(2020) 21 SAL Ann Rev 87
(Published on e-First 6 August 2021)

3. AGENCY AND PARTNERSHIP LAW

AGENCY LAW

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I. Companies and agency

3.1 The High Court decision of *Blasco, Martinez Gemma v Ee Meng Yen Angela*[1] ("*Blasco*") raised a number of important issues regarding the application of agency principles to corporate agents, specifically the managing director.

3.2 It is banal to state that companies, being *persona ficta*,[2] cannot properly function as legal entities except through agents. This truism renders the law of agency an indispensable part of the rules that govern the operations of companies. In *Meridian Global Funds Management Asia Ltd v Securities Commission*,[3] Lord Hoffmann referred to the principles of the law of agency as "general rules of attribution". These *general* rules of attribution, together with the company's *primary* rules of attribution as stipulated in its constitution, operate within the framework provided by company law "to tell one what acts [are] to count as acts of the company".[4]

3.3 The question that arose in *Blasco* was whether the acts of a director who had been appointed as the company's "acting chief executive officer" could bind the company to a loan transaction.

3.4 The facts may be briefly stated. The plaintiffs had decided to invest in Epicentre Holdings Ltd ("EHL"), a company listed on the stock exchange. The "investment" initially took the form of loans to Broadwell Ltd ("Broadwell"), a British Virgin Islands company. The loan agreements

1 [2020] SGHC 247.
2 *Meridian Global Funds Management Asia Ltd v Securities Commission* [1995] 2 AC 500 at 506, *per* Lord Hoffmann.
3 [1995] 2 AC 500.
4 *Meridian Global Funds Management Asia Ltd v Securities Commission* [1995] 2 AC 500 at 506.

with Broadwell provided that the loan moneys would be deployed towards "the investment in the shares, and the funding of the projects" of EHL.[5] These agreements were entered into on Broadwell's behalf by its sole shareholder, Lim, who was also a director on the EHL board and who was, at all material times, the executive chairman and acting chief executive officer of EHL. When the loans matured, they were renewed on substantially the same terms. In 2019, when the Broadwell loans matured for the second time, they were rolled over and renewed, not as debts owed to Broadwell, but as debts owed by EHL, even though no fresh loans were made to EHL. The new agreements ("the EHL agreements"), again on substantially the same terms as the agreements with Broadwell, were similarly executed by Lim, purportedly on EHL's behalf. EHL was subsequently placed in judicial management and the plaintiffs submitted proofs of debt for the loans disbursed to Broadwell and the interest thereon which the plaintiffs asserted were liabilities owed by EHL. The judicial managers rejected the proofs and the plaintiffs brought the present proceedings to reverse that decision.

3.5 The plaintiffs' case was premised entirely on the EHL agreements and the validity thereof. This in turn depended on whether Lim had the requisite authority to commit EHL to the agreements.

A. Actual authority

3.6 It was not disputed that the board of EHL had not *expressly* authorised Lim to enter into the EHL agreements. The plaintiffs argued that Lim nevertheless had *implied* actual authority to commit EHL to the agreements by virtue of his position as the executive chairman and acting chief executive officer of EHL. The court disagreed with the plaintiffs and held that Lim did not have the implied authority as asserted by the plaintiffs. Kannan Ramesh J stated:[6]

> There was nothing on the evidence before me that suggested that as the Executive Chairman and Acting CEO of EHL, Lim automatically had the authority borrow money or to give security on EHL's behalf.

3.7 Within the corporate structure, s 157A of the Companies Act[7] dictates that the board of directors should, subject to the constitution, reign as the supreme "agent" where management matters are concerned. However, corporate constitutions typically empower the board to

5 *Blasco, Martinez Gemma v Ee Meng Yen Angela* [2020] SGHC 247 at [5].
6 *Blasco, Martinez Gemma v Ee Meng Yen Angela* [2020] SGHC 247 at [38].
7 Cap 50, 2006 Rev Ed.

delegate its powers of management to a "managing director",[8] who is broadly considered the "chief executive" of the company.[9] As the chief executive, the managing director is generally assumed to possess the broad authority to run the company's everyday business.

