

Legal Profession / Company Law / Civil Procedure
Solicitor-client relationship – Whether its existence and scope of duties determined only by reference to retainer – Whether fiduciary entitled to restitution of expenditure incurred in securing benefit for beneficiaries– Whether court can lift a company's corporate veil despite it not being pleaded.

Gurbachan Singh Bagawan Singh & Ors v Vellasamy Pennusamy & Other Appeals
[2015] 1 CLJ 719, Federal Court

Facts Syarikat Pembinaan Perusahaan Kemajuan Berhad (“SPPKB”) bought an estate land from Nam Bee Rubber Estate Sdn Bhd, who subsequently transferred the ownership to its newly incorporated company, Simpang Empat Plantation Sdn Bhd (“SEP”), and replaced its directors with SPPKB’s directors. To raise funds, SEP borrowed from MBF Finance. SEP subsequently defaulted in repayments and the estate land was auctioned off. The first appellant, an advocate and solicitor, was instructed to act for the purchasers. He successfully bid at the auction in his own name. The first appellant then invited the purchasers to buy back their allotted plots in the estate land from him, declaring that he was no longer their solicitor. He proceeded to set up a new company (“fourth appellant”), and transferred ownership of the estate land to it. The purchasers/respondents commenced legal proceedings against the appellants. The High Court found in favour of the appellants, which was later reversed in the Court of Appeal. The appellants appealed to the Federal Court.

Issues The issues before the Federal Court were (1) whether the existence of, and scope of duties in a solicitor-client relationship may be determined only by reference to the retainer; (2) whether a fiduciary is entitled to restitution of expenditure incurred in securing a benefit due and payable to persons whom he owes duties to; and (3) whether the court can lift a company’s corporate veil to determine if it was set up for fraudulent purposes, despite it not being pleaded.

Held The Federal Court dismissed the appeals and held that a solicitor-client relationship may exist either expressly or impliedly, and is not determined by an express retainer. There was indeed a solicitor-client relationship between the first appellant and the respondents, which continued until his declaration that he was no longer their solicitor. It was also held that even though the first appellant breached his fiduciary obligation by unlawfully obtaining a profit out of his trust, he is nevertheless entitled to restitution of the expenditure incurred. It is also trite law that parties are bound by their pleadings. However, despite it not being pleaded, the Federal Court held that there were justifications in lifting the corporate veil of the fourth appellant, as it was merely a façade to transfer ownership of the estate land, for the first appellant to evade his fiduciary obligations.