

Yeoh Peng Lim v Yeo Peng Hay and Another
[2005] SGHC 145

Case Number : Suit 163/2004
Decision Date : 17 August 2005
Tribunal/Court : High Court
Coram : Woo Bih Li J
Counsel Name(s) : Bachoo Mohan Singh (K K Yap and Partners) for the plaintiff; David De Souza and Jeanette Lee (De Souza Tay and Goh) for the first defendant
Parties : Yeoh Peng Lim — Yeo Peng Hay; Yeo Brothers Launch Services Pte Ltd

Companies – Accounts – Plaintiff claiming for reversal of entries and adjustments – Whether first defendant handed all cash withdrawn to plaintiff – Whether plaintiff familiar with practice of receiving shortfall

Companies – Directors – Liabilities – Debit entries – Whether plaintiff knew nature of audited accounts he was signing

Companies – Winding up – Consent of parties – Whether company should be wound up

17 August 2005

Woo Bih Li J:

Introduction

1 The plaintiff, Yeoh Peng Lim (“the Plaintiff”), and the first defendant, Yeo Peng Hay (“the First Defendant”), who is also known as Peter, are the children of one Yeo Gek Chin (“the Father”). The Plaintiff and the First Defendant are the only directors and shareholders of Yeo Brothers Launch Services Pte Ltd (“the Company”) which is the second defendant in this action.

2 The Plaintiff’s primary, but not the only, complaint was that the First Defendant had misappropriated various sums of cash from the Company and to cover up for this had caused various sums to be debited to certain accounts including the Plaintiff’s, without his consent, for the years of 1995 to 1998 and 2001.

3 The Plaintiff claimed that:

- (a) there had been a genuine breakdown of his confidence in the First Defendant,
- (b) the acts of the First Defendant were such that they were in total disregard of the Plaintiff’s interest as a shareholder of the Company,
- (c) the adjustments were acts done which unfairly discriminated or were otherwise prejudicial to him as a member of the Company.

4 Accordingly, the Plaintiff sought the cancellation of the debit entries made in respect of his account and the accounts of other non-parties and for the sums to be debited to the First Defendant’s account with the Company. He also sought an order for the First Defendant to pay the sums to the Company and other reliefs. One of the reliefs sought was an order for the winding up of the Company and the appointment of a liquidator.

5 After considering the evidence and submissions and in view of the consent of the parties, I ordered the Company to be wound up. I also appointed the Plaintiff's nominee, Mr Lau Chin Huat, as the liquidator of the Company. The other prayers for various reliefs were dismissed. Many of those other prayers had become academic in view of the winding-up order. The claims in respect of the sums debited to the Plaintiff's account and the accounts of other non-parties with the Company were part of the other prayers for various reliefs which were dismissed. The Plaintiff has appealed against my decision dismissing the other prayers. Presumably the substantive appeal is in respect of the entries which the Plaintiff complained of. I set out below the background facts and my findings and reasons.

Background

6 The Father had nine sons and four daughters including an adopted daughter. The Plaintiff is the third child and the First Defendant is the ninth child. There is an age difference of about ten years between the Plaintiff and the First Defendant. As at February 2005, the Plaintiff was 60 years of age and the First Defendant 50 years of age.

7 In 1975, the Father registered a sole proprietorship under the name of Yeo Geok Chin Lighterage Service ("YGCLS"). The evidence was unclear as to whether the business had actually commenced several years before the year of registration but that uncertainty was immaterial to the case before me. The lighterage business was successful.

8 In 1980, a firm by the name of Yeo Brothers Launch Services ("the Firm") was registered. The Firm carried on a new business of ferrying passengers using motor launches with the Plaintiff and the First Defendant as the initial two persons registered as partners of the Firm. However, until 1984, the Plaintiff had nothing much to do with the Firm. He was working only as a relief boatman for the Firm's launches from time to time. In the meantime, he continued to work for YGCLS as a boatman. In 1984, the Father decided that the Plaintiff should work for the Firm and he did so until its dissolution in 1990. Various children of the Father also worked for the Firm from time to time and the named partners were not always the same persons. However, those developments were not material to the case before me.

