Charities, Contracts and Conspiracy:
***Singapore Shooting Association and others v Singapore Rifle Association* [2019] SGCA 83**

I. Executive Summary

Singapore Shooting Association and others v Singapore Rifle Association [2019] SGCA 83 was the latest instalment in a series of cases about a long-running dispute between Singapore Shooting Association ("**SSA**") and Singapore Rifle Association ("**SRA**"). SSA, a registered charity under the Charities Act (Cap 37, 2007 Rev Ed) (the "**Charities Act**"), is the national sports association for the sport of shooting. SRA is a founder member and constituent club of SSA.

The present dispute arose out of a resolution (the "**Resolution**") passed by the SSA Council, purporting to suspend SRA's privileges at the National Shooting Centre (the "**NSC**"). SRA brought suit in the High Court (the "**HC**") for declarations that (among other things), the Resolution was *ultra vires*[1] and the SSA Council had no power to pass the Resolution in the manner used. SRA also claimed, through an allegation of unlawful means conspiracy, that the president of SSA (Michael Vaz Lorrain or "**Mr Vaz**"), the secretary-general of SSA (Yap Beng Hui or "**Mr Yap**"), and the treasurer of SSA (Chen Sam Seong Patrick or "**Mr Chen**"), had conspired to cause SRA damage by procuring the passage of the Resolution. SSA counterclaimed against SRA for the cost of demolishing a shooting range (the "**Range**"), which SSA alleged had been built illegally by SRA at the NSC.

The HC agreed with SRA on both its claims, and also dismissed SSA's counterclaim. On appeal, the Court of Appeal (the **"CA**") held that Mr Vaz, Mr Yap, and Mr Chen (together the "**Individual Defendants**") were not liable for unlawful means conspiracy. It also held that the HC should not have granted declaratory relief[2] regarding the Resolution. However, the CA agreed with the HC's decision to dismiss SSA's counterclaim for the cost of demolishing the Range, albeit on a different basis. The CA also addressed two further issues, holding that: the parties were not entitled to litigate this dispute in the HC under the Charities Act; and due to the poor management and conduct of this dispute by both parties and their counsel, the CA declined to award legal costs to either party.

II. Material Facts

The land on which the NSC stands is owned by the State. The State leased the land to the Singapore Sports Council (now known as Sport Singapore, "**Sport SG**"), which in turn sub-leased the land to SSA and allowed it to manage and operate the NSC. In November 2014, SSA entered into a Proprietary Range Agreement ("**the Agreement**") with SRA, for SRA to construct the Range within the NSC. SRA spent nearly $300,000 on reinstatement and construction works.

Unknown to SRA, at the time of construction, the Individual Defendants complained to the Building Construction Authority ("**BCA**") about those works. This included an email from Mr Vaz to BCA, reporting that construction was being carried out without appropriate permits, and questioning whether the structures were safe. BCA then conducted a site visit with Mr Vaz and SSA's general manager. No SRA representative was invited. BCA agreed that the Range had been erected without the necessary approvals or permits. As a result, it issued a demolition order (the "**Demolition Order**") to Sport SG, ordering the complete demolition of the Range by 7 December 2015. However, BCA also issued Sport SG a letter describing steps that could be taken to retain the Range (the "**Regularisation Option**"). Sport SG forwarded the documents to SSA, leaving the choice of regularising or demolishing the Range to SSA.

The SSA Executive Committee (a smaller group within the SSA Council), which consisted of the

[1] Generally, if an act is "*ultra vires*", it means that the act was beyond the legal authority of the person performing it and hence, of no legal effect. Thus, an act which is done pursuant to an *ultra vires* resolution has no legal force.
[2] Generally, "declaratory relief" is an order made by a court which declares the rights and obligations of the parties with regard to the dispute in question.

Individual Defendants and one other individual, decided not to retain the Range and to comply with the Demolition Order. The SSA Council then held a meeting to formalise its decision. During the meeting, in response to an SRA representative's question as to whether SRA could "respond" to the Demolition Order, Mr Vaz said that the order had already been served and SSA would comply with it. No mention was made of the Regularisation Option. SSA subsequently awarded a contract for the demolition at a price of $24,800 (although the price ultimately charged was $26,536).

SRA tried to resist the Demolition Order, including initiating a meeting with BCA. During this meeting, SRA discovered the Regularisation Option. BCA subsequently sent an email to Sport SG, suggesting a meeting to discuss the demolition and the request it received for an extension of time to deal with the matter. Mr Vaz, who was copied on the email, replied that SSA would not attend the meeting as the other SSA clubs had agreed to demolish the Range.

