

EPIC QUEST SDN BHD & ANOR

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v.

SHEILA ELEANOR DE COSTA

COURT OF APPEAL, PUTRAJAYA

B

ABU SAMAH NORDIN JCA

SYED AHMAD HELMY JCA

CLEMENT SKINNER JCA

[CIVIL APPEAL NOS: B-02-622-2004 & B-02-495-2010]

19 JULY 2011

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LEGAL PROFESSION: *Remuneration - Lien - Lien for services - Appeal against granting of solicitor's lien - Possession of appellants' documents - Whether respondent can exercise solicitor's lien against appellants for legal fees due and owing by other companies within group of companies - Whether appellants a separate legal entity - Whether corporate veil ought to be lifted - Whether lien legitimately exercised*

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COMPANY LAW: *Separate legal entity - Veil of incorporation - Possession of appellants' documents - Whether respondent can exercise solicitors' lien against appellants for legal fees due and owing by other companies within group of companies - Special circumstances - Whether corporate veil ought to be lifted - Law Kam Loy v. Boltex Sdn Bhd*

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These appeals arose from the exercise of the respondent's lien, over possession of documents which belonged to her clients, *ie*, the appellants. The appellants were part of the Titijaya Group of Companies and the respondent had rendered legal services to them and also to other companies within the Titijaya Group of Companies, in particular, Titijaya (M) Sdn Bhd, Prestine Valley Sdn Bhd and Titijaya Hotel Sdn Bhd ('the three companies'). There were unpaid bills in respect of the respondent's legal fees which became due and owing from the three companies. As a result, after having secured judgment against the three companies, the respondent exercised her rights of a solicitor's lien by retaining the appellants' documents until full payment on the said outstanding bills were effected. The appellants contended that since the liability arose from the three companies which were separate legal entities from the appellants, thus, the respondent had no rights to exercise a lien over their documents. On the other hand, the respondent submitted that the appellants, the three companies and the other companies within the Titijaya Group of Companies had operated as a one group enterprise

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A when they dealt with the respondent and as such, the corporate veil of the companies ought to be lifted. The issue that arose for determination was whether the said lien was legitimately exercised by the respondent.

B **Held (dismissing the appeals with costs)**
Per Clement Skinner JCA delivering the judgment of the court:

C (1) It is not open to the courts to disregard the corporate veil purely on the ground that it is in the interests of justice to do so. Something more must be shown such as special circumstances which would include cases where there is either actual fraud at common law or some inequitable or unconscionable conduct amounting to fraud in equity (*Law Kam Loy v. Boltex Sdn Bhd*). (para 7)

D (2) The respondent had laid sufficient evidential foundation to support her contention that special circumstances had existed for lifting the corporate veil of the appellants and the three companies as the Titijaya Group of Companies. When the respondent rendered her legal charges to a company within the group, the said charges would be paid by any one of the Titijaya Group of Companies even though the paying company did not directly receive the respondent's services. Having themselves ignored the fact that they operated as a one group enterprise when dealing with the respondent, the appellants could not be allowed to insist on their separate corporate personality to defeat the respondent's general lien whereby it would be inequitable or unconscionable to do so. Besides, the corporate veil could not be used as an instrument to evade a contractual obligation (*Sunrise Sdn Bhd v. First Profile (M) Sdn Bhd & Anor*). As such, the respondent had legitimately exercised her solicitor's lien. (paras 7, 9 & 10)

Bahasa Malaysia Translation Of Headnotes

H Rayuan-rayuan ini telah berbangkit daripada perlaksanaan lien responden terhadap pemilikan dokumen-dokumen kepunyaan anakguamnya, iaitu perayu-perayu. Perayu-perayu merupakan sebahagian daripada Titijaya Group of Companies dan responden telah membekalkan perkhidmatan guamannya kepada perayu-perayu dan juga kepada syarikat-syarikat lain di dalam Titijaya Group of Companies, khususnya Titijaya (M) Sdn Bhd, Prestine Valley Sdn Bhd dan Titijaya Hotel Sdn Bhd ('tiga syarikat tersebut').