9 The Company was incorporated on 10 November 1990. The Company acquired the Firm's business and assets for \$1,940,856. \$1 million was paid by the issue of shares equally to the Plaintiff and the First Defendant. The balance was credited to the accounts of the Plaintiff and the First Defendant with the Company as loans to the Company. The Plaintiff and the First Defendant were and are the only registered shareholders and directors of the Company.

10 Various sums of cash were withdrawn from time to time from the Company's current account with Chung Khiaw Bank Ltd ("CKB") which later merged with United Overseas Bank Limited ("UOB"). Apparently the Father, the Plaintiff and the First Defendant were the authorised signatories and any two of them could operate the account. The First Defendant was the only person to withdraw cash from the account using cash cheques signed by two of the authorised signatories. It was not clear from the evidence who the usual two signatories were. In any event, the Plaintiff's evidence was that he was aware that the First Defendant was the one withdrawing the cash. Indeed it was common ground that after withdrawal, the First Defendant would hand cash to the Plaintiff. The dispute was whether he had handed the entire sum withdrawn or only part thereof to the Plaintiff.

11 The Plaintiff used the cash he received to advance money to boatmen who were operating the launches and to pay for operating expenses like the purchase of spare parts and repairs. The salaries or fees of the boatmen were paid by cheque. However, in each of the years in question,

there was a shortfall between the aggregate amount of cash withdrawn from the Company's current account and the two petty cash accounts of the Company which were used for cash advances to boatmen and cash expenses. The shortfall was accounted for by journal entries made before the commencement of audit or by audit adjustments, that is adjustments arising from audit, and included entries or adjustments made to the Plaintiff's account with the Company. The Plaintiff also complained about certain entries or adjustments which were unrelated to the shortfall.

12 Before I set out below the various entries or adjustments which the Plaintiff complained about, I should mention that the auditor of the Company's accounts was Sim Hang Kiang of Jee Ah Chian & Co. It was Mr Sim's undisputed evidence that he was introduced by a client of his to the Father at a lunch which the First Defendant also attended. After the lunch, the Father called him to appoint him as the auditor in place of the previous auditor. Mr Sim's firm was appointed on 26 January 1995. Initially, he audited the Company's accounts for 1993, 1994 and 1995 and then for subsequent years. The bookkeeper of the Company for the years in question was Ho Soo Pin also known as Steve Ho.

13 I should also mention that the Plaintiff said he was not able to obtain all the accounting records of the Company when he started making inquiries about the accounts in 2003. The Plaintiff accused the First Defendant of refusing to make available the entire accounting records of the Company. The First Defendant in turn said the entire accounting records were kept at the office of the Company. The Company's office was at the following addresses:

- (a) from about 10 November 1990 to about 21 August 1996 – at 25 Jurong Pier Road;
- (b) from about 21 August 1996 to about 31 July 2002 – at 20 Jurong Pier Road #02-02/03;
and
- (c) from about 31 July 2002 to about April 2004 – at #18/19 Pasir Panjang Lighter Wharves.

The Plaintiff subsequently engaged an accountant, one J H Tan, who listed out the accounting documents kept at the office. The list disclosed that only some accounting documents for certain years were kept at the office.

14 The administrative staff doing work like issuing cheques and invoices were relocated from the Company's office to the First Defendant's office at Tras Street in 1998. The First Defendant's wife, Tan Bee Lan, was one of the staff doing such work. The oral evidence of Mr Sim and his working papers suggested that, at times, Mr Sim would liaise with the First Defendant on the accounts but never with the Plaintiff.

15 Mr Sim's evidence was that after the directors had signed the audited accounts for the relevant year at his office, the accounting records would be returned to the directors. The directors carried them away. It was not disputed that the First Defendant had brought the Plaintiff (who did not drive) to and from Mr Sim's office each time in his car and the accounting records were brought back in his car.

16 I was of the view that the First Defendant was relatively more familiar than the Plaintiff with the accounts. It was he, and not the Plaintiff, who knew where the rest of the accounting records were kept. That was why he could mention that the accounting records were kept at the Company's office but, as I have said, not all the accounting records were found there. I set out below the entries and adjustments which the Plaintiff complained of.

