Tung Hui Mannequin Industries v Tenet Insurance Co Ltd and Others
[2005] SGHC 69

Case Number : Suit 677/2004, RA 335/2004, 336/2004

Decision Date : 15 April 2005

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Gn Chiang Soon (Gn and Company) for the plaintiff; Rebecca Chew (Rajah and Tann) for the first defendant; Pradeep Pillai (Shook Lin and Bok) for the fourth defendant

Parties : Tung Hui Mannequin Industries — Tenet Insurance Co Ltd; Tan Ai Lian; Tai Mok Yam; Teo Weng Kie; Teamwood Decoration and Construction Pte Ltd

Civil Procedure – Striking out – Defendants' solicitors questioning plaintiff's solicitor's authority to act – Plaintiff's solicitor refusing to produce warrant to act for inspection by defendants' solicitors – Whether reasonable for defendants to apply to strike out plaintiff's action on grounds that plaintiff's solicitors not having authority to act on behalf of plaintiff – Order 64 r 7(1), O 64 r 7(2) Rules of Court (Cap 322, R 5, 1997 Rev Ed)

15 April 2005 *Judgment reserved.*

Judith Prakash J:

Introduction

1 These two Registrar's Appeals, which are basically about whether an order for costs was correctly made, raise a minor but interesting issue about legal practice. The issue is whether it is incorrect practice for one solicitor to ask another to produce his warrant to act.

2 There is a long backstory to these appeals. Tung Hui Mannequin Industries (hereinafter sometimes "the firm"), the entity named as the plaintiff in this action, was, up to 14 February 2003, a partnership firm in which the partners were one Lu Hui-Huang ("Mr Lu") and one Udom Kasemkrai ("Mr Udom"). In 1999, the firm commenced High Court Suit No 1777 of 1999 ("Suit 1777") against Team Wood Decoration & Construction Pte Ltd (hereinafter sometimes "Team Wood") to recover damages that it had sustained by reason of a fire. In that action, the firm was represented by M/s Gn & Company ("Gn & Co"), who are also its solicitors in the present case.

3 The defendants in the present action were involved in one way or another in Suit 1777: Team Wood, the defendant in Suit 1777, is the fifth defendant in this case; the second and third defendants here were and are directors of the fifth defendant; the first defendant here is the insurance company that had issued a public liability policy indemnifying Team Wood against any claim made arising from a fire; and the fourth defendant here is an advocate and solicitor who was appointed by the first defendant to act for Team Wood in the conduct of the latter's defence in Suit 1777. Upon the conclusion of Suit 1777, the trial judge found Team Wood to be negligent and ordered it to pay the firm damages, to be assessed, and costs. Judgment was delivered in December 2000.

4 The events that directly resulted in the Registrar's Appeals all took place last year. On 4 August 2004, Gn & Co wrote to the first and fourth defendants. The two letters were almost identical. In both, Gn & Co stated that they acted for "Tung Hui Mannequin" and had been instructed by their clients that the first defendant and the fourth defendant had colluded and conspired with each other and with the directors of Team Wood to deprive their clients of what was due and

awarded to them in Suit 1777. Gn & Co gave notice that they had instructions to commence action on their clients' behalf to enable the latter to recover the damages caused by the conspiracy. Each letter ended with Gn & Co asking for the name of the firm of solicitors, if any, that was instructed to accept service of the Writ on behalf of the addressee.

5 On 6 August, M/s Rajah & Tann ("R&T"), who were then acting for the fourth defendant, replied to Gn & Co. After denying the accusations contained in Gn & Co's letter and stating that they had instructions to accept service on behalf of the fourth defendant, R&T asserted the following:

(a) that there was no entity known as "Tung Hui Mannequin" registered in the Registry of Companies and Businesses;

(b) that Gn & Co had represented the firm in Suit 1777 and that their searches showed that this partnership had been terminated on 14 February 2003;

(c) that the former partners of the firm prior to its termination were Mr Lu and Mr Udom.

R&T then went on to ask Gn & Co to clarify the persons that they had represented when they issued their letter of 4 August, and also to confirm that they had a warrant to act for those persons in respect of the allegations made against the fourth defendant. The purpose of this request was to clarify the names of the clients who had made those allegations against the fourth defendant and to enable R&T to advise their client as to the proper party to look to in respect of his claim for defamation.

