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3. AGENCY AND PARTNERSHIP LAW

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AGENCY LAW

3.1 It is an accepted principle in the law of agency that a principal may "ratify" an act that was made purportedly on the principal's behalf but without the principal's authority. The effect of ratification is to render the otherwise unauthorised act valid and effectual as if it had been originally done with the principal's authority.[1] The opportunity to consider the boundaries of the doctrine of ratification arose in the year of review before the Singapore courts in litigation to recover a loan under a written agreement. Although claims for repayment of loans under written agreements are typically not controversial, the present claim was litigated all the way to the Court of Appeal.[2] As the Court of Appeal noted in *Alternative Advisors Investments Pte Ltd v Asidokona Mining Resources Pte Ltd*[3] ("*Asidokona* CA"), the case was "most unusual" because "the named lender … denied any knowledge of the Loan even though there

1 Peter Watts & F M B Reynolds, *Bowstead and Reynolds on Agency* (Sweet & Maxwell, 22nd Ed, 2021) at para 2-047.

2 *Alternative Advisors Investments Pte Ltd v Asidokona Mining Resources Pte Ltd* [2023] 4 SLR 284; *Asidokona Mining Resources Pte Ltd v Alternative Advisors Investments Pte Ltd* [2023] 1 SLR 954; *Alternative Advisors Investments Pte Ltd v Asidokona Mining Resources Pte Ltd* [2024] SGCA 3.

3 [2024] SGCA 3.

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is no dispute that the named borrower … did, in fact, receive the Loan".[4] The facts are indeed convoluted but will only be briefly stated.

3.2 In 2016, Asidokona, the defendant, needed a loan of $2m, and Soh, who was its sole shareholder and director, approached Wong for assistance in procuring the funds. Wong was the principal director and shareholder of the plaintiff, Alternative Advisors Investments ("AAI"). Through JLC Advisors, a Singapore law practice which acted as an intermediary, a loan of $1m was purportedly procured from SSI, a company registered in the British Virgin Islands and a client of JLC Advisors. Wong then raised the balance required from his personal funds and various other individuals. Intriguingly, despite seemingly only providing half the loan amount, SSI was recorded as the sole lender in the loan agreement with Asidokona. Further, although the loan agreement was signed by Asidokona contemporaneously with the fund disbursement seemingly from the client accounts of JLC Advisors, it was only executed on SSI's behalf much later and by Wong. By this time, Asidokona had defaulted on the loan. To further complicate matters, the evidence indicated that, at the time of the transaction, Wong was unaware of the identity of the lender, and SSI was unaware of the loan. After Asidokona's default in 2017, it was decided that Wong should be responsible for recovering the loan. Consequently, in 2018, SSI purported to assign its interest under the loan agreement to AAI. Again, the assignment document was signed by Wong and again allegedly on SSI's behalf. The action against Asidokona was then commenced in July 2018 by AAI as assignee of rights under the loan agreement. Then, in 2021, after several amendments to the pleadings, a director's resolution was passed by SSI's sole director allegedly to ratify, *inter alia*, Wong's execution of the loan and assignment documents and the commencement by AAI of the action. Asidokona submitted that there was no case to answer on the grounds, *inter alia*, that SSI had not authorised the loan agreement and assignment and further that SSI's purported ratification was invalid. AAI's claim was allowed by the General Division of the High Court ("General Division"),[5] which held that SSI's board resolution amounted to effective ratification. The General Division made no finding on the question of Wong's authority to act on SSI's behalf, opining that the issue was moot if the ratification was found to be valid. The Appellate Division of the High Court ("Appellate Division") allowed the appeal on the ratification point.[6] AAI's appeal to

4 *Alternative Advisors Investments Pte Ltd v Asidokona Mining Resources Pte Ltd* [2024] SGCA 3 at [1].

5 *Alternative Advisors Investments Pte Ltd v Asidokona Mining Resources Pte Ltd* [2023] 4 SLR 284.

6 *Asidokona Mining Resources Pte Ltd v Alternative Advisors Investments Pte Ltd* [2023] 1 SLR 954.

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the Court of Appeal was dismissed. The Appellate Division identified three "difficult questions"[7] that arose for decision in the case.