\$300,000

17 As at November 1995, the shortfall was \$300,000. Mr Sim said that when he asked the Father about the shortfall of \$300,000, the Father told him that the cash withdrawn had been utilised and the Father directed that the shortfall be debited to the directors' accounts such that their accounts would be more or less equal after the debiting was done. The First Defendant's account was first debited with this sum on 30 November 1995. Then on 31 December 1995, the First Defendant's account was credited with \$300,000 and the Plaintiff's account was debited with \$300,000. However, even after the \$300,000 was debited to the Plaintiff's account, there was, as at 31 December 1995, a debit balance of \$550,683.27 in the First Defendant's account while the Plaintiff's account had a credit balance of \$482,279.15.

18 The debiting of the \$300,000 to the Plaintiff's account was one of the entries which the Plaintiff wanted reversed.

19 At this juncture, it is appropriate to refer to another company, Sing-Batam Ferries Pte Ltd ("Sing-Batam"). Sing-Batam was incorporated on 24 July 1990, *ie* before the Company was incorporated. The Father and the First Defendant were Sing-Batam's directors and shareholders each holding 250,000 \$1 shares. The business of Sing-Batam was to operate ferries plying between Singapore and Batam. Mr Sim was the auditor of Sing-Batam as well.

20 According to Mr Sim, Sing-Batam was proceeding towards a members' voluntary liquidation in 1996. However, there was a sum of \$1,132,785.80 that was owed by Sing-Batam to the Company. In view of the members' voluntary liquidation, the Father directed that an adjustment be made in the Company's 1995 accounts and that this sum be debited to the First Defendant's account first so that Sing-Batam would no longer appear as a debtor for this sum. Shortly after the adjustment was made, Sing-Batam went into members' voluntary liquidation. According to a report by the Plaintiff's expert witness, Yin Kum Choy, Mr Sim was appointed the liquidator of Sing-Batam.

\$783,737.80

21 For the 1996 accounts, a sum of \$783,737.80 was debited to the Plaintiff's account and a sum of \$257,540.28 was credited to the First Defendant's account. According to Mr Sim, Steve Ho made the adjustments via one journal entry which was not the correct way of making the adjustments. Mr Sim spoke to Steve Ho about the entry as it involved substantial amounts. Mr Sim was referred to the Father. The Father explained that he wanted the petty cash balance reduced, apparently to account for the shortfall in cash for 1996, and to have the two directors' accounts equalised as much as possible. As Mr Sim was not satisfied with the way Steve Ho had written up the accounts, Mr Sim made his own analysis as to how the accounts should have been written up to reflect such adjustments. In any event, after debiting the Plaintiff's account with the \$783,737.80 and crediting the First Defendant's account with \$257,540.28, the Plaintiff's account had a debit balance of \$293,516.40 and the First Defendant's account had a debit balance of \$271,247.94 as at 31 December 1996. Mr Sim's audit working papers had a note stating "Adjustment was made in the account by Steve Ho to even out the balance due by the brothers".

22 The debiting of the \$783,737.80 to the Plaintiff's account was another entry which he wanted to be reversed. He also wanted the credit of \$257,540.28 to the First Defendant's account to be reversed but the \$257,540.28 credit was already part of the \$783,737.80 debited to the Plaintiff's account. Details are found in Yin Kum Choy's report.

\$200,000

23 In the meantime, a provision of \$400,000 had also been made for the 1996 accounts. This sum was credited to the Accruals account. It was intended to be for directors' fees of \$200,000 for each of the Plaintiff and the First Defendant. For the 1997 accounts, a \$400,000 adjustment was made to clear the petty cash balance in the Company apparently to account for the shortfall in cash for 1997 and the Accruals account was debited with the \$400,000. The directors did not in fact receive the fees of \$200,000 each. According to Yin Kum Choy's report, the First Defendant's account should be debited with \$200,000 and credited to the Plaintiff's account.

\$3,515.02 and \$112,198.10

24 For 1998, the First Defendant's account was debited with the sum of \$3,515.03 and the Plaintiff's account was debited with \$3,515.02 to account for a shortfall of \$7,030.05. Another sum of \$112,198.10 was debited to each of their accounts to account for another shortfall in 1998. The Plaintiff also complained about the two debit entries of \$3,515.02 and \$112,198.10 to his account and wanted them reversed. There was a remark in Mr Sim's working papers in respect of those two adjustments and a third adjustment which was not in issue. The remark states, "Client says this is the usual policy where the directors would approve of it". There was no elaboration of this remark in oral evidence.