In December 2015, BCA granted an extension of time for the demolition until end January 2016. SRA's solicitors, Drew & Napier LLC ("**D&N**"), wrote to SSA, BCA and Sport SG requesting all parties not to take any action in relation to the Demolition Order as SRA wished to make representations to BCA.

Vexed by SRA's actions in resisting the Demolition Order, Mr Vaz sent an email to Mr Yap complaining about SRA and proposing to suspend it from all privileges in the NSC from January 2016. Upon Mr Vaz's request, Mr Yap circulated to the SSA Council a draft of the Resolution, which stated that SRA's breaches included refusing to comply with the Demolition Order. The Resolution was passed, with the Individual Defendants voting in favour, an SRA representative voting against, and the other members either abstaining or not responding at all.

While this was ongoing, SSA proceeded unilaterally to demolish the Range. On 18 December 2015 (two days after the Resolution was circulated), BCA issued SSA a permit for the demolition. SSA's contractor began the demolition works on 21 December 2015, and BCA was informed in January 2016 that the demolition had been completed.

In February 2016, the police audited the armouries at the NSC and seized 75 firearms from SRA's armoury for lacking proper records. This led Sport SG to terminate its sub-lease to SSA with immediate effect on 6 February 2016, and resume control of the NSC.

In May 2016, SRA brought this suit in the HC against SSA and the Individual Defendants. In December 2016, the SSA Council held a meeting at which it expelled SRA from SSA as a member. In January 2019, the HC found in favour of SRA. SSA then filed this appeal.

III. Issues on Appeal

On appeal, the CA decided the following issues:

(a) whether the Individual Defendants were liable for the claim of unlawful means conspiracy;
(b) whether SRA was entitled to declaratory relief in respect of the Resolution;
(c) whether SSA was entitled to an indemnity for the cost of demolishing the Range;
(d) whether section 31 of the Charities Act required that this dispute be litigated in the HC; and
(e) how the disproportionate litigation in this case should be addressed in terms of costs.

A. Unlawful Means Conspiracy

Generally, a claim of unlawful means conspiracy applies where at least two persons perform unlawful acts, in furtherance of an agreement, with the intention to injure another party, who *suffered loss or damage as a result*. Thus, SRA had to prove, among other things, that it had suffered damage as a result of the Individual Defendants' alleged conspiracy.

SRA claimed it had suffered losses in relation to its investigation and detection of the conspiracy, and its undertaking of steps to redress the conspiracy: specifically, the fees it had paid D&N to investigate, respond to and unravel the conspiracy. While the HC agreed with SRA on this point, the CA disagreed. The CA held that legal fees incurred in investigating, detecting, unravelling and/or mitigating a conspiracy do not constitute actionable loss or damage for establishing the claim of unlawful means conspiracy, if they were incurred in preparation for litigation, and thus would be recoverable as legal costs in any action that might be brought.

The CA gave three reasons for such a rule. *First*, if legal fees which are recoverable as legal costs also constituted damage for the claim of conspiracy, this requirement would be satisfied in virtually every case where the claimant pleading conspiracy engaged a lawyer. This would dilute the basic requirement that a claimant must prove that he or she suffered loss or damage as a result of the conspiracy. *Second*, this rule would prevent subversion of the legal costs regime,[3] which regulates the recoverability of legal fees. The rules on costs are a matter of social policy, which includes enhancing access to justice by requiring that costs awarded be reasonable and proportional. The application of those principles involves a distinct assessment, and would likely lead to a different result, from that involved in an inquiry into damages, which are subject to different rules. Indeed, assessing fees as costs will often result in a lower figure than that for damages. *Third*, there was no legal authority supporting SRA's argument for a contrary rule.

The CA noted that such legal fees *might* constitute actionable loss or damage if, for some reason, they could not be recovered as costs of an action instead. However, a party making this argument would have to prove that its lawyers truly performed a discrete investigative function, instead of merely gathering such evidence, facts and information that would typically precede the giving of legal advice or the commencement of litigation.

Here, the work done by D&N was nothing more than what solicitors would typically do in preparing for litigation, i.e. review documents, identify parties and discern their possible motives. There was nothing to indicate that D&N's fees were of a sort that would not be recoverable as costs of the action. Thus, the fees did not constitute actionable loss or damage for SRA's claim for unlawful means conspiracy. SRA's claim consequently failed.

B. Declaratory Relief

SRA sought declarations, essentially to the effect that the Resolution was null and void, and that SSA had no power to make decisions in the manner used. However, in order to obtain declaratory relief, there must be a "real controversy" between the parties for the court to resolve. The CA held that there was no such controversy at the time SRA brought its application for such relief, and hence the HC should not have granted declaratory relief.

