

**OSBORNE CHAPPEL SDN BHD v.
VANTAGE STEEL WORKS SDN BHD**

HIGH COURT MALAYA, IPOH
SM KOMATHY JC
[CIVIL APPEAL NO: 12BNCVC-22-04-2014]
15 OCTOBER 2015

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CONTRACT: *Claim for works done – Subcontract – Claim for monies owing under subcontract works – Allegation that defendant was only acting as agent for subcontracts – Whether defendant was signee for all contractual documents with plaintiff – Whether there was any qualification that defendant was acting as agent – Whether defendant contracted in personal capacity*

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The respondent (“the plaintiff”) issued six purchase orders to the appellant (“the defendant”) for six subcontracts in relation to a project to save a sinking dredge. The subcontract works had been completed but the plaintiff received payments for only four out of the six subcontracts. Despite reminders, the defendant neglected to pay the monies due in respect of the remaining two subcontracts and this prompted the plaintiff to claim against the defendant at the Sessions Court for the outstanding sum. In defence, the defendant alleged that the claim against it was maintainable as the plaintiff knew that the defendant was acting as agent of a disclosed principal, in connection with the subcontracts. According to the defendant, by virtue of s. 183 of the Contracts Act 1950, the plaintiff was precluded from recovering the outstanding sum from it. The Sessions Court Judge held that all the contractual documents had been signed by the defendant without any qualification that it was acting as an agent. Therefore, the defendant had contracted in its personal capacity and the defendant failed to prove that he was acting as an agent in these transactions. Hence, the present appeal.

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Held (dismissing appeal):

- (1) When a person signs a contract in his own name, he is *prima facie* a contracting party and liable. There is a presumption that a person who signs a contract in his own name without qualification is incurring a personal liability. The fact that a person is an agent and is so known to be does not *ipso facto* prevent his incurring personal liability. There must be something very strong on the face of the document to show that the liability does not attach to him. Whether he does so is to be determined by the nature and terms of the contract and the surrounding circumstances. (para 11)
- (2) There was no evidence to counteract the presumption that the defendant incurred personal liability for the subcontracts. The contractual documents were all signed by the defendant in its own name without qualification. There was absent in the documents, any indication that it

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- A had contracted as an agent. It did not take sufficient precaution, if it did not intend to bind itself, to exclude itself from liability as contracting party to state 'for and behalf of' and to make plain that the principal was the contracting party. In fact, when a notice of demand was sent to the defendant for payment of the outstanding amount, it had requested for time to settle the said sum. There was no intimation to the plaintiff that it was not liable to pay the sum claimed as it was acting as an agent. (para 12)
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Case(s) referred to:

Leong Teck Ewe v. Tractors (M) Sdn Bhd [1990] 2 CLJ 249; [1990] 2 CLJ (Rep) 347
HC (*refd*)

- C *Pernas Trading Sdn Bhd v. Persatuan Peladang Bakti Melaka* [1979] 1 LNS 65 FC (*refd*)

Legislation referred to:

Contracts Act 1950, s. 183

- D *For the appellant - Sakthivel Nagalingam; M/s Chew Gi Boo & Co*
For the respondent - Steven Wong Chin Fung; M/s Arifin & Partners
[Appeal from Session Court, Ipoh; Civil Action No: B52-34-11-2014]

Reported by Najib Tamby

E **JUDGMENT**

SM Komathy JC:

- F [1] This appeal does not raise any point of law. It merely calls for the determination of whether the sessions judge was correct in holding that the appellant/defendant had contracted in its personal capacity and not as an agent, in respect of the transactions which formed the subject matter of the case.

- G [2] The brief facts relevant to this appeal are as follows. The plaintiff issued six purchase orders to the defendant for six sub contracts in relation to a project to save a dredge that was sinking into the paddock where it was resting at 5th mile Tanjong Tualang Road, Batu Gajah, Perak Darul Ridzuan. The plaintiff received payments for four of the six sub contracts. Despite reminders, the defendant neglected to pay the monies due in respect of the remaining two sub contracts although the completion of the sub contract works was not disputed. Whereupon, the plaintiff instituted an action against the defendant.
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- I [3] The defendant in its defence alleged that the claim against it was not maintainable as the plaintiff at all material times knew that it was acting as agent of a disclosed principal, one Dato' Seri Mohd Ajib Annuar, in connection with the sub contracts. Section 183 of the Contracts Act 1950 precluded the plaintiff from recovering the outstanding sum from it. The

defendant obtained leave to bring third party proceedings against Dato' Seri Mohd Ajib Annuar. After the filing of the action, the defendant paid a further sum of RM14,400, leaving a balance of RM422,000. A

[4] At the trial, the defendant elected not to call any witnesses and in support of its case, relied on a letter dated 30 May 2012 that it had sent to the plaintiff. The letter was to this effect: B

A discussion between YBhg Dato' Abdul Rahman and Encik Omar Alwi with YBhg Dato' Seri Dr Mohd Najib on the above mentioned subject was held on Tuesday, 29 May 2012.

