IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 273

District Court Appeal No 33 of 2020

Between

Tian Kong Buddhist Temple

… *Appellant*

And

Tuan Kong Beo (Teochew) Temple

… *Respondent*

JUDGMENT

[Civil Procedure] — [Pleadings]

Tian Kong Buddhist Temple
v
Tuan Kong Beo (Teochew) Temple

[2020] SGHC 273

High Court — District Court Appeal No 33 of 2020
Choo Han Teck J
17 November; 24 November 2020

11 December 2020 Judgment reserved.

Choo Han Teck J:

1 The appellant and the respondent are Chinese temples that conducted their religious activities on Pulau Tekong until the 1980s, when the residents of Pulau Tekong were resettled on the main island of Singapore. After the resettlement, the appellant, the respondent, as well as three other temples (namely Tien Chow Foo Temple, Swee Fah Sirh Temple and Wan Fook Kong Temple) were paid compensation and allocated a piece of land by the Housing and Development Board at 51 Bedok North Avenue 4, Singapore 469695 ("the Premises") to continue the worship of their respective deities.

2 Eventually, the activities of Tien Chow Foo Temple, Swee Fah Sirh Temple and Wan Fook Kong Temple were taken over by the appellant, leaving the appellant and the respondent as the only two groups who continued to share the Premises. In 2011, the appellant and the respondent began negotiations to form a new temple body called 'Pulau Tekong Joint Temple' ("the Joint

Temple") and to make arrangements for the parties' collective usage of the Joint Temple. The negotiations led to an agreement dated 4 July 2011 ("the 2011 Agreement") which provided, *inter alia*, that the respondent would be permitted to conduct and carry out all religious events, activities and affairs pertaining to its deity, "Tuan Pek Kong". One such event was Tuan Pek Kong's annual birthday celebration which takes place on the 15th day of the 12th month of the lunar calendar ("the Celebration").

3 The 2011 Agreement was signed by one Chin Tiam Soy ("Chin") (who was, at the material time, the chairman of the appellant), as well as one Ng Kim Joo (who was, at the material time, the chairman of the respondent). Both signatures were witnessed by the parties' respective solicitors.

4 From 2016 onwards, the appellant obstructed the respondent in carrying out its annual Celebrations in the same manner and on the same scale as it had done before. The respondent's complaints included Chin parking his car in the specific area where the tentage for the Celebrations was to be set up, dismantling the respondent's tentage, denying the respondent the use of electricity and water on the Premises, and locking the Premises to prevent the respondent from preparing for and carrying out the Celebrations. The appellant's actions forced the respondent to scale down the 2016 and 2017 Celebration, and move the 2018 and 2019 Celebration to a location outside the Premises.

5 The respondent commenced an action in the District Court, claiming (*inter alia*) damages and an order that the appellant would not obstruct, or cause to be obstructed, the preparations for and the conduct of the annual Celebrations. In the proceedings below, the appellant's primary case was that Chin did not have the actual authority to enter into the 2011 Agreement on the appellant's

behalf. The District Judge ("the DJ") did not make any findings on the issue of actual authority but found that the appellant was nevertheless bound by the 2011 Agreement by virtue of the doctrine of ostensible authority. As there was nothing to show that the 2011 Agreement had been terminated or was rendered invalid, the DJ granted the reliefs sought by the respondent.

6 On appeal, the appellant's sole contention is that the DJ erred in finding in favour of the respondent based on the doctrine of ostensible authority when the respondent neither pleaded this claim nor the facts material to such a claim.

7 The law on pleadings is well-established. The general rule is that parties are bound by their pleadings and that the court is precluded from deciding on a matter or cause of action that the parties themselves have decided not to put into issue. A departure from this rule is permitted only in limited circumstances, where no prejudice is caused to the other party in the trial or where it would be clearly unjust for the court not to do so (see *V Nithia (co-administratrix of the estate of Ponnusamy Sivapakiam, deceased) v Buthmanaban s/o Vaithilingam and another* [2015] 5 SLR 1422 ("*V Nithia*") at [38] and [40]).

8 These principles are also set out in O 18 r 8 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC"), which provides as follows:

> **8.**—(1) A party must in any pleading subsequent to a statement of claim plead specifically any matter, for example, performance, release, any relevant statute of limitation, fraud or any fact showing illegality —
>
> (a) which he alleges makes any claim or defence of the opposite party not maintainable;
>
> (b) which, if not specifically pleaded, might take the opposite party by surprise; or
>
> (c) which raises issues of fact not arising out of the preceding pleading.