6 The first defendant also instructed R&T to act for it in respect of the matters contained in Gn & Co's letter of 4 August. On 12 August, R&T wrote to Gn & Co on behalf of the first defendant. The contents of this letter were largely similar to the contents of the letter sent on 6 August on behalf of the fourth defendant and also contained a demand that Gn & Co identify their clients and confirm that they had a warrant to act for those persons.

7 Gn & Co did not reply to either letter issued by R&T. Instead, they caused the Writ of Summons in this action, Suit 677 of 2004, to be issued and served. The Statement of Claim endorsed thereon contained the same allegations, in an expanded form, as those contained in the letters of 4 August. Subsequently, the fourth defendant instructed his present solicitors, M/s Shook Lin & Bok ("SLB"), to take over the conduct of the matter on his behalf.

8 In the meantime, on 12 August, the first defendant wrote separate letters to Mr Lu and Mr Udom asking for their written confirmation that they had instructed Gn & Co to issue the letter of 4 August and for a copy of their signed warrant to act. The letter addressed to Mr Udom was returned to the first defendant's office as the address no longer existed. No reply was received from Mr Lu.

9 On 3 September, the first and fourth defendants each filed an originating summons against Mr Lu and Mr Udom. By these summonses, the defendants sought pre-action discovery of Gn & Co's warrants to act, if any, which authorised them to send out the letters of 4 August on behalf of the former partners. Both defendants said that they needed this document in order to ascertain the proper parties to sue for defamation arising out of the manner in which Gn & Co had published the defamatory statements made in the letters of 4 August.

10 The summonses were served on Mr Lu on 9 September but no service could be affected on Mr Udom as he was out of town. On 10 September, Gn & Co entered appearance for both Mr Lu and

Mr Udom. The summonses were heard together on 15 September and Mr Gn of Gn & Co applied for a two-week adjournment in order to file an affidavit since Mr Lu had only recently been served and Mr Udom was not in Singapore. This application was not allowed and the senior assistant registrar went on to order Mr Lu and Mr Udom to give discovery of the warrant to act or any other document which they had executed expressly or impliedly authorising Gn & Co to act as their agent to send the letters of 4 August and/or generally. The discovery was to be given by way of an affidavit, to be filed by 24 September.

11 On 18 September, Gn & Co filed notices of appeal against the orders for pre-action discovery. On 23 September, the defendants' solicitors drew Gn & Co's attention to the fact that their clients' appeals did not operate to stay the execution of the orders of court made on 15 September. The defendants' solicitors further stated that if Mr Lu and Mr Udom did not comply with the court orders by 24 September they would be in contempt of court and the presumption under O 64 r 7(2) of the Rules of Court (Cap 322, R 5, 2004 Rev Ed) would be invoked. In that event, their clients would proceed without further reference to Gn & Co or the latter's clients.

12 The appeals against the discovery orders came on for hearing before Tay Yong Kwang J on 1 October. At this hearing, directions were given for the filing of affidavits and Mr Udom and Mr Lu were given leave to amend their notices of appeal to include a prayer for an order for stay of execution of the 15 September orders of court. Further, Tay J granted a stay of execution of those orders of court pending the adjourned hearing of the appeals.

13 On 5 October, SLB, on behalf of the fourth defendant, and R&T, on behalf of the first defendant, wrote to Gn & Co in similar terms. They said although Tay J had granted a stay of execution of the orders of 15 September until the adjourned hearing of the appeals, he had stated that this order did not affect the defendants' rights to pursue the issue of Gn & Co's authority to act for the plaintiff in the present action. Each letter then went on to demand, pursuant to O 64 r 7 of the Rules of Court, that Gn & Co produce for the inspection of SLB and R&T, respectively, their warrant to act for the plaintiff in this action, failing which the defendants would proceed on the presumption that Gn & Co had not been authorised to represent the plaintiff in this suit.

14 On 8 October, Gn & Co replied to SLB and R&T. They asserted that O 64 r 7 did not give the solicitors or their clients any right to inspect any warrant to act given by any person to his solicitor. They also stated that the demand to inspect their clients' warrant to act, was, in their view, in contempt of the orders made by Tay J on 1 October. Finally, Gn & Co stated:

> In any event, for all purposes, we wish to place on record and put your solicitor(s) in charge on formal notice that we have todate yet to hear any explanation or basis of your unusual conduct in challenging and questioning a fellow solicitor's authority to act. We cannot imagine how the legal system can function if every other solicitor acted the same way you did, besides the fact that it is offensive and insulting.

