Case Note

THE APPARENT AUTHORITY OF THE UNAUTHORISED AGENT

Kelly v Fraser
[2012] 3 WLR 1008

Can an agent who is not authorised to contract for a company nevertheless be clothed with ostensible authority to communicate the principal's approval? Conventional understanding of apparent authority may suggest not, for the representation as to the principal's approval may be no different from the agent's self-authorisation. However, the controversial case of *First Energy v Hungarian International Bank Ltd* [1993] 2 Lloyd's Rep 194 ("*First Energy*") has held otherwise. Although the correctness of *First Energy* has been doubted, it has recently been unequivocally affirmed by the Privy Council in *Kelly v Fraser* [2012] 3 WLR 1008. This note considers how *Kelly v Fraser* may affect the reception of *First Energy* in Singapore.

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I. Setting the scene – *First Energy* and *The Ocean Frost*

1 It is a rudimentary principle of agency law that an agent who acts without or beyond his actual authority may still bind the principal if those acts fall within his apparent authority. Apparent authority is established if the principal by words or conduct represents that the agent is authorised to act and a third party relies on such representation without notice of the agent's lack of authority. In the context of companies, there is the added requirement that the representation must be made by an authorised person since a company, not being a natural person, can only act through human agents. However, who this person ought to be is not always obvious. In this connection, a particularly knotty problem arises when the agent purporting to make the representation is not himself authorised to approve the transaction in question.[1]

1 This is not a problem confined to corporations since the agent of any principal may purport to make representations on his principal's approval. However, the (*cont'd on the next page*)

2 The paradigm facts where this problem arises usually involve an agent with neither actual nor ostensible authority to transact on behalf of the company, but who then purports to inform the third party that the company has approved the transaction. Can a third party, whilst fully apprised of the agent's lack of transactional authority, seek to bind the company on the strength of the agent's representation? In *Armagas Ltd v Mundogas SA*[2] ("*The Ocean Frost*"), the House of Lords expressed great scepticism for such a proposition. It reasoned as follows: if an agent has no actual or ostensible authority to contract, to say that he nevertheless has ostensible authority to communicate the principal's approval is effectively the same as saying that he has ostensible authority to contract. To hold that a third party may rely on such a representation of approval would therefore offend the fundamental principle that there is no concept of a "self-authorising agent" at common law. However, this negative stance has not deterred subsequent courts from taking a contrary view. In the famous but controversial decision of *First Energy v Hungarian International Bank Ltd*[3] ("*First Energy*"), the English Court of Appeal found that an agent whose lack of transactional authority was known to the third party could nevertheless bind the principal by representing that the principal has approved the transaction in question. In that case, the agent was a senior manager at the only branch office of the defendant bank. Although he had informed the plaintiff that he had no authority to approve certain interim finances, he subsequently confirmed that the defendant had approved those transactions. The court found, distinguishing *The Ocean Frost*, that the agent as the highest-ranking personnel at the branch had the apparent authority to make representations of approval. There was, in the court's view, no reason why a principal may not *only* delegate to an agent the authority to communicate his approval without also delegating to the same agent the authority to approve that transaction.[4] In so holding, the court was clearly influenced by considerations of commercial reality: it would defeat the very purpose of setting up a branch if its customers were expected to always seek the direct approval of the head office.[5] However, *First Energy* has been criticised as a decision that was irreconcilable with *The Ocean Frost*, and perhaps also mistaken on the ground that:[6]

problem is more acute for corporate principals since the principal (or company) cannot act by "itself" except through some human agent.

2 [1986] 1 AC 717.

3 [1993] 2 Lloyd's Rep 194.

4 *First Energy v Hungarian International Bank Ltd* [1993] 2 Lloyd's Rep 194 at 203, *per* Steyn LJ, citing Brown-Wilkinson LJ in *Egyptian International Foreign Trade Co v Soplex Wholesale Supplies Ltd (The Raffaella)* [1985] 2 Lloyd's Rep 36 at 43.

5 *First Energy v Hungarian International Bank Ltd* [1993] 2 Lloyd's Rep 194 at 204, 206 and 207–208.