3.8 Lim was not explicitly stated as having been appointed EHL's "managing director", nor was it made clear on the facts that EHL's constitution permitted its board to delegate its powers and functions to a managing director duly appointed. Nevertheless, the fact that he was appointed to the EHL board and placed in the chief executive role suggested that his position was likely to be equivalent to that of a managing director. In *Smith v Butler*,[10] Arden LJ specifically noted that "[t]he holder of the office of managing director might today more usually be called a chief executive officer in (at least) a public company".[11] Indeed, both the learned judge and counsel had proceeded on that basis.[12] The question then is whether it fell within the scope of the managing director's authority to commit the company to agreements like the EHL agreements pursuant to which the company assumed the loan liability of another company (namely Broadwell in the present case).

3.9 Ramesh J first considered whether a managing director had, simply by virtue of his position, the implied authority to borrow funds on the company's behalf and to encumber the company's assets by way of security. His Honour concluded that there was no such general rule, and opined that it was "difficult to accept … as a general or universal proposition"[13] that such authority resided in the office of a managing director. His Honour stated:[14]

> This must, at best, be a context-driven inquiry depending on a variety of factors such as, for example, the constitution of the company, the nature of the company, the nature of the transaction, and the conduct of the company. It seemed to me that it would be more reasonable to say that lenders should require, as a matter of proper due diligence, express evidence of authorisation, such as a resolution of the board of directors, to enter into borrowing arrangements with a company.

3.10 The learned judge considered that this approach cohered with "commercial reality, where *lenders* generally expect authorisations of the

8 See para 97 of the First Schedule to the Companies (Model Constitutions) Regulations 2015 (S 833/2015).
9 See *Hely-Hutchinson v Brayhead Ltd* [1968] 1 QB 549 at 584 and *Smith v Butler* [2012] EWCA Civ 314 at [30].
10 [2012] EWCA Civ 314.
11 *Smith v Butler* [2012] EWCA Civ 314 at [30].
12 *Blasco, Martinez Gemma v Ee Meng Yen Angela* [2020] SGHC 247 at [38].
13 *Blasco, Martinez Gemma v Ee Meng Yen Angela* [2020] SGHC 247 at [32].
14 *Blasco, Martinez Gemma v Ee Meng Yen Angela* [2020] SGHC 247 at [32].

board of directors of the debtor company to be furnished before entering into loan agreements" [emphasis added].[15] Further, his Honour posited, in the case of listed entities which are subject to strict regulatory and governance structures, that it would be "incorrect" to suggest that the managing director and chief executive officer should generally possess, *ex virtute officii*, the implied authority to borrow and to give security on behalf of the company as a matter of ordinary business practice.

3.11 With respect, it is difficult to appreciate why extant commercial practice of lenders and the need for commercial prudence on the lender's part should be relevant in circumscribing the implied authority of a managing director. The actual authority of an agent is a function of the relationship between the principal and the agent. This truism was recently affirmed by the Court of Appeal in *Alphire Group Pte Ltd v Law Chau Loon*[16] where the court noted in an *ex tempore* judgment that:[17]

> … [u]ltimately, the cornerstone of both express and implied actual authority is a consensual agreement between the principal and the agent, the latter of which may be implied from the words and conduct of the parties.

3.12 The power to appoint a managing director, and to confer upon him any of the powers exercisable by the board even to the exclusion of its own powers,[18] has been a feature in successive versions of the model constitution provided by the Legislature since at least 1967.[19] There should therefore be no doubt that the office of the managing director is designed to stand apart from normal directors, and, as Arden LJ noted in the English Court of Appeal decision of *Smith v Butler*, the clear intention is that some powers should be implicitly delegated to this office.

