Viknesh Dairy Farm Pte Ltd *v* Balakrishnan s/o P S Maniam and others [2015] SGHC 27

Case Number : Suit No 670 of 2013

Decision Date : 28 January 2015

Tribunal/Court : High Court

Coram : Tan Siong Thye JC (as he then was)

Counsel Name(s) : Vasudeven (Advocatus Law LLP) for the plaintiff; The firstdefendant in person; Tan Cheow Hin (CH Partners) for the second defendant; R Dilip Kumar (Gavan Law Practice LLC) for the third defendant.

Parties : Viknesh Dairy Farm Pte Ltd — Balakrishnan s/o P S Maniam and others

Tort – conspiracy

Agency – disclosure by agent

Ratification – unlawful acts

Contract – illegality and public policy – contract to commit a civil wrong

Injunctions – mandatory injunction

28 January 2015 Judgment reserved.

Tan Siong Thye J:

Introduction

1 The plaintiff is Viknesh Dairy Farm Pte Ltd. The managing director of the plaintiff is Govindasamy Subbramaniyam ("PW1") while the general manager is Rajagopal Balakrishnan ("Rajagopal"). The plaintiff leases farmland from the Singapore Land Authority ("SLA") to operate a dairy farm ("the Farm").

2 In September 2012, the plaintiff searched for a professional engineer ("PE") to obtain a Certificate of Statutory Completion ("the CSC") so that the farm buildings could be approved as required by the National Environmental Agency ("NEA"). Balakrishnan s/o P S Maniam, alias Tony ("PW2"), represented to PW1 that he was a PE and could assist him to obtain the CSC. PW2 told PW1 that the land had to be levelled for the purpose of the CSC. PW1 trusted PW2 to do the necessary so that the CSC could be obtained.

3 PW2 separately represented to Singland Transportation Pte Ltd ("D2") and BES Construction Pte Ltd ("D3") on different occasions that he was a PE engaged by the plaintiff to level the soil at the Farm. Thereafter, PW2 entered into separate agreements with D2 and D3 to allow them to dump earth on the Farm upon payment of an agreed fee. As a result, more than 1,700 truckloads of earth were dumped by D2 and D3 on the Farm. PW2 alleged that he received about $84,500 and $60,000 from D2 and D3 respectively without the knowledge of the plaintiff.

4 In this suit, the plaintiff seeks a mandatory injunction compelling the defendants to remove

1,748 truckloads of earth from its land. PW2, who is the first defendant, did not defend the action and has consented to having judgment entered against him. D2 and D3 oppose the plaintiff's application on the basis that they had entered into legitimate agreements with PW2, who was the plaintiff's PE and therefore had authority to contract on its behalf. Alternatively, if PW2 was not the plaintiff's agent, they claim that the plaintiff had ratified their actions of dumping earth on its land. Therefore, they submit that the plaintiff's application against them ought to be dismissed.

The facts

5 The plaintiff operates a dairy farm on a plot of leasehold land at 6 Lim Chu Kang Lane 8A, Singapore 719607. [note: 1] Its landlord is SLA and the plaintiff's lease expired on 20 August 2013. Both wanted to extend it. [note: 2]

6 In September 2012, the plaintiff was directed by the NEA to engage a PE so as to obtain a CSC for the farm buildings to be approved. [note: 3] Pursuant to this, PW1 went in search of a PE and met with Pulanthi, his friend. Pulanthi explained that while he was an engineer, he was too old to do the job. Pulanthi assured PW1 that PW2 could "provide professional services and expert advice to help [him] obtain the CSC." [note: 4] As a result, PW1 met up with PW2 at the Farm where Pulanthi introduced PW2 to PW1. [note: 5] PW2 also met Rajagopal. [note: 6]

7 PW2 told PW1 that as the farm buildings were wooden structures, they were not eligible for a CSC. He instructed PW1 to seek the plaintiff's previous engineer's (Mr Doh) to assist in the submission of its CSC application while PW2 would prepare all the necessary paper work. [note: 7] It was then that PW1 informed PW2 that the plaintiff was facing financial difficulties and could not commit to a surveyor at that time. [note: 8] PW2 then told PW1 that he had several surveyor friends who could do the job at low cost or for free. All the plaintiff had to do was to pay a goodwill deposit for the surveyor. [note: 9]

8 PW1 trusted PW2 and agreed to engage him to obtain the CSC. [note: 10] Thus PW2 was given access to the plaintiff's land to execute his duties. [note: 11]

9 D2 and D3 are companies that specialise in earthworks. [note: 12] PW2 asked them to transport earth excavated from their project sites to the plaintiff's Farm. They separately agreed to pay PW2 for allowing them to offload their earth at the Farm instead of dumping the earth at authorised dumping grounds which cost more in terms of dumping fees and where dump trucks have to wait for longer periods of time to dump earth.

10 The plaintiff is thus bringing this suit against all the defendants for the removal of earth from the Farm. PW2 is also the first defendant but he did not contest the plaintiff's action and is prepared to have judgment entered against him. [note: 13] He also became the plaintiff's witness to support the plaintiff's case against D2 and D3. Therefore, PW2 plays a crucial role in the plaintiff's case. D2 and D3 disagree with the plaintiff and argue that they legitimately contracted with PW2, whom they saw as the plaintiff's agent, to offload earth at the Farm for the purpose of levelling the soil. It is in this light that I shall set out their respective cases as well the circumstances under which D2 and D3 were engaged.

PW2's version of the story

11 According to PW2, PW1 needed a PE to obtain the CSC for the Farm and hence he informed PW1 that he was a PE who could assist. As PW2 knew that the plaintiff had some financial difficulties, he suggested to PW1 that he would instruct one of his surveyor friends to conduct the survey at minimal cost. The plaintiff could pay his friend later. Thereafter, he asked for a $500 deposit to engage the surveyor and the sum was paid by the plaintiff. [note: 14]

12 PW2 stated that he only thought of dumping earth on the plaintiff's land in October 2012 when PW1 received a call from Lee Kong Hock ("DW1"), asking if the plaintiff had space on its land to store a few excavators and to dump earth. [note: 15] PW1 told DW1 that there was none, after which, PW2 asked PW1 about the call. PW1 then told him that DW1 was looking for a place to dump earth.

13 Subsequently, PW2 obtained DW1's phone number from PW1 and called DW1. He discovered that D2 was looking for a place to dump a large quantity of earth from its projects. PW2 then obtained the contact details of Soh Eng Koon ("DW3"), D2's director, and they colluded together to dump earth at the Farm so that D2 could save some costs from dumping earth at the approved staging grounds while PW2 could make some money out of this situation. D2's payments to PW2 were made on the basis of dumping tickets which were collected by one David, D2's excavator operator, or himself and then submitted to D2 for payment. [note: 16]

14 PW2 claimed that D2 agreed to the arrangement despite knowing that the land belonged to SLA and that PW2 had no authority to permit the dumping of earth on the plaintiff's Farm. [note: 17] Since D2 had: (a) never met PW1; (b) never formalised any agreement with the plaintiff; (c) made all the payments by cash or cheque to PW2; [note: 18] (d) never received receipts from the plaintiff; (e) known that the land belonged to SLA by virtue of the fact that it was a company specialising in earthworks; [note: 19] and (f) agreed with PW2 to take the chance that SLA would never inspect the land, [note: 20] D2 had conspired with PW2 to injure the plaintiff and therefore was obliged to remove the earth. [note: 21]

15 With respect to D3, PW2 claimed that around the time that D2 was dumping its final loads of earth on to the plaintiff's land, Lye Ah Hing ("Ah Lam") and Jason Lye Wee Boon ("DW5"), directors of D3, contacted him. They proposed that earth be dumped on the Farm. [note: 22] This was because they had heard from DW1 that D2 had dumped a large volume of earth on the plaintiff's Farm. D3 wanted to do the same on the same terms at the plaintiff's expense. [note: 23] Just like D2, D3 agreed despite knowing that the land was SLA's and that PW2 was not authorised to dump earth on the plaintiff's land.