9 Counsel for the respondent, Ms Devi Haridas, argues that the general rule in *V Nithia* does not apply to matters of law, which need not be specifically pleaded except where they relate to matters such as time bars prescribed by law. Thus, according to Ms Haridas, it was not necessary for the respondent to plead the doctrine of ostensible authority, provided that the material facts relating to such a claim were expressly pleaded.

10 With respect, counsel appears to have confused the concept of pleading law with the concept of raising a point of law in a pleading. It is trite that the legal conclusions which a party seeks to draw from the facts need not be explicitly pleaded (see *MK (Project Management) Ltd v Baker Marine Energy Pte Ltd* [1994] 3 SLR(R) 823 at [26]). Indeed, parties are discouraged from pleading legal principles at length as this tends to obscure and overcomplicate the matters to which the court must direct its attention. However, if a party intends to raise a particular point of law on the facts as pleaded, he ought in my view to plead such a point expressly or, at the very least, give the opponent fair notice of the substance of his claim through his pleadings (see *V Nithia* at [43]–[44]). That is part of the purpose underlying the law of pleadings, namely, to prevent surprises at trial (see *SIC College of Business and Technology Pte Ltd v Yeo Poh Siah and others* [2016] 2 SLR 118 at [46]).

11 In the present case, the appellant pleaded, at paragraph 4 of the Defence, that:

> 4. …
>
> a) The 2011 Agreement (as defined in the SOC) was not approved by the trustees or Board members of the [appellant];
>
> b) Neither was the [appellant] authorised to represent the other 3 organisations, namely, Tien Chow Foo Temple, Swee

> Fah Sirh Temple and Wan Fook Kong Temple, for the purpose of entering into the 2011 Agreement;
>
> c) Due to the above reasons as well as the fact that the Pulau Tekong Joint Temple, which is not a registered charity unlike the [appellant], did not have the funds to pay for the renewal of the lease of [the Premises] in or about September 2016, the 2011 Agreement is invalid and the parties agree that the 2011 Agreement is invalid.

12 In my view, this paragraph makes clear that insofar as the validity of the 2011 Agreement was concerned, the appellant's case rested on three claims: (a) first, that Chin did not have the actual authority to enter into the 2011 Agreement on the appellant's behalf; (b) second, that the appellant was not authorised to represent the other three temples on behalf of whom it had allegedly contracted; and (c) third, that the Joint Temple did not have the funds to pay for the renewal of the lease of the Premises.

13 In response to these contentions, the respondent merely pleaded at paragraph 3 of its Reply that:

> 3. The [respondent] does not plead to Paragraphs 4(a) and 4(b) of the Defence and puts the [appellant] to strict proof thereof.

Notably, there was no indication from this statement, or from the rest of the Reply, that the respondent intended to rely on the doctrine of ostensible authority to counter the appellant's challenges to the validity of the 2011 Agreement.

14 I acknowledge that the words "ostensible authority" or "apparent authority" do not have to be specifically pleaded in the Reply so long as the pleadings as a whole had disclosed the material facts which would have supported such a claim. The disclosure of such facts would, in my view, have

been sufficient to apprise the appellant of the substance of the respondent's case, and allow it to prepare for trial accordingly.

15 But this was not the case here. It is trite that in order for the doctrine of ostensible authority to be invoked, two elements must be present: (a) there must be a representation, made by the principal to the contractor, that the agent has the authority to enter on behalf of the principal into a contract of a kind within the scope of the ostensible authority; and (b) the contractor must rely or act upon the representation when entering into a contract with the agent. If these two elements are present, the representation will operate as an estoppel, preventing the principal from asserting that he is not bound by the contract (see *Freeman & Lockyer (a firm) v Buckhurst Park Properties (Mangal) Ltd* [1964] 2 QB 480 at 503). As counsel for the appellant, Mr Lim, points out, the respondent did not plead any facts or particulars showing that either of the two elements above were satisfied. I am therefore unable to agree with Ms Haridas' submission that it had pleaded facts leading to the "inevitable legal inference" that Chin was cloaked with ostensible authority.

16 Moreover, I accept that the respondent's failure to plead its case has led the appellant to suffer irreparable prejudice in the course of the trial. Owing to the respondent's actions, the appellant did not have the opportunity to adduce or challenge evidence which may have been relevant to the issue of ostensible authority. For example, counsel for the appellant, Mr Lim Chee San, did not cross-examine the respondent's witnesses on the issue of whether they had relied on any specific representation(s), whether by words or conduct, from the appellant indicating that Chin had the authority to enter into the 2011 Agreement. Instead, the bulk of Mr Lim's cross-examination focused on other issues, such as whether the parties had intended for the 2011 Agreement to be

of a temporary character. It appears that the issue of ostensible authority was only brought to the appellant's attention for the first time during Ms Haridas' cross-examination of the respondent's final witness, Chin, and this took place after the close of the respondent's case. The appellant was thus unable to mount a substantive response to the respondent's arguments on this issue.