3.13 The cases have mostly proceeded on this basis. In *Hely-Hutchinson v Brayhead Ltd*,[20] Lord Denning had opined that a person in the position of a managing director would have the "actual authority to manage".[21] Somewhat more explicitly, Ipp J had described, in the Western Australia decision of *Entwells Pty Ltd v National and General Insurance Co Ltd*,[22] the functions of a managing director as follows:[23]

15 *Blasco, Martinez Gemma v Ee Meng Yen Angela* [2020] SGHC 247 at [33].
16 [2020] SGCA 50.
17 *Alphire Group Pte Ltd v Law Chau Loon* [2020] SGCA 50 at [7].
18 Companies (Model Constitutions) Regulations 2015 (S 833/2015) First Schedule, para 97.
19 Companies Act 1967 (Act 42 of 1967) Fourth Schedule, Arts 91 and 93.
20 [1968] 1 QB 549.
21 *Hely-Hutchinson v Brayhead Ltd* [1968] 1 QB 549 at 584.
22 (1991) 5 ACSR 424.
23 *Entwells Pty Ltd v National and General Insurance Co Ltd* (1991) 5 ACSR 424 at 427.

> The task of a managing director is to deal with every day matters, to supervise the daily running of the company, to supervise the other managers and indeed, generally, be in charge of the business of the company. It is a characteristic of the power of a managing director that he is given powers of day to day management which are exercisable without reference to the board.

3.14 It should also be noted that although the Companies Act does not provide a definition of "managing director", it does provide for a separate definition of "chief executive officer" in s 4 which states as follows:

> [A]ny one or more persons, by whatever name described, who —
>
> > (*a*) is in direct employment of, or acting for or by arrangement with, the company; and
> >
> > (*b*) is principally responsible for the management and conduct of the business of the company, or part of the business of the company, as the case may be.

This definition lends some support to the view that the chief executive officer has the usual authority to manage the ordinary day-to-day operations of the company.

3.15 There is "surprisingly little"[24] authority on the usual powers that are attached to the managing director's office. Nevertheless, it does not appear controversial that borrowing in the course of the company's normal business, whether on a secured or unsecured basis, is very much a matter of management. By logical extrapolation, therefore, such powers should fall within the managing director's normal scope of authority. This does not, however, necessarily mean that a managing director should be able to bind the company to all contracts of loan, secured or otherwise, without more. As the learned judge noted, the precise *scope* of that authority was "a context-sensitive issue and regard should be had to all the circumstances of the case".[25] Arden LJ made similar observations in *Smith v Butler*. Her Ladyship stated:[26]

> [T]he managing director's powers extend to carrying out those functions on which he did not need to obtain the specific directions of the board. This is simply the default position. It is, therefore, subject to the company's articles and anything that the parties have expressly agreed.

3.16 Such a context-driven inquiry, which the learned judge undertook, would have resulted in the same conclusion without, with respect, any need to curtail the commonly assumed scope of the

24 *Smith v Butler* [2012] EWCA 314 at [15].
25 *Blasco, Martinez Gemma v Ee Meng Yen Angela* [2020] SGHC 247 at [38].
26 *Smith v Butler* [2012] EWCA 314 at [28].

managing director's usual authority. On the facts, the EHL agreements did not disclose any fresh loan being dispensed by the plaintiffs to EHL. Thus, as the learned judge noted, even if he had accepted that the office of managing director did carry the implied authority to take out secured loans on the company's behalf, the nature of the EHL agreements would not, in the circumstances, fall within the purview of that authority. The learned judge stated:[27]

> Even if Lim had implied authority to borrow money and give security on EHL's behalf, that was not what the EHL Agreements were about. As noted above, EHL was not borrowing money from the Plaintiffs. Instead, EHL was assuming the liability of another by rolling over the Broadwell Loans as EHL Loans … [T]he terms of the EHL Agreements did not match the transaction that it purported to govern. Given these circumstances, it is questionable whether Lim's implied authority to borrow money by reason of his position as EHL's Executive Chairman and Acting CEO, even if it did exist, extended to transactions of the nature and effect of the EHL Agreements. I was of the view that it did not.