Terdapat bil-bil berkenaan fi guaman responden yang belum dibayar dan terhutang daripada tiga syarikat tersebut. Akibatnya, selepas berjaya mendapat penghakiman terhadap tiga syarikat tersebut tersebut, responden telah melaksanakan hak lien peguamcaranya dengan memegang dokumen-dokumen perayu-perayu sehingga bayaran penuh bagi hutang bil-bil tersebut dijelaskan. Perayu-perayu berhujah bahawa, memandangkan liabiliti berbangkit daripada tiga syarikat tersebut yang merupakan entiti undang-undang berasingan daripada perayu-perayu, maka, responden tidak berhak untuk melaksanakan lien peguamcaranya terhadap dokumen-dokumen mereka. Sebaliknya, responden berhujah bahawa perayu-perayu, tiga syarikat tersebut dan syarikat-syarikat lain di bawah Titijaya Group of Companies telah beroperasi sebagai satu kumpulan perusahaan semasa berkendali dengan responden dan oleh itu, tirai korporat syarikat-syarikat tersebut sepatutnya diselak. Isu yang timbul untuk ditentukan adalah sama ada responden telah melaksanakan lien tersebut dengan sah.

Diputuskan (menolak rayuan-rayuan dengan kos)

Oleh Clement Skinner HMR menyampaikan penghakiman mahkamah:

- (1) Adalah tidak terbuka kepada mahkamah untuk tidak mengendahkan tirai korporat sepenuhnya atas alasan bahawa ianya demi kepentingan keadilan untuk berbuat sedemikian. Sesuatu yang lebih mesti ditunjukkan seperti halkeadaan istimewa yang merangkumi kes-kes di mana adanya frod sebenar dalam undang-undang common atau sesuatu perbuatan tidak berekuiti atau tidak adil yang mengakibatkan frod di dalam ekuiti. (*Law Kam Loy v. Boltex Sdn Bhd & Ors*)
- (2) Responden telah menunjukkan asas pembuktian yang memadai untuk menyokong penghujahannya bahawa halkeadaan istimewa telah wujud bagi membolehkan tirai korporat perayu-perayu dan tiga syarikat tersebut sebagai Titijaya Group of Companies diselak. Apabila responden mengemukakan caj bayarannya kepada syarikat di dalam kumpulan tersebut, bayarannya akan dibuat oleh mana-mana satu daripada Titijaya Group of Companies walau pun syarikat yang membuat bayaran tidak menerima perkhidmatan responden secara terus. Sedangkan mereka sendiri tidak menghiraukan fakta bahawa mereka telah beroperasi sebagai satu kumpulan perusahaan semasa berurusan dengan responden, perayu-perayu kini tidak

- A boleh dibenarkan untuk menuntut terhadap personaliti korporat berasingan bagi mengalahkan lien peguamcara responden di mana ianya adalah tidak berekuiti atau tidak adil untuk berbuat sedemikian. Lagi pun, tirai korporat tidak boleh digunakan sebagai alat untuk mengelak sesuatu obligasi yang bersifat kontrak (*Sunrise Sdn Bhd v. First Profile (M) Sdn Bhd & Anor*).
- B Oleh yang demikian, responden telah melaksanakan lien peguamcaranya dengan sah.

Case(s) referred to:

- C *Adams v. Cape Industries PLC* [1990] Ch 433 (*refd*)
Law Kam Loy & Anor v. Boltex Sdn Bhd & Ors [2005] 3 CLJ 355 CA (*refd*)
Sunrise Sdn Bhd v. First Profile (M) Sdn Bhd & Anor [1997] 1 CLJ 529 FC (*refd*)
- D *For the 1st & 2nd appellant - Gan Khong Aik (Ong Siew Yin with him); M/s Gan Partnership*
For the respondent - KL Pang (EL Teh & IH Ong with him); M/s Cheah Teh & Su
- E [*Appeal from High Court, Shah Alam; Originating Summons Nos: MT1-24-1066-1999 & MT3-24-1062-1999*]
Reported by Kumitha Abdul Majid

F **JUDGMENT**

Clement Skinner JCA:

- [1] These appeals arise out of the exercise of a solicitor's lien over documents belonging to a client in the solicitor's possession.
- G It is not in dispute that such a right exists - the dispute is whether the lien was legitimately exercised.