YBhg Dato' Seri has agreed to the additional six compartments double plating work *via* your quotation VSW/Q/KWH/0212/0001 Rev 1 dated 16 February 2012. C

[5] The learned Sessions Judge after considering the documentary evidence and the oral evidence of the witnesses called by the plaintiff, decided in favour of the plaintiff. In her grounds of judgment, she stated that defendant had only raised one issue, ie whether it was acting as an agent for Dato' Seri Mohd Ajib Annuar in respect of the sub contracts and as such, was not liable for the outstanding sum of RM422,000. She held that on the evidence, it was clear that the defendant had contracted in its personal capacity and that the defendant had failed to prove that he was acting as an agent in these transactions. She further found that the fact that all the contractual documents had been signed by the defendant without any qualification that it was acting as an agent, rendered the defence unsustainable. She referred to the cases of *Pernas Trading Sdn Bhd v. Persatuan Peladang Bakti Melaka* [1979] 1 LNS 65; [1979] 2 MLJ 124 and *Leong Teck Ewe v. Tractors (M) Sdn Bhd* [1990] 2 CLJ 249; [1990] 2 CLJ (Rep) 347, in coming to this conclusion. D E F

[6] The parties were in agreement that s. 183 of the Contracts Act states the general rule that an agent cannot be sued on contracts that he enters into on behalf of the principal. Section 183 provides: G

In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

Such a contract shall be presumed to exist in the following cases:

- (a) where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad; H
- (b) where the agent does not disclose the name of his principal; and
- (c) where the principal, though disclosed, cannot be sued.

[7] There are numerous cases where it has been discussed whether or not an agent is personally liable on a contract. The question of whether an agent who signs a contract in his own name can be sued has received judicial consideration. I

A [8] The facts of the case in *Pernas Trading Sdn Bhd v. Persatuan Peladang Bakti Melaka* [1979] 1 LNS 65; [1979] 2 MLJ 124, are similar to the facts herein. There the appellants sued the respondents for the balance of the price of goods sold and delivered to the respondents. In their defence, the respondents denied liability and alleged that it was made known to the
B appellants at the time of the order that they were agents for Syahazam Sdn Bhd in the purchase of the goods. The appellants' case was founded on a sales invoice which stated that the goods in question were sold to the respondents and on the delivery note of the same date showing that the goods were received by the respondents. In support of the defence that the goods were
C ordered on behalf of Syahazam Sdn Bhd, the respondents relied upon the letter written by Syahazam Sdn Bhd to the appellants.

[9] The Federal Court held that the respondents' contention that goods were not ordered on their behalf must fail in view of the sales invoice and the delivery note. As regards the second contention that the letter indicated
D that it was acting as agent, Salleh Abas FJ stated:

The contents of this letter therefore amounts to nothing else than an oral evidence which the respondents wish to lead in order to prove the second proposition, i.e. the goods were ordered on behalf of Syahazam, and to support the first proposition, i.e. the goods were not ordered for the
E respondents, and thus contradict the sales invoice and delivery note. We feel that this course of action is not open to the respondents, as it is clear that under section 92 of the Evidence Act, 1950, oral evidence to contradict, vary, add to or subtract from, the terms of any contract, grant or other disposition of property which has been reduced in writing is not admissible. The sales invoice and the delivery note being the contract
F reduced in writing between the appellants and the respondents section 92 therefore applies. Hence, no value could be placed on the content of this letter and the affidavit of Zainab binti Tamby pertaining to the goods being ordered by her on behalf of Syahazam Sdn. Bhd.

