Chuan & Company Pte Ltd v Ong Soon Huat (Ong Thiam Huat and Others, Third Parties) [2002] SGHC 284

Case Number	: Suit 1310/2001/N
Decision Date	: 28 November 2002
Tribunal/Court	: High Court
Coram	: Lai Siu Chiu J
Counsel Name(s)	: C B Yeow (CB Yeow & Co) for the plaintiffs; Philip Fong & Josephine Choo (Harry Elias Partnership) for the defendant; Malcolm Lim (Tan & Lim) for the first third party; Alvin Tan (Wong Thomas & Leong) for the second & third third parties
Parties	: Chuan & Company Pte Ltd — Ong Soon Huat — Ong Thiam Huat; Ong Thiam Hong; Ong Kim Hong

Judgment

GROUNDS OF DECISION

Introduction

1. At the hearing of the preliminary issue on whether the plaintiffs' claim was time-barred, I ruled in favour of the defendant. As the plaintiffs have now appealed against my decision (in Civil Appeal No. 118 of 2002), I shall set out my reasons.

The facts

2. Chuan & Company Pte Ltd (the plaintiffs) were incorporated in Singapore in 1973; one Ong Toh (the deceased) was a founder member. The plaintiffs started as a sole-proprietorship of the deceased as far back as 1946-47. Ong Soon Huat (the defendant) is a nephew of the deceased and was named as the executor of the deceased under the latter's Will dated 16 September 1993. Ong Thiam Huat (the First Third Party) is a son of the deceased from his second wife, while Ong Kim Hong (Second Third Party)and Ong Thiam Hong (the Third Third Party) are his daughters by his third wife. Apart from specific legacies of $50,000 to each of his wives, the bulk of the deceased's estate was divided between one of his sons (Ong Heng Huat who received 80%) and his eldest grandson Ong CongQin Bobby (who received the balance 20%), by his eldest son Ong Kiat Huat.

3. On 26 November 1990, the deceased transferred all his shares in the plaintiffs to his aforesaid two (2) daughters. On the same day, he resigned as a director while the two daughters were appointed directors, of the plaintiffs. The First Third Party is also a shareholder of the plaintiffs, together with his half-brother Ong Kiat Huat.

4. The shareholders of the plaintiffs resolved, by a special resolution passed at an extraordinary general meeting on 28 May 1993, to a voluntary liquidation of the company; the company's auditors Chan Hock Seng & Company (CHS) were appointed the liquidator.

5. During his lifetime, the deceased made no distinction between his assets and those belonging to his various companies, including the plaintiffs. As far as he was concerned, the assets of his companies were his to do as he pleased. For many years prior to his death, the deceased withdrew sums of money from the plaintiffs for his own purposes, even after he resigned from the company. The deceased would acknowledge the loans as debts he owed to the plaintiffs by signing the yearly confirmation of debts statements sent to him by CHS, starting with 1987. The last confirmation of debt was signed by the deceased on 10 March 1994 in which he admitted owing the plaintiffs

$7,164,304.64 (the sum).

6. The deceased passed away on 30 March 1995. Probate of his estate in Probate No. 1489 of 195 was granted to the defendant on 4 September 1995. In the estate duty affidavit filed by the defendant on or about 12 December 1995, the sum was included as a debt owed by the estate of the deceased. The Commissioner of Estate Duties (the Commissioner), after raising several queries on the sum to the new solicitors (Harry Elias Partnership) acting for the estate, was satisfied as to its bona fides and eventually allowed its inclusion as a debt owed by the deceased, under the Schedule to s 42(2) of the Estate Duty Act Cap 96, attached to the Grant of Probate dated 18 October 1999.

7. Queries raised by the Commissioner to Harry Elias Partnership (HEP) on the deceased's estate were forwarded to CHS. In one such letter from HEP to CHS dated 17 January 2001 (the letter) the firm wrote (see AB86):-

> **Ong Toh Property Pte Ltd & Chuan & Co Pte Ltd (in Liquidation)**
>
> 3. First, the Commissioner has asked for documents in support of:-
>
> (i) Ong Toh Property Pte Ltd's allegation that a debt of S$213,049.45 was owing by the deceased to the company as at 30 March 1995; and
>
> (ii) Chuan & Co Pte Ltd's allegation that a debt of S$7,164,304.64 was owing by the deceased to the company as at 30 March 1995.
>
> 4. Without such documents, the Commissioner will refuse to make a deduction for the alleged debts. In the circumstances, please let us have copies of all the documents substantiating the alleged debts, so that we may forward them to the Commissioner.