6 Francis M B Reynolds, "The Ultimate Apparent Authority" (1994) 110 LQR 21 at 24. See also Tan Cheng Han SC, *The Law of Agency* (Academy Publishing, 2010)

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> … to allow a person known to have no authority in effect to give himself authority by wrongly purporting to notify a decision of someone else that the act is authorised is virtually to abandon the idea that the doctrine of apparent authority rests on manifestation by the principal.

Noting the criticisms levelled at *First Energy*, the Singapore Court of Appeal refrained from committing to any firm view as to its correctness in *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd*[7] ("*Skandinaviska*"), but highlighted the doctrinal difficulties that would have to be overcome before the case could be regarded as good law in Singapore. By contrast, the Privy Council has unequivocally affirmed *First Energy* in the recent decision of *Kelly v Fraser*.[8] This note sets out the facts and holdings of *Kelly v Fraser* and considers how it may affect the reception of *First Energy* in Singapore.

II. *Kelly v Fraser – First Energy* affirmed

3 The defendant joined a Jamaican company ("the company" or "ILI") as its president and chief executive in 2000 and participated in its salaried staff pension plan ("the ILI Plan"). Having accrued some contributions under the pension scheme of his previous employee, the defendant consulted M, the head of the employee benefits division, to transfer the contributions accrued under that scheme to the ILI Plan. Under the terms of the trust deed constituting the ILI Plan, the discretion to accept funds from other schemes was vested in the trustees *personally*. Thus, no personnel in the employee benefits division (including M) was authorised to approve the transfer. The trustees could, however, delegate the day-to-day administration of the ILI Plan to the employee benefits division and this they did. The defendant's accrued contributions were then credited to the trustees for the ILI Plan but this was done without the trustees' approval or knowledge. Subsequent to that, the defendant received a letter from M "confirming" the transfer. He was also sent periodic statements reflecting the accumulated contributions that included the transferred amount.

4 In 2003, the ILI Plan was terminated following ILI's merger with another company. The trustees learnt of the unauthorised transfer in the course of determining the contributories' entitlements to the surplus of

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at para 05.047, describing *First Energy v Hungarian International Bank Ltd* [1993] 2 Lloyd's Rep 194 as "an example of a hard case possibly making bad law".

7 [2011] 3 SLR 540. See Tracy Evans-Chan & Hans Tjio, "Unusual Apparent Authority and Vicarious Liability" (2012) 128 LQR 27 and Wai Yee Wan, "Fraud, Unauthorised Transactions and Vicarious Liability in Singapore" [2011] JBL 800.

8 [2012] 3 WLR 1008.

the plan and applied to the court for a declaration that they were entitled to determine the defendant's share of the surplus on the basis of his original contributions rather than the accumulated contributions that included the transferred amount. When the matter came before the judicial committee, it was not disputed that the company had no authority of any kind to approve the transfer of contributions so the only issue outstanding was whether the company had the ostensible authority to make representations (through M's "confirmation" letter and the subsequent benefit statements) on the trustees' approval. If it did, the trustees would have been estopped from denying the approval and bound to compute the defendant's share of surplus by reference to the enlarged contributions.

5 At first instance, the trial judge had found that while the company could not have authorised the transfer, it did, as agents appointed to administer the plan, have the usual authority to inform the defendant of the trustees' approval.[9] However, does not such a finding run counter to the very conception of apparent authority? In a unanimous judgment delivered by Lord Sumption, the committee categorically upheld this finding as conceptually sound and consistent with authorities. In its view, *The Ocean Frost* was not authority for the broader proposition that:[10]

> … a person without authority of any kind to enter into a transaction cannot as a matter of law occupy a position in which he has ostensible authority to tell a third party that the proper person has authorised it.

