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3. AGENCY AND PARTNERSHIP LAW

AGENCY LAW

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3.1 There were two agency cases for the year, both of which turned on the particular facts of each case.

I. Undisclosed principal

3.2 The question whether an apparent party to a contract was in fact not acting personally on its own behalf but was in reality acting as agent for an undisclosed principal is a factual inquiry. That inquiry came before the General Division of the High Court ("High Court (General Division)") in *R Manokaran v Chuah Ah Leng*.[1] The plaintiffs were holiday makers who had booked two-way bus trips from Singapore to Genting Highlands with the defendants. Whilst on the return journey to Singapore, the bus the plaintiffs were travelling on was involved in a road accident and the plaintiffs sustained injuries. The plaintiffs averred that the contract for carriage was executed when the relevant booking forms were signed at the defendants' offices, and claimed damages for breach of the contract. The defendants, however, denied liability on the ground that it was acting as agent for the owner of the bus, having "merely sold tickets on behalf of" the bus owner.[2] If the defendants were indeed the agents of the bus owner for the purposes of the bus journeys, they would not be liable on the contract. This is trite law. As Wright J noted in *Montgomerie v United Kingdom Mutual Steamship Association Ltd*:[3]

> [W]here a person contracts as agent for a principal the contract is the contract of the principal, and not that of the agent; and, *prima facie*, at common law the only person who may sue is the principal, and the only person who can be sued is the principal.

1 [2022] SGHC 39.
2 *R Manokaran v Chuah Ah Leng* [2022] SGHC 39 at [83].
3 [1891] 1 QB 370 at 371.

3.3 In the present case, a clause found in the "Terms and Conditions" that was printed on the reverse side of the booking form stated that:[4]

> The Company and/or its associated agents act only in the capacity of agent for passengers in making all arrangements for transportation and accommodation. All receipts and tickets issued by the Company are subject to the terms and conditions stipulated by the supplier.

It was common ground that the "Company" in the clause was a reference to the defendants. The court held that the words of the clause clearly suggested that while the defendants acted as agent for the *passengers*, they were not agents for the transport supplier, that is, the bus owner. A reasonable reader would thus have understood that the defendants were in fact not agents for the bus owner. The logical inference, the court concluded, was that the defendants "undertook to perform the transportation service itself and [were] merely sub-contracting the work to another party".[5] This conclusion was buttressed by the evidence, which showed that the booking forms functioned as bus tickets which entitled the plaintiffs to board the bus. This clearly established that the plaintiffs were unaware of the identity of the transport supplier. Accordingly, the defendants were the parties to the contract for carriage and liable if breach could be established.

3.4 The court further observed that even if the defendants were agents for the bus owner, the latter would have been an *undisclosed principal*. The Court of Appeal in *Family Food Court v Seah Boon Lock*[6] considered the doctrine of the undisclosed principal and described its effects as follows:[7]

> The existence of the principal does not have to be known by the third party, and the third party has no obligation or duty to inquire as to whether there is an undisclosed principal. Since the third party is of the view that he is dealing only with the agent, and since the agent does not contract in a representative capacity, the agent clearly assumes personal liability under the contract. So long as the agent executes a deed or enters into a contract in his own name, he is personally liable upon it, regardless of whether he discloses the name and the existence of his principal. Therefore, the agent can sue or be sued on the agreement since the agent contracts personally in the situation of an undisclosed principal and the principal's existence is, *ex hypothesi*, unknown to the third party.

3.5 Thus, in the instant case, the defendants would not be able to escape contractual liability as it was well within the plaintiffs' rights, as

4 *R Manokaran v Chuah Ah Leng* [2022] SGHC 39 at [83].
5 *R Manokaran v Chuah Ah Leng* [2022] SGHC 39 at [90].
6 [2008] 4 SLR(R) 272.
7 *Family Food Court v Seah Boon Lock* [2008] 4 SLR(R) 272 at [30].