8. In reply to the letter, CHS forwarded to HEP under cover of their letter dated 5 February 2001, a copy of the confirmation of debt dated 7 March signed by the deceased on 10 March, 1994. In the interim, starting with a letter dated 26 October 1994, CHS had written to the deceased to ask for repayment of the sum. A follow-up to that letter was forwarded on 30 November 1994 and, after the demise of the deceased, four (4) more letters/reminders were forwarded to the defendant as the executor of the deceased's estate. No response or payment was received by CHS to the letters, even after the liquidator's solicitors sent a reminder dated 15 June 2001.

The pleadings

9. Consequently, the liquidator commenced these proceedings in the name of the plaintiffs on 16 October 2001, claiming the sum from the defendant, relying on:-

> (i) the deceased's conformation of debt dated 10 March 1994, as an acknowledgement of a debt; and
>
> (ii) the admission of the sum contained in the estate duty

affidavit affirmed by the deceased on 9 December 1995.

10. In the (re-amended) Defence filed by the defendant, he contended inter alia, that:-

> (i) the liquidator's claim was time-barred, the same having been commenced more than six (6) years after the deceased's demise;
>
> (ii) the confirmation of debt dated 7 March 1994 by the deceased and the estate duty affidavit did not constitute acknowledgements of debts within the meaning of ss 26, 27 and 28 of the Limitation Act Cap 163.

but did not admit the claim (see para 4 of the Defence).

11. In the Reply, the liquidator contended that the estate duty affidavit affirmed by the defendant (on 9 December 2001) constituted an admission of a debt which caused time to run only as from that date. Reference was also made to the letter as reviving the claim.

12. Pursuant to the application filed by his solicitors on 19 June 2002, leave was granted to the defendant to issue Third Party proceedings against the three (3) persons now named as Third Parties.

The preliminary issue

13. By agreement between the plaintiffs and the defendant, the court was requested to hear the preliminary issue on Limitation before commencement of trial. After hearing arguments, I held that the plaintiffs were precluded from claiming the sum as it was already time-barred by 10 March 2000, pursuant to s 6(1)(a) of the Limitation Act Cap 163 (the Act), six (6) years after the deceased's last confirmation of the sum to CHS. The section states:-

> Subject to this Act, the following actions shall not be brought after six years from the date on which the cause of action accrued:-
>
> (a) actions founded on a contract or on tort.

14. The arguments presented before me centred on whether the plaintiffs' claim could be said to have been revived by the letter so as to amount to a fresh accrual of action on the debt. At the hearing, counsel for the liquidator abandoned the contention in para 7 of the plaintiffs' (amended) Reply; he conceded that the defendant's estate duty affidavit did not amount to a fresh acknowledgement of the debt but maintained that the letter did. Before I set out the reasons why I rejected the plaintiffs' arguments in this regard, it would be useful to look at three (3) sections of the Act which relate to fresh accruals of actions arising from acknowledgements.

15. The relevant sections are:-

> 26(2) Where any right of action has accrued to recover any debt or other liquidated pecuniary claim, or any claim to the personal estate of a deceased person or to any share or interest therein, and the person liable or accountable therefor acknowledges the claim or makes any payment in

> respect thereof, the right shall be deemed to have accrued on and not before the date of the acknowledgement or the last payment.
>
> 27(1) Every such acknowledgement or payment as is referred to in section 26 shall be in writing and signed by the person making the acknowledgement.
>
> (2) Any such acknowledgement or payment as is referred to in section 26 may be made by the agent of the person by whom it is required to be made under the that section, and shall be made to the person, or to an agent of the person, whose title or claim is being acknowledged or, as the case may be, in respect of whose claim the payment is being made.
>
> 28(4) An acknowledgement of any debt or other liquidated pecuniary claim shall bind the acknowledgor and his successors but not any other person.
>
> (9) In this section,
>
> > "successor", in relation to any mortgagee or person liable in respect of any debt or claim, means his personal representatives and any other person on whom the rights under the mortgage or, as the case may be, the liability in respect of the debt or claim devolve, whether on death or bankruptcy or the disposition of property or the determination of a limited estate or interest in settled property or otherwise.