D2 and D3's version of the story

16 There are similar features in D2 and D3's cases. First, both of them made cash or cheque payments to PW2 instead of the plaintiff. They believed that PW2 was authorised by the plaintiff to collect payment on its behalf, [note: 24] although this is disputed by PW2. Second, no receipts were given by the plaintiff to D2 and D3. [note: 25]

17 D2 was the first company that was engaged by PW2. Its case is that PW2 had arranged for DW3 to meet DW1 at the Lim Chu Kang area. [note: 26] At that meeting, PW2 represented himself to be the PE engaged by the plaintiff to obtain the CSC for the farm buildings. DW3 accepted PW2's representation without verification from PW1. [note: 27] In any event, PW2 claimed that he needed

earth so as to stabilise the land for drainage works. [note: 28] After the meeting, DW3 agreed to dump earth on the plaintiff's land and D2 would pay PW2 $65 per lorry load of earth. [note: 29]

18 It might seem strange that D2 was willing to pay PW2 to dump earth instead of vice versa. This is because in the construction industry, it is a business cost to dispose of unwanted earth from construction sites. Earth is usually taken to two places in Singapore where it is dumped for a fee. DW3 would save on his business cost by dumping on the plaintiff's land as paying PW2 $65 per lorry load of earth was cheaper than dumping earth at the other approved sites.

19 Pursuant to the agreement, DW3 sent an excavator to the plaintiff's land on 1 November 2012 to organise the dumping process. It commenced earth dumping in front of the farm office and next to the barns from December 2012 to 26 January 2013, when it eventually ran out of earth. D2 paid PW2 the agreed sums on the understanding that he was the plaintiff's agent and would later pay the plaintiff. [note: 30] Alternatively, if PW2 was not the agent of the plaintiff, the latter had ratified his acts and is therefore precluded from claiming against D2. [note: 31]

20 D3's case is that in March 2013, it had unwanted earth from Mandai Link and Yishun which it had to remove. After hearing that the plaintiff was looking for soil to adjust the soil level on his farm, Jacky Lye Cheow Hui ("Jacky Lye"), its General Manager, approached PW2 together with Ah Lam and DW5. They understood that PW2 was authorised to act on the plaintiff's behalf to dump earth onto the Farm. Subsequently, PW2 entered into a written agreement to allow D3 to dump earth on the Farm and for him to receive about $18,000. [note: 32] Later when more earth was needed, D3 agreed to dump more earth for another $42,000. [note: 33] In total, D3 dumped 818 lorry loads of earth on the plaintiff's land. [note: 34]

The aftermath

21 After D2 and D3 had dumped the earth, SLA came and inspected the plaintiff's land. In a letter dated 30 April 2013, the plaintiff was informed to remove the earth from its land. [note: 35] At a meeting with SLA on 3 May 2013, PW2 also admitted to collecting money from D2 and D3 for allowing them to dump earth on the plaintiff's land. [note: 36] The consequence of not removing the earth would be the cancellation of the plaintiff's lease on the land. [note: 37]

22 It was then that the plaintiff realised that PW2 had misled it into believing that earth was needed in order for the Farm to be levelled so that the CSC could be approved. [note: 38] PW1's story is that, unknown to him and his workers, who were usually busy with daily commitments and events outside of the farm, [note: 39] PW2 through D2 and D3 exploited the situation to dump a total of about 1,748 lorry loads of earth (D2 dumped 906 lorry loads and D3 dumped 818 lorry loads) [note: 40] onto the plaintiff's land. [note: 41] When SLA informed the plaintiff to remove the earth from the land, PW1 confronted PW2. The latter reacted in an aggressive and intimidating manner. [note: 42] The plaintiff filed a police report against PW2 on 6 May 2013. [note: 43]

23 The plaintiff thus brought the current suit against the defendants. He seeks a mandatory injunction that the defendants remove the soil that they had conspired to illegally dump earth onto its land. [note: 44] Its case against D2 and D3 is that they had known at all times that PW2 did not have actual or apparent authority to act as the plaintiff's agent. [note: 45] The plaintiff also seeks damages and costs of the action against them.

24 D2 and D3 submit that they had operated under the honest belief that PW2 was the plaintiff's agent and was authorised to contract with them. The plaintiff must have known about the earth dumping as this was a huge operation that was carried out openly. It also lasted several months, from March 2013 to May 2013, with many lorries moving in and out of the plaintiff's land. [note: 46] His inaction meant that the plaintiff must have tacitly approved of the dumping, which was legal in nature. [note: 47]

The issues

25 The following issues are for my determination:

(a) Did the defendants conspire to defraud the plaintiff?

(b) Did PW2 have authority to act on the plaintiff's behalf?

(c) Did the plaintiff ratify D2 and D3's actions?

(d) Should a mandatory injunction be issued and, if so, against whom?

Did the defendants conspire to defraud the plaintiff?

26 Conspiracy has been defined in Gary Chan Kok Yew & Lee Pey Woan, *The Law of Torts in Singapore* (Academy Publishing, 2011) ("*The Law of Torts in Singapore*") at para 15.049 as two or more persons agreeing and acting on a course of conduct to cause damage to another person. It can be effected by either (a) lawful means or (b) unlawful means: *Quah Kay Tee v Ong and Co Pte Ltd* [1996] 3 SLR(R) 637 at [45]. While there is been debate as to what acts would fall within the ambit of "unlawful means", the Singapore position has not been disturbed with the question left to be answered by the Court of Appeal on another occasion: *EFT Holdings, Inc and another v Marinteknik Shipbuilders (S) Pte Ltd and another* [2014] 1 SLR 860 at [93]. The question is whether "[e]ach of the alleged conspirators must also have acted or taken some step to further a common design" (*The Law of Torts in Singapore* at para 15.052).

Did PW2 inform D2 and D3 of its plan to defraud the plaintiff?

27 The plaintiff alleges that PW2, D2 and D3 colluded to defraud PW1. Although the standard of proof in a civil case is on a balance of probabilities, if fraud is alleged, strong evidence is required. This was stated in *Trans-World (Aluminium) Ltd v Cornelder China (Singapore)* [2003] 3 SLR(R) 501 at [31]:

> In a civil case where fraud is alleged, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probabilities. The court does not adopt so high a degree as a criminal court, but still it does require a degree of probability which is commensurate with the gravity of the imputation.

28 PW2 is the plaintiff's principal witness in establishing that all the defendants, namely PW2, D2 and D3, were in collusion to deceive PW1 into allowing earth to be dumped at the Farm. Is it implausible that PW2 had informed D2 and D3 about his plan to defraud the plaintiff? I have to assess the veracity of PW2's account against that of D2 and D3.

29 If PW2 had told D2 and D3 about his plan to defraud the plaintiff, the parties would have been

somewhat *ad idem* about the contents of their discussion. Yet, the evidence shows that this was not the case. Their stories were hugely divergent from each other. I set out the relevant portions of their affidavits for reference:

PW2's affidavit [note: 48]

16 I told [DW3] that I would convince [PW1] to allow dumping of the 2nd Defendant's soil on the farm land upon the pretext of levelling the soil. We negotiated the price and we settled at a price of between $45.00 to $60.00 per lorry load. When [DW3] asked how I was going to handle the Plaintiff or the SLA, I told him that we will figure it out and to leave that to me. I made it very clear to [DW3] and hence there can be no doubt that [DW3] well knew that our arrangement to dump earth on the farm land was our mutual idea, whereby I could make some money off the 2nd Defendant … and the 2nd Defendant will make and/or save a good amount of money (i.e. approximately $235.00 to $255 per lorry load in savings as compared to dumping in one of the staging grounds.) [DW3] also acknowledged that there would be a huge costs savings from his lorries not having to wait several hours at the staging grounds.

…

28 Hence, when I met [the representatives of D3], I told them something similar to what I had told the 2nd Defendant, i.e. that we would convince the Plaintiff to allow dumping of the 3rd Defendant's soil on the farm land upon the pretext of levelling the soil. We negotiated the price and we settled at an initial price of $18,000 for 300 lorry loads of earth at $60.00 per lorry.

