United Overseas Bank Ltd
v
Lippo Marina Collection Pte Ltd and others

[2016] SGHC 23

High Court — Suit No 1250 of 2014 (Registrar's Appeal No 145 of 2015)
Aedit Abdullah JC
9, 21 September; 26 October 2015

Civil procedure — O 14 r 12 Rules of Court (Cap 322, r 5, 2014 Rev Ed) — Summary determination of question of law

Civil procedure — Pleadings — Striking out

22 February 2016 .

Aedit Abdullah JC:

Introduction

1 What was ultimately in issue in this case was whether the fraud of an employee of a bank could be attributed to the bank so as to preclude it from suing other persons on the basis of misrepresentation and deceit involving that employee. This in turn raised issues concerning the attribution of knowledge in a company, and the limitations, if any, that applied to such attribution. Additionally, this case also presented the issue of when a summary determination of law under O 14 r 12 of the Rules of Court (Cap 322, r 5, 2014 Rev Ed) would be appropriate.

2 In Summons No 1069 of 2015 ("Summons 1069"), the plaintiff in Suit No 1250 of 2014 ("Suit 1250") made two applications seeking:

> (a) the determination of a question of law, pursuant to O 14 r 12 of the Rules of Court, on whether the plaintiff, a victim of a fraud or a conspiracy to commit fraud, is attributed with the knowledge or actions of a fraudulent employee so as to preclude it from alleging certain misrepresentations and acts of deceit committed by the second and third defendants ("the Defendants") ("the Question"). This application shall be referred to as "the Application under O 14 r 12"; and
>
> (b) the striking out of certain portions of the Defendants' defence under O 18 r 9(1)(*a*) to (*c*) and/or (*d*) and/or O 92 r 4 on the grounds that they do not disclose a reasonable defence, are scandalous, frivolous or vexatious, may prejudice, embarrass or delay the fair trial of the action, and/or are an abuse of process of the court. This shall be referred to as "the Application for Striking Out".

These applications involve only the Defendants (*ie*, the second and third defendants), and not the remaining six defendants in Suit 1250.

3 The learned Assistant Registrar ("the AR") dismissed both applications, leading the plaintiff to file the present Registrar's Appeal. After hearing the parties, I allowed the appeal and granted both applications. The Defendants have filed an appeal against my decision. I will now give the reasons for my decision.

Background

4 To understand the plaintiff's applications in Summons 1069, it is necessary to first appreciate the background of Suit 1250.

5 Between 2011 and 2013, Lippo Marina Collection Pte Ltd ("Lippo Marina") (the first defendant in Suit 1250), a developer, sold, in separate transactions, 38 units in a leasehold condominium development known as Marina Collection to 38 purchasers, including the sixth to eighth defendants. The plaintiff, the United Overseas Bank Limited, granted housing loans to each of these purchasers to finance their purchases.

6 The Defendants were real estate agents at the material time, although they are no longer licensed by the Council of Estate Agencies. The fourth to eighth defendants are relatives of either of the Defendants; the fourth and fifth defendants are the second defendant's sons, while the sixth and seventh defendants are the third defendant's daughter and nephew respectively. The eighth defendant is the seventh defendant's wife.

7 The plaintiff pleaded in its statement of claim that it discovered, after granting the loans, that the 38 purchasers had not disclosed that Lippo Marina had given them substantial furniture rebates that exceeded the market norm. According to the plaintiff, the rebates resulted in the units being of far lower purchase prices than what were recorded on the application forms for the housing loans. The plaintiff contended that the first to eighth defendants (collectively referred to as "the defendants") had made a deliberate effort to mislead the plaintiff into granting housing loans based on the inflated purchase prices that were stated on the application forms, instead of the actual purchase prices after factoring in the rebates. The plaintiff also asserted that it further discovered that many of the purchasers did not have the genuine means to service the housing loans, but were merely fronts procured by the Defendants to enter into purchase agreements with Lippo Marina. The plaintiff pleaded that this was apparent from the way in which monies were transferred to and from

the bank accounts of the purchasers and that of the second, fourth and fifth defendants, in a bid to ensure that the balance sums in the purchasers' accounts would meet the plaintiff's requirements for the grant of the housing loans.

8 Convinced that it had been defrauded by the defendants, the plaintiff commenced Suit 1250 against them on 26 November 2014. Specifically, the plaintiff alleged that the defendants had conspired to obtain (i) financing from the plaintiff in circumvention of the Monetary Authority of Singapore's ("MAS") cooling off measures such as the maximum permissible amount of loan stipulated in MAS's Notice No 632 ("the MAS Notice"); and (ii) housing loans that were in excess of the purchase price of the respective properties. It further alleged that Lippo Marina, the Defendants, and the purchasers had committed various acts of deceit, which included the following:

(a) failing to declare substantial furniture rebates that were given by the first defendant in the purchasers' housing loan applications, which thereby induced the plaintiff to approve housing loans to the purchasers in excess of the MAS Notice (referred to by the plaintiff as the "Purchase Price Misrepresentation");

(b) making or procuring or inducing the purchasers to make false representations of the true identity of the purchasers to prevent close scrutiny of the purchases by the plaintiff (referred to by the plaintiff as the "Identity Misrepresentation"); and

(c) procuring the transfer of monies between the accounts of the purchasers, as well as between the accounts of the purchasers and the accounts of the second, fourth and fifth defendants, so that there would be sums ranging from $200,000 to $1,200,000 in the bank accounts of

> the purchasers at the time of the application of the housing loans, with the intention to deceive the plaintiff into believing that the purchasers had financial standing so that the plaintiff would approve and thereafter disburse the housing loans (referred to by the plaintiff as the "Financial Standing Fraud")

9 The Defendants filed a joint defence on 8 January 2015 ("the Defence"), while the other defendants separately filed their defences. The Defendants pleaded that there was no conspiracy between the defendants and that they did not commit any act of deceit. They argued, instead, that the Vice-President of Home Loans of the plaintiff, Ann Ong, had always been aware of all the matters arising from the purchasers' housing loans applications, and was in fact the one who had suggested the arrangement to transfer monies between the accounts (*ie*, the acts alleged by the plaintiff to be part of the Financial Standing Fraud). Their case was that the knowledge and acts of Ann Ong, as an employee and agent of the plaintiff, should be attributed to the plaintiff, and thus the plaintiff cannot be said to have been induced or defrauded by the defendants. Further, or alternatively, the Defendants argued that Ann Ong's knowledge would have estopped the plaintiff from bringing the various claims against them.