Further, this case, in our view, falls on all fours with *Higgins v. Senior* 151
G ER 1279, in which it was held that in an action on a written agreement, purporting on the face of it to be made by the defendant and subscribed by him for the sale and delivery of goods above the value of £10, it is not competent for him to discharge his liability by proving that the agreement was really made by him by the authority of and as agent for a third person, and that the plaintiff knew those facts at the time the agreement was
H made or signed. What the respondents are trying to do in the present case is exactly what the defendant in *Higgins v. Senior* was doing, i.e. to prove by oral evidence that they were contracting with the appellants, not for themselves but for a third party, Syahazam Sdn. Bhd. In our view, this is not a defence to the appellants' claim ...

I In view of section 92 of the Evidence Act and *Higgins v. Senior*, we do not think that this is the correct view to be taken of this case. In our view, it is unnecessary for the court to examine the nature of the transaction

any further because, irrespective of whether the respondents were ordering those goods on behalf of Syahazam Sdn. Bhd. the sales invoice and the delivery note plainly show that the respondents were the purchaser and the receiver of the goods, and no one else. Thus, even if they were contracting for and on behalf of Syahazam, we agree with the submission of Mr. Nijar that the respondents are still liable because they were contracting in such form as shows that they are personally liable. Parke B., delivering the judgment in *Higgins v. Senior*, quoted with approval the passage in *Jones v Littledale* 6 Ad & Ell 486; 1 Nev & P 677 in which Lord Denman said that:

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if the agent contracts in such a form as to make himself personally responsible, he cannot afterwards, whether his principals were or were not known at the time of the contract, relieve himself from that responsibility.

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In our view, the sales invoice and the delivery note show that even if the respondents were agents for Syahazam in respect of the sale and delivery of those goods, they were contracting in such form as comes within the ambit of what Lord Denman said in *Jones v. Littledale*. Thus the respondents are clearly liable.

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[10] In *Leong Teck Ewe v. Tractors (M) Sdn Bhd* [1990] 2 CLJ 249; [1990] 2 CLJ (Rep) 347, Wan Yahaya J, the magistrate allowed the plaintiff's claim for goods sold and delivered. On appeal, the defendant argued that the claim against him was not maintainable as he had contracted for the goods not in his personal capacity but as an agent. In dismissing the appeal it was held:

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All the documentary evidence produced in support of the plaintiff's claim indicate specifically that the documents were made out in the personal name of the defendant and was likewise acknowledged ...

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The learned Magistrate had made a finding of fact on the appellant's non disclosure of his alleged principal. It is a finding he is well entitled to make on the balance of probability, a consideration of the circumstance relating to the issuance and signing of the documents. In *Rusholme Ltd. v. S.G. Read Ltd.* [1955] 1 All ER 180 at 183 Pearce J said:

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The fact that a person is agent and is so known to be does not itself prevent his incurring personal liability. Whether he does so is to be determined by the nature and terms of the contract and the surrounding circumstances. When he contracts on behalf of a foreign principal there is a presumption that he is incurring a personal liability, unless a contrary intention appears. The same presumption arises when he signs in his own name without qualification.

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Even if the appellant had successfully proved that the respondent was aware that he was acting as an agent for a third party, his mere acknowledgment of the documents in his own name, without qualification would nevertheless give the respondent a right to sue either the agent or the principal.

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A [11] It is clear from the two authorities that when a person signs a contract
in his own name he is *prima facie* a contracting party and liable. There is a
presumption that a person who signs a contract in his own name without
qualification is incurring a personal liability. The fact that a person is agent
and is so known to be does not *ipso facto* prevent his incurring personal
B liability. There must be something very strong on the face of the document
to show that the liability does not attach to him. Whether he does so is to
be determined by the nature and terms of the contract and the surrounding
circumstances.

C [12] In the instant appeal, the contractual documents were all signed by the
appellant in its own name without qualification. There is absent in the
documents any indication that it had contracted as agents. It did not take
sufficient precaution, if it did not intend to bind itself to exclude itself from
liability as contracting party to state “for and on behalf of” and to make plain
that Dato’ Seri Mohd Ajib Annuar was the contracting party. Further, when
D a notice of demand was sent to the defendant for payment of the outstanding
amount, it had requested for time to settle the said sum. There was no
intimation to the plaintiff that it was not liable to pay the sum claimed as it
was acting as agent. On these facts, it is clear that the sessions judge was
correct in holding that there was no evidence to counteract the
E presumption that the defendant incurred personal liability for the sub
contracts.

[13] The appeal is accordingly dismissed with agreed costs of RM3,000.

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