DW3's affidavit [note: 49]

6 I believe that the [PW2] was the agent of the Plaintiff. I rely on the following facts:

(i) Sometime in November 2012, or thereabout, I met up with [PW2], at the farm land …;

(ii) the Meeting was arranged at [PW2's] request vide [DW1] … who was and is in the business of earthwork;

(iii) at the Meeting, I noticed that substantial earth had recently been dumped at the farm land. [PW2] acknowledged this and told me:

(a) *that he is a professional engineer engaged by* [PW1]*, the owner of the farm land, to obtain CSC for the farm buildings* and in the process require earth and leveling work; I believe that [PW1] … is a director of the plaintiff and the deponent of several affidavits on behalf of the plaintiff in its failed interlocutory application for a mandatory injunction;

(b) [PW2] also told me that Lee's last introducee, another earthwork company, has just stopped dumping as they ran out of earth. At this juncture I would like to quickly say that I do not know exactly how many had dumped before or after the 2nd Defendant;

(c) that as the farm land requires more earth, in a win-win situation, the 2nd Defendant may dump earth thereat.

DW5's affidavit [note: 50]

5 The Plaintiff runs a dairy farm at No. 6 Lim Chu Kang Lane 8A, Singapore 719607 ("the farm land"). I was informed that the Plaintiff had earlier contracted with Peng Chuan Engineering Construction Pte Ltd to dump earth at their farm land and later contracted with the 2nd Defendant to also dump earth at their farm land. Now that the 2nd Defendant had run out of earth and the Plaintiff is looking for another party who may have earth to dump on their farm land.

6 My father Lye Ah Hing, my brother Lye Cheow Hui Jacky and I then approached [PW2] who was the Plaintiff's Professional Engineering [*sic*] at the material time. [PW2] *told me that he is employed by the Plaintiff as their Professional Engineering* [*sic*]*. The National Environmental Agency has told the Plaintiff to get the Certificate of Statutory Compliance clearance for the Plaintiff to build a farm building.* So the Plaintiff is in earnest to get the CSC clearance. [PW2] told me that to get the farm land survey ready for the CSC clearance the Plaintiff wants to level the soil as the soil is not stable. In order to do this they needed to dump earth on the farm land to level soil. [PW2] also told me that the Plaintiff is the owners (*sic*) of the farm land. I then told [PW2] that the 3rd Defendant have earth that they needed to dump and they can enter into agreement with the Plaintiff to dump earth at the farm land.

[emphasis added]

30 From the affidavits, it is clear that while the directors of D2 and D3 maintained that PW2 had told them he was the plaintiff's PE, PW2 denied it. Instead, PW2's story was that they were in cahoots with him and he informed them that they would deceive PW1 into allowing earth to be dumped onto the plaintiff's Farm. However PW2's account was riddled with inconsistencies which surfaced under cross-examination. At one stage, PW2 admitted that D3 had no knowledge of his deception of [PW1]: [note: 51]

Q: Did you tell [DW5] about your deception of [PW1]?

A: No, I did it on my own. I never told him.

Q: You never told him, right?

A: No, no.

Q: So am I correct to say---am I correct to say as far as [DW5] is concerned, the 3rd defendant's director is concerned, "you allow me to dump there at a cheap price, then I dump my soil there"? Am I correct?

A: Yes.

Q: And therefore he's got no part to---and therefore he's got no part to play in your deception of [PW1] of, you know, soil needed to level the earth. Am I correct? You said you never told [DW5]. So [DW5]---my---I'm just moving forward from there. *So* [DW5] *has got no knowledge of your deception of* [DW5]*, about soil is needed to level the earth. Am I correct?*

A: *Yes, yes.*

[emphasis added]

31 It is also reasonable to believe that there was a substantial amount of earth on the Farm by the time D2 started dumping earth on the land. Earlier, PW1 had contracted with Peng Chuan Development Pte Ltd ("Peng Chuan") to dump earth at the Farm. This was evident by a payment voucher (Exhibit D1) dated 23 April 2012 for $6,000 made in favour of Peng Chuan for an "Initial deposit for earth dumping @ Lim Chu Kang 8A". [note: 52] While PW1's identification number and a signature that looked similar to PW1's signature were on this voucher. The veracity of the payment voucher was disputed by PW1 [note: 53] and Peh Tian Swee ("DW6"), Peng Chuan's director, was subpoenaed to attend the proceedings as a result.

32 DW6's story was that DW1 had introduced him to PW1, [note: 54] who had informed him that he owned the land and bred cows on the land. His instructions were to "clear the wild grass and the two ponds behind" and "remove the grass and replace it with good quality grass suitable for breeding of cows". Therefore he had to put about 0.3m of soil in order to plant the grass. [note: 55] In total, about 100 to 120 lorry loads of earth were dumped by Peng Chuan on the Farm from 25 April 2012 to 15 May 2012. [note: 56] The amount of earth dumped by Peng Chuan was substantial and lent credence to D2's account of the events.

33 PW1 denied that he allowed Peng Chuan to dump earth at his farmland. He also denied receipt of $6,000 for this. However, it was a bare denial. Basically, PW1 alleged that Peng Chuan's payment voucher was a forgery. In this regard, I am aware that DW6 did not affirm an affidavit of his examination-in-chief. He was also an unwilling witness who had to be subpoenaed to testify in court. However, I heard his evidence and find that there are no compelling reasons for me to disregard his testimony. Accordingly, I find DW6's evidence more credible than PW1's especially when there was no reason for him to give a false account of the events in court. Together with the inconsistences in the evidence of PW2, I find that the plaintiff's case is less probable than D2 and D3's.

34 I find that it is likely that DW1 introduced Peng Chuan to PW1 and that PW1 consented to the earth dumping by Peng Chuan. The evidence showed that PW2 mentioned that the thought of dumping earth on the Farm occurred to him in October 2012 when he overheard the telephone conversation between PW1 and DW1, who was also involved in the earth dumping. The latter had enquired, *inter alia*, if the plaintiff had space for him to dump earth. PW1 did not deny receiving this telephone call although he claimed that he could not fully understand DW1. [note: 57]

35 I had several questions in relation to this telephone call. First, how did DW1 know the mobile number of PW1? Second, why would DW1 ask PW1 about earth dumping unless he knew that earth had previously been dumped at the Farm? Coupled with DW1's evidence that he was the one who introduced Peng Chuan to PW1, [note: 58] I find that it is likely that there is some truth to this statement, which also suggests that there might be some truth about PW1 allowing Peng Chuan to dump earth at the Farm in April 2012. I am aware that there were some contradictions in DW1's evidence. Thus I have to peruse his testimony with caution. When DW1's testimony is considered with the other evidence in this case I am of the view that it is safe to accept DW1's evidence that he introduced Peng Chuan to PW1. The demeanour of DW1 also appears to be truthful.

36 Additionally, the circumstances do not support the plaintiff's case. D2 and D3 are established companies in the construction industry. While the conspiracy plan might have saved them significant sums in disposal costs, PW2 could not explain why D2's excavators and vehicles were so *brazenly* used to dump earth illegally. This was evident when PW2 was cross-examined and the relevant portions are set out as follows:

Notes of Evidence Day 4 at p 16, line 26 to p 17, line 26

Q: So you're saying that [DW3] was fully aware of the illegality of what he was going to do and he agreed with you to do it?

A: Yes.

…

Q: Do you think it will be very easy for anybody looking at the farm to know that earth is being dumped?

A: Yes.

…

Q: Would you agree that getting caught at the end by SLA is a certainty?

A: Yes.

Q: So you are saying that despite all these, [DW3] agreed to do the illegal dumping?

A: Yes.

…

Q: And he brought his excavator to the site?

A: Yes, he did.

…

Q: With the name of his company clearly shown on the excavator?

A: Yes.

Q: And have it operating there for 2 months.

A: Three months.

…

Q: And [DW3] used his lorry to bring in the earth?

A: Yes.

…

Q: And the lorry shows very clearly the name of his company, Singland [D2]?

A: Yes.

Q: So despite all this certainty of getting caught, [DW3] exposed his company for 3 months.

A: Yes.

…

Notes of Evidence Day 4 at p 22, lines 1 to 5

Q: I put it to you that it doesn't make sense at all for [DW3] to expose his excavator and his lorries to commit an illegal act which is bound to be found out. Do you agree or disagree?