15 On 14 October, each of the first and fourth defendants filed an application in this action asking for orders that the suit be struck out on the ground that Gn & Co did not have the authority to bring the action in the name of the entity named as plaintiff and that the respective defendant's costs of the action, including the costs of the application, on an indemnity basis, be paid personally by Gn & Co. These applications were both fixed for hearing before the Registrar on 27 October.

16 On 25 October, Mr Lu and Mr Udom made a joint affidavit. In it, they stated that they were the former partners of the firm, the plaintiff named in this suit, and had brought this action against the defendants in the name of their former firm and partnership. The deponents confirmed that they

had instructed and authorised Mr Gn and his firm to act for them and that they had signed a warrant to act to instruct Gn & Co to commence this action against the first and fourth defendants and some others for the conspiracy pleaded in the Statement of Claim. They also gave various reasons for their failure to reply to the letter dated 12 August 2004 from the first defendant, including the following:

(a) that the first defendant was threatening to sue them for defamation and had demanded an apology on terms to be dictated by its lawyers;

(b) the first defendant had demanded that they help it to identify the parties, namely themselves and Gn & Co, so that it could sue them and/or the lawyer;

(c) the first defendant had insisted that it had the right to see the confidential warrant to act given to Gn & Co by Mr Lu and Mr Udom; and

(d) they were highly suspicious of the first defendant's intentions.

17 Mr Gn affirmed an affidavit of his own the same day. In it he said, among other things, that he had been an advocate and solicitor for the preceding 21 years and in those years of practice had never been asked by counsel for an opposing party to produce his client's warrant to act for inspection or had his authority to act for his client challenged. Similarly, he had never questioned another solicitor's authority to act in any matter, let alone demanded to inspect the latter's warrant to act. It had always been his understanding, that, for good practical and professional reasons, a solicitor would accept the word of another solicitor that he acted for a certain client, and that a solicitor would not suggest to another solicitor that the latter had been acting improperly without the authority of his client, unless there were exceptional circumstances to justify such a suggestion. He also referred to the various previous proceedings in which he had represented the two former partners of the firm and asserted that the first and fourth defendants knew or ought to have known that there existed a long-running client and solicitor relationship between the firm, its former partners and Gn & Co. Mr Gn reiterated that, in his professional opinion, his firm was not legally required to respond to unreasonable demands for its warrant to act or to supply the defendants with information to assist them in their threatened action against the former partners and Gn & Co.

18 In the event, the applications were heard in November. At the hearing, the respective solicitors for the first and fourth defendants informed the court that they did not wish to pursue the prayer to strike out the action as the contents of the joint affidavit were precisely what they were seeking. They asked for costs because the firm had not provided them with the authority when they had asked for it. Mr Gn objected. His submission was that if the defendants were going to withdraw the application, they would have to pay the costs of it. The application was unnecessary and was contrary to Tay J's order on 1 October in the originating summonses. In the event, the assistant registrar granted the defendants leave to withdraw prayer 1 of both summonses in chambers and awarded costs of $1,000 each and reasonable disbursements to each of the defendants. On 17 November, the plaintiff appealed against those orders as it considered that costs should have been awarded in its favour instead of in favour of the defendants.

The appeals

19 The issues before me on these appeals are:

(a) Does a solicitor have the right to question another solicitor's authority and to demand to inspect that solicitor's warrant to act?

(b) Whether it was reasonable for the first and fourth defendants to have filed their respective applications to strike out the plaintiff's action against them?

20 Since much of the argument revolved around the effect of O 64 r 7 of the Rules of Court on the correct practice to be adopted by solicitors, I will set out that rule in full. It reads:

> **7.**—(1) Every solicitor representing any party in any cause or matter shall obtain from such party or his duly authorised agent a warrant to act for such party, either generally or in the said cause or matter.
>
> (2) The absence of such warrant shall, if the solicitor's authority to act is disputed, be prima facie evidence that he has not been authorised to represent such party.

