong with authority. The court stated:

> [Section 25B] serves to relieve parties transacting with a company from having to check whether the directors' authority to transact on the company's behalf is curtailed by the company's constitutional documents or processes. It is evident from a plain reading of this provision that it is directed at powers to bind the company which are already in place … s 25B of the CA does not purport to be a standalone source of power that endows directors with authority to bind their companies to all manner of contracts, when no such authority is discernible at law to begin with.

3.8 Indeed, s 25B of the CA, which expressly operates "[i]n favour of a person dealing with a company in good faith", is clearly intended to protect outside parties dealing with the company. This means that the section does not purport to affect the *internal* relationship between the company and its directors, as defined in the corporate constitution or any operative company resolutions, which is what "actual" authority is concerned with. This is confirmed by the section itself in expressly preserving both the right of a member of the company to bring proceedings to restrain any act in excess of board powers as well as any liability incurred by the directors because they had exceeded their powers.[13]

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9 *Baizanis, Georgios v Snap Innovations Pte Ltd* [2024] SGHC 200 at [125].
10 2020 Rev Ed.
11 *Baizanis, Georgios v Snap Innovations Pte Ltd* [2024] SGHC 200 at [135].
12 *Baizanis, Georgios v Snap Innovations Pte Ltd* [2024] SGHC 200 at [134].
13 Companies Act 1967 (2020 Rev Ed) ss 25B(4) and 25B(5).

C. Representations as to authority

3.9 The court then turned to the plaintiff's submissions that each of Zee and Ong had been clothed with the apparent authority to sign the Service Agreement on Snap's behalf. To establish that Snap had made the necessary representations of authority, the plaintiff had relied on several facts. Firstly, Ong was described in his LinkedIn profile as Snap's "Managing Director".[14] Secondly, Snap's website had held out both Zee and Ong as holding the office of "director".[15] And thirdly, an employee of Snap had confirmed via e-mail that Zee was with Snap's "Vietnam office".[16]

3.10 The court held that none of the asserted facts could amount to a representation by Snap that was sufficient to ground a finding of apparent authority. The representation found in Ong's LinkedIn profile was essentially a representation by Ong himself. LinkedIn profiles were typically under the control of the account holder, who in this case was Ong, and not his employer. As already noted above, a representation by the agent himself of his own authority cannot create apparent authority so as to affect the legal position of the principal unless the principal had in some way condoned the making of that representation. The plaintiff failed to adduce credible evidence to substantiate this.

3.11 Further, the communication by Snap's employee "[added] little value to the analysis"[17] as all it did was to confirm that Zee was with Snap's Vietnam office. Such a terse[18] communication could hardly be "extrapolated into a representation that Zee had the authority to sign the Service Agreement".[19] It should be noted that even if the communication had explicitly represented that Zee possessed the requisite authority, it could not have had the effect of creating apparent authority unless the employee in question had the *actual* authority to make the representation on Snap's behalf.[20]

3.12 In connection with the statements on its official website, Snap argued that those statements could not found apparent authority, and that in any case, a representation as to the agent's specific position within the organisation did not amount to a representation as to the agent's

14 *Baizanis, Georgios v Snap Innovations Pte Ltd* [2024] SGHC 200 at [144].
15 *Baizanis, Georgios v Snap Innovations Pte Ltd* [2024] SGHC 200 at [144].
16 *Baizanis, Georgios v Snap Innovations Pte Ltd* [2024] SGHC 200 at [12].
17 *Baizanis, Georgios v Snap Innovations Pte Ltd* [2024] SGHC 200 at [162].
18 *Baizanis, Georgios v Snap Innovations Pte Ltd* [2024] SGHC 200 at [162].
19 *Baizanis, Georgios v Snap Innovations Pte Ltd* [2024] SGHC 200 at [162].
20 *Freeman & Lockyer v Buckhurst Properties (Mangal) Ltd* [1964] 2 QB 480 at 504–505.

authority. The court opined[21] that a statement on the principal's official website as to the office held by the agent was indeed "a representation made to the world and which the principal must be held to".[22] However, whether that statement amounted further to a representation that the agent thus had the authority to enter into the contract in question cannot be determined without a consideration of various factors. As the court put it:[23]