\$391,620.65 and \$3,515.02

25 For 2001, \$391,620.65 was debited to the Father's account even though he had passed away on 1 March 1998. Another sum of \$3,515.02 was debited to the account of Sea-Dragon Marine Services Pte Ltd ("Sea-Dragon"). Sea-Dragon was incorporated on 22 August 1990, *ie* after Sing-Batam was incorporated but before the Company was incorporated. As was the case for Sing-Batam, the Father and the First Defendant were the directors and shareholders of Sea-Dragon each holding \$250,000 \$1 shares. The business of Sea-Dragon was to ferry passengers outside the Singapore port limits. The Plaintiff also wanted those two entries reversed even though the sums had not been debited to his account.

The parties' positions

26 The First Defendant's position was that he had handed over to the Plaintiff all the cash which he had withdrawn. Part of the shortfall was because the Father had taken some of the cash and part of it had been used by the Plaintiff for "entertainment". By this the First Defendant was referring to bribes. The First Defendant alleged that the Father had controlled the Firm and then the Company. The various debit entries in question, except for the entries made after the Father had died, had been made on the instructions of the Father with a view towards equalising the balances between the First Defendant and the Plaintiff. Furthermore, the Plaintiff had signed the audited accounts of the Company for the years in question which accounts had been explained to the Plaintiff by Mr Sim. The Plaintiff had also signed audit confirmations for 1997 and 1999 in which the Plaintiff confirmed the sums he was owing to the Company as at the end of those respective years.

27 The Plaintiff's position was that until the end of 1997, he had been signing blank cheques, including blank cheques of entire cheque books. He had not received all the cash which was withdrawn and the First Defendant had misappropriated the shortfall for the years in question. The Plaintiff did not accept that the Father was in control of the Firm and then the Company. He accepted that he had signed the audited accounts of the Company in the presence of Mr Sim. However, he said that each time Mr Sim would begin to explain the accounts but the First Defendant would interject and say that the documents were meant for the government and assure him that it was alright for him to sign. He said he had signed at the behest of the First Defendant whom he had

trusted absolutely without knowing about the specific debit entries in question. He accepted that he had also signed the audit confirmations for 1997 and 1999 but gave a similar reason for signing them. He also alleged that he had refused to sign the audit confirmation for 2001 when he was informed that it was to acknowledge that he was owing a certain sum of money to the Company as at the end of 2001. However, he accepted that he did sign the audited accounts for 2001.

The court's findings and reasons

28 When the Plaintiff gave oral evidence, he did not appear to accept that the Father was the one who was controlling the Firm and then the Company, while the Father was alive.

29 Paragraph 35 of the closing submission for the Plaintiff states, *inter alia*:

The Father was instrumental in setting up of firm. Capital came from the Father and he was treated as the real owner of the Firm.

It was not clear whether this passage was a concession that the Father was controlling the Firm, if not the Company. I assumed it was not a concession and considered the evidence and submission on the issue as to who was controlling the Firm, as well as the issue as to who was controlling the Company.

30 The Plaintiff's evidence on the issue as to who was controlling the Firm kept on vacillating. For example, at times, the Plaintiff would assert that the Father was the real owner of the Firm initially but then at other times, he would agree that the Father was the real owner throughout 1980 to 1990. The Plaintiff also kept on saying that the Father was either seldom involved or not involved with the Firm which gave the impression that the Father was not controlling the Firm but he accepted that the Father decided what role he was to play in the Firm and what salaries he and the First Defendant would receive from the Firm.

31 As regards the decision to incorporate the Company to take over the business and assets of the Firm, the Plaintiff said the idea was floated by the First Defendant and the decision was reached after a meeting among the Father, the First Defendant and him. However, the Plaintiff then accepted that the Father was the one who decided on the incorporation of the Company and the portion of the shares which the First Defendant and he would get.