Issues

10 The issues before me were as follows:

> (a) whether the Application under O 14 r 12 for the determination of the Question should be allowed;
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> (b) if a determination of the Question was appropriate, how should the Question be resolved; and

(c) whether the Application for Striking Out should be allowed (i) in the light of the answer to the Question; or (ii) on the alternative grounds raised by the plaintiff (discussed at [60] below).

11 The logical sequence is to deal first with the Application under O 14 r 12 before the Application for Striking Out because the primary ground for the plaintiff's latter application was premised on the Question being resolved in its favour.

The Application under O 14 r 12

The law on O 14 r 12

12 Order 14 r 12 of the Rules of Court provides that:

> **Determination of questions of law or construction of documents**
> (O.14, r.12)
>
> **12.** –(1) The Court may, upon the application of a party or of its own motion, determine any question of law … arising in any cause or matter where it appears to the Court that –
>
> (a) such question is suitable for determination without a full trial of the action; and
>
> (b) such determination will fully determine (subject only to any possible appeal) the entire cause or matter or any claim or issue therein.

13 The following threshold requirements must be met before a court will consider whether it is appropriate to exercise its discretion to proceed with summary determination:

(a) the defendant has entered an appearance in the action;

(b) the parties have an opportunity of being heard on the question of law;

(c) the question of law is suitable for determination without a full trial of the action; and

(d) such determination will fully determine (subject only to any possible appeal) the entire cause or matter or any claim or issue therein.

The overriding consideration in deciding when the discretion will be exercised is whether the summary determination would fulfil the underlying purpose of O 14 r 12, *ie*, to save time and costs for the parties: *ANB v ANF* [2011] 2 SLR 1 ("*ANB*") at [61].

14 As the first two requirements are straightforward and self-explanatory, it is only necessary to discuss the approach that our courts have taken in respect of the third and fourth requirements (referred to at [13(c)] and [13(d)] above).

15 Concerning the third requirement (at [13(c)] above), it is well-established that a question that raises factual issues requiring findings of fact is not appropriate for summary determination: the Court of Appeal case of *Obegi Melissa v Vestwin Trading Pte Ltd* [2008] 2 SLR(R) 540 at [42] ("*Obegi*"), and the High Court case of *TMT Asia Ltd v BHP Billiton Marketing AG (Singapore Branch*) [2015] 2 SLR 540 ("*TMT*") at [34]. This coheres with the observation in *ANB* at [32] that the phrase "suitable for determination" has been interpreted by English courts to exclude all questions that can only be answered with reference to disputed facts.

16 The mere fact that the question raises a complex issue of law is not a bar to summary determination, for all this requires is a "full hearing, involving prolonged arguments on points of law", which can equally be done by the court in an application under O 14 r 12: *Payna Chettiar v Maimoon bte Ismail* [1997] 1 SLR(R) 738 at [36] and *TMT* at [33]. Novel questions of law that are of considerable public importance are, however, unsuitable for summary determination: *Obegi* at [42] and *TMT* at [35].

17 An issue that arises in respect of the fourth requirement (at [13(d)] above) is whether O 14 r 12 could be used to determine a free standing point of law that does not dispose of the entire matter or cause of action. This issue is pertinent in the present appeal as the Question will not determinatively resolve the dispute in Suit 1250. Whether the knowledge and acts of the plaintiff's officer, Ann Ong, can or cannot be attributed to the plaintiff, the dispute in Suit 1250, which centres on whether the Defendants committed the acts of deceit or are part of the alleged unlawful conspiracy, subsists.

18 The presence of the words "or issue" in O 14 r 12(1)(*b*) suggests that a free standing question of law can be summarily determined even though such determination does not dispose of the entire action. The courts in cases such as *Payna Chettiar* (at [34]-[35]) and *Microsoft Corp and others v SM Summit Holdings and another and other appeals* [1999] 3 SLR(R) 465 (at [49]) have similarly held that an application under O 14 r 12 is not restricted to cases where the decision would determine the entire cause or matter. As pointed out by Steven Chong J in *ANB* (at [33]), in a case involving a free standing question of law, this question to be determined would be equivalent to the "issue" referred to in O 14 r 12(1)(*b*). The discretion of whether O 14 r 12 should be used for the summary determination of a free standing issue of law should, however,

only be exercised where the underlying purpose and overriding consideration of the provision is fulfilled *ie*, if it led to the saving of time and cost for the parties: [61] of *ANB*. It should not be automatically assumed that the use of O 14 r 12 will always be cost and time efficient. The court must also be wary that such an approach may result in the bifurcation of the judicial process into issues of law and fact, which has the potential to lead to greater expense and delay for the parties.

19 The next question then is whether a summary determination was appropriate in the present case.

A summary determination is appropriate

20 The first two requirements stated at [13(a)] and [13(b)] above were clearly met in the present case. The Defendants have entered appearance and were also given ample opportunity to be heard on this issue.

21 Distilling both parties' submissions to their core, the question of whether a summary determination was appropriate in this case depended on whether the plaintiff could show that:

(a) the Question did not raise any factual issue and did not require any finding of fact; and

(b) a determination of the Question would lead to the saving of time and costs for the parties.

The AR's reasons for dismissing the application

22 The AR dismissed the Application under O 14 r 12 largely on the basis that the Question raised significant factual issues that required findings of fact. He was of the view that the Question required the assumption of fraud on the part of the Defendants, as well as on Ann Ong, and observed that there could be alternative factual permutations that may result in the applicability of different rules of attribution of Ann Ong's knowledge to the plaintiff. He gave several examples of the possible factual permutations: (i) Ann Ong could have acted on her volition without the Defendants having any knowledge that she was acting fraudulently against the plaintiff; (ii) she could have knowingly acted beyond her scope of authority, but did not have the intention to defraud the plaintiff; or (iii) she may not even have been aware that she had acted beyond her scope of authority at the material time. The AR thus came to the view that findings of fact as to the respective knowledge and intentions of Ann Ong and the Defendants as well as the scope of Ann Ong's duties and authority had to be made before the Question could be answered. He held that even if the court made an assumption of fraud on the part of the Defendants and Ann Ong, and held that the legal principle that can be attributed to the case of *In re Hampshire Land Company* [1896] 2 Ch 743 ("*In re Hampshire Land*") ("the *Re Hampshire Land* principle") applied, it would merely address one of several possible factual permutations, and would not substantially determine the matter or result in significant saving of time and costs.

