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Consequence of Hearsay Evidence

When a witness testifies in court on what he heard from another person, that is hearsay evidence.¹

Last week (2 July 2020), the Court of Appeal dismissed an appeal by a defendant (**D**) against a third party (**TP**) and affirmed the decision of the High Court.²

In summary, TP awarded D a contract to carry out certain work. D appointed a sub-contractor to carry out the work. In the course of the work, the sub-contractor did additional work and claimed payment for the additional work from D. Thereafter, the sub-contractor commenced legal action against D for payment of the additional work. D then took out third party proceedings and alleged that TP was responsible for payment of the additional work.

During trial, in the course of cross-examination by TP, D's witness admitted he had no personal knowledge of the matter. The High Court judge, in his grounds of judgment, held that, among others:

- “(a) The Defendant’s sole witness, DW-1, admitted that he had no knowledge of the matter at hand and whatever he said in court was based on what an individual ... had told him. Thus, DW-1’s evidence is pure hearsay ... which renders the inadmissible.
- “(b) Further, there is no explanation from the Defendant as to why ... was not called as a witness to testify in its behalf. Based on what DW-1 had testified ... is an important and crucial witness to establish the facts averred in the Defendant’s pleadings. In such circumstance, I would have to agree with submissions of counsel for the 3rd Party that the presumption of adverse inference ought to be

¹ See *Lembaga Kemajuan Tanah Persekutuan (Felda) & Anor v Awang Soh Mamat & Ors* [2009] 5 CLJ 1 (CA)
² For the High Court’s decision, see [2019] 1 LNS 1950

invoked by the court under section 114(g) of the Evidence Act 1950.”

At the Court of Appeal, TP argued that, among others, D bore the burden to prove its claim against TP. As the evidence by D’s sole witness was pure hearsay, it was therefore inadmissible and adverse inference ought to be invoked. TP argued that on this reason alone, D’s appeal should be dismissed.

The Court of Appeal, by a unanimous decision, dismissed D’s appeal with costs and affirmed the findings of the High Court judge.

The third party was represented by partner, SM Shanmugam, and associate, Siew Hui Yi, from the Corporate & Commercial Disputes Practice.

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