32 Mr Bachoo Mohan Singh, counsel for the Plaintiff, submitted that any inconsistency in the Plaintiff's oral evidence was the result of his lack of knowledge, failure to understand or poor recall due to his poor mental state. Nicon Chin, a certified psychologist, had conducted a formal psychological assessment on the Plaintiff in January 2005. The report stated that the Plaintiff's overall IQ function was just below the average level. However, Mr Chin was not a witness at the trial. Dr Brian Yeo Kah Loke, a consultant psychiatrist who was a witness, gave a report stating that the presenting problem for the Plaintiff was that of poorer cognitive function and the Plaintiff required a longer time to understand and process information. However, his long-term memory was intact and he remained independent in his daily functions. Dr Yeo's diagnosis was that of age-related cognitive decline. I had given the Plaintiff more latitude when he needed time to respond to questions as well as when I was assessing his evidence. However, as regards the issue whether the Father was controlling the Firm and the Company, I was of the view that the vacillation in the Plaintiff's evidence was not due to mental decline but because the Plaintiff knew the significance of the Father being in control and sought to avoid acknowledging this. This was a simple issue of fact which he need not have vacillated so much if he was going to tell the truth.

33 One Tan Chin Juan, a former boatman who had worked as an independent contractor between 1990 to January 2004 with the Company, also gave evidence which was that he had considered the Father to be the owner of the Company. Similar evidence was given by one Othman bin Mohd Saleh who was a boatman working with the Firm and then the Company as an independent contractor from 1988 to 1998.

34 As I have mentioned, the undisputed evidence of the auditor, Mr Sim, was that he was appointed by the Father to be the auditor of the Company's accounts. Mr Sim spoke to the Father at times about the accounts. He considered the Father to be the one controlling the Company.

35 The First Defendant's evidence was that the Father was controlling the Firm and then the Company.

36 It was also telling that the Plaintiff said that the First Defendant would not deny having taken any money so long as the Father was alive as the Father would have known what moneys had been taken from the Company.

37 Accordingly, I was of the view that although the Father was not registered as one of the partners of the Firm, he was the one controlling the Firm. Likewise, although the Father was not a director or shareholder of the Company, he was controlling the Company when he was alive.

38 As for Mr Singh's submission that the First Defendant had not pleaded that the Father was the "alter ego" or "the controlling mind and will" of the Company, I noted that Mr Singh also submitted that the First Defendant had loosely alleged that the Father had controlled the Company. I see no magic in the words "alter ego" or "the controlling mind and will". The First Defendant had pleaded that the Company was under the overall control of the Father and also that the management and operations of the Company were subject to the Father's overall directions.[\[1\]](#) I therefore did not accept Mr Singh's submissions on this pleading point.

39 As regards the point as to whether the First Defendant had handed all the cash withdrawn from the Company's bank account to the Plaintiff, the First Defendant relied on the evidence of Yeoh Peng Yok who is the second brother in the family. Peng Yok's evidence was that between 1980 and 1984, the First Defendant would withdraw cash from the Firm's bank account and hand the cash to the Father. In or about 1984, the Father said, in the presence of the Plaintiff, the First Defendant and Peng Yok, that the cash withdrawn was to be handed by the First Defendant to the Plaintiff who was to take charge of the financial matters of the Firm. Peng Yok said that from then on, the First Defendant would hand all the cash withdrawn to the Plaintiff and the practice continued after the Company was incorporated. The Plaintiff would keep the money in a drawer in the office and later on in a safe in the office which the Plaintiff had bought. He said the First Defendant did not know the combination to the safe.

40 However, Peng Yok was not involved in the operations of the Firm. He was working for YGCLS initially. In about 1982, he started his own business known as Huat Heng Boat Service which carried on the same business as YGCLS but from a different location in Singapore. Peng Yok terminated his business only in about 1997 and joined the Company at the Father's invitation as a general administrator. This was another piece of evidence indicating that the Father was controlling the Company. Peng Yok left the Company in 1998. Peng Yok said that although he was not involved with the operations of the Firm and the Company until 1997, and even then, for only around a year, he had occupied the same business premises as the Firm and then the Company.

41 Although Peng Yok said that over the years, he had seen the First Defendant handing over

cash that had been withdrawn to the Plaintiff, he did not know how much the First Defendant had actually withdrawn each time. It seemed to me that what the Father had said in the presence of the three sons could also mean that the First Defendant was to hand over only what was needed to pay for advances to boatmen and cash expenses and not necessarily all the money that was in fact withdrawn.