23 The AR was also of the view that summary determination was not appropriate as this case raises a novel legal issue on the applicability of the *Re Hampshire Land* principle in a case where the alleged fraudulent director or employee is not a defendant in the action. I am of the view, however, that this

should not be a ground to find that a summary determination was inappropriate. It would not suffice for a party opposing a summary determination to argue that the question of law was novel or complex; this submission had to be supplemented with a convincing argument that the question of law was not only novel but was of considerable public importance (as discussed at [16] above). It was not shown how the Question was of considerable public importance in this case.

The Question did not require findings of fact

24 After hearing the parties' submissions on appeal, I agreed with the plaintiff that the Question could be answered without requiring an enquiry into the disputed facts.

25 At first sight, the Question seems to require the court to ascertain certain factual issues, such as (i) whether the plaintiff was a victim of a conspiracy or fraud; (ii) whether Ann Ong was a "fraudulent" employee; and (iii) whether the Defendants were aware of, or complicit in, the fraudulent acts of Ann Ong. The Defendants argued that a summary determination of the Question was not appropriate as these factual issues had yet to be resolved.

26 In reality, however, the Question did not require the court to engage in those factual issues. The Question had been constructed in such a way as to take the Defendants' defence to the plaintiff's claim that the Defendants are liable in the torts of conspiracy and deceit at its highest by assuming that Ann Ong was fraudulent and complicit in the Purchase Price Misrepresentation, Identity Misrepresentation and Financial Standing Fraud. In other words, the plaintiff was asking the court to proceed on the assumption that Ann Ong had acted fraudulently, which is the position that would have been most advantageous to

the Defendants. In any event, as submitted by counsel for the plaintiff, Mr Eddee Ng ("Mr Ng"), all the possible factual permutations in respect of Ann Ong's conduct which would assist the Defendants' defence involve, at the very least, breaches of duty (if not fraud) by Ann Ong. As Mr Ng pointed out, the court need not engage in the factual dispute of whether Ann Ong had acted fraudulently or "merely" in breach of her duty to the plaintiff because this would not affect the answer to the Question as breaches of duty suffice to invoke the *Re Hampshire Land* principle that an officer's knowledge and acts cannot be attributed to the plaintiff (see [53] below).

27 What the plaintiff was seeking through this application was a determination of whether the Defendants could *preclude*, as opposed to deny, the plaintiff's claim against them on the bases of estoppel or a lack of inducement by arguing that Ann Ong's knowledge and acts can be attributed to the plaintiff. The Question was thus restricted to a factual scenario where the Defendants are found to be complicit in the fraud or conspiracy, but are seeking to argue that they were not liable because of the rules of attribution. To answer this specific question of law which involves an inquiry into the rules of attribution and the *Re Hampshire Land* principle, the court can proceed on the assumption that the plaintiff was a victim of fraud or conspiracy committed by the Defendants. It must be made clear that the fact that the court made such an assumption for the purposes of the Application under O 14 r 12 did not equate to a finding that the Defendants have committed such acts of deceit; it is still open to the Defendants to argue that they are *not* complicit in the fraud or conspiracy.

28 I accepted Mr Ng's submission that it was permissible for the court to proceed on certain assumptions when dealing with an application under O 14 r

12, as evidenced from the approach taken by the Court of Appeal in *Kamla Lal Hiranand v Harilela Padma Hari and others* [2000] 2 SLR(R) 801 ("*Kamla*"). The defendant in *Kamla* sought a summary determination of the question of whether an unattested testamentary document that was invalid as a will was in law capable of creating or evidencing a trust in relation to any property in the estate of the deceased. The Court of Appeal in *Kamla* held (at [15]) that a summary determination of the question was appropriate as it did not have to go into any investigation of the facts, because it could "proceed on the assumption that what the appellant [had] pleaded was true", *ie*, that the document in question was a genuine document that had been executed by the deceased. I was of the view that a similar approach could be undertaken in the present case.

29 Additionally, I found the two cases, *Beam Technology (Mfg) Pte Ltd v Standard Chartered Bank* [2003] 1 SLR(R) 597 ("*Beam*") and *Tat Lee Securities Pte Ltd v Tsang Tsang Kwong and another action* [1999] 3 SLR(R) 692 ("*Tat Lee*") raised by the Defendants distinguishable from the present case.

30 In *Beam*, the Court of Appeal held that the question posed by the respondent in that case was not suitable for summary determination because there were issues that had to be resolved at trial before the question could be answered. To briefly set out the facts of *Beam*, the appellants in that case were sellers who had contracted to sell electronic components to buyers who had obtained a letter of credit, which was subject to the Uniform Customs and Practice for Documentary Credit, 1993 Revision, from their bank in favour of the appellants. When the appellants eventually presented the documents required to draw on the letter of credit before the respondent who was the confirming bank, the respondent rejected the documents on the ground that the air waybill that had been presented was a forgery. The appellants brought a suit

against the respondent claiming for payment due under the letter of credit. In response, the respondent made an application under O 14 r 12 for a summary determination of whether it was entitled to refuse to make payment when the air waybill was a forgery known to the bank, even if it was assumed that the appellants were not the forgers. The principal reason for which the Court of Appeal found that a summary determination was not suitable was that the question of whether the air waybill could constitute a forgery when it was issued by the very entity, though non-existent, which the buyers had nominated the sellers to deal with had to be considered and further explored at trial, along with the issue of whether the air waybill amounted to non-compliance of the terms of the letter of credit: at [37] and [38] of *Beam*. The Court of Appeal was thus reluctant to proceed on the assumption in the respondent's favour that the air waybill was forged.