Brief Facts

- H [2] The appellants here are Epic Quest Sdn Bhd (1st appellant) and Logic Marine Sdn Bhd (2nd appellant). The respondent is the sole proprietor of a firm of solicitors who provided legal services to both the appellants in that she acted for the 1st appellant in relation to the sales and purchase transaction of three pieces of land; and for the 2nd appellant in respect of the sales and purchase of two ferries known as MV Pulau Labuan and MV Pulau Lumut.
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[3] The 1st and 2nd appellants are part of the Titijaya Group of Companies which includes *inter alia* Titijaya (M) Sdn Bhd, Titijaya Hotel Sdn Bhd, Titijaya Resort Sdn Bhd, Prestine Valley Sdn Bhd, Sri Komakumar Sdn Bhd and the 1st and 2nd appellants. A

[4] Apart from doing legal work for the 1st and 2nd appellants, the respondent also rendered legal service to other companies in the Titijaya Group of Companies, in particular Titijaya (M) Sdn Bhd; Prestine Valley Sdn Bhd and Titijaya Hotel Sdn Bhd (the three companies) for which the respondent rendered them bills which became due and owing to the respondent. B C

[5] When the bills of the three companies remained unpaid the respondent purported to exercise her right of a solicitor's lien over the documents belonging to the 1st and 2nd appellants which were in the possession of the legal firm, ie, the documents of title to the lands and the certificate of registration of the two ferries. These documents were retained until the full payment on the outstanding bills were effected after the respondent secured judgment against the three companies. D E

[6] The appellants commenced these suits by way of originating summons claiming for a declaration (prayer 1) that the respondent is not entitled to a lien over the documents mentioned. Therefore their retention was wrongful. By prayer five the appellants sought for damages to be assessed. F

The Contentions

- (i) It is the appellants' case that the respondent had no right to exercise a lien over their documents when the legal fees allegedly due to the respondent were the liability of the three companies who were separate legal entities from the appellants. G
- (ii) The respondent's case is that at all material times the 1st and 2nd appellants, the three companies and the other companies under the Titijaya Group of Companies are but the alter ego of SP Lim, and they operated as one group enterprise. Accordingly the corporate veil of the companies in the group ought to be lifted so as to entitle the respondent to exercise her lien over the documents in respect of the legal fees owned by the three companies. H I

A Our Findings

[7] Although the High Court did not give any reasons for its decision, we find the learned judge was correct to dismiss the appellants' claim for the following reasons.

- B** (a) The appellants referred us to the decision of the Court of Appeal in *Law Kam Loy & Anor v. Boltex Sdn Bhd & Ors* [2005] 3 CLJ 355 where Gopal Sri Ram JCA pointed out that while it is true that at one point in time the view held by some academics and judges (including Lord Denning) was that
- C** the corporate veil could be cast aside whenever the interests of justice required it, a careful study of contemporary cases show that the formerly held view no longer prevails. The learned judge said that in the light of more recent authorities
- D** such as *Adams v. Cape Industries PLC* [1990] Ch 433, it is not open to the courts to disregard the corporate veil purely on the ground that it is in the interests of justice to do so. Something more must be shown such as special circumstances which would include cases where there is either actual fraud
- E** at common law or some inequitable or unconscionable conduct amounting to fraud in equity.
- (b) Contrary to what the appellants contend, we find that the respondent has laid sufficient evidential foundation to support her contention that special circumstances exist here for lifting
- F** the corporate veil of the appellants and the three Companies as the Titijaya Group of Companies including the appellants and SP Lim had themselves ignored the separate corporate personalities of the companies in the group, and operated as one group enterprise when dealing with the respondent. In the
- G** circumstances it would be inequitable or unconscionable to allow the appellants to now insist that they and the three companies are separate legal entities for the purposes of liability to pay the respondent's bills. And as pointed out in *Law Kam Loy*, unconscionable or inequitable conduct amounts
- H** to fraud in equity.

[8] The reasons for our above finding are these:

- I** (a) The deponent of all affidavits filed by the appellants, Mr Bay Nutt Soo who describes himself as the "Setiausaha Syarikat Titijaya Group of Companies," states that the 1st appellant and the 2nd appellant "merupakan suatu ahli komponen dalam Syarikat Titijaya Group of Companies."