42 In my view, Peng Yok was not really in a position to say whether the First Defendant had in fact handed over all cash withdrawn to the Plaintiff or only so much as was needed for advances and cash expenses.

43 I was of the view that the First Defendant had not handed all the cash he had withdrawn to the Plaintiff. If he had done so, as he asserted, it would have meant that he was just running an errand when he went to the bank to withdraw the cash only to hand all of it to the Plaintiff. I did not think he was just running such errands.

44 If all the cash withdrawn was to be retained by the Plaintiff, the Plaintiff could have gotten any of the staff or a relative like Jason Yeoh, who was a nephew working for the Company, to drive him to and from the bank without inconveniencing the Defendant who was managing other companies. Although the branch of the bank where the Company's current account was maintained was for several years near the First Defendant's office in World Trade Centre, it seemed to me that the Company used this branch because the First Defendant was the one withdrawing the cash. The Company could have easily used a bank branch nearer to the Company's office to facilitate withdrawal of cash by the Plaintiff if the Plaintiff was to be the one to withdraw cash.

45 Secondly, it was the evidence of the First Defendant that part of the cash unaccounted for was given to the Father. This was corroborated by the evidence of Mr Sim who said the Father had mentioned he had taken some of the cash. I accepted the evidence that the Father had been given some of the cash. However, I was of the view that there would be no reason for the First Defendant to hand all the cash withdrawn to the Plaintiff only for the Plaintiff to hand over part thereof to the Father. It was more likely, and I found, that after withdrawing the cash, the First Defendant handed part of the cash withdrawn to the Plaintiff and part to the Father with the balance being used by the First Defendant whether for "entertainment" or otherwise.

46 I come now to Mr Singh's submission that the First Defendant had asked the Plaintiff for receipts for the cash which was handed by the First Defendant to the Plaintiff and that the receipts were the acknowledgments by the boatmen of advances made by the Plaintiff to the boatmen. Mr Singh was implying that the acknowledgments constituted all the cash which the Plaintiff had received from the First Defendant. In my view, this was a quantum leap. The acknowledgments from the boatmen were of cash which the boatmen received from the Plaintiff. Such acknowledgments did not purport to be of cash which the First Defendant had handed to the Plaintiff. In any event, for the reasons I have stated, I found that the First Defendant had not handed all the cash withdrawn to the Plaintiff.

47 There was also a question as to whether the Plaintiff was the only one who knew the combination to the safe in which the Plaintiff placed whatever cash he had received from the First Defendant. In the light of my finding that the First Defendant had not handed all the cash withdrawn to the Plaintiff, the answer to this question was academic. Nevertheless, I would add that I accepted the Plaintiff's evidence that he had told the First Defendant the combination to the safe. The Plaintiff had remarked with candour during cross-examination that if the First Defendant was unaware of the combination to unlock the safe, the First Defendant would not have been able to retrieve his own passport which had been kept there.

48 As regards "entertainment", the Plaintiff said it was the First Defendant who did the entertainment in the sense of bringing people out for meals. He did not know about "the rest".

49 If there were substantial sums of cash spent on "entertainment", it was my view that as between the Plaintiff and the First Defendant, it would have been the First Defendant who did the "entertainment". The First Defendant had admitted that as between the Plaintiff and him, he (the First Defendant) was the one who would source for business and I did not accept his suggestion that the sourcing was done only by way of giving discounts. I was of the view that the "entertainment", whether it be in the form of bribes and/or treating customers to lavish meals would therefore have been done by him and not the Plaintiff. I rejected the First Defendant's suggestion that the Plaintiff also "entertained" the passengers of the launches by giving them cash in order to persuade them to give positive feedback to their bosses. It was more logical to spend time and effort to cultivate the goodwill of the bosses directly than through their employees.