31 In contrast, the plaintiff in the present case was not asking the court to assume in its favour that all the facts that it had pleaded were true in order to determine the Question. Although this may be the effect of some of the assumptions (*eg,* that the plaintiff is a victim of fraud and conspiracy committed by the Defendants), the focus and scope of the Question were to engage the *Defendants*' averments in the relevant portions of the Defence to determine if the Defendants are precluded (as opposed to denied) from arguing estoppel or a lack of inducement through attributing Ann Ong's knowledge and acts to the plaintiff.

32 *Tat Lee* can also be distinguished. The respondents in that case were clients of the appellant, a firm of stockbrokers. The respondents executed letters of authority authorising the firm to release share scrips to Koh, a remisier in the firm, for transactions executed on their accounts. It was also agreed that the

appellant would not be held responsible for "any losses that may result therefrom". Koh turned out to be a rogue remisier. He sold off the shares through other client accounts with the appellant without the respondents' knowledge and misappropriated the proceeds of sale. The respondents sued the appellant for Koh's fraudulent misappropriation on the basis of agency law, and in negligence for the lack of internal controls to prevent unauthorised withdrawals of and dealings with clients' shares. The appellant's defence was that they had no knowledge that Koh had acted without the respondents' knowledge or instructions, and that in any event they were not liable under the terms of the letters of authority.

33 The appellant applied for a summary determination of the construction of the letters of authority and sought a dismissal of the respondents' claims. The Court of Appeal dismissed the application for summary determination on the ground that the construction of the letters of authority would neither assist the appellant in respect of the respondents' claim which was based on agency law nor in respect of the claim on negligence: at [14] of *Tat Lee*. Further, the Court of Appeal found that even in respect of the determination of the construction of the letters of authority, the summary procedure was not appropriate as the construction was dependent on the rationale behind certain clauses of the bye-laws of the Stock Exchange of Singapore, and may even require evidence from the industry: at [16]–[17]. The situation in *Tat Lee* in respect of the summary determination application was thus quite different from the present case. Unlike in *Tat Lee*, the determination of the Question would resolve the issue of whether the Defendants can rely on the defences of estoppel and did not require any extrinsic evidence.

34 For the above reasons, I was satisfied that that the Question did not require any factual finding and was thus suitable for summary determination.

Summary determination would result in saving of time and costs

35 As set out at [18] above, it is not sufficient for a party making an application under O 14 r 12 to show that the question was suitable for summary determination. The party also had to show that a summary determination would result in saving of time and costs.

36 Mr Ng submitted that if the Question is answered negatively (*ie*, that Ann Ong's knowledge and acts cannot be attributed to the plaintiff), significant time and costs in investigating into the allegations regarding Ann's knowledge and intention can be saved.[1] He further submitted that it was sufficient even if the summary determination would only resolve the issue if it was decided in favour of one party *per ANB* at [34] and [35], and thus the fact that no issue would be resolved if the Question is answered in the positive does not impede the plaintiff's application.[2]

37 I was satisfied that a summary determination of the Question would lead to significant saving of time and costs. The pleadings in the Defence pertaining to the point of attribution of Ann Ong's knowledge or acts to the plaintiff were substantial. The determination of the Question would fully resolve the substantial issue of whether the Defendant could rely on Ann Ong's knowledge to argue estoppel or lack of inducement, thus avoiding the need for this issue to

[1] Plaintiff's submissions filed on 4 September 2015 at paragraph 37.

[2] Plaintiff's submissions dated 4 September 2015 at paragraph 49(a).

be dealt with at trial where the parties would have to adduce evidence and cross-examine witnesses in relation to Ann Ong's knowledge and intention. I thus agreed with the plaintiff that a summary determination of the issue would narrow the issues at trial and expedite the resolution of the dispute, allowing for substantial saving of time and costs.[3]

38 In coming to my decision, I took into account the general reluctance of the court to separate inquiries of fact and law because it will usually result in more costs and delay for parties as well as a multiplicity of proceedings. Further, the bifurcation of the judicial process may lead to two different judges deciding on the separate matters in two distinct proceedings. Such concerns were raised in the case of *Basil Anthony Herman v Premier Security Co-operative Ltd and others* [2010] SGCA 15 ("*Basil Anthony*") at [69] as well as in several English cases as summarised in [42]-[43] of *ANB*. Although it was clear that a grant of summary determination in the present case would lead to additional proceedings as evidenced from the two appeals that have arisen in respect of Summons 1069, I was of the view that the time and costs that would be saved at trial would be greater. Further, I was of the view that the separation of proceedings here would not subsequently place the trial judge in a "difficult and uncomfortable position" (*Basil Anthony* at [69]) unlike in cases like *Basil Anthony* where the concern was that a trial judge who hears a defamation case would be bound by the meaning of the defamatory words that was determined by the judge who heard the O 14 r 12 application in deciding whether the claim in defamation is made out. My decision in the present case would not restrict the trial judge's analysis in respect of the claim as my decision dealt solely with the question of law of

[3] Plaintiff's submissions dated 4 September 2015 at paragraph 69.

whether Ann Ong's conduct and knowledge could be attributed to the plaintiff, and related only to whether the Defendants could rely on this to argue estoppel and lack of inducement.

Determination of the Question

39 Having dealt with the procedural issue of whether a summary determination is appropriate, the next issue is the substantive one of how the Question should be answered.

40 To recap, the Question was whether the plaintiff, a victim of fraud or conspiracy to commit fraud, was attributed with the knowledge or actions of a fraudulent employee so as to preclude it from alleging certain misrepresentations and acts of deceit committed by the Defendants.

The parties' submissions

41 Mr Ng submitted that the Question should be answered in the negative, as the law is clear that the knowledge of a fraudulent agent will not be imputed to his principal where the agent has knowingly committed fraud against the principal. He submitted that this was commonly known as the *Re Hampshire Land* principle, which has been affirmed and applied across common law jurisdictions such as in the United Kingdom ("UK") Supreme Court case of *Bilta (UK) Ltd (in liquidation) and others v Nazir and others (No 2)* [2015] 2 All ER 1083 ("*Bilta*"), the Hong Kong Court of Final Appeal case of *Moulin Global Eyecare Trading Ltd (In Liq) v Commissioner of Inland Revenue* [2014] 3 HKC 323 ("*Moulin*"), as well as in our local Court of Appeal case of *Ho Kang Peng v Scintronix Corp Ltd (formerly known as TTL Holdings Ltd*) [2014] 3 SLR 329 ("*Scintronix*").