> Much will depend on whether the office which the agent occupies … or which the principal holds the agent out as occupying, can reasonably be perceived as *usually* possessing the authority to bind the principal to the kind of transaction at issue. [emphasis in original]

3.13 The plaintiff had argued that the statements by Snap that both Zee and Ong were "directors" sufficed without more to constitute representations by Snap that they each had the authority to bind Snap to the Service Agreement. The court, however, rejected this contention. In the court's view, it was necessary to "juxtapose the transaction at issue against the office held by the agent and ask whether that transaction can reasonably be understood as falling within a class of transactions which someone holding that office would usually be authorised to conclude on the principal's behalf".[24] In this connection, the court considered the Service Agreement to be "exceptional, to say the least"[25] as Snap would seemingly be undertaking not only unlimited liability which could "jeopardise [Snap's] very viability", but also a liability that was related to an activity that fell outside of Snap's ordinary course of business. As the court noted, the cryptocurrency investment scheme the plaintiff had engaged in was a "fundamentally different business proposition"[26] from Snap's business of providing technological solutions. In the circumstances, the court was of the view that Snap's representation that Zee and Ong were "directors" fell patently short of cloaking them with apparent authority. Indeed, the court would consider it unreasonable for a contractor to "unthinkingly take an individual's appointment as a director to imply that the individual possessed the usual authority to enter into a transaction such as the Service Agreement … [which was] not a run-of-the-mill commercial deal".[27] In the court's view, the plaintiff should have sought confirmation from the company's board of directors.

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21 *Baizanis, Georgios v Snap Innovations Pte Ltd* [2024] SGHC 200 at [148].
22 *Baizanis, Georgios v Snap Innovations Pte Ltd* [2024] SGHC 200 at [149].
23 *Baizanis, Georgios v Snap Innovations Pte Ltd* [2024] SGHC 200 at [150].
24 *Baizanis, Georgios v Snap Innovations Pte Ltd* [2024] SGHC 200 at [153] and [157].
25 *Baizanis, Georgios v Snap Innovations Pte Ltd* [2024] SGHC 200 at [158].
26 *Baizanis, Georgios v Snap Innovations Pte Ltd* [2024] SGHC 200 at [158].
27 *Baizanis, Georgios v Snap Innovations Pte Ltd* [2024] SGHC 200 at [159].

3.14 The court's approach is, with respect, patently correct. With apparent authority, liability is imposed on the principal because of the representations he has made. And a principal who states that an individual holds a particular position is only representing, if at all, that that individual has such authority as would be *usual* for that particular position. It is thus necessary that the particular transaction entered into by the purported agent should fall within the scope of the principal's representation. In the present case, the court's conclusion was clearly premised on the highly unusual nature of the particular transaction in question, which meant that it could not fall with the scope of the apparent authority of a director *simpliciter*. Indeed, it might well be that the same conclusion would have been reached even if Snap *had* represented that Ong was its *managing* director, as the usual authority of a managing director does not extend beyond the ordinary business of the company.

D. Authority of ordinary directors

3.15 But what if the transaction had instead been an *ordinary* one falling within the normal business of the company? Would the company's clear representation that an individual was a director *simpliciter* suffice to clothe that individual with the apparent authority to bind the company? There is reason to doubt this. Whilst it has generally been accepted[28] that persons appointed to the office of managing director may be assumed to be endowed with the authority to act for the company in connection with transactions falling within the ordinary scope of the company's business, the same cannot be said of persons appointed as *ordinary* directors without more. As the High Court of Australia noted in *Northside Developments Pty Ltd v Registrar-General*,[29] "[t]he position of director does not carry with it any ostensible authority to act on behalf of the company".[30] This is because, unless entrusted with specific responsibility, directors can only act collectively[31] as a board.

28 Although the precise scope of a managing director's authority appears largely undefined: see *Hely-Hutchinson v Brayhead Ltd* [1968] 1 QB 549 at 560, *per* Roskill J. See also *Smith v Butler* [2012] Bus LR 1836; [2012] EWCA Civ 314 at [15]. But see *Blasco, Martinez Gemma v Ee Meng Yen Angela* [2021] 3 SLR 1360 where the High Court opined (at [32]) that it could not be assumed, as a "general or universal proposition", that the office of managing director carried the implied authority to borrow money and give security on behalf of the company.

29 (1990) 170 CLR 146 at 205, *per* Dawson J.