In *The Ocean Frost*, the agent was the defendant's vice-president and chartering manager who the plaintiff knew had no authority to commit the defendant to charterparties. So that was a case where *the facts* precluded the finding of ostensible authority to communicate because "the agent was in reality holding out himself as having authority to do a specific thing that the third party knew he had no general authority to do".[11] Indeed, Lord Keith had in *The Ocean Frost* accepted the conceptual possibility of vesting in an agent the authority to communicate without also conferring on him the authority to transact, though he thought that such occurrences must by their nature be "rare and unusual".[12]

6 Having so construed *The Ocean Frost*, the committee also confirmed that the decision in *First Energy* was entirely consistent with the principle identified in *The Ocean Frost*. In an important passage, Lord Sumption explained how the two cases were to be reconciled:[13]

9 *Kelly v Fraser* [2012] 3 WLR 1008 at [8].
10 *Kelly v Fraser* [2012] 3 WLR 1008 at [12].
11 *Kelly v Fraser* [2012] 3 WLR 1008 at [12].
12 *Armagas Ltd v Mundogas SA* [1986] 1 AC 717 at 777.
13 *Kelly v Fraser* [2012] 3 WLR 1008 at [15].

> Lord Keith's speech remains the classic statement of the relevant legal principles. An agent cannot be said to have authority *solely* on the basis that he has held himself out as having it. It is, however, perfectly possible for the proper authorities of a company (or, for that matter, any other principal) to organise its affairs in such a way that subordinates who would not have authority to approve a transaction are nevertheless held out by those authorities as the persons who are to communicate to outsiders the fact that it has been approved by those who are authorised to approve it or that some particular agent has been authorised to approve it. These representations which, if made by some one held out by the company to make representations of that kind, may give rise to an estoppel. Every case calls for a careful examination of its particular facts. [emphasis in original]

7 On this reasoning, *First Energy* did not contravene the principle in *The Ocean Frost* because it did *not* involve a "self-authorising agent". Rather, it was a case where the principal had, through its manner of organisation, held its agent out as having the authority to communicate its approval.

8 Interestingly, Lord Sumption also pointed out that it is not – contrary to Lord Keith's prediction in *The Ocean Frost*[14] – at all uncommon for such holding out to occur. The company secretary is an obvious and common example of a company officer who would often have both actual and ostensible authority to communicate the board of directors' decisions even if he may not be authorised to make executive decisions by himself.[15] In "bureaucratically complex organisations and in the case of routine transactions", the "ordinary authority" to communicate approvals may be distributed even more widely so that it would not at all be unusual for an organisation to restrict the approval authority to a small number of very senior officers but appoint a much larger group of subordinates to communicate their approvals.[16]

9 Applying the law to the facts, the judicial committee had no difficulty in holding the trustees bound by the company's communications to the defendant. Indeed, the committee regarded this to be a particularly appropriate case for applying the principle in *First Energy* because while the trustees of pension plans were clearly the decision makers, it was not their usual practice to communicate directly with the beneficiaries.[17] Instead, it was more usual for the company to be administering the plan as agent for the trustees. To discharge those

14 *Armagas Ltd v Mundogas SA* [1986] 1 AC 717 at 777.

15 *Kelly v Fraser* [2012] 3 WLR 1008 at [13]. A point also made by the English Court of Appeal in *First Energy v Hungarian International Bank Ltd* [1993] 2 Lloyd's Rep 194 at 204 and 206.

16 *Kelly v Fraser* [2012] 3 WLR 1008 at [13].

17 *Kelly v Fraser* [2012] 3 WLR 1008 at [16].

functions effectively, it was necessary for the company to have had actual and ostensible authority to communicate the trustees' decisions to its employees. Against this background, the defendant had not only acted reasonably in relying on the company's representations, but had clearly suffered a detriment as a result. Had he not been told that the transfer was approved, he would most certainly have taken steps to either persuade the trustees to regularise the transfer or put the funds to other use. The loss of a chance to take these steps was a sufficient detriment for establishing an estoppel against the trustees.[18]

10 The decision in *Kelly v Fraser* is significant for at least two reasons. First, it rightly confirmed that there is no legal or conceptual impossibility in vesting an agent with *only* the authority to communicate a decision. A third party who knows of the agent's limited authority may rely on his representation provided the agent reasonably appears, by reason of the principal's operational structure, to have the authority to make such representations. There is no conceptual incongruity inherent in such a situation because the source of the agent's apparent authority (to make representations of approval) is not founded in his own representation but in the principal's conduct. The facts of *Kelly v Fraser* fittingly bear out the correctness of this holding. It is a striking example of a principal (*viz*, the trustees) deliberately adopting an operational structure that involves delegating to intermediaries (who were plainly not the decision makers) the authority to communicate its decisions to third parties. There is no reason why the principal should not be bound by the representations made by these intermediaries in the ordinary course of business.