A: I Disagree.

…

Notes of Evidence Day 4 at p 35, lines 8 to 29

Q: Now, if what you said is correct, then since the 2nd and 3rd defendant also benefitted from this and collaborated with you on this---they may equally be liable for an offence of CBT or fraud at the very least for abetting you in this offence. Am I correct?

A: Yes.

Q: Now you are sure---you will agree with me that the 2nd defendant and the 3rd defendant also know this. It is an offence.

A: Yes.

Q: And you have said earlier that this commission of offence will definitely 100% be discovered subsequently. Isn't that what you said, correct?

A: Yes.

Q: If it is discovered---then the 2nd defendant, Singland, and the 3rd defendant, BES Construction, would be liable for criminal offences. Am I right?

A: I'm not sure about that.

Q: And not only the companies, Singland and BES construction, even the directors who are involved---that is [DW3] of Singland and [DW5] and Mr Jacky [Lye] of BES Construction may face criminal charges. Am I correct?

A: I'm not sure about that.

Q: *Now do you agree with me that in an event like this where it is an offence that will definitely be discovered, it is silly for the 2nd defendant and the 3rd defendant to embark on this with you?*

A: *We all took chances for the filling.*

[emphasis added]

37 I am not convinced by PW2's testimony as he did not provide satisfactory reasons for why D2 and D3 would have hatched the plan together with him so as to defraud the plaintiff. Indeed, it would have been nothing short of reckless and severely detrimental to their long-run commercial interests for them to be engaged in such flagrant misconduct. Even if they did participate in this illegal venture which, according to PW2, would be certainly be discovered, it would have made sense for D2 to at least be discreet in the way it carried out the earth dumping. This was the evidence of D2's director, [DW3], set out as follows: [note: 59]

> Q: I put it to you that the se---that the 2nd defendant and the 1st defendant colluded to dump earth on the farmland and to profit from it.
>
> A: No, there was no need for me to collude with him. The lorry and excavator are registered under the company's name. So there is no way that I could have colluded with him in this. The excavator and lorry have stickers---
>
> …
>
> A: ---that display the company name so everyone could see the company name.
>
> …
>
> A: *If I had colluded with him, I would have removed the company name but I didn't do so.*
>
> [emphasis added]

38 There is no evidence that D2 and D3 were surreptitious in their dumping of earth at the Farm. They did it openly and numerous lorry loads were moving in and out of the Farm. In view of the magnitude of the earth dumping operation, there was no way to conduct a covert earth dumping operation to prevent detection. In fact, there were huge mounds of earth that were clearly visible at the Farm. There is no way one can get away from earth dumping on such a large scale if it was true that PW2 had colluded with D2 and D3 to deceive the plaintiff. Furthermore, D2 and D3 are in the business of earth dumping and it would not have made commercial sense for them to pay PW2 thousands of dollars, albeit at a lower fee when compared to dumping at designated areas, for unauthorised dumping at the Farm, as the consequences upon discovery would be even more expensive. They would have to incur the costs of removal and then pay for dumping the earth at authorised grounds. It would certainly entail more work, time, resources and far more cost. D2 and D3 might even have to face criminal sanctions. The only person who would gain from this enterprise would be PW2 and it is not logical for D2 and D3 to collude with PW2 in an operation where the sole beneficiary is the latter.

39 In summary, I find that on a balance of probabilities, PW2 had represented himself as the plaintiff's agent who told D2 and D3 about the plaintiff's need for earth so that surveying and levelling works could be done. That would explain why D2 and D3 decided to take up his offer to dump soil on the plaintiff's premises and did so in an open manner.

40 Moreover, if PW2 intended to deceive PW1 in order to make money from the earth dumping, there would have been no necessity for him to reveal to D2 or D3 of his deception. It would have been much easier and logical to inform them that earth was required for levelling the ground as he had been appointed as the plaintiff's PE. A revelation of his deception of PW1 might not interest D2 and D3. This would have been the easiest way for PW2 to collect fees from D2 and D3 without any suspicion. [note: 60] I also noticed that sometime in April 2013, SLA came to know of the unauthorised

earth dumped on the plaintiff's Farm. PW1 and PW2 were summoned to attend meetings at SLA but not D2 and D3. At that stage, there was no allegation that PW2, D2 and D3 were in collusion to deceive PW1. The allegation only surfaced about five months later when the plaintiff applied for an interlocutory injunction in September 2013.

41 In the circumstances, between the two accounts presented by the plaintiff and PW2 on the one hand and D2 and D3 on the other, I find that it is more probable that PW2 had told them that he was the agent of the plaintiff and needed earth for backfilling works (works to fill an area with material) so as to obtain the CSC from NEA. I, therefore, am unable to accept PW2's conspiracy theory as it was highly improbable.

Did D2 and D3 know that the Farm belongs to SLA?

42 The plaintiff submits that as D2 and D3 are large earthworks companies, they would have known that all the land situated in Lim Chu Kang is owned by SLA, including the Farm. [note: 61] This allegation appears to be one of the mainstays of the plaintiff's case and the plaintiff's sole basis for this assumption is that D2 and D3 were specialised in earthworks. This is evident from the following paragraphs in its submissions:

> 29 The 2nd Defendant is a company that specializes in earthworks. By virtue of this, even if the 1st Defendant had not mentioned that the farm land belonged to SLA, it would not have been unreasonable to conclude that the 2nd Defendant would have known that, this being a farm land in Lim Chu Kang, *it was almost certainly owned by SLA and that it could not simply dump earth on the land*, irrespective of the representations made by the 1st Defendant. *In fact, all farm land on Lim Chu Kang belongs to SLA and this is a commonly known fact.* Certainly, the 2nd Defendant cannot feign ignorance of this.
>
> …
>
> 47 Like the 2nd Defendant, the 3rd Defendant is a company that specializes in earthworks. Hence, it would not have been unreasonable to conclude that the 3rd Defendant would have known that, this being a farm land in Lim Chu Kang, it was almost certainly owned by SLA and that it could not simply dump earth on the land, irrespective of the representations made by the 1st Defendant. *In fact, all farm land on Lim Chu Kang belongs to SLA and this is a commonly known fact.* Certainly, the [3rd] Defendant cannot feign ignorance of this.
>
> [emphasis added]

43 I cannot accept the plaintiff's assumption that just because D2 and D3 are earthworks specialists, they therefore must have known that the land on which the Farm is situated belongs to SLA. This is an unsafe assumption to make as:

(a) There is no evidence to suggest that D2 and D3 knew that the plaintiff's Farm belongs to SLA other than the testimony of PW2, which is unreliable.

(b) There is no evidence to state categorically that all farmland in Lim Chu Kang belongs to SLA. Moreover, there was no sign at the Farm to indicate that it belonged to SLA.

(c) There is no evidence to show that it is common knowledge in the earthworks industry that

all farmland in Lim Chu Kang belongs to SLA and that a landfill permit would be required to dump in the Lim Chu Kang area.

44 The fact that D2 and D3 are specialised construction earthwork companies, therefore, cannot lead to the automatic inference that they must be aware that all the land in Lim Chu Kang is owned by SLA. The plaintiff has, therefore, failed to prove on a balance of probabilities that D2 and D3 knew that the plaintiff's Farm belongs to SLA. More importantly it has also failed to establish that D2 and D3 knew that it was not authorised or that it was illegal to dump earth at plaintiff's Farm.

Did PW2 have the authority to act on behalf of the plaintiff regarding D2 and D3?

45 This issue relates to agency. PW1 submits that while he authorised PW2 to assist the plaintiff to obtain the CSC (see [7] above), he did not authorise PW2 to permit the wanton dumping of earth on the Farm. On the other hand, D2 and D3 argue that PW2 represented to them that he was the plaintiff's PE and that earth was required for dumping on the Farm.

Did PW1 know about the dumping of soil at the Farm by D2 and D3?

46 As a preliminary finding, I find that PW1 knew about the soil dumping at the Farm.

47 When the plaintiff applied for an interlocutory injunction, PW1 gave the impression that he was not aware that earth was being deposited on the Farm and that the earth dumping was done surreptitiously. Later, PW1 admitted that he was aware that soil was dumped on the Farm as he was deceived by PW2 that earth was required for levelling in order to obtain CSC. In my view, the latter is more probable as there is overwhelming evidence that the PW1 knew that earth was being dumped on the Farm.