21 When the parties appeared before me on 30 November, they were at odds not only on what the rule means but also on what the practice was among Singapore lawyers as to the making of requests for the production of warrants to act. In order to obtain evidence of that practice, I directed that counsel for all parties file affidavits setting out their respective firms' practice in relation to demands for the production of warrants to act or other evidence of authority. The following affidavits were filed on 14 December pursuant to these directions:

(a) an affidavit by Gn Chiang Soon on behalf of the plaintiff;

(b) an affidavit by Rebecca Chew on behalf of the first defendant; and

(c) an affidavit by Sarjit Singh Gill SC on behalf of the fourth defendant.

Affidavit of Gn Chiang Soon

22 To substantiate his point that it was not the practice of lawyers in Singapore to challenge the authority of opposing counsel to act in a matter unless there were exceptional circumstances to justify such a challenge, Mr Gn conducted a survey among his fellow solicitors on their individual professional experience in relation to this issue. He asked them to disclose how many demands they had made to see another counsel's warrant to act in the course of their work and how many warrants had been disclosed to them. He also asked them how many demands they had received from other counsel to produce their own warrants to act and how many times they had acceded to these requests. Additionally, he asked respondents to the survey for their thoughts on the matter.

23 Mr Gn received a total of 29 responses to his questionnaire. He affirmed that these responses supported his own personal experience in that, as far as the Singapore legal fraternity was concerned, there did not exist a practice of one lawyer challenging a fellow lawyer's authority to act in any matter by demanding that he produce his warrant to act for inspection. Mr Gn found it noteworthy that none of the 29 advocates and solicitors who had responded, except one, had ever made a demand on a fellow lawyer for production of the latter's warrant to act for inspection. It was Mr Gn's personal view and that of his fellow solicitors, as reflected in the responses given to him, that it is a very serious matter to challenge another solicitor's authority to act. Such a challenge amounts to an attack on the solicitor's professional integrity and it is a personal attack.

24 Copies of all the responses were exhibited to Mr Gn's affidavit. A perusal of these shows that the majority of the solicitors who responded to Mr Gn's survey had been in practice for more than ten years with many of them having practised for more than 20 years. More than a few of them have, to my knowledge, been involved in litigation. Many respondents commented on the purpose of the

warrant to act. Most considered that such warrant is strictly a matter between a solicitor and his client and is a document executed for the solicitor's own protection. They stated that counsel should accept opposing counsel's word that the latter acted for the other party in the matter. Two lawyers considered that opposing counsel had no business querying their authority. On the other hand, a lawyer with 24 years' experience, only considered that it would be unethical to ask for opposing counsel's warrant if there were no valid strong reasons for such request. The only solicitor who replied to the survey to say that he had made a demand to see another counsel's warrant to act in the course of his work and that he had been shown that warrant, was a solicitor with 32 years in practice. He said he had received such a demand only once in that period and had himself made a similar demand of another counsel once as well. He commented that it was not prevailing practice to demand production of another counsel's warrant to act.

Affidavit of Ms Chew

25 Ms Chew is a partner of R&T. She confirmed in her affidavit that, after legal proceedings were commenced, if a challenge were to be made by an opposing party as to her firm's authority to represent the client in the matter, she would produce to that opponent either the warrant to act or other documentary evidence of the firm's authority to represent the client. She had checked with senior members of the Bar practising in her firm and they concurred with her views. Mr Steven Chong SC had taken out the application to strike out the action and therefore his position was that the first defendant was entitled to demand production of the warrant to act and the failure to produce such evidence of authority entitled the first defendant to apply to strike out the application.

Affidavit of Sarjit Singh Gill SC

26 Mr Gill is a senior partner of SLB and head of its litigation and arbitration practice. He is the partner with overall conduct of this matter on behalf of the fourth defendant. It is SLB's practice to request evidence of authority from solicitors claiming to represent an opposing party in a contentious matter when there appears to the firm to be a reasonable basis to doubt whether those solicitors had been authorised, properly or at all, to act for that opposing party. Mr Gill considered that this position is in line with the practice note issued by the Council of the Law Society on this issue. That note reads as follows:

> **Requests For Written Warrants To Act**
>
> Council is of the view that a law firm should as a general rule accept another law firm's written representation that the latter is authorised to act for a particular client on the face value of the representation made, unless there are good reasons for suspecting that the representation has been falsely made.
>
> Members are informed that this is a rule of practical efficacy, or otherwise the effect of a legal notice can be negated by a request for verification of written authorization.