3.3 First, can a principal ratify a contract (in this case, the loan agreement) when the alleged agent did not even purport to act on behalf of the principal?[8] The Appellate Division answered this question in the negative. On appeal, the Court of Appeal agreed, noting as follows:[9]

> [F]or the Ratification to be valid, the principal seeking to ratify, *ie*, SSI, must be capable of ratifying the act or contract. This requires some form of nexus between the principal and the act or contract which the principal seeks to ratify. Such nexus is made out by an act of an agent who purported to act on its principal's behalf …

This requirement for the appropriate "nexus" before an alleged principal is able to ratify an act is long established. Peter Watts and F M B Reynolds, in *Bowstead and Reynolds on Agency*, state categorically that "[t]he only person who has power to ratify is the person in whose name or on whose behalf the act was purported to be done".[10] Indeed, this fundamental condition may well be dictated by the very concept of ratification itself. It is of course trite that the only persons who are able to enforce, or who may be sued on, a contract are the parties to the contract themselves. As Lord Macnaghten noted in *Keighley, Maxsted & Co v Durant*,[11] "[a] stranger cannot enforce the contract, nor can it be enforced against a stranger".[12] However, a person may be made a party to a contract and bound thereby through the act of his agent provided the latter is duly authorised to so act. The doctrine of ratification provides an exception to the requirement for authority in allowing the act of an unauthorised agent to be subsequently ratified by the putative principal. When such ratification occurs, the unauthorised act, in the words of Chief Justice Tindal in *Wilson v Tumman*,[13] "becomes the act of the principal … to the same effect as by, and with all the consequences which follow from, the same act done by his previous authority". Ratification has therefore been

7 *Asidokona Mining Resources Pte Ltd v Alternative Advisors Investments Pte Ltd* [2023] 1 SLR 954 at [1].

8 *Asidokona Mining Resources Pte Ltd v Alternative Advisors Investments Pte Ltd* [2023] 1 SLR 954 at [1].

9 *Alternative Advisors Investments Pte Ltd v Asidokona Mining Resources Pte Ltd* [2024] SGCA 3 at [90].

10 Peter Watts & F M B Reynolds, *Bowstead and Reynolds on Agency* (Sweet & Maxwell, 22nd Ed, 2021) at para 2-062. See also *Eastern Construction Co Ltd v National Trust Co Ltd* [1914] AC 197 at 213.

11 [1901] AC 240.

12 *Keighley, Maxsted & Co v Durant* [1901] AC 240 at 246.

13 (1843) 6 M & G 242.

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described as "equivalent to an antecedent authority"[14] as it "relates back".[15] This "wholesome and convenient fiction"[16] deems the person ratifying to be a party to the contract, even though, given the agent's lack of authority to so commit him to the contract, he was in reality not such a party at the time of contracting. It follows that there will be no contract between the principal and the would-be counterparty unless there is ratification.

3.4 This effect of ratification has attracted opprobrium as it is thought to be inconsistent with the principle of *consensus ad idem* which underpins contract law, and puts the third party "in the power of the principal while the latter decides whether or not to ratify".[17] Nevertheless, ratification has been justified on the basis that its operation in fact gives the third party "exactly what he bargained for",[18] since he would have dealt with the agent in the belief that the latter was authorised to act on the ratifying principal's behalf. Accordingly, it necessarily follows that a person will be able to ratify an unauthorised transaction only if the alleged agent had purported to act on that person's behalf with respect to that transaction.[19] Is it a sufficient response if the purported agent had *intended* to act for the putative principal but "keeps his intention locked up in his own breast"?[20] The answer is provided by Lord Macnaghten in *Keighley, Maxsted & Co v Durant*:[21]

> But ought the doctrine of ratification to be extended to such a case? On principle I should say certainly not. It is, I think, a well-established principle in English law that civil obligations are not to be created by, or founded upon, undisclosed intentions. That is a very old principle. Lord Blackburn … traces it back to the year-books of Edward IV … and to a quaint judgment of Brian C.J: 'It is common learning,' said that Chief Justice, who was a great authority in those days, 'that the thought of a man is not triable, for the Devil has not knowledge of man's thoughts.' … It is, I think, a sound maxim – at least, in its legal aspect: and in my opinion it is not to be put aside or disregarded merely because it may be that … no injustice might be done to the actual parties to the contract by giving effect to the undisclosed intentions of a would-be agent.