B. Apparent authority and indoor management rule

3.17 Counsel for the plaintiffs had relied on the English Court of Appeal decision in *Biggerstaff v Rowatt's Wharf Ltd*[28] ("*Biggerstaff*") as authority for the proposition that committing the company to loans, whether secured or unsecured, fell within the managing director's usual scope of authority. In that case, the managing director of the company, which was in financial difficulties, had purported to hypothecate certain debts that were owed to the company to one of the company's creditors as security for a loan. The company's constitution empowered the board to delegate to the managing director all the powers of the board except as to bills of exchange and promissory notes. It was alleged that as no such delegation had occurred, the hypothecations were invalid. The English Court of Appeal held that the hypothecations were valid. There was no question that the managing director was validly appointed and had acted as such. As the board *could*, by constitutional provision, have delegated to the managing director the power to hypothecate, persons dealing in good faith with him are entitled to assume that that delegation had been duly undertaken. As Kay LJ explained:[29]

> Mr Davy [that is, the managing director] … did nothing *ultra vires* of a managing director; and it would be extraordinary if a person dealing bona fide with the managing director of the company were bound to inquire whether the powers which the articles authorised the directors to give him had been

27 *Blasco, Martinez Gemma v Ee Meng Yen Angela* [2020] SGHC 247 at [46]–[48].
28 [1896] 2 Ch 93.
29 *Biggerstaff v Rowatt's Wharf Ltd* [1896] 2 Ch 93 at 106.

> formally delegated to him. There is a long string of cases shewing that a person so dealing with an officer of a company has a right to presume that all has been done regularly.

3.18 In the present case, the learned judge expressed reservations about the correctness of the decision in *Biggerstaff*. His Honour opined that the English Court of Appeal had based its conclusion that the managing director could bind the company on the basis of the provision in the company's constitution which permitted the directors to delegate their powers to a managing director. His Honour stated:[30]

> *Biggerstaff* should be understood as a case decided on the basis of the apparent authority of the managing director, arising by reason of the specific provision in the company's Articles of Association … The provision provided that actual authority could be conferred through an act of delegation. It appeared incorrect to say that Mr Davy, as the managing director, had apparent authority because third parties who dealt with him might assume that the board of directors had delegated its powers to him pursuant to provisions of the Articles of Association. It seemed to me that third parties could not make that assumption as to do so would be to ignore the specific language of the Articles of Association which they had actual or constructive notice of. The analysis in *Biggerstaff* thus conflated the power of the directors under the Articles of Association to delegate, with the separate issue of the authority of Mr Davy.

3.19 With respect, while the learned judge was undoubtedly correct that the validity of the hypothecations was founded upon the apparent authority of the managing director, the English court did not, contrary what his Honour appeared to suggest, hold that that appearance of authority arose out of the delegation provision. Instead, the English court had viewed the managing director's apparent authority as a function of his *office*. As Sargant LJ explained in the later decision of *JC Houghton and Co v Northard, Lowe and Wills Ltd*[31] ("*Houghton*"):[32]

> [T]here the agent whose authority was relied on had been acting to the knowledge of the company as a managing director, and the act done was one within the ordinary ambit of the powers of a managing director in the transaction of the company's affairs. It is I think clear that the transaction there would not have been supported had it not been in this ordinary course, or had the agent been acting merely as one of the ordinary directors of the company. I know of no case in which an ordinary director, acting without authority in fact, has been held capable of binding a company by a contract with a third party, merely on the ground that that third party assumed that the director had been given authority by the board to make the contract.

30 *Blasco, Martinez Gemma v Ee Meng Yen Angela* [2020] SGHC 247 at [27]–[28].
31 [1927] 1 KB 246.
32 *JC Houghton and Co v Northard, Lowe and Wills Ltd* [1927] 1 KB 246 at 267.

3.20 The assumption of regularity made on the basis of the delegation provision was the operationalisation of a rule of company law developed at common law known as the "indoor management rule".[33] This rule provides an irrebuttable[34] presumption, in favour of an outsider dealing with the company in good faith, that acts of internal management have been duly performed. As Lord Simmonds explained in *Morris v Kanssen*,[35] the rule is "designed for the protection of those who are entitled to assume, just because they cannot know, that the person with whom they deal has the authority which he claims".[36]

3.21 The indoor management rule cannot, however, give rise to apparent authority without more. Company directors are, as a general rule, required to act collectively and ordinary directors are not, by virtue only of the fact of their appointment to the board, empowered individually to bind the company.[37] The indoor management rule does not alter this truism. This was recognised by in *Biggerstaff* itself.[38] Hence, the indoor management rule could not validate the contract in *Houghton* because the director who had purported to commit the company to the transaction was an ordinary director who had not been appointed to any office or delegated any power.

