

Isabel Redrup Agency Pte Ltd v A L Dakshnamoorthy and others and another suit
[2012] SGHCR 6

Case Number : Suit No 755 of 2011/C consolidated with Suit No 381 of 2011/A, and Summons No 2294 of 2012/Q

Decision Date : 11 June 2012

Tribunal/Court : High Court

Coram : Amy Seow Wai Peng AR

Counsel Name(s) : Vincent Yeoh (Malkin & Maxwell LLP) for the plaintiff in S 755/2011 Adrian Tan and Aziah Hussin (Drew & Napier LLC) for the plaintiffs in S 381/2011; Ragbir Singh s/o Ram Singh Bajwa (Bajwa & Co.) for the 10th defendant in S 755/2011 and the 11th defendant in S 381/2011.

Parties : Isabel Redrup Agency Pte Ltd — A L Dakshnamoorthy and others

Civil Procedure – Striking Out

Unincorporated Associations

11 June 2012

Amy Seow Wai Peng AR:

1 This interlocutory application arose out of a dispute that spanned two suits which were subsequently consolidated. Mr Balour Singh (“Mr Singh”), who was the 10th defendant in Suit No 755 of 2011 (“S 755/2011”) and the 11th defendant in Suit No 381 of 2011 (“S 381/2011”), applied to strike out both statements of claim insofar as they pertained to him, on the grounds that he was not the proper defendant to both suits. On 1 June 2012 I dismissed his application and now set out my grounds for so doing.

2 The first suit, S 755/2011, was referred to by the parties as the “commission claim”; and the second suit, S 381/2011, as the “defamation claim”. Both claims arose from the same set of facts – the sale and purchase of nine residential properties located along Sophia Road (“the Sophia Road properties”), completion of which took place in October 2011. In S 755/2011, Isabel Redrup Agency Pte Ltd (“Isabel Redrup”) claimed that the defendants, who were the owners of the Sophia Road properties, had breached an agreement to pay it a commission for being the effective cause of the sale of the Sophia Road properties. After the option to purchase the Sophia Road properties was granted in February 2011, Isabel Redrup invoiced the owners of the Sophia Road properties for commission purportedly due. The owners’ representative, one Mr Simon Loh (“Mr Loh”), then allegedly made defamatory statements about Isabel Redrup and its representative, one Ms Susan Eleanor Prior (“Ms Prior”), to the media, the Council of Estate Agents, and to the police in the form of a police report. The making of these statements was allegedly authorised by the owners of the Sophia Road properties in a letter signed by the same. This was the substrate of S 381/2011. The parties to S 381/2011 were the same as those in S 755/2011, save for the inclusion of Ms Prior as the second plaintiff to S 381/2011.

3 Mr Singh objected to his inclusion as a defendant in both suits. His involvement in these proceedings stemmed from the fact that he was a trustee of the Sikh Business Association (“the Association”), which was located at, and held an interest in, a property known as 124 Sophia Road.

This was one of the Sophia Road properties that were the subject of the sale and purchase. In respect of the commission claim, Mr Singh's case was that he was merely a bare trustee of the Association and could not be made to shoulder liability for what was essentially a contract for commission allegedly entered into between Isabel Redrup and the Association. In respect of the defamation claim, Mr Singh's case was that he had not signed the purported letter of authorisation. There was a signature above his printed name on the letter, but he contended that this signature was not his.

4 The parties did not dispute that the Association was an unincorporated association. As the term "unincorporated association" suggests, such an entity is an association of people that is not incorporated, and therefore does not have a separate legal corpus. Such an entity has a separate existence from its members, but it does not have its own legal personality separate from its members. This unique set of characteristics necessitates a unique set of mechanisms for the unincorporated association to hold land, enter into contracts, and to be made a defendant to litigation. These mechanisms, and the problems associated with their interplay, were thrown into sharp focus over the course of these proceedings.