14 *Koenigsblatt v Sweet* [1923] 2 Ch 314 at 325.
15 *Koenigsblatt v Sweet* [1923] 2 Ch 314 at 325.
16 *Keighley, Maxsted & Co v Durant* [1901] AC 240 at 247.
17 Peter Watts & F M B Reynolds, *Bowstead and Reynolds on Agency* (Sweet & Maxwell, 22nd Ed, 2021) at para 2-048.
18 Peter Watts & F M B Reynolds, *Bowstead and Reynolds on Agency* (Sweet & Maxwell, 22nd Ed, 2021) at para 2-048.
19 But note the view expressed in Peter Watts & F M B Reynolds, *Bowstead and Reynolds on Agency* (Sweet & Maxwell, 22nd Ed, 2021) at para 2-062 that it is not necessary, at the time of the unauthorised act, for the principal to be known, either personally or by name, to the third party. This view does not appear, however, to be supported by authority.
20 *Keighley, Maxsted & Co v Durant* [1901] AC 240 at 247.
21 *Keighley, Maxsted & Co v Durant* [1901] AC 240 at 247.

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On the facts of the present case, the Appellate Division concluded that, in the face of the "palpably contradictory evidence", it could not "be credibly said that Mr Wong acted or purported to act on behalf of SSI in relation to the Loan"[22] in 2016. It followed thus that it would be incorrect to conclude that SSI was able to ratify the transaction. This must, with respect, be the correct conclusion on the facts and was accordingly affirmed on appeal.[23]

3.5 The second question which the Appellate Division sought to address was whether a principal could ratify a contract when the principal was unable to establish that it had performed the contract in question. This is, with respect, an unusual question as proof of performance by the principal of the contract has never been a condition for valid ratification. In the early authority of *Firth v Staines*,[24] Wright J had stated the "ordinary principles of the doctrine of ratification"[25] as follows:[26]

> To constitute a valid ratification three conditions must be satisfied: first, the agent whose act is sought to be ratified must have purported to act for the principal; secondly, at the time the act was done the agent must have had a competent principal; and, thirdly, at the time of the ratification the principal must be legally capable of doing the act himself.

Additionally, the person ratifying must, at the time of ratification, have "full knowledge of all the essential facts"[27] before he can be bound by his purported ratification. In the present case, the Appellate Division opined that if it could not be shown that the loan was in fact funded by SSI, it would be incorrect to conclude that SSI could ratify the loan.[28] It is clear that if the principal does indeed perform the unauthorised contract, this in itself should, in the absence of evidence of *prior* ratification, amount to effective ratification by conduct as such performance would show unequivocally that the principal has indeed adopted the agent's unauthorised act. However, the tenor of the Appellate Division's judgment suggests that it was concerned with something beyond conduct amounting to ratification. In the court's view, to conclude that SSI could validly ratify the loan, even if it could not be established on the available evidence that SSI had provided the funds for the loan, "could lead to SSI adopting as its own the Loan and the funds disbursed thereunder

22 *Asidokona Mining Resources Pte Ltd v Alternative Advisors Investments Pte Ltd* [2023] 1 SLR 954 at [51].
23 *Alternative Advisors Investments Pte Ltd v Asidokona Mining Resources Pte Ltd* [2024] SGCA 3 at [95].
24 [1897] 2 QB 70.
25 *Firth v Staines* [1897] 2 QB 70 at 75.
26 *Firth v Staines* [1897] 2 QB 70 at 75.
27 *Eastern Construction Co Ltd v National Trust Co Ltd* [1914] AC 197 at 213.
28 *Asidokona Mining Resources Pte Ltd v Alternative Advisors Investments Pte Ltd* [2023] 1 SLR 954 at [32].

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when the funds could very well belong to another".[29] In so concluding, the Appellate Division appears to be imposing an additional requirement of proof of performance of the contract before ratification of the same is valid.

3.6 On this point, the Court of Appeal disagreed with the Appellate Division, stating that there was no such requirement in law.[30] Indeed, any requirement for contractual performance by the putative principal *before* the principal's purported ratification is considered binding and effective will have the untoward consequence of rendering the doctrine of ratification moribund where the contract concerned only requires the principal's performance *after* the third party has performed. In such types of contract, ratification by the principal should mean that the third party will have recourse against the principal for breach if the latter fails to perform. Clearly, if the principal's own performance is required before his ratification is effective, there will simply be no room for the application of the doctrine and the third party will have to premise his claim against the principal on some other ground, such as, perhaps, estoppel.