30 See also *Houghton and Company v Nothard, Lowe and Wills Ltd* [1927] 1 KB 246 at 267.

31 Unless of course, the director is the sole director of the company.

3.16 The court's decision demonstrates the importance for parties entering into transactions with companies to check the veracity of statements made by corporate representatives. In this connection, the more unusual the transaction, the greater the need for care in ascertaining the representative's authority to act on the company's behalf.

PARTNERSHIP LAW

3.17 There was only one decision of note involving partnership law in 2024.

I. Existence of partnership

3.18 A business collaboration between persons, individual or corporate, is sometimes argued to give rise to a partnership in the legal sense. The motive for doing so typically falls into one of two objectives: either to establish joint liability to a third party on the part of the alleged partners, or to establish the existence of fiduciary duties between them. The District Court's decision in *Sim Chee Yong v Centre for Fathering Ltd*[32] ("*Sim Chee Yong*") was an example of the former. But there are many kinds of collaboration in business and not all give rise to a partnership: the argument will only succeed if the relationship in question amounts to the parties "carrying on a business in common with a view of profit" as defined in s 1(1) of the Partnership Act 1890.[33] An interesting aspect of this case was that one of the alleged partners was a non-profit organisation.

3.19 The case arose from an accident involving a campfire during a "Camp-out with Dad" event held on Pulau Ubin. The plaintiff and his infant son participated in the outdoor event and suffered burn injuries in the mishap. The event had been organised through a collaboration between the first and second defendants, *viz*, Centre for Fathering Ltd ("CFF"), a non-profit organisation promoting active fathering (whose legal form was a company limited by guarantee) and Better Trails Education LLP ("BT"), a commercial outdoor-education provider. As BT, whose employee had caused the accident, conceded liability in the tort of negligence, the central legal question concerned whether CFF was also liable on any of several bases. The focus in this chapter is on the partnership law issue as whether CFF and BT were in partnership

32 [2024] SGDC 135.
33 2020 Rev Ed.

in relation to the event. If they were, CFF would be jointly and severally liable with BT for the latter's negligence, pursuant to ss 10 and 12 of the Partnership Act.[34] District Judge Clement Seah Chi-Ling ("DJ Seah") held that a partnership had not been established, as discussed below.

3.20 The plaintiff had alternatively put his case against CFF both in negligence and in contract. The court held that the case for vicarious liability in negligence failed, essentially because BT was an independent contractor of CFF and the duty was neither pleaded nor found to be a non-delegable one. But the plaintiff's case in contract succeeded on the basis that CFF had agreed to provide the outdoor event personally, albeit having subcontracted the actual running of the event to BT, and CFF was in breach of an implied term to exercise reasonable care in providing the event (relying on *R Manokaran v Chuah Ah Leng*).[35] CFF in turn was entitled to be wholly indemnified by BT against its liability to the plaintiff. As these issues fall outside the scope of the present chapter, they are not discussed further.

3.21 Partnership is a legal relationship arising from a contract. As DJ Seah noted, determining the existence of a partnership under s 1(1) requires examining "the true contract and intentions of the parties as they appear from all the facts of the case".[36] The court must consider objectively the surrounding facts to see whether they are consistent with a subjective intention of the parties to carry on a business in common with the objective of earning profits. The typical indicia of partnership include the presence, in the parties' arrangement, of some or all of the following: capital contributions by the parties; their joint beneficial ownership of the assets of the business; the sharing of profits and of losses; and shared control and management of the business. Conversely, the absence of these factors will tend to point away from a conclusion that a partnership exists.[37] The court will also look at how the alleged partners describe themselves to the outside world, although in this regard it is clear that labels are not determinative and indeed "have very little probative value" in proving the parties' intention.[38] (One might add that the increasing ubiquity of the term "partner" in marketing and publicity materials to refer to almost any business relationship serves to reinforce this point).