48 First, the testimonies of the witnesses attested to PW1's knowledge. DW2, the excavator operator who was assigned by D2 to take charge of the earth dumping operation at the Farm, indicated that the plaintiff's General Manager, Rajagopal, had supervised him. PW1 had told DW2 not to let the earth cover the drains and the pond. DW2 also had said that he saw PW1 inspecting his works with Rajagopal and PW2.

49 Second, DW2 also observed that there were signs of earth dumping that had taken place previously and that corroborated the earlier incident of earth dumping by PW6 from Peng Chuan in which PW1 was paid $6,000 for earth being dumped at the Farm.

50 Third, Rajagopal kept records of the locations at which earth was dumped by D2 and D3.

51 In view of the magnitude of the earth dumping activities that were carried out daily, it is untenable for the plaintiff to deny knowledge of the earth dumping operations. I find that PW1 must have known of the earth dumping activities that took place on the Farm.

Did PW2 act within the scope of his actual authority?

52 It is clear from the evidence that PW2 only had authority to do the acts that were necessary to obtain the CSC. In the course of PW1's testimony, he maintained that PW2 was only authorised to do acts pursuant to obtaining the CSC. Earth dumping was not within the scope of PW2's authorised work.

53 Moreover, PW2 had consented to default judgment on the basis that he had fraudulently

misrepresented that he was a PE who could obtain CSC for PW1, thus causing PW1 to rely on that misrepresentation and suffer detriment. Therefore when PW2 separately contracted with D2 and D3 to dump earth on the plaintiff's land, PW2 had not acted within the scope of his actual authority.

54 The next issue is whether PW2 had acted on his apparent or ostensible authority when he entered separate agreements with D2 and D3 respectively. If he was, the plaintiff was bound. Otherwise, he was not. I shall now deal with these matters.

Did PW2 have apparent authority?

55 Apparent authority is founded on a different basis from actual authority. In the case of apparent authority the principal is bound not because he had authorised the agent to act on his behalf, but because he had made representations to a third party and the latter had acted on it: *Sigma Cable Co (Pte) Ltd v NEI Parsons Ltd* [1992] 2 SLR(R) 403 ("*Sigma Cable*"). Such a representation might be in the form of express communications or might even be implied from the apparent principal's actions through acquiescence or inactivity: *Chien Chung Ming v Kay Hian and Co Pte Ltd and another* [1991] 2 SLR(R) 882 at [16]. In *Sigma Cable* at [29], F A Chua J cited Browne-Wilkinson LJ in *Ebeed v Soplex Wholesale Supplies Ltd* [1985] BCLC 404 at 411 that:

> … The relevant inquiry … is whether the acts of the principal constitute a representation that the agent had a particular authority and were reasonably so understood by the third party. This requires the court to consider the principal's conduct *as a whole*. … [emphasis in original]

56 The plaintiff submits that PW2 did not have actual and apparent authority to permit D2 and D3 to dump earth on the Farm for the following reasons: [note: 62]

(a) PW1 had never met D2 and D3.

(b) There was no letter of authorisation from the plaintiff or even a verbal confirmation from the plaintiff that PW2 was its agent in relation to the dumping works that had been carried out.

(c) The plaintiff did not give any confirmation to D2 or D3 with respect to the details of the earth dumping.

(d) All payments from D2 and D3 were made to PW2 directly as cash cheques were issued to him personally.

(e) No receipts were issued by the plaintiff for payments received by PW2 to D2 or D3.

Furthermore, the plaintiff submits that D2 did not raise any evidence to support its case that it was acting under the belief that PW2 was the plaintiff's agent. Therefore D2 and D3's case cannot succeed. In contrast, D2 and D3 submit that PW2 had represented to them that he was a PE engaged by the plaintiff and they had dealt with him on that basis. In fact, they submit that PW2's signature was on the contract signed with D3. [note: 63] Therefore the plaintiff cannot assert that PW2 did not have authority to deal with them on its behalf.

57 On the totality of PW1's conduct (see *Sigma Cable* at [29]), I find that it is more probable that PW2 had apparent authority through PW1's implied representation by conduct to D2 and D3 that earth dumping was permitted at the Farm. When D2 and D3 entered into their respective agreements with PW2, *the latter was permitted to enter the Farm* and there were already signs of earlier earth dumping that had already taken place. PW1 also did not say anything to the effect that PW2 did not

have authority to contract on its behalf. Before D2 agreed with PW2, Peng Chuan had already dumped earth at the plaintiff's Farm. When D2 completed dumping his earth PW2 approached D3 and by that time there was already a large quantity of earth dumped by Peng Chuan and D2. In the circumstances, the plaintiff had impliedly represented via its conduct to both D2 and D3 that PW2 was its agent and that he had the authority to contract on its behalf to obtain the CSC. D2 and D3 would also not have suspected that there was unauthorised earth dumping by the plaintiff's agent, PW2. Their states of mind were that PW2 was the plaintiff's agent and genuinely wanted earth to be dumped on the land so that the CSC could be obtained.

58 The subsequent conduct of PW1 also attests to the presence of apparent authority at the point of contracting. The evidence shows that PW1 had knowledge of the following facts and had said nothing about them when told that they were for the purposes of obtaining the CSC:

(a) First, the earth dumping activity, which was carried out over a few months, was done in a systemic and open manner. There was also heavy machinery at the Farm to ensure that the earth dumping was conducted in a proper manner under the direction of PW2 and even a system of proper accounting of the number of lorry loads for the purpose of payment to PW2.

(b) Second, there was significant movement of lorries laden with earth entering the plaintiff's premises daily to dump earth, which piled up to form large mounds and PW1 acknowledged that he knew of the huge mounds of earth at the Farm. However, he thought that it was being used by PW2 for levelling in order to obtain the CSC.

In the circumstances, it was reasonable for D2 and D3 to believe that PW1 must have approved of the earth dumping at its Farm or the plaintiff would have stopped the activity if otherwise. He did not.

59 As an aside, the plaintiff tried to blame D2 and D3 for not verifying PW2's claim of being the plaintiff's PE. In *Jurong Town Corp v Wishing Star* [2005] 3 SLR(R) 283, the Court of Appeal held that there was no duty of due diligence on the part of the representee to verify the veracity of a representation made to him. At [112]–[113], Woo Bih Li J held that:

> 112 If the proposition advocated [that the representee has a duty of due diligence] were correct, it means that a fraudster can be as deceitful as he wishes in his representations and yet escape the consequences of his deceit if the innocent party chooses to make his own inquiry or due diligence on his representations. However, if the innocent party chooses not to make his own inquiry or due diligence, he can rely on the misrepresentations to avoid the contract.
>
> 113 We see no logic, firstly, in penalising a party who has chosen to act carefully but failed, whether due to negligence or otherwise, to discover the fraud. Put another way, such a proposition would encourage the indolent. Secondly, such a proposition would also encourage fraud.
>
> 114 *It is our view that such a proposition cannot be valid. A person who has made a false representation cannot escape its consequences just because the innocent party has made his own inquiry or due diligence* …
>
> [emphasis added]

60 In summary, I hold that there was apparent authority on the facts as:

(a) PW2 was authorised to enter the Farm which belonged to PW1;

(b) there were visible signs of earth dumping having taken place before D2 and D3 respectively commenced their earth dumping operations at the Farm; and

(c) PW1 did not protest although he had knowledge of D2 and D3 dumping soil on the Farm.

61 Those facts would have led D2 and D3 to believe that PW2 was indeed the plaintiff's agent for the purposes of obtaining the CSC. D2 and D3 had taken PW2's representation that he was a PE as the truth. They were entitled to rely on it. In fact the circumstances in which the earth dumping was done caused D2 and D3 to believe that PW2 must be the agent of the plaintiff otherwise the latter would have stopped the earth dumping almost immediately. The earth was dumped and visible to PW1. There were large mounds of earth around the office building, barns and almost everywhere on the Farm.