3.7 The third question was stated by the Appellate Division as follows: where legal action is commenced on a contract that has not been ratified, can ratification thereafter retrospectively remedy the cause of action and so provide legal basis for the action? The retrospective effect of ratification has already been noted. A particularly controversial application of the deemed retrospective effect of ratification occurred in the (in)famous English decision of *Bolton Partners v Lambert*[31] ("*Bolton Partners*"), where ratification of an unauthorised acceptance of an offer was held to be effective even though the third-party offeror had given notice of his withdrawal of the offer prior to the ratification. This decision of the UK Court of Appeal has been trenchantly criticised.[32] Indeed, even Lord Lindley,[33] who was one of the judges in *Bolton Partners*, came to admit later that *Bolton Partners* "presents difficulties" and should perhaps be reconsidered in future in an appropriate case.[34] In the present case, the contract and assignment had yet to be ratified at the point when AAI commenced the action. There was therefore, at that point, no contract that was binding on SSI and nothing that could be assigned.

29 *Asidokona Mining Resources Pte Ltd v Alternative Advisors Investments Pte Ltd* [2023] 1 SLR 954 at [70].
30 *Alternative Advisors Investments Pte Ltd v Asidokona Mining Resources Pte Ltd* [2024] SGCA 3 at [83].
31 (1889) 41 Ch D 295.
32 See discussion in Tan Cheng Han, *The Law of Agency* (Academy Publishing, 2nd Ed, 2017) at para 06-050.
33 In *Fleming v Bank of New Zealand* [1900] AC 577.
34 *Fleming v Bank of New Zealand* [1900] AC 577 at 587

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However, if the retrospective effect of ratification applied to its full logical extent as it was in *Bolton Partners*, it would mean likewise here that, upon valid ratification, the contract and assignment would be resurrected as at the date of action, thus establishing AAI's standing and cause of action. Noting the criticisms of *Bolton Partners,* the Appellate Division observed that "an underlying concern [is] that the retrospective effect of ratification, if given too wide an effect, could give rise to unfairness". The court referred to *Wittenbrock v Bellmer*,[35] a decision of the Supreme Court of California where it was held that the purported ratification of an unauthorised assignment of a chose in action after action on the same had been commenced by the assignee could not relate back to the date of the assignment to support the alleged assignee's action.[36] The Appellate Division endorsed the proposition so stated, stating that it was a fundamental rule of civil procedure that a plaintiff must have a valid cause of action at the time of commencement of action. As there had been no ratification yet at that crucial juncture in time, the action was void *ab initio*. The court stated as follows:[37]

> If the action is void *ab initio*, it follows that an act undertaken post-commencement cannot restore validity to the action. The correct course of action for AAI to have taken … was to have commenced a new action after the Ratification. Alternatively, action should have been commenced only after the Ratification.

3.8 The Court of Appeal considered it unnecessary to comment on this aspect of the Appellate Division's judgment as, in its view, the point was not pleaded. Nonetheless, it is submitted with respect that the Appellate Division's position is consistent with the rules of civil procedure which assesses the legal basis of an action at the date when proceedings are instituted, *ie*, the date of the writ.[38] It must necessarily follow then that if a writ was issued at a time when no cause of action exists, the

35 (1880) 57 Cal 12.

36 See also the later decision of *Read v Buffum* (1889) 79 Cal 77. There is contrary authority: see *Persons v McKibben* (1854) 5 Ind 261 where the Supreme Court of Indiana held that the ratification of an unauthorised assignment of a debt, after the commencement of a claim on the same, related back to the time of the assignment. The court held that the plea denying the assignment "merely put upon [the defendant] the proof of the assignment, and did not change his rights or relative position to [the plaintiff]": at 262.

37 *Asidokona Mining Resources Pte Ltd v Alternative Advisors Investments Pte Ltd* [2023] 1 SLR 954 at [80].

38 *DyStar Global Holdings (Singapore) Pte Ltd v Kiri Industries Ltd* [2018] 5 SLR 1 at [136].

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action has no basis in law.[39] Any potential future ratification is simply of no relevance at that point in time.

PARTNERSHIP LAW

There were no cases on partnership law in 2023.

39 Jeffrey Pinsler, *Singapore Civil Practice* (LexisNexis, 2022) at para 8-7.

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