Submissions

27 For the plaintiff, Mr Gn challenged various holdings made by the assistant registrar. The assistant registrar had observed that the defendants' solicitors' conduct in challenging Mr Gn's authority to act was not "unusual" in the particular circumstances of the case. Hence, since the defendants were questioning whether there was authority to sue, the plaintiff's counsel had to show that he had authority to act, be it by way of warrant to act or otherwise. The assistant registrar did not think that it was sufficient for the solicitor to say that he had a long-standing relationship with

the client and therefore must have been authorised to sue. If challenged, there was always a need for counsel to show that there was authority to act in each suit commenced. The assistant registrar held that counsel for the defendants were justified in taking out their respective applications given Gn & Co's refusal to prove that they had authority to act.

28 Mr Gn submitted that if there was always a need for a solicitor to show that he had authority to act in each suit, if challenged, that would mean that everyone and anyone could at any time for no reason at all and with impunity, challenge any opposing counsel and put him to proof of his authority to act in every single case no matter how small. That would make the judicial process and legal practice untenable. Mr Gn submitted that the law on this point was that counsel could be put to proof of his authority to act only in exceptional circumstances and not as a matter of routine check. In support, he cited an observation by Brightman LJ in *Waugh v H B Clifford & Sons Ltd* [1982] Ch 374 at 388 to the effect that a party on one side of the record and his solicitor ought usually to be able to rely without question on the existence of the authority of the solicitor on the other side of the record and that only in the exceptional case should the solicitor retained in the action be put to proof of his authority.

29 Mr Gn further submitted that any argument that O 64 r 7 gave solicitors an unfettered right to put a fellow solicitor to proof of his authority to act by producing his warrant to act for their inspection, at any time and for any reason, was misconceived. This was because first, the wording of the said rule did not support such a wide interpretation and, second, such an assertion of right to see what was basically a client's instruction to, and communication with, his counsel, for the purpose of litigation was contrary to established common law professional legal privilege and to s 128 of the Evidence Act (Cap 97, 1997 Rev Ed). That section prohibits an advocate or solicitor from disclosing any communication made to him by a client in the course of, and for the purpose of, his employment as such advocate or solicitor unless the client consents to the disclosure. By reason of the foregoing, it was wrong for the assistant registrar to find that there was nothing unusual in the challenge to Gn & Co's authority mounted by counsel for the defendants.

30 In this case, no exceptional circumstances, justifying the challenge to Gn & Co's authority, existed. The first and fourth defendants knew that there had been a previous long-standing solicitor and client relationship between Gn & Co and the firm. The defendants had subtly shifted their position in the course of the proceedings. At first, they had demanded production of the warrant to act. It was only later that they focused on "want of authority to act". The demand to see the warrant to act was unreasonable. There was an ulterior motive for it.

31 A further argument made was that Tay J's stay order had been violated by the defendants' demand on 5 October to see the warrant to act. The stay order had meant that Mr Lu and Mr Udom were not bound to make discovery of the warrant to act until such time as their appeals against the order for discovery had been disposed of. The striking-out application was a way of circumventing the stay order and the defendants should not be allowed to get round the stay order in such a way.

32 On behalf of the first defendant, Ms Chew submitted that there had been circumstances that justified the request for disclosure of the warrant to act. The original letter giving notice of intention to commence action had been written on behalf of a client identified as Tung Hui Mannequin, a business that did not exist and even though the Writ was taken out in the name of the firm, that did not resolve the difficulty as the business of the firm had been terminated more than a year prior to the issue of the Writ. Secondly, the first defendant had written to ask for the plaintiff to be properly identified and for the warrant to act to be disclosed. No reply whatsoever had been received to this letter. Further, the firm did not carry on business at the address stated in the Writ and the first defendant's investigations had shown that the residential address of one of the former partners of the

firm was no longer in existence. There were sufficient grounds for the first and fourth defendants to write to Gn & Co on 5 October to ask to see their client's warrant to act. Gn & Co's reply on 8 October exacerbated the position as Mr Gn failed to confirm in his reply whether he had a warrant to act. He merely said that the defendants were not entitled to make the request and that this request was "insulting and offensive".