62 For the above reasons, it is my view that the circumstances point towards the presence of apparent authority. The plaintiff is bound by the agreement between PW2 and D2 as well as PW2 and D3.

Did the plaintiff ratify PW2's actions?

63 The parties disagree on whether PW2's actions (if outside the scope of his authority) could have been ratified by the plaintiff. The plaintiff submits that PW2's actions could not have been ratified by virtue of his illegal collusion with D2 and D3. D2 and D3's position is that there is no illegality to speak of. Accordingly, PW2's actions were impliedly ratified by the plaintiff's inaction as he knew substantial earth dumping was taking place on the land but he did nothing about it.

Can illegal acts be ratified?

64 The first issue is one of law: can illegal acts be ratified? The position appears to be dependent upon the kind of illegality that is involved and whether the act should be treated as void. In *Bowstead and Reynolds* at para 2–058, it is commented that:

> … *The extent to which it is correct to regard a transaction affected by illegality as actually void* will, however, turn on the *nature of the illegality*, the wording of any relevant statute, and the extent of the illegality. The law is far from clear … [emphasis added]

65 From the above passage, it seems that the object of the court's inquiry is whether the transaction would be *so affected by* illegality that it would be regarded as *void*. It would make sense then that a principal is not allowed to ratify an illegal act since it would be akin to a backdoor manner by which a party can get around the illegality.

66 This issue was raised in *Bedford Insurance Co Ltd v Instituto De Resseguros Do Brasil* [1985] 1 QB 966 ("*Bedford Insurance*"), which is instructive. In that case, a Hong Kong insurance company had authorised G H Ltd as their agents to write marine insurance risks in the United Kingdom ("UK"). However, neither the principal nor the agent was authorised to do so under the Insurance Companies Act 1974 (c 49) (UK) or the Insurance Companies Act 1981 (c 31) (UK) (collectively "the Acts") and it was an offence to conduct business in contravention of the Acts. Without the plaintiff's knowledge, the agents wrote a number of marine insurance risks on the plaintiff's behalf for certain customers. Later when the customers claimed on those plans, the plaintiff sought to claim against the agents. The agents raised the defence of illegality and its case was that the insurance contracts could not be ratified because they had been entered into illegally (at 978).

67 Parker J held (at 985) that, had the insurance contracts been authorised, they would have been prohibited under the Acts and therefore illegal and void *ab initio*. On the facts of *Bedford Insurance*, the illegality was statutory in nature (see also R A Buckley, *Illegality and Public Policy* (Sweet & Maxwell, 3rd Ed, 2013) at para 1.12) and it was held (at 982–983 of *Bedford Insurance*) that:

> [I]t appears to me clear that what is aimed at and what is prohibited is both the making and performance of any contract of insurance of a relevant class *by way of business*. Thus a company opening business premises for the purpose of carrying on insurance business would commit an offence when in the course of that business and without authorisation from the Secretary of State it entered into the very first contract of insurance of a relevant class. …
>
> …
>
> The Acts of both 1974 and 1981 are plainly for the purpose of protecting the public in the form of actual or potential insured from the operations of an unauthorised person. Any suggestion that the innocent insured was intended to acquire rights under a contract with an unauthorised person appears to me to be plainly negatived by the fact that, albeit he is not guilty of the principal offence, the principal offence *covers the performance of contracts and the discharge of liabilities as well as the effecting of the contracts, and by the further fact that the offence is created is plainly an absolute one*.
>
> [emphasis added]

68 Parker J went on to hold (at 985–986) that:

> … As to ratification, it is well settled that an unauthorised act by an agent, whether lawful or unlawful, can be ratified, but *no case was cited to me where a purported principal has been enabled to ratify an act which would have been illegal had he done it and thereby escape the consequences of the illegality. In my judgment, assuming it is possible to ratify the contracts, it makes no difference to the application of the principle*.
>
> Mr. Gee sought to argue that what the plaintiffs were seeking to do was in effect to carry out the policy of the Act, for, by ratification long after action brought, they were protecting the insured; that by the reinsurance they were ensuring that the insured would be paid, and that reinsurance is expressly encouraged by the Acts. Hence, he said, public policy does not require that the plaintiffs should be prevented from recovering. I reject this argument both in principle and on the facts. I reject it in principle because, once it is concluded that on its true construction the Acts prohibited both contract and performance, that is the public policy. I reject it on the facts, because it is clear that the plaintiffs' ratification was for the purpose of protecting their own credibility and the purpose of the reinsurance is to protect them from the full consequences of their own wrong. …
>
> [emphasis added]

69 Parker J continued (at 986) to hold that "life cannot be given by ratification to prohibited transactions". On the facts of *Bedford Insurance*, one can understand his holding as the entering into of insurance contracts without fulfilling the requirements of the Acts was prohibited by statute. Hence, the principal in that case could not subsequently ratify the illegal act of his agent. I turn now to address the nature of the illegality in the present case.

What was the nature of the illegality alleged?

What was the nature of the illegality alleged?

70 The plaintiff submits that the illegality in this case is that PW2 had perpetrated a fraud on PW1 through its false representations and collusion with D2 and D3 to deceive PW1. [note: 64] Thus, the conduct which is being complained of is not that the contracts are *prima facie* illegal, but that PW2 had entered into them with the object of conspiring with D2 and D3 in order to defraud the plaintiff. The issue is whether the object of the contracts to conspire and commit a tort to defraud constitutes an illegality that should render the plaintiff unable to ratify the contract and *Harry Cross v William Dickinson Kirkby* [2000] EWCA Civ 426 at [96] puts this well:

> It is clearly established that the *ex turpi causa* principle applies to actions founded on tort – see for example *Murphy v Culhane* [1977] QB 94, *Revill v Newbery* [1996] QB 567 and *Clunis v Camden & Islington Health Authority* [1998] QB 978. … The issue therefore is not whether but in what circumstances the principle applies in tort.

71 This version of illegality was addressed in *Ting Siew May v Boon Lay Choo and another* [2014] 3 SLR 609 ("*Ting Siew May*") and in my view, whether the tort of conspiracy would bar the plaintiff from ratifying PW2's acts must depend on what was the object of the conspiracy. The underlying basis of illegality at common law is the element of public policy that would be contravened if the impugned contract were to be upheld. This was made patently clear in *Ting Siew May* where Andrew Phang Boon Leong JA held (at [24]) that:

> 24 A court will therefore hold that a particular contract is void and unenforceable as being contrary to public policy because of the *wider public interest*, which in such cases overrides the parties' individual contractual rights. As has been observed (see "Illegality and Public Policy" in ch 13 of the *Law of Contract in Singapore* (Academy Publishing, 2012) ("*Illegality and Public Policy*") at para 13.001):
>
> > The topic of illegality and public policy constitutes perhaps the most complex area of the law of contract. This is not surprising because the very concept of public policy is a very nebulous creature indeed. The focus here is not so much on the individual as such but rather, on society. ***To this end, the courts are prepared to override the contractual rights of the parties concerned if to do so would give effect to the greater public good.*** This is not to say that matters of broader public interest arise only in some contracts. They arise in all contracts but most of the time they coincide with the parties' contractual rights. There is as much a public interest in upholding properly reached agreements as a private interest between the parties themselves in keeping to the agreement. In the cases discussed in this chapter, however, the public interest element does *not* coincide with the parties' interests and, indeed, the latter *militates against* the former. Where, however, the line is to be drawn by the courts constitutes the difficult issue that lies at the heart of this chapter.
>
> [emphasis in original in italics; emphasis added in bold italics]

72 The question to ask therefore is whether any conspiracy found between PW2 and D2 and D3 is so detrimental to the public good such that their bargain must be struck down.

73 First, I earlier found that there was no collusion between PW2, D2 and D3 (see [42(c)] above). That is sufficient to dispose of the illegality point. However assuming that there was indeed collusion between the defendants, I find that the contracts would have been entered into with the object of perpetrating a fraud on the plaintiff by PW2. The conspiracy would have been effected by:

(a) PW2's fraudulent misrepresentations to the plaintiff that all the work that was being done was pursuant to obtaining the CSC and that D2 and D3's soil dumping was pursuant to that goal; and

(b) D2 and D3's subsequent conspiracy with PW2 to defraud the plaintiff and lower their business costs.