11 However, to accept that the conceptual distinction between the two types of authority (*ie*, to transact and to communicate approval) is not to exclude the possibility that there may be situations where such a distinction cannot properly be drawn because to do so would be to allow the agent to self-authorise. Whether or not this is so is, as Lord Sumption explained in *Kelly v Fraser*,[19] a *question of fact* rather than the application of strict legal rules.

12 Secondly, by clarifying the absence of any conceptual impediment, *Kelly v Fraser* correctly places the spotlight on the *conduct* or *circumstances* that may cloak an agent with the apparent authority to communicate. In *The Ocean Frost*, Lord Keith could be understood[20] to

18 *Kelly v Fraser* [2012] 3 WLR 1008 at [19].

19 See passage cited in para 6 above.

20 *Armagas Ltd v Mundogas SA* [1986] 1 AC 717 at 777. In this context, Lord Keith was discussing the "ostensible specific authority to enter into a particular transaction" in a situation where the agent was known to have no general authority to contract. Despite the use of this phrase, his Lordship's observations (at 777–779) when read as a whole suggest that he also had in mind the ostensible specific

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have suggested that the apparent authority to communicate a principal's approval could not be inferred *only* from the general authority that inheres in an agent's position when that agent was known to have no general authority to contract, and also that such authority was unlikely to arise in one-off transactions. On this view, the circumstances that may confer on the agent the authority to communicate will be rather limited. It may only arise (if at all) where the principal has expressly represented to the third party that the agent has the authority to communicate, or where the principal has acquiesced in a course of dealing that has the effect of conferring on the agent such apparent authority.

13 However, the analysis in *Kelly v Fraser* suggests that these constraints, while relevant, are not inevitable. As the facts of the case demonstrate, the authority to make representations of approval may be implicit in the general or positional authority conferred on an agent so long as such general authority is known or appears to include the authority to make such representations. The particular *functions* or *responsibilities* of that agent will have to be closely and objectively examined to determine if such is indeed the case. This means that in general, the ostensible authority to make representations on the principal's approval is established in much the same way as other forms of ostensible authority, *viz*, by (a) the principal's direct representation to the third party; (b) the general authority conferred on the agent by his position or appointment; and (c) a previous course of dealing that the principal has acquiesced in.

III. *First Energy* in Singapore

14 In *Skandinaviska*, the Singapore Court of Appeal accepted the possibility that *First Energy* might be inconsistent with *The Ocean Frost*; hence, its correctness was still open to question.[21] Read as a whole, however, one may reasonably surmise that the court's analysis favoured a benign construction of the case. It noted, in particular, that *First Energy* could be reconciled with *The Ocean Frost* if it were understood as a case where the agent did (by reason of his wide-ranging powers) have ostensible authority to make the *specific* representation about the principal's approval.[22] On this interpretation, *First Energy* was really a situation where the principal had held the agent out as a person

authority *to communicate the principal's approval*. This interpretation is consistent with the fact that his Lordship was doubtful (at 779) of the conceptual distinction between the authority to transact and the authority to communicate.

21 *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd* [2011] 3 SLR 540 at [57].

22 *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd* [2011] 3 SLR 540 at [47], [51] and [58].

authorised to convey its approval and so "[posed] no doctrinal difficulty".[23] Implicit in this observation is the acceptance of the conceptual distinction between the authority to approve and the authority to communicate such approval. This is consistent with the Privy Council's view in *Kelly v Fraser*, and one that this author respectfully submits to be correct. *The Ocean Frost* and *First Energy* are thus distinguished by facts rather than doctrine.[24]