33 Ms Chew relied on the holding in *William Jacks & Co (M) Sdn Bhd v Chemquip (M) Sdn Bhd* [1991] 2 MLJ 555 for the proposition that a challenge to the authority of solicitors to institute an action may be made at any time. She cited two other Malaysian cases, *viz Sarawak Building Supplies Sdn Bhd v Director of Forests* [1991] 1MLJ 211 and *Syawal Enterprise Sdn Bhd v Dayadiri Sdn Bhd* [1993] 2 MLJ 26 in support of this proposition and the further principle that once such a challenge had been made, the burden of proving that the suit had been instituted with proper authority would rest on the plaintiff. Ms Chew further argued that the provisions of O 64 r 7 meant that the onus was on the plaintiff to produce the warrant to act when its solicitors' authority was challenged. Further, in the letter of 5 October, Tay J's statement that the stay order did not stop the defendants from pursuing the point about Gn & Co's authority in this action had been repeated and the plaintiff had been given notice that if the warrant were not produced, the first defendant would take necessary action. The refusal by Gn & Co to reply to the letter in substance and to produce any evidence of their authority to act meant that the first defendant had no choice but to file the striking-out action because the absence of the warrant meant that a lack of authority was to be presumed.

34 In respect of the survey carried out by Mr Gn, Ms Chew submitted that the majority of lawyers surveyed had not said that it was wrong for counsel to request to inspect opposing counsel's warrant to act where a suit had been filed. Although a practice may not be commonly carried out, this did not necessarily mean that such a practice was wrong in law. Mr Gn himself had admitted that there may be "exceptional circumstances" which justified a challenge to an opposing counsel's authority to act. Given that serious consequences may follow in the event that a lawyer is unable to show that an action has been commenced with authority, it is critical for a claimant's lawyer to have evidence of his authority to commence the action and for the defendant to ensure that there is no absence of such authority. Since in the absence of authority, defendants are entitled to have the claim dismissed, it should be open to them to ascertain if the claimant has in fact authorised the action.

35 Gn & Co were aware of O 64 r 7(2) of the Rules of Court and that the absence of a warrant would be *prima facie* evidence that they had not been authorised to represent the plaintiff. Ms Chew submitted that Gn & Co took the decision not to provide any evidence of authority from their client to deal with the presumption under that rule and having done so, they ran a risk of a striking-out action being taken out against the action for want of authority.

36 The submissions made on behalf of the fourth defendant were in similar vein to those made by Ms Chew. Basically, it was submitted that the application to strike out the plaintiff's claim was reasonable and warranted. It was not in contempt of Tay J's order in the originating summonses. It was correct for the fourth defendant to ask for costs and for the court to award costs against the plaintiff because of the plaintiff's refusal to confirm the issue of the authority which led to the filing of the application, the defective affidavit filed on behalf of the plaintiff and the length of the arguments on costs before the assistant registrar.

37 Mr Pillai, for the fourth defendant, further submitted that the purpose of O 64 r 7 was not for the protection of the solicitor *vis-à-vis* his client. Matters relating to the regulation of a solicitor's relationship with his client would be provided for in the Legal Profession Act (Cap 131, 2001 Rev Ed). Order 64 r 7 is a rule of practice that is meant for the regulation of practice between solicitors and

the court. Under r 7(2), an "absence of a warrant to act" is made *prima facie* evidence of lack of authority. Mr Pillai submitted that the "absence of a warrant to act" presupposed that a demand had been made and the demand had not been complied with. In a contentious matter such as this, there would be no other way of ascertaining whether the solicitor had been duly authorised other than demanding inspection of the warrant or other authority.

38 As for the argument that the warrant to act could not be disclosed because it contained privileged material, Mr Pillai submitted that in order to prove authority there was no requirement to disclose the actual warrant to act. Authority could be shown by a document signed by the former partners of the plaintiff that stated that they had authorised Gn & Co to commence the action. Mr Udom and Mr Lu had done just that in their joint affidavit which in itself amounted to a warrant to act.

My decision

39 This case has shown me that the function of a warrant to act and its place in legal practice is not well understood by many practitioners. This misunderstanding survives despite the presence of O 64 r 7 and may have been compounded by a further misunderstanding of the purpose of the Law Society's practice note on requests for warrants to act.