42 The Defendants did not seek to contest the legal basis of the *Re Hampshire Land* principle, but instead argued that the principle was not applicable in the present case because they were innocent parties who were not complicit in the fraud, if any, committed by Ann Ong. Counsel for the Defendants, Mr Shankar Sevasamy ("Mr Sevasamy") submitted that this case was more akin to cases like *Strover v Harrington* [1988] Ch 390 and *Gabriel v Little and others* [2012] EWHC 1193 where the third parties did not act fraudulently in any way and the knowledge of the agents were attributed to the principal. The essence of Mr Sevasamy's submissions was that there was no reason that the Defendants, being innocent parties, should be made to bear the brunt of a fraud, if any, that was perpetuated by the plaintiff's own employee. Additionally, Mr Sevasamy argued that the "special rule of attribution" enunciated by Lord Hoffmann in *Meridian Global Funds Management Asia Ltd v Securities Commission* [1995] 2 AC 500 ("*Meridian*") applied in the present case as the plaintiff was governed by the Banking Act (Cap 19, 2008 Rev Ed). In this regard, Mr Sevasamy submitted that the statutory purpose of s 55 of the Banking Act, which placed banks under the obligation to, *inter alia*, not grant a residential property loan beyond the stipulated quantum and conduct verification checks, would be frustrated if knowledge of the employees of a bank is not imputed on them.

The rules of attribution

43 A company, unlike an individual, has no mind or body of its own and can only act through natural persons. Attribution rules therefore serve to determine when and which natural person's acts and thoughts are to be treated as the company's own: at [47] of *Scintronix*. This concept was explained by Lord Hoffmann in the leading case on the topic of attribution, *Meridian*, at 506:

> Any proposition about a company necessarily involves a reference to a set of rules. A company exists because there is a rule (usually in a statute) which says that a persona ficta shall be deemed to exist and to have certain of the powers, rights or duties of a natural person. But there would be little sense in deeming such a persona ficta to exist unless there were also rules to tell one what acts were to count as acts of the company. It is therefore a necessary part of corporate personality that there should be rules by which acts are attributed to the company. These may be called "the rules of attribution[".]

44 Lord Hoffmann subsequently set out three distinct rules of attribution:

(a) First, there are primary rules of attribution, which will generally be found in a company's constitution, typically its articles of association. There are also primary rules of attribution that are not expressly stated in the articles but are implied by company law.

(b) Second, there are general rules of attribution, which are also equally applicable to natural persons, comprising the principles of agency which allow for liability in contract for the acts done by other persons within their actual or ostensible scope of authority, and vicarious liability in tort (as summarised at [48] of *Scintronix*).

(c) Lastly, there are "special rules of attribution", which will be applied by the courts in situations where a "rule of law, either expressly or by implication, excludes the attribution on the basis of the general principles of agency or vicarious liability": *Meridian* at 507. The example given in *Meridian* is where a rule is stated in language primarily applicable to a natural person and requires some act or state of mind on the part of the person "himself", as opposed to his servants or agents. In such cases, the court must determine the intention of the legislature from

the statutory language, purpose and context. Lord Hoffmann explained at 507:

> …. This is always a matter of interpretation: given that it was intended to apply to a company, how was it intended to apply? Whose act (or knowledge, or state of mind) was *for this purpose* intended to count as the act etc. of the company? One finds the answer to this question by applying the usual cannons of interpretation, taking into account the language of the rule (if it is a statute) and its content and policy.

45 In my view, the Defendants' submission that Ann Ong's knowledge ought to be attributed to the plaintiff because the "special rules of attribution" applied (see [42] above) displayed a misunderstanding of how the rules of attribution worked. There was no need to rely on the "special rules of attribution" here because the secondary rules of attribution, grounded in this case in the law of agency, would apply. More importantly, "special rules of attribution" do not operate in such a way. As set out at [44(c)] above, this category arises in cases where a statute or rule excludes the operation of agency or vicarious liability principles by requiring, for instance, that the act be committed by the company itself, or in cases where it is necessary to prove that the company acted with a particular mental state (*eg*, in the context of criminal offences and intentional torts).

46 In any event, the plaintiff was not arguing that the rules of attribution did not apply. The focus of its submission was that the *Re Hampshire Land* principle applied and acted as a bar to attribution. The dispute between the parties was thus not over whether the rules of attribution applied, but over the applicability of the *Re Hampshire Land* principle. In fact, implicit in the plaintiff's submission in respect of the *Re Hampshire Land* principle was an acceptance that *prima facie*, the rules of attribution applied.

The Re Hampshire Land *principle*

47 The *Re Hampshire Land* principle, or what was referred to by the UK Supreme Court in *Bilta* as the breach of duty exception, applies in certain circumstances to prevent the attribution to a principal of his agent's knowledge of his breach of duty or fraud or acts, even though in other contexts or circumstances, the agent's state of mind and acts would be attributable to the principal.

48 The principle is commonly referred to as the *Re Hampshire Land* principle because it can be traced to the judgment of Vaughan Williams J in *In re Hampshire Land*. In *In re Hampshire Land*, the Hampshire Land Company had borrowed money from a building society. The borrowing required the authority of the company's shareholders in a general meeting, but the authority that was given was found to be vitiated by defects in the notice by which the meeting was summoned. The issue in the case was whether the building society was affected by notice of the irregularity such that it was prevented from relying on the indoor management rule. The company argued that the building society had notice because its secretary was also the secretary of the company. Vaughan Williams J declined to impute the secretary's knowledge to the building society, and held that the knowledge that a person acquired whilst acting as an agent for a principal is not automatically imputed to another principal for whom he also acts unless he owed the latter a duty to disclose the information. Vaughan Williams J further observed at 749:

> … if Wills [who was the secretary] had been guilty of a fraud, the personal knowledge of Wills of the fraud that he had committed on the company would not have been the knowledge of the society of the facts constituting that fraud; because common sense at once leads one to the conclusion that it would be impossible to infer that the duty, either of giving or receiving

> notice, will be fulfilled where the common agent is himself guilty of fraud.