15 That being the case, the more crucial question is what factual circumstances would justify the inference of the ostensible authority to communicate approvals without falling foul of the prior principle that an agent may not self-authorise. In *Skandinaviska*, the court sought to place some logical limits on the agent's apparent authority by distinguishing between the authority to make general and specific representations. Chan Sek Keong CJ, who delivered the court's only judgment, explained that the authority to make representations on the principal's approval cannot be treated like the authority to make other representations, for it is by its nature one that "goes to the heart of the agency relationship".[25] Though conceptually distinct from the authority to approve, its *effect* is nevertheless the same in that it may be exercised to alter the principal's legal position. That being the case, strong evidence is required to establish the ostensible authority to communicate approvals in situations where the agent is known to have no authority to transact. This means, according to Chan CJ, that the authority to make the *specific representation* as to the principal's approval *cannot* be inferred from the authority to make other *general representations*. This part of Chan CJ's judgment is significant, and merits citing at length:[26]

> While an agent may possess authority (whether actual or ostensible) to make general representations pertaining to a certain transaction (such as, for example, a representation about the condition of the goods involved in a sale transaction), this authority, in a situation where the agent *does not* also possess authority (whether actual or ostensible) to enter into the said transaction on the principal's behalf, *cannot* include authority to make the specific representation that the principal has approved that transaction. To argue that an agent has authority to represent that his principal has approved a transaction – which is, in effect, authority to bind the principal to the transaction – because he (the agent) has authority to make general representations about the transaction and, hence, also has authority to represent that his

23 *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd* [2011] 3 SLR 540 at [58].

24 *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd* [2011] 3 SLR 540 at [47].

25 *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd* [2011] 3 SLR 540 at [59].

26 *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd* [2011] 3 SLR 540 at [59].

> principal has approved the transaction is contrary to the established principle that there cannot be self-authorisation by an agent. Of course, if an agent has been conferred authority, whether actual or ostensible, to make the *specific* representation that his principal has approved a transaction (which authority Mr J was found to have in *First Energy*), he would also have been vested with at least ostensible authority to enter into the transaction on his principal's behalf. But, if the agent merely has authority to make *general* representations about the transaction and does not have any authority (whether actual or ostensible) to enter into the transaction on the principal's behalf, it is not possible for him to give himself such authority by falsely representing that his principal has approved the transaction, which representation carries with it the implication that the principal has given him (the agent) the requisite authority to bind the principal to the transaction. [emphasis in original]

16 It is crucial to note that the distinction that Chan CJ drew in this passage is between the authority to make general and specific *representations*. This may bear some relation to, but must not be confused or conflated with, the distinction that Lord Keith drew between general and specific *authority* in *The Ocean Frost*.[27] As already explained,[28] Lord Keith might be taken there to be saying that the authority to make representations about an agent's authority to communicate cannot be inferred from the *general authority surrounding his position* if he is known not to have the authority to approve the transaction in question. That was thus a reference to the *source* (as opposed to the content) of the authority. Chan CJ, on the other hand, appeared to be looking at the precise *scope* or *content* of the agent's authority. So in proposing that the authority to make general representations may not itself include the authority to make specific representation on the agent's authority to communicate, the learned CJ was not precluding the finding of the latter authority from the agent's general positional authority. Rather, he was highlighting the need to be sure that such positional authority does *by itself* include the authority to make specific representations about the principal's approval. Chan CJ's reference to *First Energy* in the passage just cited adds credence to this interpretation for *First Energy* is itself a case where the authority to communicate was inferred *solely* from the agent's position as senior manager of the branch.[29] So while Chan CJ advocated the need to apply a higher threshold of proof, the learned CJ did anticipate that, consistent with the view taken in *Kelly v Fraser*, an agent with no authority to approve may be clothed with the apparent authority to communicate

27 *Armagas Ltd v Mundogas SA* [1986] 1 AC 717 at 777.

28 See text accompanying n 23 above.

29 *First Energy v Hungarian International Bank Ltd* [1993] 2 Lloyd's Rep 194 at 204 and 206–207.

his principal's approval and such authority may be inferred solely from his position in the company.