16. Counsel for the plaintiffs submitted that the letter constituted a fresh acknowledgement of the sum owed by the deceased, so that the right of action accrued as from 17 January 2001 and not from 10 March 1994. He urged the court to examine the circumstances which led to the letter being written by HEP and highlighted the fact that the defendant's solicitors were asking the liquidator for documents to substantiate the debt. The letter showed that the defendant was seeking the liquidator's support for his claim for estate duty exemption for the debt admitted on oath in his estate duty affidavit, on which he eventually succeeded. How could the letter not be considered an admission under s 26 of the Act when, HEP wrote it as the defendant's agent and it was addressed to the plaintiffs' liquidator? The defendant could not blow hot and cold to suit his own ends. Counsel submitted that equity will not permit a statute to be used as an engine of fraud, citing *Sia Siew Hong & Ors v Lim Gim Chian* [1995] 3 MLJ 141.

17. Counsel for the defendant disagreed, contending that the letter could not be considered an acknowledgement which came within the ambit of s 27(2) of the Act, even if his firm could be said to be the defendant's agent in its writing; he relied on *Good v Parry* [1963] 2 ALL ER 59. The letter merely requested records, did not say the claim is outstanding and did not admit that the defendant

had a legal liability to make payment. Even if the letter was an acknowledgement, it subsisted as at 30 March 1995, whereas this suit was filed more than six (6) years later. Even the liquidator's reply dated 5 February 2001 did not regard the letter as an acknowledgement.

18. Counsel also drew the court's attention to the fact that s 27 of the Act is in *pari materia* with s 24 of the UK Limitation Act 1939 (now part of the UK Limitation Act 1990). He cited an English authority *Trustee in bankruptcy of Bowring-Hanbury v Bowring-Hanbury* [1943] 1 ALL ER 48 as a case directly in point, as it held that an estate duty affidavit did not amount to an acknowledgement of a debt.

The decision

19. I dismissed the plaintiffs' claim as having been time-barred by March 2000 (from 10 March 1994) as I was of the view that the requirement under s 26 of the Act had not been fulfilled by the letter so as to revive the claim and give it a new period of limitation starting from 17 January 2001. True, the letter was written by HEP as agent for the defendant who was the deceased's personal representative, to the creditor plaintiffs, thereby satisfying the criteria in s 27(2). However, s 26 must be satisfied first before s 27(2) kicks in — *the person liable or accountable therefor acknowledges the claim*. It would be useful in this connection to refer to some of the cases cited by the parties to support their respective stands.

20. In *Good v Parry* (*supra*), the word 'acknowledgement' was equated with 'admission' by the Court of Appeal. In that case, a landlord let premises to a couple in 1962 as joint tenants. The husband died and the wife carried on the tenancy. In 1962, the landlord brought an action claiming more than six years' arrears of rent. In 1957, the tenant's agent (his son) wrote a letter to the landlord during negotiations for the proposed purchase of the premises by the tenant, in which it was stated that *'……the question of outstanding rent can be settled as a separate agreement as soon as you present your account'.* The landlord contended that this 'acknowledged the claim' for arrears of rent for the purposes of s 23(4) of the Limitation Act 1939 (which is *in pari materia* with our s 26[2]). The Court of Appeal held that the letter was not an acknowledgement within s 23(4) of the Limitation Act 1939, because there was in it no admission of any defined amount of rent or of any amount that could be ascertained by calculation being due, nor, indeed, any admission that there was such a debt in fact. Both parties relied on this case although the plaintiffs' reliance was by way of a textbook *Law of Limitation* (by Choong Yeow Choy [1995]), in which the learned author cited this case in relation to our s 26.