The entire purpose of the Resolution was to suspend SRA's privileges at the NSC. However, SSA lost the power to manage and operate the NSC when its sub-lease with Sport SG was terminated (which occurred well before the suit commenced). From that point onwards, SSA could neither grant nor suspend privileges at the NSC. Thus, the Resolution was entirely moot[4] by the time the suit commenced in the HC. As such, there was no longer any real controversy for the court to resolve when SRA brought its application for the declaratory relief.

C. Indemnity for Cost of Demolishing the Range

SSA counterclaimed for an indemnity of $26,536, being the cost of demolishing the Range. The CA

[3] For litigation matters in Singapore, the court will usually order the unsuccessful party to pay the successful party a sum of money, as reimbursement for the successful party's legal fees.
[4] If a legal issue is "moot", it has already been resolved, leaving no actual dispute for a court to resolve.

agreed with the HC that SSA was not entitled to such an indemnity, but made the decision on a different basis from the HC:[5] i.e. clause 10 of the underlying Agreement.

Clause 10 provided that SRA would indemnify and keep indemnified SSA from all claims, proceedings, costs, losses and expenses which SSA might suffer or incur "for any death, injury, loss and/or damage caused directly or indirectly by ***its*** activities, including the activities of ***its*** members, employees, independent contractors, agents, invitees or other permitted occupier at the [NSC]." The CA held that using a natural reading of clause 10, the parties could only have intended the word "***its***" to refer to SRA. This meant that *SRA* would indemnify SSA in respect of all liability and/or loss that SSA might suffer as a result of *SRA's* activities, a position which seemed commercially sensible. In contrast, if the word "its" referred to *SSA* instead, it would lead to an absurd result, requiring SRA to indemnify SSA for liabilities that SSA suffered due to *SSA's own* activities. There was no reason why SRA would have agreed to such an interpretation, as it would effectively be the insurer of SSA's misdeeds or misfortunes.

The CA then found that SSA's demolition of the Range fell outside the indemnity under clause 10. SSA unilaterally hired its own contractor to demolish the Range despite SRA's requests to SSA to desist, and thus incurred the relevant costs on its own accord. Moreover, to give SSA the benefit of the indemnity would be to allow it to benefit from its own wrong. SSA refused to participate in meetings with SRA and wilfully concealed from it the Regularisation Option, which would have been a much cheaper alternative to the wasteful demolition of the Range that had cost almost $300,000 to build.

D. Whether Litigation in the HC was required by Charities Act

The CA was concerned that the only loss or damage claimed by SRA in respect of the alleged conspiracy consisted of the legal fees charged for investigating the conspiracy. These fees, at their highest, amounted to only $63,200 – which was well below the monetary threshold for a case to be litigated in the HC.[6] SRA's response was that: (i) under section 31 of the Charities Act, the dispute had to be litigated in the HC, as this was a case seeking declaratory relief against a charity for breach of the charity's constitution, and (ii) SRA had obtained approval of the Commissioner of Charities (the "**Commissioner**") to commence the litigation in the HC, as required by section 31(2) of the Charities Act. However, the CA ultimately rejected SRA's claim in this regard.

With regard to the *first* point, only certain categories of people can bring a claim against a charity under section 31 of the Charities Act, including "any person interested in the charity". The CA accepted that SRA was such a person. SRA was a founder member and constituent club of SSA, and was seeking declaratory relief concerning a resolution which it perceived not only to have been passed *ultra vires* SSA's constitution, but also deprived SRA of certain privileges. SRA thus had a materially greater interest than ordinary members of the public in securing the due administration of SSA.

Concerning the *second* point, however, the CA stressed that a failure to obtain the Commissioner's authorization to pursue a particular claim or relief barred a claimant from presenting that claim or relief as part of charity proceedings in the HC, unless it clearly fell within the scope of authorisation that was already given. Such a rule has clear benefits. *First*, it helps preserve a charity's funds and assets for its charitable purposes, instead of being frittered away on wasteful litigation. *Second*, it discourages claimants who seek to mount frivolous or ill-founded claims on the back of legitimate ones. *Third*, it helps to strengthen the Commissioner's role in regulating charities. Parties should not be encouraged to sidestep the Commissioner by bringing charity proceedings straight to the HC,

[5] The HC held that SSA was not entitled to the cost of demolition, as the loss was a result of SSA's own breach of an implied term in the Agreement that it would use reasonable efforts to assist SRA in obtaining planning and building approval from BCA for the construction of the Range.