40 At common law, it was established as far back as 1841 that a solicitor had a duty to obtain a written authority from his client before filing a suit in the name of that client. The words of the Master of the Rolls, Lord Langdale in *Allen v Bone* (1841) 4 Beav 493–494; 49 ER 429 at 430 are instructive:

> It is the duty of a solicitor to obtain a written authority from his client before he commences a suit. If circumstances are urgent, and he is obliged to commence proceedings without such authority, he should obtain it as soon afterwards as he can. An authority may however be implied, where the client acquiesces in and adopts the proceedings; but if the solicitor's authority is disputed, it is for him to prove it, and if he has no written authority, and there is nothing but assertion against assertion, the Court will treat him as unauthorised, and he must abide by the consequences of his neglect.

That passage must have served as one of the precedents in the formulation of what is now O 64 r 7. The two sub-rules of r 7 neatly embody two aspects of the law as set out in the passage. Sub-rule (1) makes it an obligation of every solicitor who is acting for a party to a court proceeding to obtain a warrant to act from that party. The second sub-rule embodies the second part of Lord Langdale's holding though softening it somewhat by making the absence of a warrant only *prima facie* and not conclusive evidence of the lack of the solicitor's authority to act.

41 Thus, every solicitor who is representing a litigant or a prospective litigant must obtain a warrant to act. The fact that it is a duty to obtain such a warrant and that this duty has been legislated as part of the Rules of Court indicates that the warrant is not simply a matter between the solicitor and his own client as some of the respondents to Mr Gn's survey seemed to believe. The warrant is to serve as proof of the solicitor's authority whenever such proof is needed and not only if the client himself subsequently disputes it. Lord Langdale's prescriptive language is in general terms even though his holding was made in a case where it was the client himself who was disputing the solicitor's authority to start an action in his name and there is nothing in O 64 r 7 which imports any restriction that was not indicated in the original formulation of this duty.

42 The third important matter in relation to this question is the issue of the burden of proof. It is

clear from the authorities that the burden of proving that a solicitor has been authorised to act lies on that solicitor or his client. The person challenging the authority does not have to prove that the solicitor is not authorised. In *Allen v Bone*, Lord Langdale made it plain that once a solicitor's authority was questioned by his own client, it was the solicitor who had to show that such authority existed. This must be because a solicitor in starting an action acts as an agent and, as such agent, makes his principal liable for various consequences including the possibility of a costs order against him. An agent who takes action that will bind his principal must be the person who has the onus of showing that his act was an authorised act. When the challenge to the solicitor's authority is made by the opposing party in the case rather than by the solicitor's own client, then that client and the solicitor have the onus of establishing the authority. In *Sarawak Building Supplies Sdn Bhd v Director of Forests* ([33] *supra*) an action was started in the name of a company pursuant to a resolution passed at a board meeting. The defendants challenged the validity of this resolution. Haidar J held that the authority of the solicitors to act could be challenged at any stage of the proceedings and, once the challenge had been made, the burden of proving that the suit had been instituted with proper authority rested on the plaintiff company.

43 Although a solicitor who files a writ or other pleading on behalf of a client thereby represents that he has the authority to act for that client, he must be aware that, from time to time, his authority may be challenged and, if it is challenged, he must be prepared to disclose his warrant to act or other document establishing his authority. The fact that he must have such a warrant before acting in a cause or matter means that he should anticipate having to produce it from time to time as evidence of his authority. Whilst the practice of law is an honourable profession and lawyers are, by and large, honourable persons, inasmuch as it is the duty of one lawyer to obtain authority before commencing action, it is the duty of the opposing counsel to defend his client's interests by putting a stop to an unauthorised action at as early a stage as possible if there appears to be reason to suspect that the action is unauthorised. Solicitors therefore should not react with umbrage when asked to produce their warrants to act and especially when opposing counsel explains clearly the reason why there is a doubt regarding their authority.

