IN THE APPELLATE DIVISION OF THE HIGH COURT
OF THE REPUBLIC OF SINGAPORE

[2022] SGHC(A) 5

Civil Appeal No 71 of 2021

Between

Choo Cheng Tong Wilfred

… *Appellant*

And

(1) Phua Swee Khiang
(2) Ding Pei Chai

… *Respondents*

In the matter of Suit No 678 of 2018

Between

Choo Cheng Tong Wilfred

… *Plaintiff*

And

(1) Phua Swee Khiang
(2) Ding Pei Chai

… *Defendants*

EX TEMPORE JUDGMENT

[Legal Profession — Remuneration — Unauthorised person acting as advocate or solicitor]
[Evidence — Presumptions — Presumption of fact in loans of money]

Choo Cheng Tong Wilfred
v
Phua Swee Khiang and another

[2022] SGHC(A) 5

Appellate Division of the High Court — Civil Appeal No 71 of 2021
Woo Bih Li JAD, Quentin Loh JAD and Chua Lee Ming J
9 February 2022

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Woo Bih Li JAD (delivering the judgment of the court *ex tempore*):

1 This is an appeal by the appellant ("Choo") against the decision of the trial judge ("the Judge") dismissing his claim for fees for consultancy services rendered to the two respondents ("Phua" and "Ding" respectively) over various years from 2000 to 2018.

2 We note that Phua submits that the Judge found that Ding had agreed to be responsible for any liability of Phua for Choo's fees and that Choo had accepted this novation. Phua also submits that Choo's appeal does not challenge this finding. Hence, there is no claim for money by Choo against Phua in Choo's appeal. Any such claim is against Ding only. Choo's Reply at [6] agrees with this. Yet this was not clarified by Choo in his Appellant's Case ("AC") at the outset.

3 In any event, the AC has said that it is limited to certain points and claims and we now address them.

4 One of the main rulings by the Judge was that in rendering his services, Choo was acting as an advocate and solicitor in Singapore although he did not hold a practising certificate for the period 1 April 2000 to 31 March 2006 and from 1 April 2014 onwards. Under s 36(1) of the Legal Profession Act (Cap 161, 2009 Rev Ed), Choo was precluded from claiming fees, charges, disbursements, expenses and remuneration for services rendered during the relevant periods.

5 For the appeal, Choo argues that the Judge was wrong to rely on certain tests in *Turner (East Asia) Pte Ltd v Builders Federal (Hong Kong) Ltd and another* [1988] 1 SLR(R) 281 ("*Turner*") to determine whether Choo was acting as an advocate and solicitor in providing his services to the respondents. He argues that in the light of political, economic and social changes in Singapore since *Turner*, the Judge should have adopted a more restrictive approach as set out in more recent English cases ("the Restrictive Approach"). He argues that we should clarify the law in this regard. However, he acknowledges that this argument was not made before the Judge.

6 Choo also submits that the Judge should not have applied the standard of a balance of probabilities as the question whether Choo provided legal services as an advocate and solicitor could have criminal consequences. Hence, the Judge should have applied the criminal standard, ie, proof beyond reasonable doubt. However, no authority was cited for this proposition. It is obvious to us that one's conduct may attract civil or criminal consequences. The burden of proof remains different. The appeal arises from a civil claim brought by Choo for his services and the usual standard of proof for a civil claim applies.

7 As for the Restrictive Approach, we note that Choo did apply for the transfer of his appeal to be heard by the Court of Appeal instead of the Appellate Division of the High Court. One of his reasons was the argument we have mentioned above. However, on 25 January 2022, Justice Andrew Phang dismissed the application. He was of the view that the position in Singapore is still as set out in *Turner* and the Restrictive Approach does not apply in Singapore.

8 In any event, there is a more formidable obstacle in Choo's way. Whether or not the Restrictive Approach applies, the evidence before us showed that Choo was approached for his legal expertise and he himself had described his services as such. This was contrary to his allegation that he was engaged only as a business consultant and he rendered his services accordingly. For example, as the Judge found in an email dated 25 July 2001 to Phua, Choo described his services as "legal services", referred to the provision of his "legal opinion" and described his fee as a "legal fee". Various other instances were mentioned by the Judge.

