Alphire Group Pte Ltd *v* Law Chau Loon and another matter
[2020] SGCA 50

Case Number	: Civil Appeal No 185 of 2019 and Summons No 51 of 2020
Decision Date	: 19 May 2020
Tribunal/Court	: Court of Appeal
Coram	: Andrew Phang Boon Leong JA; Woo Bih Li J; Quentin Loh J
Counsel Name(s)	: Palmer Michael Anthony, Reuben Tan Wei Jer and Daryl Tan (Quahe Woo & Palmer LLC) for the appellant; Lim Tahn Lin Alfred and Lee Tat Weng Daniel (Fullerton Law Chambers LLC) for the respondent.
Parties	: Alphire Group Pte Ltd — Law Chau Loon

Agency – Implied authority of agent – Settlement agreement

Contract – Formation – Identifiable agreement that is complete and certain

[LawNet Editorial Note: This was an appeal from the decision of the High Court in [2019] SGHC 275.]

19 May 2020

Andrew Phang Boon Leong JA (delivering the judgment of the court *ex tempore*):

1 We first deal with the appellant's application in Summons No 51 of 2020 ("SUM 51") to strike out paras 19(a), 19(b), 20 and 21 of the respondent's case, as well as certain documents exhibited under S/N 2 of the respondent's supplementary core bundle, which consist of exhibits of the respondent's affidavit of evidence-in-chief in Suit No 822 of 2015 ("Suit 822"). We allow the application. This is because, for the documents other than those exhibited under S/N 2 of the respondent's supplementary core bundle, the Assistant Registrar in Summons No 4359 of 2019 had already dismissed the respondent's application to adduce further evidence (which included these same WhatsApp messages) on the basis that they were not relevant. The appeal against the Assistant Registrar's decision in Registrars' Appeal No 267 of 2019 was similarly dismissed, with leave being denied to adduce further evidence. The remaining documents in S/N 2 of the respondent's supplementary core bundle should have been introduced in the court below but were not. In any event, we are of the view that the materials which the respondent seeks to rely on have no bearing on the present appeal.

2 The appellant appeals against the decision of the High Court Judge ("the Judge") in *Law Chau Loon v Alphire Group Pte Ltd* [2019] SGHC 275 to grant a declaration that a settlement agreement reached between the appellant and the respondent is valid and binding. The appellant, Alphire Group Pte Ltd, is a Singapore-incorporated company in the business of arranging visits to foreign casinos – a process known as "junkets" – while the respondent, Law Chau Loon, was a former director in the appellant. The settlement agreement was in relation to a separate suit between the same parties in Suit 822 in which the appellant was awarded judgment for monies which the respondent had collected from certain clients in relation to the junkets business, but had failed to pay over.

3 By way of brief background, three individuals, Han Seng Juan ("Han"), Loh Kim Kang David, and Wong Kok Hoe ("Wong"), whom we will refer to as "the Investors", met the respondent at the Sheraton Hotel on 2 February 2019. The respondent alleged that at this meeting, he and the

Investors reached a settlement of the judgment debt in relation to Suit 822 ("the Judgment Debt") on various terms which included the payment of $1.4m by him, with an initial payment of $1m to be made. It is undisputed that he did pass the Investors $1m in cash at this meeting. Shortly after the meeting, Han sent the respondent a WhatsApp message, stating, amongst other things, that "if [Law] pays … S$1m[illion] … plus S$400,000 in 4 instalments of S$100,000 each", the Investors would agree to the settlement and would withdraw the pending bankruptcy petition against the respondent. Subsequently, there was a series of email correspondence between the appellant's solicitors and the respondent's solicitors in relation to the alleged settlement and its terms.