44 I accept the submission that the existence of O 64 r 7 necessarily implies that counsel are entitled to request opposing counsel to produce their warrants to act. It is not incorrect practice to do so. Asking for warrants to act all the time can, however, become a nuisance and make practice unnecessarily difficult. That is why some practitioners think that you should not ask to see a warrant to act unless you have a good reason to do so or the circumstances are, in some way, exceptional. I agree with this view. So does the Law Society. For that reason, its practice note advised practitioners that they should usually accept a lawyer's representation as to his authority at face value and should not ask to see another counsel's warrant to act unless there were good reasons to doubt the authority in any particular case. Lawyers should not, however, interpret that practice note as meaning that they cannot ask to inspect a warrant to act or that a request from another lawyer to inspect their warrants to act is a request that casts aspersions on their professionalism and integrity.

45 In general, therefore, I consider that a lawyer who receives a request to disclose his warrant to act should do so as a matter of course. He should not suspect the motives of the lawyer who makes the request unless there are other circumstances that indicate an ulterior motive. But, even if there is some ulterior motive, that is not a just excuse to withhold disclosure of the authority. If the warrant to act contains privileged material, the solicitor should either expunge that material before disclosing the warrant or obtain a further brief warrant that does not contain such material. To avoid having to expunge privileged material, warrants to act should be as brief as possible and simply describe the authority given without embellishment.

46 In this particular case, matters appear to have escalated in an undesirable fashion because of the previous history between the parties. Gn & Co's first letter was not clear since the client's name was stated wrongly and the firm's business had been terminated. The first and fourth defendants were entitled to know exactly who was taking action against them and to question the authority of Gn & Co to act for a firm that had, apparently, ceased business. As their lawyers' requests for clarification were contained in the same letters that asserted that Gn & Co's first letter was defamatory and that the defendants were considering commencing legal action for defamation, Gn & Co and their clients were suspicious of the motives of the defendants and not inclined to be helpful. That was not a correct response. Gn & Co should have clarified the position before they issued the writ. They had written a letter on behalf of clients whom they had not identified properly. Having made such serious allegations, it was incumbent on them when asked for the identity of those clients to disclose the same. The fact that the Writ when issued bore the correct name of the plaintiff (in view of the fact that the law allows former partners to sue in the name of their partnership even after it has been terminated) was not a sufficient answer since that firm was no longer in business and no longer occupied the address stated on the Writ to be the address of the plaintiff.

47 The filing of the two originating summonses further muddied the waters. It made Gn & Co and Mr Udom and Mr Lu even more suspicious of the defendants' motives and less inclined to be forthcoming. Mr Gn did, however, ask for time to file an affidavit at the first hearing of the summonses. If he had been given that time, then, judging by the contents of affidavits that were filed later, that affidavit would probably have resolved the situation by giving the defendants all the information they wanted as to who had instructed Gn & Co to issue the Writ and the letters that they alleged were defamatory. The adjournment was refused, however, and matters then took the course that I have recounted. An opportunity for an earlier resolution was lost. I should also note here, however, that at any time Gn & Co could have pre-empted the later actions by simply writing to the defendants' solicitors, telling them what they needed to know and showing them the warrant to act. Unfortunately, Mr Gn took the view, as his letter of 8 October 2004 showed, that one solicitor had no right to ask another for his warrant to act and that the request was an insult to him. From the survey results, it would appear that Mr Gn is not alone in espousing such a view. Whilst it may be widespread, however, it is not a correct view.

48 After careful consideration I have come to the conclusion that the first and fourth defendants had a reasonable basis on which to file their respective applications to strike out the action as against them. By 14 October 2004, it was clear that Gn & Co were not going to produce any warrant to act. Their clients were appealing against the order made by the assistant registrar in the originating summonses and despite Tay J's indication that the question of authority could be pursued in relation to this action notwithstanding the stay order he had granted, Gn & Co were adamant in their refusal to produce any evidence of their authority to act. It was therefore open to the defendants and their counsel, to take the view that no such warrant existed and that there was *prima facie* evidence that Gn & Co had not been authorised to act. Once Mr Lu and Mr Udom confirmed in their joint affidavit that they had authorised the commencement of the action, the defendants decided, quite properly, to withdraw their applications to strike out the action. They were, however, entitled to the costs of these applications because the applications had been necessitated by the plaintiff's and Gn & Co's unreasonable refusal to produce any evidence of authority.

49 I therefore dismiss the present appeals with costs which I fix at $1,500 per defendant plus the reasonable disbursements incurred in connection with the appeals.

Copyright © Government of Singapore.