49 As noted by Lord Walker of Gestingthorpe at [84] of *Moulin*, some legal scholars consider the true ground of the decision *In re Hampshire Land* to have been the dual capacity of the officer in both companies, and not so much the breach of duty exception. In any event, Vaughan Williams J's dictum was subsequently adopted by two members of the House of Lords in the case of *JC Houghton and Co v Nothard, Lowe and Wills Ltd* [1928] AC 1 ("*JC Houghton*"). The issue that arose in that case was whether a company was bound by the self-interested acts of two of its directors that had never been approved by the board of the company. Viscount Dunedin held that the company could not be treated as knowing about a director's breach of duty by virtue only of the knowledge of the defaulting director. He observed at 14 of the judgment:

> … there can obviously be no acquiescence without knowledge of the fact as to which acquiescence is said to have taken place. The person who is sought to be estopped is here a company, an abstract conception, not a being who has eyes and ears. The knowledge of the company can only be the knowledge of persons who are entitled to represent the company. It may be assumed that the knowledge of directors is in ordinary circumstances the knowledge of the company. The knowledge of a mere official like the secretary would only be the knowledge of the company if the thing of which knowledge is predicated was a thing within the ordinary domain of the secretary's duties. But what if the knowledge of the director is the knowledge of the director who is himself particeps criminis, that is, if the knowledge of an infringement of the right of the company is only brought home to the man who himself was the artificer of such infringement? Common suggests an answer, but authority is not wanting.

Viscount Dunedin however found some support for this proposition in the dictum of Vaughan Williams J in *In re Hampshire Land*.

50 Viscount Sumner in the same case was similarly of the view that it would be "contrary to justice and common sense to treat the knowledge of such persons

as that of their company, as if one were to assume that they would make a clean breast of their delinquency": *JC Houghten* at 19.

51 The *Re Hampshire Land* principle continued to be applied in various jurisdictions in the decades since, and the rationale and scope of the principle have been refined and explored in greater depth. These developments were comprehensively traced and summarised in the recent cases of *Bilta* and *Moulin*. The principle has also been accepted as part of Singapore law, *per* the Court of Appeal case of *Scintronix*, even though it was not so termed and the case of *In re Hampshire land* was not mentioned. At one stage, it was unclear what the basis of the *Re Hampshire Land* principle was. This confusion was partially the result of the House of Lords' decision in *Stone & Rolls v Moore Stephens* [2009] AC 1391 ("*Stone & Rolls*") where the three majority judges appeared to have expressed different ideas on what the rationale of the principle was (see the discussion at paragraph 07.041 of Hans Tjio *et al*, *Corporate Law* (Academy Publishing, 2015)).

52 The recent cases of *Bilta* and *Moulin* have, fortunately, clarified the rationale and scope of the principle. Contrary to some suggestions by cases in the past such as *Stone & Rolls*, the *Re Hampshire Land* principle is not founded on agency principles, but is a reflection of the public policy that the law will not permit a company's right to seek redress from a defaulting officer to be defeated by attributing the defaulting officer's culpability to itself. Lord Walker, who recanted on his position in *Stone & Rolls* (at [145]), explained at [106] of *Moulin*:

> … The underlying rationale of the fraud exception [synonymous with what we have been referring to as the *Re Hampshire Land* principle] is to avoid the injustice and absurdity of directors or employees relying on their own awareness of their own

> wrongdoing as a defence to a claim against them by their own corporate employer.

Lord Sumption JSC expressed a similar view at [86] of *Bilta*:

> … The problem posed by the authorities is that until the Court of Appeal's decision in this case, they have generally treated the imputation of dishonesty to a company as being governed by tests dependent primarily on the nature of the company's relationship with the dishonest agent, the result of which is then applied universally. This was the point made by Lord Walker in *Stone & Rolls* at para 145, from which he resiled in *Moulin*. The fundamental point made by the Court of Appeal in this case and the Court of Final Appeal in *Moulin* is that, while the basic rules of attribution may apply regardless of the nature of the claim or the parties involved, the breach of duty exception does not. I agree with this. *It reflects the fact that the rules of attribution are derived from the law of agency, whereas the fraud exception, like the illegality defence which it qualifies, is a rule of public policy. Viewed as a question of public policy, there is a fundamental difference between the case of an agent relying on his own dishonest performance of his agency to defeat a claim by his principal for his breach of duty; and that of a third party who is not privy to the fraud but is sued for negligently failing to prevent the principal from committing it.*
>
> [emphasis added]

53 It has also been clarified that the *Re Hampshire Land* principle is not restricted only to cases involving fraud, but extends to all cases involving breaches of duty by the agent. This had in fact been part of the *obiter dicta* of Vaughan Williams J in *In re Hampshire Land* where he stated at 749-750 that:

> … I do not know … whether he was guilty of actual fraud; but whether his conduct amounted to fraud or to breach of duty, I declined to hold that his knowledge of his own fraud or his own breach of duty is, under the circumstances, the knowledge of the company.

The law lords in *Bilta* were also of a similar view, with some commenting that the principle should not be known as the "fraud exception" but should instead be termed as the "breach of duty exception": at [9], [71] and [181] of *Bilta*.

54 The principle has also been held to apply equally against third parties who were complicit in the wrongdoing of the director or employee: *eg*, Lord Mance's observations at [44] of *Bilta* and [131] of *Moulin*. Lord Sumption's observations at [90] of *Bilta* are pertinent:

> … If the fraudulent agent cannot raise the defence of illegality in these circumstances, the same must be true of third parties who are under an ancillary liability for participating in the fraudulent agent's wrong: co-conspirators, aiders and abettors, knowing assisters, receivers, and so on …

55 In cases where a party is seeking to invoke the principle as a defence to a claim brought by a third party or, as in the present case, as a means to preclude a third party from arguing defences such as estoppel or the illegality defence (*ie*, the defence of *ex turpi causa non oritur actio*), the key issue to be determined is whether the third party is an innocent party or a party complicit in the fraud or who had abetted the agent's breach of duty. As against an innocent party, the principle has no application and the principal will not be treated as a victim of the wrongdoing but as one of the perpetrators: [84] of *Bilta*. On the other hand, as against a defaulting agent or a third party who is complicit in the wrongdoing of the agent, the *Re Hampshire Land* principle will apply and act as a bar to prevent the agent's knowledge or acts from being attributed to the principal. This distinction was recognised and emphasised in the leading cases on the principle (*eg*, *Scintronix* at [68] to [71]), *Moulin* at [131], *Bilta* at [84]).