- (b) From the documents exhibited relating to the shareholdings in the companies within the Titijaya Group of Companies, Mr SP Lim is a director in almost every one of them and he held controlling shares in them through Titijaya (M) Sdn Bhd in which he holds 50% of the shares through Cahaya Prestasi (M) Sdn Bhd, a company controlled by him and his brothers or close business associate one Baharuden or the later's wife Nor Hafiza. A
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- (c) In respect of the 1st appellant Epic Quest Sdn Bhd's dealings with the respondent (for suit MT1-24-10666-1999): C
- (i) On 26 July 1996 the respondent received a facsimile from Titijaya (M) Sdn Bhd instructing the respondent to prepare a sale and purchase agreement for one Baharuden Abd Majid, but the letter from the vendor dated 26 July 1996 was issued to Sri Komakmur Sdn Bhd as the purchaser; D
- (ii) On 1 August 1996 and again on 8 August 1996, the respondent forwarded the draft sale and purchase agreement to Titijaya (M) Sdn Bhd for their perusal. On 27 August 1996 the respondent was instructed on the agreement by Sri Komakmur Sdn. Bhd; E
- (iii) On 12 September 1996 the respondent received instructions from Titijaya (M) Sdn Bhd to change the purchaser from the said Baharuden Abd Majid to Epic Quest Sdn Bhd. At the same time, Sri Komakmur Sdn. Bhd wrote to the vendor informing the change in the purchaser; F
- (iv) On 12 September 1996 the respondent wrote a letter to Epic Quest Sdn Bhd and the receipt of the letter was acknowledged by Titijaya (M) Sdn. Bhd. G
- (d) In respect of the 2nd appellant Logic Marine Sdn Bhd's dealings with the respondent (for suit MT3-24-1062-1999): H
- (i) On 25 November 1996 the respondent received a facsimile from Titijaya (M) Sdn Bhd instructing the respondent to, *inter alia*, prepare an agreement for Titijaya (M) Sdn Bhd to purchase two ferries; I

- A** (ii) On 26 November 1996, the respondent received a copy of the letter from Jabatan Laut Semenanjung Malaysia to Titijaya (M) Sdn Bhd which was faxed to the respondent by using facsimile facilities belong to “Titijaya”;
- B** (iii) On 11 December 1996 the draft agreement was prepared by the respondent identifying the purchaser of the ferries as Titijaya Resorts Sdn. Bhd;
- C** (iv) On 18 November 1996 the respondent received instructions from Prestine Valley Sdn Bhd to change the purchaser to Logic Marine Sdn Bhd (the 2nd appellant);
- (v) Payments for the purchase of the ferries were made by Titijaya (M) Sdn Bhd as confirmed in the letter from Logic Marine Sdn Bhd dated 3 February 1997;
- D** (vi) On 18 Jun 1997 the respondent received a letter from Titijaya (M) Sdn Bhd dated 17 Jun 1997 requesting for advice on the transaction;
- E** (vii) The memorandum as to the registration of managing owners of both ferries stipulates that SP Lim is the managing owner, manager or ship’s husband for the ferries.
- (e) In the suits instituted by the respondent against the three companies for outstanding legal fees, the deponent for the appellants had stated an oath that SP Lim was a representative of Titijaya (M) Sdn Bhd; Prestine Valley Sdn Bhd and Titijaya Hotel Sdn Bhd.
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- (f) With regard to the past payment of the respondent’s bills:
- G** (i) The letter from Titijaya (M) Sdn Bhd dated 19 September 1997 states that the overpayment of fees for the bill issued to Epic Quest Sdn Bhd (the 1st appellant) should be utilized to contra the bills issued to Prestine Valley Sdn Bhd, Titijaya (M) Sdn Bhd and Titijaya Hotel Sdn Bhd;
- H** (ii) The letter from Titijaya (M) Sdn. Bhd dated 19 September 1997 states that Titijaya (M) Sdn. Bhd had made payment for “Bill No. 100/97/pt” ie, the bill issued to Logic Marine Sdn Bhd (the 2nd appellant).
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[9] From what is set out above it was evident to us that when dealing with the respondent, the Titijaya Group of Companies including the appellants and SP Lim had deliberately ignored the separate corporate personalities of the companies, and operated as one group enterprise. The payment of the respondent's legal charges also reflected this where it can be seen that when the respondent rendered her charges to a company within the group, the respondent's charges would be paid by any one of the Titijaya Group of Companies even though the paying company did not directly receive the respondent's services. Having themselves ignored it when dealing with her, the appellants cannot now be allowed to insist on their separate corporate personality to defeat the respondent's general lien. In *Sunrise Sdn Bhd v. First Profile (M) Sdn Bhd & Anor* [1997] 1 CLJ 529 Chong Siew Fai (CJ Sabah & Sarawak) said that the corporate veil cannot be used as an instrument to evade a contractual obligation.

[10] It was for the above reasons we held that on the particular facts of this case, premised upon the doctrine of lifting of the corporate veil, the respondent's exercise of her solicitor's lien over the documents in question was legitimate. We therefore dismissed the appellants' appeal with costs.

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