4 The Judge in the court below found that the Investors had implied actual authority to bind the appellant to the settlement agreement, which could be inferred from the parties' conduct and the overall circumstances of the case. In particular, the Judge emphasised that the relevant (and objective) evidence showed that the appellant's directors were subservient to the Investors, and that the directors reported to the Investors on issues relating to the appellant's management, operations and profitability. As for the settlement agreement, the Judge found that it was contractually binding, and that its terms mirrored those described in the WhatsApp message sent by Han to the respondent.

5 In this appeal, the appellant claims that the Investors did not have implied actual authority, and that, as a result of the correspondence between the parties' solicitors after 2 February 2019, which were marked as "without prejudice" or "subject to contract", there was no "full and final settlement" on 2 February 2019 between the respondent and the appellant.

6 Having carefully considered the parties' submissions, we agree with the Judge's decision and dismiss the appeal. We now set out the oral grounds for our decision.

7 On the first issue as to whether the Investors had implied actual authority, the relevant legal principles are very well established. The court may find implied actual authority through the parties' conduct and the circumstances of a particular case, such as where directors appoint one among their members to be a managing director to do things usual within the scope of that office (see the English Court of Appeal decision in *Hely-Hutchinson v Brayhead Ltd* [1968] 1 QB 549 and also the decision of this court in *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd and another and another suit* [2009] 4 SLR(R) 788 at [30]). Ultimately, the cornerstone of both express and implied actual authority is a consensual agreement between the principal and the agent, the latter of which may be implied from the words and conduct of the parties, who will be deemed to have consented if they have agreed to what, in law, amounts to such a relationship, even if they later profess to disclaim it (see the decision of this court in *Alwie Handoyo v Tjong Very Sumito and another appeal* [2013] 4 SLR 308 at [148]). In the final analysis, in making a finding of implied actual authority, the court must imply from the parties' conduct and the surrounding circumstances both the existence of the agent's authority and the *scope* of that authority (see also Tan Cheng Han, *The Law of Agency* (Academy Publishing, 2nd Ed, 2017) at para 03.027).

8 Having these principles in mind, we consider the particular facts and circumstances of this case which, in our view, clearly show that the Investors had the implied actual authority to bind the appellant to the settlement agreement. First, there were several material allegations in the respondent's affidavit, which pertained to the Investors' involvement in the appellant's business, that were left essentially unrebutted in the affidavit of Alicia Chua Buan Ling ("Alicia"), a director of the appellant. These included assertions by the respondent that: (a) the Investors had invested $8 million in the appellant during its incorporation; (b) the Investors had personally guaranteed the appellant's credit; (c) the appellant's annual meetings were held together with the Investors, during which time they, together with the respondent and Alicia, would discuss the appellant's financial affairs; and (d) Alicia would update the Investors on the appellant's monthly and annual profits and losses, and

would even refer to one of the Investors, Wong, as "boss".

9 Even more significantly, the appellant did not challenge the respondent's account of the circumstances surrounding his meeting with the Investors on 2 February 2019. Alicia's position was simply that she had no knowledge of these events. According to the respondent, he had met Han, sometime in the end of January 2019 at a karaoke outlet, where he was informed that the appellant was willing to compromise the judgment debt in Suit 822 upon payment of $1 million. At the time, Han assured the respondent that he would require no additional confirmation from the remaining Investors, and that payment of $1 million would represent satisfaction of the Judgment Debt. Thereafter, the respondent met the Investors in Sheraton Hotel on 2 February 2019, and passed them $1 million in cash. The Investors also informed him that they were willing to agree to "full and final satisfaction" of the Judgment Debt on the condition that the respondent perform certain additional obligations apart from his paying of the $1 million. These further obligations are described in the WhatsApp message sent by Han to the respondent.

10 Applying the well-established principle that where material allegations on affidavit are not contradicted, they are deemed to be admitted (see, for example, *Fasi Paul Frank v Specialty Laboratories Asia Pte Ltd* [1999] 1 SLR(R) 1111 at [33]), the respondent's description of the Investors' involvement in the appellant's business, as well as his account of the circumstances surrounding the meeting with the Investors on 2 February 2019 must therefore be deemed to have been accepted.