17 For the sake of completeness, it is worth noting that Chan CJ had in *Skandinaviska* also highlighted the relevance of assessing the scope of the agent's ostensible authority from an "economic point of view".[30] By this, Chan CJ appeared to be suggesting that the court would be more inclined to find that the agent has ostensible authority to communicate approvals, thereby upholding the contract between the principal and the third party, if by doing so the court was doing no more than giving effect to transactions that the principal would otherwise have entered into in the normal course of business. In such cases, it is unlikely that the enforcement of the transaction will result in exceptionally adverse financial effects for the principal. A case such as *First Energy* (as well as *Kelly v Fraser*)[31] falls squarely into this category. On the other hand, where the agent has acted fraudulently, the court is effectively asked to mediate between two (usually but not always equally) innocent parties as to who should bear the loss occasioned by the fraudster. In such cases, the court may be slow to visit upon the principal the whole of the losses occasioned by the fraudster through the finding of ostensible authority except where such finding is clearly justified. To the extent that these observations suggest that the finding of apparent authority is not based on consent (or holding out) alone, but is dependent also on distributional concerns, they may support the argument that apparent authority is not consensual in rationale but is more akin to the tortious approach of vicarious liability that seeks to allocate loss based explicitly on policy considerations.[32] It is plain, however, that the court did not have in mind such far-reaching consequences.[33] Moreover, it may be said that the consensual model does in fact integrate such distributional concerns because cases involving

30 *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd* [2011] 3 SLR 540 at [60].

31 Indeed, the relevance of this consideration was also acknowledged in *Kelly v Fraser* [2012] 3 WLR 1008, when Lord Sumption observed (at [19]) that the trustees would in any event have had to approve of the plaintiff's transfer if they had been known about it. This comment was, however, made in relation to the "detriment" that the plaintiff suffered in reliance on the company's representation.

32 Such an approach may suggest that the law ought to lean more strongly in favour of the protection of reasonable third-party expectations, an approach that *First Energy v Hungarian International Bank Ltd* [1993] 2 Lloyd's Rep 194 (as well as *Kelly v Fraser* [2012] 3 WLR 1008) appears to exemplify: see Ian Brown, "The Agent's Apparent Authority: Paradigm or Paradox?" [1995] JBL 360 and "The Significance of General and Special Authority in the Development of the Agent's External Authority in English Law" [2004] JBL 391.

33 Indeed, the court proceeded to consider the defendant's liability for vicarious liability on distinctly different legal tests: *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd* [2011] 3 SLR 540 at 574–588.

fraud or deception would typically involve more exceptional facts that render the fact of "holding out" less probable on an objective assessment.[34] So while the fact of deceit (and the consequential allocation of loss between two innocent parties) is not the sole decisive factor,[35] it is clearly a relevant factor.

IV. Concluding remarks

18 *Kelly v Fraser* is an important decision that usefully demonstrates that *First Energy* is defensible at the conceptual level. In principle, there is no reason why the authority to approve a transaction and his authority to communicate such approval should always coincide in one and the same person. Whether an agent is vested with the ostensible authority to do the latter without the former is a question of fact. Such ostensible authority may be established in the usual ways, by the principal's direct representations, or by reference to the agent's position or a previous course of dealing. Although the Singapore Court of Appeal has yet to make any definitive ruling in this regard, its discussion in *Skandinaviska* is in fact largely consonant with the approach taken in *Kelly v Fraser*, but with the added caution not to infer the authority to communicate approval solely from the authority to make general representations about a transaction. The fact that the agent has acted fraudulently beyond his authority is not by itself a conclusive factor, but it would usually call for a closer scrutiny of the facts in deciding whether the principal has in fact held the agent out as being authorised.

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34 See, *eg*, *Armagas Ltd v Mundogas SA* [1986] 1 AC 717 (involving a fairly elaborate scheme to conceal a bogus three-year charterparty), *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd* [2011] 3 SLR 540 (where the fraudulent agent had produced (forged) board resolutions at exceptional speed and even signed loan documents in a car park) and the decision of the Hong Kong Court of Final Appeal in *Thanakharn Kasikorn Thai Chamkat (Mahachon) v Akai Holdings Ltd (No 2)* (2010) 13 HKCFAR 479 (where the transaction in question was wholly unfavourable to the principal).

35 As Chan Sek Keong CJ acknowledged in *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd* [2011] 3 SLR 540 at [60].