The Question is answered in the negative

56 Applying the *Re Hampshire Land* principle to the factual scenario in the Question, the Question would thus be answered in the negative. If the plaintiff succeeds in proving that it is a victim of fraud or conspiracy to commit fraud which the Defendants are complicit in, the principle would operate to preclude

the Defendants from relying on the rules of attribution, which would otherwise apply, to attribute the knowledge and acts of Ann Ong on the plaintiff in order to defeat the plaintiff's claims against them.

57 Again, I reiterate that this does not equate to a finding that the Defendants have committed fraud or the tort of unlawful act conspiracy. The Defendants are free to, and no doubt will, defend against the plaintiff's claims that they were never fraudulent or part of any conspiracy against it. The Question above will only be engaged in relation to the defences (*ie*, estoppel and concurrent cause of (or lack of) inducement) they pleaded in the Defence.

58 I will also add that the fact that Ann Ong was not included as a party to the plaintiff's claim had no bearing in relation to the Question. The plaintiff is free to elect whether to include Ann Ong as a party for the purposes of its claim. More importantly, this had no bearing on the application of the *Re Hampshire Land* principle to the scenario put forward in the Question. The principle would be invoked as long as Ann Ong, the plaintiff's agent, was in breach of duty, and the averments in the Defence postulate at the very least breaches of duty, if not fraudulent conduct, by her.

The Application for Striking Out

59 The second application in Summons 1069 – the Application for Striking Out, should be considered next. To recap, the plaintiff's primary ground for this application was premised on the Question being resolved in its favour. In total, the plaintiff sought to strike out 15 averments in the Defence. Mr Ng submitted that all four grounds in O 18 r 19(1) are met because:

(a) The averments disclosed no reasonable defence as the *Re Hampshire Land* principle applied to bar the attribution of Ann Ong's knowledge on the plaintiff. There was thus no mechanism for the defences of estoppel or lack of inducement as pleaded in the Defence to apply.

(b) The averments were frivolous and vexatious as they were plainly or obviously unsustainable in the light of the *Re Hampshire Land* principle. The averments were also scandalous as they could constitute a vehicle for allegations or attacks on persons unconnected with the issues.

(c) The averments would prejudice, embarrass and delay the fair trial of the action as they would only unduly prolong the trial even though no valid defence was disclosed.

(d) The averments would constitute an abuse of process as they are not legally tenable arguments and would serve no useful purpose other than to embarrass the plaintiff.

60 Apart from the primary ground, the plaintiff also sought to rely on two additional grounds:

(a) that the portions of the Defence that alluded to, or disclosed, a defence in estoppel should be struck out as the Defendants had failed to properly plead their defence in estoppel; and

(b) that the portions of the Defence that alluded to, or disclosed, contributory negligence on the part of the plaintiff should be struck out as contributory negligence was not a valid defence in law to the

plaintiff's claims in the torts of deceit and unlawful act conspiracy against the Defendants. Similarly, a concurrent cause of inducement cannot be the basis for the Defendants to argue that they had no liability for the two torts.

61 Further and in the alternative of O 18 r 19, the plaintiff also sought to rely on O 92 r 4 of the Rules of Court (*ie*, inherent powers of the court to make any order as may be necessary to prevent injustice or to prevent an abuse of process of the court) but did not elaborate on how this provision was applicable. In my view, O 92 r 4 had no application in the present case. Striking out applications are governed by O 18 r 19 and would in almost all circumstances only be granted where the court is satisfied that at least one of the four grounds in O 18 r 19(1) is met. If none of the grounds are met, a party would not be allowed to rely on O 92 r 4 to circumvent the grounds for striking out.

62 The Defendants argued that there was no basis for the plaintiff to allege at this juncture that the Defendants' case was groundless, given the number of factual disputes between the parties.[4] Further, the plaintiff had not even adduced any direct evidence to prove that the Defendants were parties to any fraud or conspiracy to commit fraud against it. Mr Sevasamy submitted that the defences pleaded in the averments would afford the Defendants a full defence to the plaintiff's claim at trial, and will show that any loss or damage suffered by the plaintiff were solely due to the wrongdoing of its own employee, Ann Ong, and not the Defendants.[5] He argued that the averments should not be struck out as they formed the necessary factual background to the Defendants' defence.

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[4] Defendants' submissions filed on 4 September 2015 at paragraph 104.

[5] Defendants' submissions filed on 4 September 2015 at paragraph 105.

63 After hearing the parties on 21 September 2015, I posed the following questions:

(a) Is the *Re Hampshire Land* principle violated if the Defence was taken to read that Ann Ong's actions and conduct were relevant as evidence of the plaintiff's condoning or adoption of her actions, *ie*, that the plaintiff 'was in' on what she did? Would this nonetheless be illegitimate attribution? ("Question 1")

(b) If I find that the *Re Hampshire Land* principle applied in respect of the issue of attributing Ann Ong's knowledge to the plaintiff, can I nonetheless find that the Defence as pleaded can be interpreted in a way that did not offend the principle even if the pleadings are not clearly drafted as such, for example by adopting the interpretation in referred to in [63(a)] above? ("Question 2")

(c) If so, in my determination of the Application under O 14 r 12 or the Application for Striking Out, could I or should I direct that pleadings be amended to conform clearly with an acceptable interpretation as in [63(a)] above? ("Question 3")

64 The plaintiff's response to my questions was as follows:

(a) In respect of Question 1, the plaintiff submitted that even if all of a company's directors and shareholders were privy to the information, the *Re Hampshire Land* principle may still apply. It argued that the only situation which it can possibly be argued that the plaintiff was "in" on Ann Ong's actions and conduct was where the plaintiff's entire board of directors *and* its entire corpus of shareholders had condoned and adopted

such actions and conduct on Ann Ong's part – which is clearly not borne out on the facts.