9 Indeed, Choo had to argue before us that *not all* his services were of a legal nature as he had deep expertise in various industries including finance and accounting, investment banking, trading, corporate regulations and investigations, negotiations and project management. This was referred to as his Skillset. The suggestion was that *most* of the services were not of a legal nature. Hence, he argues that the Judge should have called for submissions on how much work was customarily done by lawyers and how much was due to his other expertise in his Skillset (see Appellant's Skeletal Arguments at para 23). However, the difficulty for Choo was that he had run his case below on the basis that *all* his services were *not* of a legal nature. It is clear to us that this was not true. It was for him to give evidence to draw a distinction between the services

he rendered of a legal nature and non-legal nature but he did not seek to do so. It is too late to try and blame the Judge for not calling for such submissions when the evidence was not adduced along such lines. Hence, the late arguments about the tests and his Skillset must fail.

10 In so far as Choo argues that he was instructing other solicitors to act for the respondents and this constitutes a *novus actus interveniens*, we reject this argument. It is not uncommon for a solicitor to instruct other solicitors to act for the same client. It is absurd to suggest that this *per se* would mean that the person giving the instruction would necessarily not be acting as a solicitor.

11 However, in so far as the Judge appeared to have given weight to the fact that Choo had described himself as an advocate and solicitor in his name card and that Choo had acknowledged that it was wrong to do so since he did not have a practising certificate, we point out that actually the name card referred to his position in 'PHILLIP SECURITIES PTE LTD", which is a stockbroking company, as a DEALING DIRECTOR" in capital letters. However, the words "Advocate & Solicitor" were not all in capital letters. In our view, there is nothing wrong in including one's professional qualifications in this manner since the card's focus was on the stockbroking company. Indeed, other educational and professional qualifications were also stated on the card. To this extent, we disagree with the Judge that a natural reading of the name card indicates that "Advocate & Solicitor" described Choo's occupation at the time. Nonetheless, the name card would have indicated that Choo had legal expertise. The Judge was not plainly wrong in accepting this as a factor, with many other pieces of evidence, leading to the conclusion that the respondents engaged Choo to act as an advocate and solicitor, rather than in some non-legal capacity.

12 In the course of the hearing before us, Choo informed us that he would not proceed with other issues raised at the appeal if the court was not with him on the question whether he was acting as an advocate and solicitor. Accordingly, since we were not with him, that was the end of his appeal.

13 Therefore it is not necessary to address the other issues here except a point of law we should clarify.

14 There was an issue whether the Judge had erred in concluding that Ding had lent an aggregate sum of $24,000 to Choo. It was undisputed that Choo had received the sum.

15 We note that in concluding that there was a loan from Ding to Choo, the Judge relied on *Power Solar System Co Ltd (in liquidation) v Suntech Power Investment Pte Ltd* [2018] SGHC 233 ("*Power*") at [103(d)] to infer that where a payment is made, the court is entitled to infer that it was a loan in the absence of circumstances justifying a presumption of advancement. *Power* relied on *Seldon v Davidson* [1968] 1 WLR 1083 ("*Seldon*"). However, as explained in *PT Bayan Resources TBK and another v BCBC Singapore Pte Ltd and another* [2019] 1 SLR 30 (at [140]-[144]), *Seldon* has been criticised. In that case, the defendant did not admit that he had incurred a debt. He had only admitted receiving a sum of money. Accordingly, it is still for a plaintiff to prove the purpose of the payment. Nevertheless, even though a court is not entitled to make the inference mentioned in *Power*, there was evidence for the Judge to conclude that the sum was advanced by Ding as a loan. We say no more as Choo has not pursued this issue for the reason stated above.

16 In the circumstances, we dismiss the appeal. Choo is to pay costs of $45,000 each to Phua and Ding inclusive of disbursements. The usual consequential orders apply.

Woo Bih Li
Judge of the Appellate Division

Quentin Loh
Judge of the Appellate Division

Chua Lee Ming
Judge of the High Court

Salem bin Mohamed Ibrahim, Charlene Wee Swee Ting and Hoon Wei Yang Benedict (Salem Ibrahim LLC) for the applicant;
Chan Wai Kit Darren Dominic and Ng Yi Ming Daniel (Characterist LLC) for the first respondent;
Chow Chao Wu Jansen, Ang Leong Hao and Sasha Anselm Gonsalves (Rajah & Tann Singapore LLP) for the second respondent.