74 It is trite that contracts entered into to commit fraud on a third party would be void for illegality (see *Ting Siew May* at [37]–[41]; *Koon Seng Construction Pte Ltd v Chenab Contractor Pte Ltd and another* [2008] 1 SLR(R) 375 at [72]; and *Suntoso Jacob v Kong Miao Ming* [1985–1986] SLR(R) 524). That being the case, assuming that there was collusion to commit fraud on the plaintiff, the contracts between PW2 and D2 and PW2 and D3 would be illegal, void and hence incapable of ratification.

Did the plaintiff ratify the contracts with D2 and D3 if they could be ratified?

75 In my view, even if the contracts were capable of being ratified, the plaintiff did not ratify the contracts with D2 and D3.

76 For ratification to take place, it is necessary for a person to first have full knowledge of all the material circumstances in which the act is done, unless he had intended to ratify the act and accept the risks of whatever outcome there might be: *Bowstead and Reynolds* at para 2–067. Tan Cheng Han SC, *The Law of Agency* (Academy Publishing, 2010) at para 06.032 also comments that:

> … [I]f an agent has misrepresented the facts to the principal, the misrepresentation being of a material nature, the purported ratification by the principal is ineffective. Similarly, *if the principal did not know of the facts that constituted the agent's act a wrongful one, the principal could not have ratified the agent's unauthorised act*. In *Freeman v Rosher*, the question was whether the landlord was guilty of trespass as he had given his agent a warrant to distrain for rent and the agent seized and sold a fixture, paying the proceeds to the landlord who received it without knowledge that anything irregular had been done. It was held that the landlord had not assented to any trespass as he received the money in the belief that his warrant had been lawfully executed.

7 7 *Freeman v Rosher* (1849) 13 QBD 780 held that a principal is not liable for the acts of his agent unless he authorised the action before hand or later assented to it with knowledge of what had been done. In *Eastern Construction Company, Ltd v National Trust Company, Ltd and others* [1914] AC 197, the appellants had a lease to cut timber from specific areas. They hired a firm of cutters to cut the timber. The cutters cut timber from areas that they were not authorised to do so at and the respondents who were the victims sought to make the appellants liable for the acts of the cutters. It was held that ratification had to be evidenced by clear adoptive acts and full knowledge of the essential facts and since the appellants did not have full knowledge of the precise place where the logs were cut or the material details, they could not have ratified the actions of the cutters (at 213).

78 The defendants submit that PW1 had ratified D2 and D3's actions and submits that his knowledge can be gleaned from the following facts revealed during his cross-examination:

(a) He found out that earth was being dumped in November 2012. [note: 65]

(b) When earth was being dumped, he had enquired about the dumping and was told by PW2 that (a) the soil was PW2's; and (b) it was being used to level the ground. [note: 66]

(c) He admitted to knowing that earth was being dumped continually until April 2013. [note: 67]

(d) He admitted to trusting PW2, who was supposed to help him obtain the CSC as he thought PW2 was an engineer and knew his job. [note: 68]

(e) He only told PW2 that the soil level was very high in April 2013. [note: 69]

79 However while the plaintiff appeared to have placed great trust in PW2, having appointed him as the PE to assist with obtaining the CSC, PW1 insisted that he had kept quiet because PW2 said he was levelling the ground and that all seven acres had to be levelled. [note: 70] He only found out about PW2's deception when SLA came to know of the huge deposit of earth at the Farm and when he did so, he made a police report. The reasonable finding from the evidence is that PW2 had deceived the plaintiff into thinking that the dumped earth was needed for obtaining the CSC and the material facts were not made known to PW1. It was only in this light that PW1 did not say anything even though he knew of the dumping that was going on. That being the case, I am unable to find that there is implied ratification by the plaintiff in respect of D2 and D3's actions.

Can the plaintiff obtain a mandatory injunction to remove the earth against PW2?

80 Since I have dismissed the plaintiff's claim against D2 and D3, it remains for me to address the final issue of whether I should grant a mandatory injunction to remove the earth against PW2.

81 It is important to state at the outset that what is sought for is the grant of a mandatory injunction and not an interim one. In its bundle of authorities, the plaintiff relied on several cases in support of his mandatory injunction application. However I note that most of those cases concerned the grant of interim mandatory injunctions, which are of a different nature from the mandatory injunction being sought for in the present proceedings. To that extent, they were unhelpful in assisting the court.

82 A mandatory injunction imposes an onerous burden on the person against whom the injunction is issued. Robert J Sharpe, *Injunctions and Specific Performance* (Thomson Reuters, 4th Ed, 2012) ("*Injunctions and Specific Performance*") at para 1.530 comments that:

> … [W]here the defendant has commenced the activity the plaintiff complains of, an injunction in favour of the plaintiff will, on account of costs already incurred, impose a heavier burden. Some, if not all, of the costs incurred by the defendant, often in reliance on the belief that the activity complained of was lawful, are lost. A mandatory order imposes an obligation to take positive steps to set matters right and hence involves not only forgoing the benefit of costs already incurred but also the imposition of the additional costs which will be incurred by taking the positive action required by the court's order. It follows that, to the extent that the availability of injunctive relief is determined by a balance of burden and benefit, mandatory injunctions are often relatively costly remedies and, for that reason, more difficult to obtain.

83 Ultimately, it is a question of the balance of benefits between the plaintiff and the defendant and in *Tay Tuan Kiat v Pritnam Singh Brar* [1985–1986] SLR(R) 763 at [9], Chao Hick Tin J (as he then was) cited the following passage from *Charrington v Simons & Co Ltd* [1970] 1 WLR 725 at 730:

> Where a mandatory order is sought the court must consider whether in the circumstances as they exist after the breach a mandatory order, and if so, what kind of mandatory order, will

produce a fair result. In this connection the court must, in my judgment, take into consideration amongst other relevant circumstances the benefit which the order will confer on the plaintiff and the detriment which it will cause the defendant. A plaintiff should not, of course, be deprived of relief to which he is justly entitled merely because it will be disadvantageous to the defendant. On the other hand, he should not be permitted to insist on a form of relief which confer no appreciable benefit to himself and will be materially detrimental to the defendant.

[emphasis added]

84 The ultimate enquiry is whether a fair result will be obtained. Exemplifying the cautious attitude which the court would take, Chao J held at [21] that *generally*, "a mandatory injunction will not be issued unless very serious damage will ensue from withholding an injunction". On the facts of *Management Corporation Strata Title Plan No 1378 v Chen Ee Yueh Rachel* [1993] 3 SLR(R) 630, which concerned the erection of certain structures without the plaintiff's approval, Chao J did not grant a mandatory injunction as it would have cost the defendant to remove the structures but the plaintiff would not have obtained any substantial benefit (at [23]). This was similarly the case in *Choo Kok Lin and another v Management Corporation Strata Title Plan No 2405* [2005] 4 SLR(R) 175 where again unauthorised structures were put up without the respondent's approval. Judith Prakash J declined to grant a mandatory injunction due to the costs that would be incurred and the lack of benefit that would stem from restorative works done to remove the unauthorised structures.

85 The issue is whether it is appropriate to grant a mandatory injunction to compel PW2 to remove the dumped earth from the plaintiff's land. I find the following two cases helpful to this inquiry.

86 The first case is *Redland Bricks Ltd v Morris and another* [1970] AC 652 ("*Redland*"). In that case, the appellant was a brick company which had excavated earth and clay, leaving a large pit on its land which, over time, was filled with water. The pit caused the respondents' land to become unstable and to slip. The only way to permanently rectify the situation was for the appellant to backfill the pit and it would cost £35,000 for him to do so. In contrast, the value of one acre of the respondents' land was between £1,500 and £1,600. The respondents sought a mandatory injunction for the appellant to undertake the necessary restorative works within six months.

87 The House of Lords held that while there was a strong possibility of grave future damage to the respondents' land and that damages were an insufficient remedy, they were just factors to be taken into account in the entire analysis. The decision turned on the appellant's blameworthiness and on the facts, since it was not unreasonable or wrongful in its behaviour and there was no indication of what work they had to do in the mandatory injunction, the injunction was discharged by the House of Lords.