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the third party, to elect to sue either the agent (the defendants) or the undisclosed principal (the bus owner) under the contracts. Although the point did not arise to be considered, it is apt to note that on the facts of the present case, the doctrine of the undisclosed principal was unlikely to apply in any case. If the doctrine of undisclosed principal applied, the undisclosed principal itself would equally be entitled to sue the third party. The right of the undisclosed principal to intervene in its agent's contract is, however, premised on it being shown that the agent had "[acted] throughout as [the undisclosed principal's] agent".[8] This, as Lord Lloyd of Berwick noted in *Sin Yiu Kwan v Eastern Insurance Co Ltd*,[9] requires two things. First, the contract must have been made by the agent acting within the scope of its *actual authority* on the undisclosed principal's behalf; and secondly, that agent, when entering into the contract, must have *intended* to act on the principal's behalf.[10] In the present case, the court had concluded that the defendants had neither express actual authority nor implied actual authority to act as the bus owner's ticketing agent for the journey undertaken by the plaintiffs. In the circumstances, therefore, as that central element was absent, there would have been room for the application of the doctrine. Be that as it may, the point need not be addressed as, even if the doctrine had applied, the court's conclusion would not have been affected.

II. The existence of agency

3.6 A different factual inquiry arose before the High Court (General Division) in *Commodities Intelligence Centre Pte Ltd v Mako International Trd Pte Ltd*.[11] In this second case, the specific question was whether an agency relationship subsisted between the very parties to the contract. The plaintiff and the defendant had entered into an agreement, the purpose of which was for the latter to assist the former in the development of its business in the Indonesian commodities market. Pursuant thereto, the defendant procured a back-to-back trade in nickel ore for the plaintiff to participate in as a middleman. The transaction involved the plaintiff contracting for the supply of nickel ore from an Indonesian company, which it would then on-sell at a profit to a third party.

3.7 The transaction did not proceed as planned as there were delays in the shipping of the nickel ore as well as issues as to the sufficiency and

8 M P Furmston, *Cheshire, Fifoot, and Furmston's Law of Contract* (Oxford University Press, 17th Ed, 2017) at p 560.

9 [1994] 2 AC 199 at 207.

10 See the classic statement of the doctrine in *Sin Yiu Kwan v Eastern Insurance Co Ltd* [1994] 2 AC 199 at 207, *per* Lord Lloyd of Berwick.

11 [2022] 5 SLR 837.

specifications of the ore supplied. These issues resulted in losses suffered by the plaintiff. However, instead of suing the Indonesian company for breach of contract which was, in the court's view, "the commercially simpler course",[12] the plaintiff sought instead "to pin the responsibility for such losses"[13] on the defendant. The plaintiff's case against the defendant rested on the premise that the defendant was its agent, and that it thus owed fiduciary duties to the plaintiff. The plaintiff claimed that the defendant had breached these fiduciary duties by, *inter alia*, causing the plaintiff to enter in the back-to-back contracts to buy and on-sell the nickel ore which were allegedly illegal, and failing to ensure that the source as well as the supplier of the nickel ore were reliable.

3.8 The court concluded on the evidence that the defendant was not "in any legally meaningful sense"[14] an agent of the plaintiff. Whether the relationship between parties is one of agency is dependent on an assessment of the intention of the parties deduced from the nature and terms of the contract and the surrounding circumstances.[15] Beginning thus with the written agreement between the plaintiff and the defendant, the court noted that the descriptors of the parties in the agreement as "principal"/"client" and "agent"/"broker" (as translated from Chinese, which was the language in which the agreement was written) were unhelpful because "labels neither conclusively indicate nor preclude the existence of particular legal relationships".[16] Examining the agreement, the court found that the arrangement envisaged by the parties was for the defendant to recommend a supplier of commodities from Indonesia, and for the plaintiff to find an end-buyer for the same. This arrangement meant that the scope of work which the defendant contracted to undertake was especially narrow. The court accepted that this fact in itself would not preclude an agency relationship from arising because "agents come in all shapes and sizes".[17] However, it was the plaintiff's own admission that it had not conferred on the defendant any authority to enter into or execute any agreement on its behalf. This lack of power on the part of the defendant to bind the plaintiff to contracts was critical as it meant that the defendant, even if described or labelled as an "agent", did