PARTNERSHIP LAW

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3.22 After two years with few partnership law decisions being handed down by the Singapore courts, there were several decisions in 2020 which generally involved the application to the facts of established principles.

33 This is also known as the "Rule in *Turquand's* case" after the decision in *Royal British Bank v Turquand* (1856) 119 ER 886.
34 I D Campbell, "Contracts with Companies" (1960) 76 LQR 115 at 116.
35 [1946] AC 459.
36 *Morris v Kanssen* [1946] AC 459 at 475.
37 Peter Loose, Michael Griffiths & David Impey, *The Company Director – Powers, Duties and Liabilities* (Jordan Publishing, 12th Ed, 2015) at para 4.58.
38 *Biggerstaff v Rowatt's Wharf Ltd* [1896] 2 Ch 93 at 104.

I. Partnership property

3.23 *Koh Lian Chye v Koh Ah Leng*[39] ("*Koh Lian Chye*") was a dispute between two brothers over the ownership of a shophouse unit in Bukit Batok ("the Property"). Their father and the elder brother (the first defendant or "D1") had been in partnership since 1975. The firm carried on its business at the Property, which was initially leased from the Housing and Development Board ("HDB"). In 1996, the HDB offered to sell the Property, which was then purchased in the names of the father, D1 and the younger brother (the first plaintiff or "P1") as legal joint tenants, who jointly took out a mortgage loan of $570,000 to finance the purchase. P1, who was not a partner in the firm, later used $77,000 of his own Central Provident Fund ("CPF") money to reduce the mortgage loan, and the balance of the loan was discharged by the father in 2005. The current dispute arose after the father passed away in 2014. A number of alternative legal grounds were advanced by the parties in support of their respective claims, including constructive trust and proprietary estoppel, which are outside the scope of this chapter. However, D1 put forward as an alternative argument that the Property was partnership property, and hence that it belonged beneficially to him as the surviving partner. This partnership law claim, discussed below, was rejected by Mavis Chionh JC on the facts. The case was eventually decided on the basis of a resulting trust.

3.24 The judge first clarified that even if the Property was a partnership asset, the death of one partner would not automatically result in the surviving partner becoming entitled to the deceased's beneficial interest. A partnership is not a separate legal entity; hence, the partnership assets – including the beneficial interest in the Property – would be jointly owned by the partners in undivided shares. Absent contrary agreement, individual partners would only be entitled to their share of the net proceeds of sale of the Property upon winding up.[40] The property law doctrine of survivorship, under which the interest of a deceased joint tenant accrues to the surviving joint tenants, is presumed not to apply to partnership property (that is, partners are presumed to be tenants in common of the beneficial interest), and here, there was nothing to rebut that presumption. Thus, even if the Property was a partnership asset, the father's interest in it would not pass to D1 *qua* partner upon the father's demise.

3.25 As to whether the Property was a partnership asset, the court's understanding was that D1 made his argument in two ways. The first

39 [2020] SGHC 131.

40 *Chiam Heng Hsien v Chiam Heng Chow* [2015] 4 SLR 180 at [117].

was that the Property was held by the three registered proprietors on a common intention constructive trust for the firm. This was premised on an alleged unwritten agreement between the father and P1 that the latter's interest in the Property was held solely as a matter of convenience and that the partnership would be responsible for the mortgage repayments. The court rejected the existence of such an agreement, which was inherently unlikely in view of the fact that P1, a non-partner, was a joint purchaser of the Property and had used his own money to reduce the mortgage loan. (Parenthetically, while the common intention of the partners is the basic test of whether an asset is partnership property, it is not strictly necessary to prove a constructive trust. The effect of it being partnership property is that the asset is held on trust for the partnership as mentioned in the preceding paragraph).