17 For the reasons aforesaid, I disagree with the District Judge's conclusion that the respondent was entitled to rely on the doctrine of ostensible authority, even though I acknowledge that this could potentially have been a strong case of ostensible authority — had that been pleaded. The question arises as to whether I can order a re-trial on the basis that some substantial wrong or miscarriage of justice has taken place.

18 The High Court's power to order a new trial on the hearing of any appeal is set out under O 55D r 12(1) of the ROC, which states:

> **12.**—(1) On the hearing of any appeal, the High Court may, if it thinks fit, make any such order as could be made in pursuance of an application for a new trial or to set aside any finding or judgment of the Court below.

19 The court will only exercise its powers to order a retrial in "exceptional" circumstances, *ie*, where some substantial wrong or miscarriage of justice has taken place. Moreover, however serious the error, if the court takes the view that it would ultimately have made no difference to the outcome of the case, a new trial will not be ordered (see *Basil Anthony Herman v Premier Security Co-operative Ltd and others* [2010] 3 SLR 110 at [54], citing the Hong Kong Court of Appeal decision in *Ku Chiu Chung Woody v Tang Tin Sung* [2003] HKEC 727 at [24])).

20 Counsel on both sides are opposed to the idea of a retrial, but for different reasons. Mr Lim argues that the present appeal does not entail "exceptional circumstances" as it is "simply a case of the … [r]espondent failing to plead and failing to adduce evidence of reliance on apparent authority". Conversely, Ms Haridas submits that the appeal ought to be dismissed and that there is therefore no need for a retrial.

21 I agree with counsel that it would not be appropriate to order a retrial here. The law and the facts before me are straightforward: The respondent cannot rely on that which it has not pleaded, and it must be made to bear the consequences of its own errors. This is indeed an unfortunate position for the respondent. It is particularly unfortunate because, based on the limited evidence before me, it appears that the respondent's submissions on ostensible authority are not completely without merit, and may well have succeeded if the facts that were relevant thereto had been pleaded and proved at trial. However, the fact remains that ordering a retrial would effectively entitle the respondent to have a second attempt, which would be grossly unfair to the appellant. And if this were allowed, the courts would be inundated with fresh trials by failed litigants.

22 Ms Haridas also belatedly raised the argument, in the respondent's further closing submissions, that the appellant's appeal has a "fatal flaw" in that it did not obtain leave to bring the present appeal before the High Court. In this regard, Ms Haridas relies on s 21 of the SCJA, which states that a prospective appellant must seek the leave of the District Court or the High Court to bring an appeal against a decision by the District Court in cases where "the amount in dispute… at the hearing before the District Court" does not exceed $60,000. Ms Haridas asserts that the requirement to seek leave under s 21 of the SCJA

was engaged here because the amount of damages awarded to the respondent by the District Judge was only $4,400.

23 Aside from the fact that it was raised very late in the day, I am of the view that this argument is entirely without merit. The plain wording of s 21 of the SCJA makes clear that it is the amount in dispute at the hearing before the District Court, and not the amount of damages actually awarded by the District Court, which determines whether leave to appeal is required. Prior to the hearing of the trial below, the appellant had argued before Deputy Registrar Patrick Tay Wei Sheng ("DR Tay") that the District Court did not have the jurisdiction to hear the action because the value of the amount in dispute exceeded the District Court's monetary jurisdiction of $250,000. After considering the parties' respective positions, DR Tay held that the value of the entitlement asserted by the respondent in its claim had a value of $130,000 (see *Tuan Kong Beo (Teochew) Temple v Tian Kong Buddhist Temple* [2018] SGDC 99 at [19]). This figure, which was unchallenged by the respondent, clearly exceeds than the $60,000 threshold set out under s 21 of the SCJA. In the circumstances, I am satisfied that it was not necessary for the appellant to seek leave to bring the present appeal.

24 There might have been another argument that counsel for the respondent could have pursued, which is that Chin in fact had the actual authority to enter into the 2011 Agreement on the appellant's behalf. However, this argument was neither raised before me nor in the court below. I thus need say no more on this matter.

25 The three crucial things that must not go wrong at the start of any action are, the right parties, the right cause of action, and time bar. Should a party get

any of them wrong, that party, as far as the action is concerned, becomes a walking dead. District Court Appeal No 33 of 2020 is therefore allowed. I will hear parties on costs.

- Sgd -
Choo Han Teck
Judge

Lim Chee San (TanLim Partnership) for the appellant;
Haridas Vasantha Devi (Belinda Ang Tang & Partners) for the respondent.