3.22 The court rejected as circular the plaintiff's argument that he did not need to prove the existence of a partnership but merely

34 Partnership Act 1890 (2020 Rev Ed).
35 [2022] SGHC 39.
36 *Sim Chee Yong v Centre for Fathering Ltd* [2024] SGDC 135 at [111], citing *Rabiah Bee bte Mohamed Ibrahim v Salem Ibrahim* [2007] 2 SLR(R) 655 at [61]–[64].
37 *Sim Chee Yong v Centre for Fathering Ltd* [2024] SGDC 135 at [127].
38 *Sim Chee Yong v Centre for Fathering Ltd* [2024] SGDC 135 at [113] and [130]–[131].

that the defendants shared joint and several liability based on their representations. As DJ Seah pointed out, joint and several liability is a consequence of establishing the existence of a partnership, hence the latter must be proved by a third party such as the plaintiff.[39] This is different from a claim based on a "partnership by estoppel" (which is codified in s 14 of the Partnership Act). Liability under the estoppel principle is founded on a representation of partnership that is relied on by the third party, hence it is not crucial that an actual partnership exists. But in *Sim Chee Yong* no argument based on partnership by estoppel was raised.

3.23 Turning to the detailed facts, the collaboration between CFF and BT began in July 2019 when CFF launched its "Fathering through Outdoors" initiative. As it lacked the expertise and resources to organise outdoor activities, CFF engaged BT to provide outdoor event management services. The arrangement involved CFF charging participants (including the plaintiff) $200 per father-child pair, of which a fixed fee of $180 was paid to BT and $20 retained to cover CFF's administrative expenses. After the initial two "runs" of the camp event, the parties signed a Memorandum of Understanding ("MoU") dated 29 July 2019, which contained many references to "partners" and described one of its core objectives as forming "a partnership in the development and management of the 'Fathering through Outdoors' programme". Also, e-mail communications to participants and publicity materials (including on CFF's website) consistently described the defendants as running the event as "partners".

3.24 To fall within the partnership definition, there must be a profit objective that is common to the partners. The pricing structure described above was designed to ensure that CFF did *not* make a profit from the event but simply recovered its costs. As a registered charity, CFF's organisational purposes were required to be "exclusively charitable", and the organisation was subject to annual audits by the Commissioner of Charities. The court found it "wholly inconsistent" with CFF's charitable purposes[40] and regulatory obligations for it to have intended to collaborate with BT in carrying on a business with a view to profit. Further, while not an essential requirement of a partnership, profit-sharing is one of the most significant indicia of the relationship, as it implies that there is a "business in common". In *Sim Chee Yong*, there

39 *Sim Chee Yong v Centre for Fathering Ltd* [2024] SGDC 135at [115]–[117].

40 The position is not necessarily the same for those non-profit organisations ("NPOs") which are not charities. Many non-charitable NPOs are formed as companies limited by guarantee. Under company law, such companies are not prohibited from making a profit but only from distributing it to their members: s 38(1) Companies Act (Cap 50, 2006 Rev Ed).

was found to be no agreement for or evidence of sharing of profits (or losses). Nor was there any capital contribution, common ownership of property, or shared books of account by the two defendant entities.[41]

3.25 Accordingly, the absence of the usual indicia strongly suggested the CFF-BT collaboration was not a partnership in the legal sense. The plaintiff had, however, emphasised the frequent use of the term "partners" and "partnership" in the MoU and in marketing materials as indicating the parties' intention. The court rejected this argument, noting that such labels were often used loosely by businesspeople and should not be given much weight in the absence of other factors pointing to a partnership. Indeed, the oral evidence confirmed that the parties employed the terms in a loose sense, consistent with their usage not only in commerce but also in the non-profit sector.[42] In any event, the MoU was of less importance as the evidence suggested that it was not intended to cover the event during which the accident happened but only to apply to potential future collaborative projects between CFF and BT.[43]

3.26 As a result, the court rejected the plaintiff's argument that CFF was liable based on partnership law principles (although, as noted, it held CFF liable on the basis of a contract with the plaintiff). One implication of the decision is that it will be difficult for charities and other non-profits to form partnerships in the strict legal sense. Moreover, while newer business models and terminology may blur traditional boundaries, the established test for the existence of partnership remains the same. And although the court did not penalise the parties for their loose use of partnership terminology, the inclusion of clear disclaimer language may reduce the risk and cost of future legal disputes.

41 *Sim Chee Yong v Centre for Fathering Ltd* [2024] SGDC 135at [70] and [126]–[127].
42 *Sim Chee Yong v Centre for Fathering Ltd* [2024] SGDC 135at [131]–[135].
43 *Sim Chee Yong v Centre for Fathering Ltd* [2024] SGDC 135 at [136]–[138].