3.26 D1's second argument rested on s 21 of the Partnership Act,[41] which lays down a rebuttable presumption that property bought with money belonging to a partnership "is bought on account of the firm" and hence belongs beneficially to it. D1 asserted that the father had repaid the mortgage loan using the firm's trading profits. However, as pointed out by the judge, profits distributed by the firm to its partners no longer belong to the firm, and there was insufficient evidence that repayments were made with the firm's money. Moreover, the s 21 presumption was rebutted on the facts. Even if the firm's money was used, it would have repaid only a part of the loan, with the remainder being discharged by payments from the father's personal funds and from P1's CPF money. Other facts also militated against an intention that the Property was to be a partnership asset. For example, it was not recorded as an asset in the firm's balance sheets prior to the dissolution. And the firm's discharge of outgoings on the Property was ambivalent as it could be regarded as payment for the use rather than as an indication of beneficial ownership. Not least of all, if P1 had no beneficial interest in the Property, his $77,000 mortgage repayment would have been "downright peculiar".[42]

3.27 The s 21 presumption was also held to be rebutted in a different 2020 case, *Lim Kiat Seng v Lim Seng Kiat and Lim Boon Tiong*[43] ("*Lim Kiat Seng*"), another property ownership dispute where the facts were rather similar to those in *Koh Lian Chye*.[44] A partnership of a father and two sons carried on a retail business in premises at Everton Park leased from the HDB. When in 1995, the HDB offered to sell them the property, they purchased it as joint tenants. At the same time, the second brother's

41 Cap 391, 1994 Rev Ed.
42 *Koh Lian Chye v Koh Ah Leng* [2020] SGHC 131 at [76].
43 [2020] SGDC 191.
44 See para 3.23 above.

son ("the nephew") was brought in as the fourth co-purchaser, in order to facilitate the obtaining of a mortgage loan. The father subsequently withdrew from the partnership but remained a joint tenant until his death in 2001. Some ten years after that, the property was sold and the proceeds shared equally among the two brothers and the nephew. Despite this, several years later the first brother brought the current proceedings against the second brother and the nephew, claiming that the latter had not been entitled to any interest in the property. His argument was that it was a partnership asset, and the nephew was clearly not a partner. The District Court rejected the plaintiff's claim: while the court did not make a finding as to whether the property was bought with partnership money, it held that s 21 was displaced by a contrary intention. An appeal to the High Court was dismissed.

3.28 Thus, in both the cases under review here, a property used in the business of a partnership was jointly purchased, with mortgage financing, by a group comprising the partners of the respective firm and a non-partner. Both courts rejected the argument that the involvement of the non-partner was merely nominal: he had undertaken substantive obligations under the mortgage loan (and, in *Koh Lian Chye*, had contributed personal funds). In these circumstances, it is not surprising that the presumption that it was partnership property was held to be rebutted in both decisions.

II. Dissolution of partnership

A. Authority and duties of partners

3.29 In *Betty Lena Rewi v Brian Ihaea Toki*[45] ("*Rewi v Toki*"), four persons (who were two married couples) formed a partnership to own and charter out an escort vessel known as the MV *Ngati Haka*. A simple Vessel Partnership Agreement was entered into in August 2010 under which the plaintiffs held a 40% share and the first and second defendants held a 60% share. The *Ngati Haka* was registered in the name of the third defendant, a company ("VOM") owned by the first and second defendants, but it was beneficially owned by the partnership. VOM acted as the manager of the vessel for the partnership and on its behalf, entered into charter agreements with VOM's customers. VOM also offered security consultancy services for vessels operating in the Gulf of Aden and East Africa.

45 [2021] 4 SLR 124.

3.30 After disputes arose, the plaintiffs and the defendants mutually agreed to dissolve the partnership in August 2013. It was also agreed that the *Ngati Haka* should be placed for sale on the open market. Despite this, VOM continued to charter out the *Ngati Haka* pending its sale. Following the dissolution, VOM instructed an accounting firm, TKNP International Accounting Services Pte Ltd ("TKNP"), to prepare dissolution final accounts for the partnership up to 31 July 2013, which showed a partnership loss. These accounts were later adjusted by TKNP to take account of the proceeds of the sale of the vessel in September 2017. However, the plaintiffs disputed the accounts, and brought the present High Court proceedings based on two separate grounds. First, that the financial effects of the post-dissolution charters of the vessel should not be included in the final accounts. Second, that the defendants had breached their duties in relation to the sale of the vessel and winding up of the partnership. Chua Lee Ming J found for the plaintiffs on both grounds.