11 One also cannot lose sight of the fact that the appellant could have, but did not, tender any evidence from any of the Investors. The Investors are, above all, in the best position to shed light on the nature of their involvement in the appellant and the events that took place on 2 February 2019. Furthermore, we bear in mind that the very first time that the appellant had objected to the Investors' authority to enter the settlement agreement was on *17 May 2019*, some five months after the meeting between the respondent and the Investors. Based on our survey of the parties' correspondence before 17 May 2019, there was nothing raised by the appellant which suggested that the Investors did not have the authority to negotiate with or collect the $1 million from the respondent towards satisfaction of the Judgment Debt. Indeed, the correspondence suggested otherwise. For example, a letter dated 15 February 2019 from the appellant's solicitors to the respondent's solicitors referred to a settlement reached "between our respective clients" on or around 2 February 2019. In this vein, we agree with the Judge's observation that the appellant's objection to the Investor's having the necessary authority was a "tactical decision" for the appellant to distance itself from the settlement agreement. Finally, from a commonsensical perspective, the fact that the Investors had met up with the respondent and had proceeded to *collect $1 million* from the respondent – and that this was not in dispute – speaks volumes. Given the circumstances we have just described, there can be no doubt that the Investors had implied actual authority to bind the appellant to the settlement agreement. While both parties had also raised in their submissions the issue of apparent authority, we do not think it is necessary to make a finding on this point, given that we have decided in favour of the respondent with regard to the issue of implied actual authority.

12 The second issue concerns the validity of the settlement agreement. In this respect, the appellant pointed to the parties' correspondence after 2 February 2019, highlighting in particular the references to either "without prejudice" or "subject to contract" in the headings in some of the emails. The appellant also submitted that the Judge had erred in finding that the parties had "quarrelled" over the precise terms of the settlement agreement, but had nonetheless gone on to conclude that an agreement was concluded on 2 February 2019.

13 In our judgment, the parties had indubitably reached a binding and valid settlement agreement

on 2 February 2019. To that end, any subsequent correspondence is, strictly speaking, *irrelevant* to the question of whether there had been a binding agreement reached on 2 February 2019, save where it would constitute variation of the terms under the settlement agreement. The fact that some of the emails were marked "without prejudice" or "subject to contract", or that the parties had attempted to re-negotiate the terms of the settlement agreement does not detract from the fact that *there was already a binding agreement on 2 February 2019*. As stated earlier, the appellant did not challenge the respondent's account of the meeting with the Investors, nor the circumstances which preceded it. Of particular relevance is the appellant's failure to challenge the respondent's key contention, which is that he had *agreed* with the Investors to compromise the judgment debt on certain terms, including the payment of $1 million. Finally, we also think that the WhatsApp message exhibited in the respondent's affidavit constitutes strong objective evidence that the parties had reached a binding agreement on 2 February 2019. Indeed, the appellant did not provide any explanation as to why Han would have sent such a message if a binding agreement had not been reached on 2 February 2019.

14 We note that the appellant has now introduced a new argument on appeal to the effect that there was in fact a new agreement on 15 May 2019 which superseded the agreement arrived at on 2 February 2019. In addition to the fact that this was not an argument that was raised in the court below, there was, in any event, insufficient evidence of a *consensus ad idem* on the terms of such an alleged agreement in light of the 16 May 2019 letter from the appellant's solicitors suggesting different terms.

15 For the reasons set out above, we dismiss the appeal in Civil Appeal No 185 of 2019. However, we vary the declaration in the court below in that para 1 of the Order should refer to an oral settlement agreement between the applicant and the respondent made on 2 February 2019 which is valid and binding on the respondent.

16 Having considered the respective costs schedules of the parties as well as the fact that we have allowed SUM 51, we award costs to the respondent in the sum of $25,000 (all-in). There will be the usual consequential orders.