88 The second case is *Haggerty v Latreille* (1913) 29 OLR 300 from the Ontario Court of Appeal. In that case, the appellant possessed riparian rights over a part of the river in front of his property. The respondent had filled in a part of the river and the appellant alleged that it interfered with his riparian rights. He thus sought a mandatory injunction against the respondent to remove the earth and stone which was used to fill in the river. The court denied his application as it was of the view that the appellant had not suffered much injury but the respondent would incur much expense in removing the earth and stone.

89 The preceding cases indicate that to arrive at a fair outcome, financial costs are but one of the factors to be considered. In this case, the plaintiff and PW2 placed significant emphasis on the huge cost for the removal of the earth from the Farm. While costs may be important, they must be balanced against other factors. Indeed, the author of *Injunctions and Specific Performance* comments

at para 1.560 that undue attention to costs is "uncalled for" as less concern is expressed with respect to prohibitive injunctions even though they often impose significantly higher costs.

90 What the cases show is that blameworthiness is a large part of the analysis and is a factor to be taken into account in the entire exercise to reach a fair outcome. The relevance of the moral blameworthiness of the party against whom the injunction is sought is seen in *Redland* where Lord Upjohn held (at 666) that:

> 3. Unlike the case where a negative injunction is granted to prevent the continuance or recurrence of a wrongful act the question of the cost to the defendant to do works to prevent or lessen the likelihood of a future apprehended wrong must be an element to be taken into account:
>
> > (a) *where the defendant has acted without regard to his neighbour's rights, or has tried to steal a march on him or … to sum it up, has acted wantonly and quite unreasonably in relation to his neighbour he may be ordered to repair his wanton and unreasonable acts by doing positive work to restore the status quo even if the expense to him is out of all proportion to the advantage thereby accruing to the plaintiff*. …
> >
> > (b) but where the defendant has acted reasonably, though in the event wrongly, the cost of remedying by positive action his earlier activities is most important for two reasons. First, because no legal wrong has yet occurred … and, in spite of gloomy expert opinion, may never occur or possibly only upon a much smaller scale than anticipated. Secondly, because if ultimately heavy damage does occur the plaintiff is in no way prejudiced for he has his action at law and all his consequential remedies in equity.
>
> [emphasis added]

91 I am of the view that a mandatory injunction should be issued against PW2, who is also the first defendant. First, he was the person who had fraudulently misrepresented himself to the plaintiff, resulting in the plaintiff hiring him as a PE. Second, he abused the trust placed in him by the plaintiff and went about making a quick buck at the plaintiff's expense. Third, when SLA subsequently asked him to remove the earth from the plaintiff's land, he repeatedly sought for delays and attempted to ask D2 and D3, who were totally innocent parties, to remove the earth. Fourth, he sought to unjustly implicate D2 and D3 in his deception of the plaintiff. He had acted without regard to the rights of the plaintiff, and profited from his devious scheme. Last, if PW2 does not remove the earth, SLA will repossess the plaintiff's Farm and order the plaintiff to remove the earth. Therefore, it is appropriate to issue a mandatory injunction against PW2 insofar as the earth dumped by D2 and D3 is concerned. The plaintiff's relief will not cover the earth dumped by Peng Chuan as PW2 was not involved in that transaction.

Conclusion

92 In summary, PW2 had deceived the plaintiff into believing that earth was required for levelling in order to obtain CSC. On a balance of probabilities, there is no evidence to implicate D2 and D3, or which suggests that they were involved in PW2's fraud on the plaintiff.

93 I also find that PW2 had acted with apparent authority when he dealt with D2 and D3. However if there was none, then PW1 did not ratify the actions of PW2.

94 In the premises, I dismiss the plaintiff's application against D2 and D3 for a mandatory

injunction. I issue a mandatory injunction against PW2 for him to remove the dumped earth from the plaintiff's land. I shall hear the parties on costs.

[note: 1] Statement of Claim ("SOC") at para 1.

[note: 2] SOC at para 2.

[note: 3] Bundle of Affidavits of Evidence-in-Chief ("BAEIC") Tab 1 at para 5.

[note: 4] BAEIC Tab 1 at para 6.

[note: 5] BAEIC Tab 1 at para 6.

[note: 6] BAEIC Tab 2 at para 8.

[note: 7] BAEIC Tab 1 at para 8.

[note: 8] BAEIC Tab 2 at para 9.

[note: 9] BAEIC Tab 1 at para 10; Tab 2 at para 11.

[note: 10] SOC at para 5.

[note: 11] SOC at para 6; BAEIC Tab 1 at para 11.

[note: 12] SOC at para 4; LAF at para 2.

[note: 13] Transcript Day 1 p 1, lines 10 – 11.

[note: 14] BAEIC Tab 2 at para 11.

[note: 15] BAEIC Tab 2 at para 12.

[note: 16] BAEIC Tab 2 at para 25.

[note: 17] BAEIC Tab 2 at paras 16–17 & 22.

[note: 18] Pf's closing submissions at para 11.

[note: 19] Pf's closing submissions at paras 21 & 30.

[note: 20] BAEIC Tab 2 at para 19.

[note: 21] Pf's closing submissions at para 21.

[note: 22] BAEIC Tab 2 at para 26.

[note: 23] BAEIC Tab 2 at paras 28–29.

[note: 24] LAF at para 7.

[note: 25] LAF at para 8.

[note: 26] D2 defence at para 4(ii).

[note: 27] NE Day 5 at p 20, lines 2–8.

[note: 28] D2 defence at para 4(iii).

[note: 29] D2 defence at para 4(iv)(a).

[note: 30] D2 defence at para 4(v).

[note: 31] D2 defence at para 5.

[note: 32] D3 defence at para 7; AB at p 26.

[note: 33] D3 defence at para 8.

[note: 34] BAEIC Tab 8 at para 10.

[note: 35] AB at p 1.

[note: 36] BAEIC Tab 1 at para 17.

[note: 37] SOC at para 13; BAEIC Tab 1 at para 19.

[note: 38] BAEIC Tab 1 at para 15.

[note: 39] SOC at para 8; BAEIC Tab 1 at para 14.

[note: 40] AB at p 519.

[note: 41] SOC at para 7; BAEIC Tab 1 at para 12.

[note: 42] SOC at para 9.

[note: 43] AB at p 340.

[note: 44] SOC at para 16.

[note: 45] Setting Down Bundle ("SDB") at Tab 4, para 13.

[note: 46] D3 defence at para 12.

[note: 47] D3 defence at para 14.

[note: 48] BAEIC Tab 2 at paras 16 & 28.

[note: 49] BAEIC Tab 5 at para 6.

[note: 50] BAEIC Tab 7 at paras 5–6.

[note: 51] NE Day 4 at p 60, lines 3–16.

[note: 52] Payment voucher dated 23/4/2012 to Peng Chuan Development Pte Ltd.

[note: 53] NE Day 8 at p 70, line 4.

[note: 54] NE Day 9 at p 3, lines 29–31.

[note: 55] NE Day 8 at p 60, lines 8–17.

[note: 56] NE Day 8 at p 63, lines 27–28.

[note: 57] PW1's affidavit dated 12/2/14, para 24-25; NE Day 1 at p 76, line 32, p 77, lines 1-32

[note: 58] NE Day 5, p6 lines 8-27

[note: 59] NE Day 6 at p 25, lines 6–17.

[note: 60] D2's submissions at para 36.

[note: 61] NE Day 4, p 60, lines 17–32.

[note: 62] Pf's written submissions at para 37 & 53

[note: 63] AB at p 26.

[note: 64] Pf's reply submissions at para 30.

[note: 65] NE Day 2 at p 31, lines 3–17.

[note: 66] NE Day 1 at p 83, line 8 to p 84, line 5.

[note: 67] NE Day 2 at p 31, lines 15–16.

[note: 68] NE Day 1 at p 84, lines 10–11; p 85, line 11.

[note: 69] NE Day 1 at p 84, lines 24–28.

[note: 70] NE Day 2 at p 32, lines 20–23.

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