3.31 On the first ground, the court held that the post-dissolution charters effected by the firm's ship manager, VOM, were beyond its authority and hence should not be reflected in the final accounts (these charters were carried on at a net loss).[46] The plaintiffs had not expressly agreed to the charters, and the judge rejected the defendants' argument based on acquiescence and estoppel. The defendant partners also argued that they, and by extension VOM, had authority pursuant to s 38 of the Partnership Act to enter into the charters. Section 38 provides that the partners' authority, and their other rights and obligations, continue after the dissolution "so far as may be necessary to wind up the affairs of the partnership". However, the court disagreed that the charters were necessary for the winding up. Entering into new customer contracts is generally not necessary to wind up a business, and doing so would expose the partners to further losses. The prospect of earning further hire payments to defray the vessel's maintenance costs during the winding-up period was insufficient to make the charters necessary, and in any event, the court found that maintenance costs would have been lower had the vessel been placed in cold lay-up rather than kept in operation. Similar considerations also ruled out the implication of a term which might have allowed the continuation of the business after the dissolution.

3.32 The plaintiffs' second ground was that the defendant partners had breached their duties in relation to the sale of the *Ngati Haka*. The sale took place some four years after the 2013 dissolution (incidentally, a longer period than the duration of the partnership). The defendant partners, who controlled VOM, the vessel's registered owner and manager, undertook to market the vessel and obtained a valuation of

46 *Betty Lena Rewi v Brian Ihaea Toki* [2021] 4 SLR 124 at [55].

US$845,000 from a ship brokerage firm in January 2014. However, they set the asking price at US$2.2m. In September 2014, the brokerage firm informed VOM of an offer of US$1.2m from a Nigerian party, but the defendants considered that US$1.8m would be more acceptable and did not pursue the offer. They were informed of other enquiries in 2015 from potential buyers who considered the asking price too high. By mid-2016, demand for vessels from the oil and gas industry had waned significantly. While the defendants indicated to the broker that they might be prepared to negotiate the price down to US$1.5m, there were no offers. The vessel was eventually sold for US$790,000 in August 2017.

3.33 The court held that the defendants had breached their duty to sell the *Ngati Haka* as soon as they reasonably could in order to wind up the partnership's affairs. It was unreasonable of them not to accept the US$1.2m unconditional offer, and they did not consult the plaintiffs about it. Chua J found that the defendants were motivated by continuing to charter the vessel out, which would also stand to earn revenue for VOM for management fees and security services. His Honour inferred that the eventual decision to sell was taken as a result of lack of demand for charters.

3.34 In remedial terms, the court held that the final dissolution accounts should be drawn up as at 31 January 2015, which was the date by which the vessel would likely have been sold had the defendants accepted the US$1.2m offer, and should value it at that price. The revenue and costs of the post-dissolution charters should also be disregarded for the purpose of these accounts. The plaintiffs' 40% share of the partnership's net assets would therefore reflect these adjustments.

3.35 Partners continue to owe duties to each other even after dissolution until settlement of the firm's affairs, as implied by s 38 and confirmed by the leading case law.[47] The judgment does not in specific terms classify the precise type of duties that were breached, but it seems clear that it was mainly the duty of care and diligence, while the defendant partners' desire to earn revenue for VOM may also suggest a breach of fiduciary duty. One issue that may arise in relation to a partner's duty of care to fellow partners is the applicable standard of care. Although case law is fairly sparse, in England it has been held that a "culpable negligence" standard should be applied to certain types of loss.[48] This issue was not raised in *Rewi v Toki*,[49] but even if the English approach found favour here, the loss involved in this case appears to fall outside

47 *Eg*, *Chan v Zacharia* (1984) 154 CLR 178.
48 *Tann v Herrington* [2009] EWHC 445; [2009] Bus LR 1051.
49 See para 3.29 above.

those categories of loss which attract the "culpable" standard. It would thus fall to be judged by the normal objective standard, which is in effect what the judgment does.

3.36 By way of post-script, the defendants' appeal was dismissed by the Court of Appeal in 2021.[50] That judgment, which essentially upheld the High Court's findings on the breach of duty question, will be noted in next year's Annual Review.

50 *Brian Ihaea Toki v Betty Lena Rewi* [2021] SGCA 37.