(b) As for Question 2, the plaintiff submitted that there is no room for the averments singled out in the Defence to be relevant in any way other than in relation to the issue of attribution. It argued that the second and third defendants' pleaded defences of estoppel and lack of inducement are premised on the basis of such attribution of knowledge.

(c) In respect of Question 3, the plaintiff submitted that the court should not direct an amendment of the Defence as there is no appropriate amendment that can be made to salvage the averments as a defence to the plaintiff's claims in fraud against the second and third defendants.

65 In their response to my questions, the Defendants continued to assert that the *Re Hampshire Land* principle was not invoked. Mr Sevasamy's submissions in relation to my questions were as follows:

(a) Question 1 is not applicable on the set of facts because the *Re Hampshire Land* principle was not violated in the first place as the plaintiff has not made any distinction between itself as a corporate entity and Ann Ong.

(b) In respect of Question 2, the Defendants reiterated that the Defence, as pleaded, did not offend the principle, and in fact, the plaintiff's pleaded case did not invoke the principle either. The Defendants emphasised that their case was premised on them *not* being involved in any fraud or conspiracy against the plaintiff, and that they were seeking to prove this by showing that Ann Ong, as an agent of the plaintiff, was at all material times aware that there was no intention or

knowledge on the part of the Defendants to commit such torts. On this ground, they submitted that the Defence, as pleaded, did not offend the *Re Hampshire Land* principle.

(c) As for Question 3, the Defendants, like the plaintiff, submitted that the court has the power to order the amendment of any pleadings pursuant to O 18 r 19. They took the position that there was no need for the Defence to be amended in this case because the *Re Hampshire Land* principle did not even apply. The Defendants further argued that even if the principle applies and thus Ann Ong's knowledge cannot be attributed to the plaintiff, the averments were still necessary to form the factual background to their Defence that they were not parties to a conspiracy or fraud.

66 Having considered the parties' submissions, I was of the view that the relevant averments disclosed no reasonable defence. 12 out of the 15 averments (*ie*, paragraphs 8(e), 10(b), 11(a), 12(a), 12(c), 18, 22, 25, 36, 37, 59 and 61) of the Defence sought to rely on the attribution of Ann Ong's knowledge on the plaintiff to argue estoppel or a lack of inducement on the part of the plaintiff in order to preclude the plaintiff's claim. This would be barred by the *Re Hampshire Land* principle.

67 As for the three remaining averments (*ie*, paragraphs 8(a), 10(c) and 10(d)), the Defendants sought to argue through them that the plaintiff ought to have conducted due diligence checks (in paragraphs 8(a) and 10(d)) or ought to have enquired further (in paragraph 10(c)). I agreed with Mr Ng that a defendant cannot argue contributory negligence on the part of the plaintiff as a defence to the plaintiff's claims in the tort of deceit and unlawful act conspiracy: *DBS Bank*

Ltd v Carrier Singapore (Pte) Ltd [2008] 3 SLR(R) 261. Further, even if what the Defendants were seeking to argue was that they were not liable because Ann Ong had also acted as a concurrent cause to induce the plaintiff to approve the housing loans, this argument also failed as the fact that there was another cause of inducement – even if proven – would not amount to a valid defence in law if the plaintiff succeeds in proving that the Defendants were also complicit in the fraud or conspiracy. This finding would also apply to paragraph 61 of the Defence, which relied both on the attribution of knowledge and contributory negligence.

68 The 15 averments were thus struck out as they disclosed no reasonable cause of defence. I would however add that in my view, the other grounds of O 18 r 19(1) were not met in the present case. I do not think that the averments amounted to an abuse of process or were vexatious, frivolous or scandalous. Neither was I of the view that the averments would prejudice or embarrass the plaintiff unnecessarily, even though it would have the effect of prolonging the trial.

Alternative courses

69 Through the questions I posed to the parties, in particular Question 3, I gave the Defendants the opportunity to consider to amend their Defence to express in clearer terms whether their position is that the plaintiff, as an entity, consented to the actions of the Defendants and were in that sense "in" on the whole transaction. On this interpretation, Ann Ong's role would be relevant only as a piece of evidence of the plaintiff's position. If this is their position, the defence they are seeking to rely on would not be estoppel or a lack of inducement. Instead, the defence would be that the plaintiff had consented to the actions of the Defendants (not through Ann Ong, but as a decision made by

the plaintiff itself) and thus the tortious claims would not even be made out. Simply put, there can be no fraud or conspiracy to defraud if the plaintiff had been a consensual party. Nothing in my judgment precludes the Defendants from putting forward such a defence, though this defence may itself be fraught with difficulties.

70 In my oral judgment, I had also emphasised that my decision did not preclude the Defendants from pleading that they were clueless and innocent third parties in the whole transaction, or that everything was done with the knowledge or at the suggestion of Ann Ong. On this approach, the reference to Ann Ong's knowledge and conduct would not be for the purposes of attributing any knowledge to the plaintiff, but as a means to show that the Defendants were upfront and did not hide anything from the plaintiff and therefore could not have been fraudulent. It must be emphasised that the averments were not struck out simply because they referred to Ann Ong. They were struck out because they would not act to preclude the plaintiff's claim because of the *Re Hampshire Land* principle and because contributory negligence or concurrent causes of inducement are no defence to the tort of deceit. This would explain why the plaintiff did not apply to strike out other parts of the Defence that referred to Ann Ong, such as paragraph 8(a). These paragraphs would in any case not have been struck out as they did not invoke O 18 r 19(a).

71 As I had stated in my oral judgment, it is open to the Defendants to consider what amendments to the Defence may be appropriate if they wish to put forward valid defences against the plaintiff's claims.

Conclusion

72 For the reasons above, I allowed the appeal and granted both applications in Summons 1069. I also ordered costs to the plaintiff, fixed at $5,000 for the appeal and the proceedings below.

Aedit Abdullah
Judicial Commissioner

Eddee Ng, Ho Xin Ling, Alcina Chew and Lau Qiuyu (Tan Kok Quan Partnership) for the plaintiff;
Shanker Angammah Sevasamy and Claire Tan (Straits Law Practice LLC) for the second and third defendants.