12 *Commodities Intelligence Centre Pte Ltd v Mako International Trd Pte Ltd* [2022] 5 SLR 837 at [14].
13 *Commodities Intelligence Centre Pte Ltd v Mako International Trd Pte Ltd* [2022] 5 SLR 837 at [14].
14 *Commodities Intelligence Centre Pte Ltd v Mako International Trd Pte Ltd* [2022] 5 SLR 837 at [38].
15 *Maritime Stores Ltd v H P Marshall & Co, Ltd* [1963] 1 Lloyd's Rep 602 at 608.
16 *Commodities Intelligence Centre Pte Ltd v Mako International Trd Pte Ltd* [2022] 5 SLR 837 at [40].
17 *Commodities Intelligence Centre Pte Ltd v Mako International Trd Pte Ltd* [2022] 5 SLR 837 at [45].

not fall within "the paradigmatic definition of the term 'agency'".[18] Thus, even if the defendant could be described loosely as acting as an "agent" of some sort for the plaintiff, it could not be presumed to owe fiduciary obligations to the latter. The court stated:[19]

> … Non-paradigm agents may well be fiduciaries, but, … our intuitive sense that 'agency' presumptively entails the imposition of fiduciary obligations relates specifically to agents with the power to change their principals' legal position. That is, to bind the principal to contracts; to dispose of the principal's property; and generally, to expose the principal to liability. This is not the only characteristic of a fiduciary, or even necessarily a definitive one, but it is a strong *indicium* because it places the party liable to have his legal position changed in a uniquely vulnerable position.
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> … [A] party who grants discretionary power to another person to legally act on his behalf has to bear an internal risk that his representative may exercise such power to bind him to a detrimental position. This risk is inherent to the very conferral of discretionary powers, and it is not easily mitigated. …
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> In the face of this, the imposition of onerous fiduciary obligations over the exercise of powers is justified and necessary to mitigate at least some of the internal risks the grantor faces, by deterring the grantee from abusing his …. [emphasis in original omitted]

PARTNERSHIP LAW

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I. Partners *inter se*

3.9 *Ng Lim Lee v Lee Gin Hong*[20] ("*Ng Lim Lee*") concerned claims between the estates of two partners who were mother and son, both now deceased. Lee Huat Company was a profitable business in motorcycle sales and repairs, which had been founded by a father who was later joined in partnership by one of his sons (the plaintiff and appellant in the present proceedings). After the father's death in 1981, the mother was

18 *Commodities Intelligence Centre Pte Ltd v Mako International Trd Pte Ltd* [2022] 5 SLR 837 at [46].
19 *Commodities Intelligence Centre Pte Ltd v Mako International Trd Pte Ltd* [2022] 5 SLR 837 at [49]–[51].
20 [2022] SGCA 47.

registered as a partner with the son. While it was agreed to be an equal partnership, the trial court found that in reality the son ran the business and the mother's role in the business was minimal; she did not receive her share of the profits over the years, being paid an allowance of $1,000 per month. In 2014, the son was incapacitated by a stroke and one of his own sons ("Jeffrey") took over the running of the business; when the mother died later that year, the partnership was dissolved. At such time, the firm owed some $700,000 to United Overseas Bank ("UOB") under an overdraft facility. In 2016, the plaintiff (through another son, Roland, as his litigation representative) sued his mother's estate, represented by her two daughters as executors ("the mother's estate"). The claim alleged that the partnership was insolvent and sought indemnity for a half share of the UOB overdraft liability, on the basis of the mother's responsibility as an equal partner. The mother's estate denied liability and also counterclaimed against the plaintiff, asserting that the partnership was solvent and seeking a half share of its assets. The High Court rejected the plaintiff's claim and allowed the counterclaim.[21] It found that the plaintiff had treated the partnership moneys as "his own piggy bank" and had overdrawn sums which far exceeded the amount due under the overdraft facility.[22] An appeal was brought by the plaintiff's litigation representative as the plaintiff had by that time also passed away. The Court of Appeal affirmed the trial judge's findings of fact and dismissed the plaintiff's appeal.