The commission claim

5 In support of the striking out application for the commission claim, counsel for Mr Singh, Mr Bajwa, put forward two main arguments. Firstly, that the contract appointing Isabel Redrup as the marketing agent for the Sophia Road properties was made between Isabel Redrup and the Association, and Mr Singh was not a party to this contract. Mr Bajwa referred to a letter dated 26 August 2009 from Mr Loh, on behalf of the owners of the Sophia Road properties, to Isabel Redrup, appointing it as the sole and exclusive marketing agent of the properties for six months with effect from 25 August 2009 ("the 26 August 2009 letter"). This letter listed under the heading "124 Sophia Road" the Association's name, not Mr Singh's name, and furthermore Mr Singh's name did not appear anywhere on this letter. Secondly, that Mr Singh was merely a bare trustee of 124 Sophia Road, and his powers did not extend to entering into contracts or appointing agents. Therefore, Mr Singh could not have entered into such a contract to appoint an agent in any event.

6 The pith of Isabel Redrup's case is that the defendants wrongfully did not pay it a commission which was rightfully due. This obligation to pay a commission must have emanated from an agreement to pay the same, made between Isabel Redrup and the person on whose behalf it allegedly sold 124 Sophia Road for. Who would this person be?

7 The statement of claim for S 755/2011 alleges that the agreement to pay commission was made as a result of certain utterances, conduct, and/or writing between the plaintiff's representative, Ms Prior, and the defendants' representative, Mr Loh. The letter of 26 August 2009 which Mr Bajwa had referred to suggested that it was the Association which had entered into the contract to appoint Isabel Redrup as the marketing agent for the Sophia Road properties. It must be pointed out that the contract to appoint the marketing agent and the contract to pay the marketing agent commission are distinct. Counsel for the plaintiff in S 755/2011, Mr Vincent Yeoh ("Mr Yeoh"), sought to draw the inference that the intention of the defendants, including Mr Singh, was that they were to pay Isabel Redrup a commission upon the successful sale of the Sophia Road properties. Mr Yeoh pointed to a draft commission agreement and two draft options exhibited in Ms Prior's affidavit, all of which referred to Mr Singh as one of the vendors of the property; and all of which indicated that the vendors were to pay the agent a commission. But these documents were unsigned and undated, and the draft options were made expressly subject to contract. It was thus difficult to draw the inference which Mr Yeoh put forward, as there was no visible concurrence to this on the part of the defendants. One of the draft options had been enclosed in an email of 30 June 2010 from Mr Loh, as

the defendants' representative, to Isabel Redrup. Even if this represented Mr Yeoh's case at its highest, as evidence of the defendants' intentions, there was still no evidence that these intentions had been consummated to form a contract.

8 The discussion in the preceding paragraph was not meant to pre-empt a determination of the merits of this case, rather, it was necessary in order to sift through the relevant documents for the purposes of this striking out application. At the end, what remains is the letter of 26 August 2009 appointing Isabel Redrup as the marketing agent for the sale of the Sophia Road properties. Although the appointment of an agent may not necessarily entail the payment of a commission; had there been an agreement to pay commission it must have been made between Isabel Redrup and the person appointing the same, which this letter indicated to be the Association.

9 Turning to the alleged agreement to pay commission, one difficulty with Mr Bajwa's argument – that the Association, not Mr Singh, was party to this agreement – is that the Association, as an unincorporated association, cannot enter into contracts in its own name. As stated earlier at [\[4\]](#), unincorporated associations do not have separate legal personality, and therefore they must depend upon their members to enter into contracts on their behalf.

10 Another feature of unincorporated associations is that they cannot hold property in their own right, and one mechanism for such associations to hold property is to depend on a trustee to hold property on trust for their benefit. Mr Singh was one of the trustees of the Association, and was involved in the sale of 124 Sophia Road, which property was statutorily vested in Mr Singh's name jointly with another trustee of the Association. Mr Singh had also signed the final option which effected the sale of 124 Sophia Road.