21. It would also be useful to refer to a passage from Lord Denning's judgment at this point; he said (at p 61):-

> …the words 'the claim' are not, perhaps, very happy. A person may acknowledge that a claim has been made against him without acknowledging any indebtedness…There need only be an acknowledgement of a debt or other liquidated amount. That means, I think, that there must be an admission that there is a debt or other liquidated amount outstanding and unpaid…

22. It would be appropriate at this juncture to reconsider the words in para 3(ii) of the letter, which the plaintiffs rely upon as an acknowledgement/admission of the sum claimed:-

…the Commissioner has asked for documents in support of:

> Chuan & Co Pte Ltd's allegation that a debt of S$7,164,304.64 was owing by the deceased to the company as at 30 March 1995.

It would be straining the language to say the above words amount to an admission that the deceased owed the plaintiffs the amount stated. It says what is set out — that the plaintiffs had alleged that the deceased owed the company a certain sum, as at a certain date; that is all. Counsel for the plaintiffs had sought to argue that the word 'allegation' was from the viewpoint of the Commissioner, who required substantiation of the allegation, before he accepted that the debt existed as a fact. I disagree, on a plain reading of the paragraph. The law requires there to be 'an unequivocal admission of a subsisting debt, that is subsisting at the time of the acknowledgement' (per Lord Evershed at p 482 of *Consolidated Agencies Ltd v Bertram Ltd* [1956] AC 470 quoted with approval by the Malaysian Federal Court in *Wee Tiang Teng v Ong Chong Hooi* [1978] 2 MLJ 54 at p 56). It is noteworthy that as at 17 January 2001, the debt was already time-barred, it no longer subsisted.

23. One other case relied upon by the defendants reinforces my view. *Surrendra Overseas Ltd v Government of Sri Lanka* [1977] 2 ALL ER 481 concerned a charterparty dispute involving claims by shipowners for freight and demurrage, and cross-claims by charterers for damage to cargo, all of which arose before 10 July 1968. On 19 July 1974, the shipowners appointed an arbitrator on their behalf who, in default of an appointment by the charterers, was appointed the sole arbitrator. Although more than 6 years had lapsed since the claims and cross-claims first arose, the shipowners contended that their claims were not time-barred, because a letter dated 6 November 1968 which their agents wrote to the charterers' agents stating:

> …In view of the attitude taken by Charterers in their calculation of Laytime, Owners will be putting the matter to Arbitration. We will be advising you concerning details of the Arbitrator appointed in due course.

constituted a sufficient notice for the purpose of the commencement of the arbitration under s 27(3) of the Limitation Act 1939. In the alternative, the shipowners argued that the charterers' letter dated 20 March 1970 to the shipowners' Colombo agents constituted an acknowledgement of a debt, for the purposes of s 23(4) of the 1939 Act. That letter contained a statement of account comprising the charterers' set-off or cross-claims and stating the balance alleged to be due to the shipowners in respect of the charter. Subsequently, the charterers paid the shipowners the amount in the balance. Consequently, the shipowners argued, the limitation period started to run afresh from 20 March 1970. The material portion of s 27(3) of the 1939 Act reads:

> For the purpose of this Act ….an arbitration shall be deemed to be commenced when one party to the arbitration serves on the other party or parties a notice requiring him or them to appoint or to agree to the appointment of an arbitrator….

24. Kerr J inter alia held, that a debtor could only be taken to have 'acknowledged the claim' for the purposes of s 23(4) of the 1939 Act, if he had, in effect, admitted his legal liability to pay that which the creditor was seeking to recover. If he denied liability, whether on the ground of avoidance or on the ground of an alleged set-off or cross-claim, then his statement did not amount to an acknowledgement of the creditor's claim. Alternatively, if he contended that some existing set-off or cross-claim reduced the creditor's claim in part, then the statement, taken as a whole, could only amount to an acknowledgement of indebtedeness of the balance. Accordingly, the charterers' letter of 20 March 1970 only amounted to an acknowledgement of the owners' entitlement to the sum which

the charterers had paid.

25. After considering the Malaysian authorities relied on by the plaintiffs (*Halimah Binti Abdullah v Tengku Mariah Binti Sultan Sulaiman* [1980] 1 MLJ 240*, KEP Mohamed Ali v KEP Mohamed Ismail* [1981] 2 MLJ 10), I held that the claim against the deceased was time-barred by March 2000, well before the writ was issued (16 October 2001). There could not be any acknowledgement of the sum by the letter, as the debt no longer subsisted by that date (17 January 2001).

Sgd:

Lai Siu Chiu

Judge