[6] The High Court generally accepts only cases where the value of the claim is greater than S$250,000.

without the Commissioner's prior authorisation. *Fourth*, the rule helps to ensure that the duties and responsibilities of the Commissioner and the HC in superintending the administration of charities are appropriately distributed, according to Parliament's intention.

In this respect, the CA found that, even though SRA had obtained the Commissioner's authorisation for its application for declaratory relief, it had failed to do so for its conspiracy claim. Indeed, the conspiracy claim was not even mounted against SSA at all, but against the Individual Defendants. Moreover, SSA had also failed to obtain the Commissioner's authorisation to bring its counterclaim for an indemnity in the HC. The value of the counterclaim was also far below the monetary threshold for proceedings to be brought in the HC; thus, the counterclaim could not have supported this litigation in the HC by itself.

Separately, the CA observed that claims under section 31 of the Charities Act also had to be "charity proceedings". In its view, both SRA's conspiracy claim and SSA's counterclaim failed in this respect. "Charity proceedings" typically referred to proceedings involving the administration of a charity. SRA's claim in conspiracy, however, was unrelated to the administration of SSA (being made against the Individual Defendants), while SSA's counterclaim was to enforce a term of the Agreement (i.e. related to its common law rights). While both claims could have been pursued independently of the charity proceedings, they would have to be assessed in light of the applicable monetary threshold for a claim to be brought in the HC, which they plainly did not meet.

E. Issue of Costs

In addressing the issue of costs, the CA first emphasised that lawyers have a professional obligation to ensure that a proper risk-benefit evaluation is undertaken at each stage of legal proceedings. Even if a client was prepared to bear the expenses of litigation, a lawyer owed a higher duty to the court to assess whether it would be in the interests of the administration of justice to pursue the matter. It was not simply the client's money that was at stake; precious judicial time and resources also had to be expended on the claim. The CA then held that SRA had conducted the present litigation disproportionately.

First, the conspiracy claim should not have been part of the proceedings in the HC. The claim was not authorised by the Commissioner, and directed only at the Individual Defendants. It was also ultimately ill-founded for lack of actionable loss or damage. Even if SRA had succeeded in its claim, the maximum sum it could recover was $63,200, which was far below the threshold required for a claim to be mounted in the HC. Moreover, the actual litigation took 11 days of hearing, and involved five lawyers in the HC and six in the CA. Overall, the CA questioned whether the expense of litigation was appropriate in these circumstances.

Second, SRA had failed to pursue more cost-efficient alternatives, such as an injunction[7] to restrain SSA from acting on the Resolution and interfering with SRA's privileges. This approach would have been more cost-effective, as opposed to bringing what was ultimately a defective application to the HC, whose decision was then appealed to the CA.

Third, SRA's lawyers pursued convoluted and circuitous arguments in defending against SSA's counterclaim,[8] when it could have pursued a shorter, simpler one based on clause 10 of the Agreement. This contradicted the principle expressed in Rule 9 of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) that a lawyer must conduct his or her case in a manner which maintained the efficiency of court proceedings.

[7] Generally, an injunction is an order given by the court, requiring a person to either do a particular act or refrain from doing a particular act.

[8] This is in reference to SRA's argument that SSA breached an implied term in the Agreement, which the HC accepted.

The CA also found that SSA and the Individual Defendants, particularly Mr Vaz, had behaved deplorably. This dispute originated from their actions in first giving SRA the right to build the Range, then completely reversing their position by seeking to undermine SRA instead. Mr Vaz went behind SRA's back to complain to BCA about the construction of the Range, sparking BCA's investigations. And when BCA issued the Demolition Order, SSA and the Individual Defendants deceptively concealed the Regularisation Option from SRA. Mr Vaz even suggested that the BCA inspection might have been the result of anonymous poison letters, despite knowing that he was the author of the complaints. Further, SSA refused to co-operate with SRA in regularising the Range, and instead proceeded unilaterally to demolish it. Overall, the CA regarded SSA's actions as having been borne out of malice and ill-will. As both parties had behaved appallingly, the CA held that there would be no order as to the costs of the proceedings, both in the HC and on appeal. As such, each party would bear its own costs.

Notably, the CA considered requiring Mr Vaz to personally indemnify and hold SSA harmless in respect of all legal costs it had incurred as a result of these proceedings. It also considered disallowing or limiting D&N's recovery of costs from their client SRA, due to the grossly disproportionate and ill-advised manner in which the litigation was conducted. However, the CA decided to first give the respective parties a chance to separately defend their positions in this regard.

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