11 The high standard of a plain and obvious case necessary for a successful striking out application was stated in *Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin and others* [1997] 3 SLR(R) 649 at [18]. In order for the statement of claim for S 755/2011 to be struck out insofar as Mr Singh is concerned, it must be plain and obvious that he is not a proper defendant. To test the strength of the arguments to strike out, it will be assumed for the sake of argument that the alleged agreement to pay Isabel Redrup a commission existed, and that it had been made by Mr Loh as a representative of *inter alia*, Mr Singh. Given the extent of Mr Singh's involvement in the sale of 124 Sophia Road, it would not be a stretch to infer that had there been such an agreement, it would have been made on his behalf. These assumptions do not pre-determine the issue of whether Mr Singh was the proper defendant, since Mr Singh would presumably have in turn been acting on behalf of the Association in entering into the commission agreement. The question remains as to whether Mr Singh in so doing could be held personally liable, or whether the Association should be the proper named defendant.

12 This question of law is not one to which there is an easy answer. On the one hand, since unincorporated associations depend on their members to enter into contracts on their behalf, *vis-à-vis* the contracting third party, the contracting party is the member, not the association. One question that lingers is whether it remains unfair for the contracting member to bear contractual liability for what are essentially the affairs of the association, although this concern is ameliorated by the possibility of the contracting member seeking indemnification from the association.

13 On the other hand, as Mr Bajwa had pointed out, s 35(b) of the Societies Act (Cap 311, 1985 Rev Ed) states that every society registered under the Societies Act may sue or be sued in its own name. Mr Yeoh did not dispute that the Association was so registered, and the constitutional documents of the Association made reference to such registration. Pursuant to s 35(d) of the Societies Act, it seems that any judgment entered into against a society in its own name will be

satisfied out of the property of the society. Yet, it must be emphasised that every society *may* be sued in its own name, and therefore s 35(b) is a permissive, rather than a mandatory provision, statutorily permitting some form of legal standing for societies in respect of litigation. The section does not discount the possibility of individual members facing suit as a result of acts undertaken on behalf of the society.

14 The position in Singapore on this question of law does not seem to be settled, and there are a sufficient number of authorities from the Commonwealth that point in either direction. Another issue to consider is whether, if the Association cannot enter into contracts in its own right, what would it mean to say that the Association could be sued in its own name, and thus potentially be made liable in its own name on those contracts?

15 Turning to Mr Bajwa's second submission, that Mr Singh was merely a bare trustee and was therefore not empowered to enter into contracts or effect a sale of 124 Sophia Road, I agreed with Mr Yeoh's submission that this was really a matter between Mr Singh and the members of the Association. In my view, this would go to whether Mr Singh had exceeded his powers as a trustee in any way and whether he could receive indemnification from the Association for any contractual liability he would have to bear. This was not an issue which concerned Isabel Redrup.

16 In any event, the fact that the discussion above (at [\[12\]](#)-[\[15\]](#)) was necessary shows that the question as to whether Mr Singh is a proper defendant is not one to which there is a plain and obvious answer, and therefore the application in respect of S 755/2011 is dismissed.

The defamation claim

17 I move on to S 381/2011, or what was termed the defamation claim. Mr Bajwa pointed to an undated letter which purported to authorise the making of those allegedly defamatory statements by Mr Loh. This letter was allegedly signed by the "vendors" of the Sophia Road properties, which signatures appeared above the names of the vendors listed in the letter. Mr Singh's name was among the names of the vendors listed, and there was a signature above his name. However, Mr Bajwa claimed that this signature was not that of Mr Singh, rather, it was that of the vice president of the Association; and Mr Singh therefore could not be taken to have authorised those allegedly defamatory statements.

18 The question therefore is whether it is plain and obvious that Mr Singh did not so authorise. As Mr Adrian Tan, counsel for the plaintiffs in S 381/2011 pointed out, this does not turn on Mr Singh's powers or capacity as a trustee of the Association. If it is established that Mr Singh had indeed authorised those statements, he could be personally liable whether he was acting on his own behalf or on behalf of the Association.

19 I was not of the opinion that it was so plain and obvious. Mr Singh's name did appear on the alleged letter of authorisation, and there is a signature above it. Mr Bajwa's submissions essentially amount to an allegation of fraud or impersonation. This allegation was not plainly or obviously made out before me, and in all likelihood substantial disputes of fact would be involved in such allegations. These would not be suitable for determination at the striking out stage.

Conclusion

20 For the reasons enumerated above, the striking out application was dismissed in its entirety, with costs of \$3,500 awarded to each of the sets of lawyers for the plaintiffs in the respective suits.