3.10 The case turned mainly on questions of fact and each side engaged experts to produce reports on the partnership's accounts. Both the trial and appellate courts preferred the evidence of the expert engaged by the mother's estate, and found that the partnership was solvent at the date of dissolution. On that basis, there was no net liability owing to UOB; hence, the plaintiff's claim for a half share of it was unsustainable.[23] The counterclaim alleged that the plaintiff had used substantial partnership funds over a long period for his personal purposes, including to invest in real properties, in breach of his fiduciary duties as a partner. The plaintiff did not deny that he had withdrawn moneys from the firm for purposes unrelated to the partnership but pleaded that he had deposited an even greater amount of his own money back into the firm. However, the plaintiff's expert had calculated these withdrawals and deposits on a "running account" basis, which was wrong in principle. Funds withdrawn for the plaintiff's personal investments were misapplications in breach of duty; hence, any profits made on such investments belonged

21 [2020] SGHC 159.
22 *Ng Lim Lee v Lee Gin Hong* [2022] SGCA 47 at [3].
23 *Ng Lim Lee v Lee Gin Hong* [2022] SGCA 47 at [71].

to the partnership and could not be credited to him as part of the moneys refunded.[24]

3.11 Further, it was argued (albeit for the first time in closing submissions at the trial) that the mother had known of, and expressly or impliedly approved, the plaintiff's withdrawals. The Court of Appeal rejected this defence of consent for a number of reasons.[25] Not only had it not been pleaded, but the evidence of the daughters to the contrary effect had also not been challenged.

II. Dissolution of partnership

3.12 *Tan Huah Sun v Tan Huah Tai*[26] ("*Tan Huah Sun*") raised a short point about the appointment of a receiver in the context of a partnership dissolution. The firm, an engraving business, had three partners, comprising two brothers (the plaintiff and the first defendant) and the latter's wife (the second defendant). The business was run by the wife, and the plaintiff brother was not actively involved. It was apparently a partnership at will,[27] and the plaintiff eventually gave unilateral notice of dissolution. The other brother initially rejected the notice as he had not consented; however, as Chua Lee Ming J rightly pointed out, his consent was not required in a partnership formed for an undefined time, and there was no evidence of a contrary agreement. In any event, the firm was later dissolved by a consent order, which appointed the wife to administer the winding up and to produce a partnership final account for the partners. When she had failed to do so after 11 months, the plaintiff brought an action to enforce the consent order; he also complained that his entitlement to a partnership "salary" had been paid not to him but to his mother without his consent.

3.13 Rather than comply with the consent order, the defendants sought the appointment of a nominated accounting firm as "a liquidator or a receiver"[28] and also a stay of proceedings in the plaintiff's action. Chua J declined to grant this relief. First, the Partnership Act 1890[29] contains no power to appoint a liquidator over a partnership; s 39 envisages that the firm will be wound up by the partners or by one of them appointed by the court for that purpose. Alternatively, as a partnership is defined as an "unregistered company" in the Insolvency, Restructuring and Dissolution

24 *Ng Lim Lee v Lee Gin Hong* [2022] SGCA 47 at [41] and [68].
25 *Ng Lim Lee v Lee Gin Hong* [2022] SGCA 47 at [75(a)]–[75(h)].
26 [2022] 5 SLR 175.
27 Partnership Act 1890 (2020 Rev Ed) s 32(1)(*c*).
28 *Tan Huah Sun v Tan Huah Tai* [2022] 5 SLR 175 at [8].
29 2020 Rev Ed.

Act 2018[30] ("IRDA"), it may be wound up by the court under the IRDA,[31] in which event a liquidator may be appointed. However, the defendants had not applied under the IRDA, which is a more suitable route for creditors rather than partners. Moreover, liquidation was unnecessary as the wife had already been appointed to conduct the winding up under the Partnership Act and there was no apparent reason why she could not do so. Any dispute over the partnership accounts could be resolved within that process.

3.14 Secondly, the court also rejected the request to appoint a receiver.[32] A receiver is typically appointed where there is an interim need to preserve property pending final resolution of a dispute, or where a partner is delaying or preventing the winding up. This was not the situation on the facts, and any dispute with the plaintiff could be resolved by the court in the normal partnership winding-up process. In fact, Chua J suggested that the defendants' desire for a receiver was connected with their request for a stay of proceedings, to prevent the plaintiff pursuing his claim for salary. The court held that such a reason would be an abuse of process.

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30 See s 245(1) of the Insolvency, Restructuring and Dissolution Act 2018.

31 Section 124(1) read with s 246(1) of the Insolvency, Restructuring and Dissolution Act 2018.

32 *Ie*, pursuant to s 4(10) of the Civil Law Act 1909 (2020 Rev Ed) and para 5 of the First Schedule to the Supreme Court of Judicature Act 1969 (2020 Rev Ed).