50 It is true that the working papers from Mr Sim referred to gifts of thousands of dollars. This suggested that the First Defendant's explanation about the large sums of cash used for "entertainment" might have been exaggerated since such expenses could also have been recorded as gifts as well. On the other hand, it might have been that the quantum of the "entertainment" expenses was too large to have been conveniently recorded as gifts or that the recorded gifts were meant to refer only to "*ang pows*" to boatmen as there was another document recording "*ang pows*" to crew. Unfortunately, this specific point was taken up with the First Defendant only during his cross-examination and he did not shed much light on it.

51 Mr Sim was unable to elaborate as to what the shortfall for each year had actually been used for. It was clear to me that he was content to accept vague and general explanations from the Father and to do the Father's bidding by making sure that the necessary entries or adjustments were made to cover up the shortfall without any qualification to the accounts. Sadly, he performed his duties more like a glorified bookkeeper than as an auditor.

52 I would also mention that the First Defendant was unwilling to disclose bank statements pertaining to his personal bank accounts and his wife's personal bank accounts on the ground that such documents were confidential. The request for such documents was made only during the trial as the Plaintiff's solicitors had not sought specific discovery of such documents before trial as they should have done. Even at trial, Mr Singh had not pressed for such documents to be produced and was eventually prepared to leave it to submission that an adverse inference be drawn against the First Defendant. While I was prepared to and did conclude that the First Defendant would have known what the shortfall for each year had been used for, I was not prepared to conclude that he had taken all the money comprising the shortfall. Even if he had taken some of the money, this did not necessarily mean that the various entries which the Plaintiff complained of should be reversed.

53 At this juncture, it is appropriate to say something more about the directors. Each had sought to give the impression that the other was better educated than himself. The First Defendant asserted that the Plaintiff had received formal education up to Secondary Three but the Plaintiff said he studied up to Secondary Two and he had failed his Primary Six and Secondary Two examinations. On the other hand, the Plaintiff asserted that the First Defendant had had technical education for a few years at a vocational institute after Primary Six. In turn, the First Defendant said he had up to Primary Five education as he failed his Primary Six examination. He did not say whether he agreed that he had had technical education. However, what was significant was that he accepted that he was the most successful of all his brothers. Indeed, as I have mentioned, he was the only shareholder and director of Sing-Batam and Sea-Dragon with his Father. He also had his own business, Hai Huat Boatbuilders Pte Ltd, and was a director of other companies. It was he who was to source for

business and it was he whom his Father had entrusted to withdraw the cash.

54 As regards the accounts of the Company, both the Plaintiff and the First Defendant professed their ignorance of accounting matters. Mr Sim's affidavit of evidence-in-chief was to the effect that he would liaise with the bookkeeper, the Father and the directors on the accounts but his oral evidence and the notes made on his working papers revealed that he never liaised with the Plaintiff but only with the bookkeeper and/or the Father and/or the First Defendant. The only times Mr Sim dealt with the Plaintiff was when the Plaintiff and the First Defendant had come down to Mr Sim's office, usually once a year, to sign the audited accounts. I will say more about those meetings later.

55 Accordingly, I found that the First Defendant was the more shrewd of the two directors. As I have already said, he was also more familiar about the Company's accounts than the Plaintiff.

56 As for the audited accounts and the audit confirmations which the Plaintiff had signed, Mr Singh submitted that it was only as against innocent third parties that the Plaintiff was precluded in law from avoiding the consequences of the documents he had signed. The First Defendant was not such an innocent party. However, the cases which Mr Singh relied on for this legal proposition were cases where the plea of *non est factum* was raised. In the case before me, the Plaintiff knew the nature of the documents he was signing.

57 Even if the Plaintiff was not precluded in law from avoiding the consequences of the documents he had signed *vis-à-vis* the First Defendant, he still had to establish the facts which would allow him to avoid such consequences. The facts of other cases which Mr Singh relied on were different from those before me.

58 For example, Mr Singh submitted that *Lee Siew Chun v Sourgrapes Packaging Products Trading Pte Ltd* [1993] 2 SLR 297 was a case on similar facts. That was not accurate. As he himself submitted, that was a case where the plaintiff mortgagor failed on a claim of *non est factum* against an innocent mortgagee but succeeded against the firm of solicitors whose employed solicitor had falsely witnessed her signature. In that case, the court found as a fact that the plaintiff did not know that the document she was signing was a mortgage.

59 Another case which Mr Singh relied on was *DM Divers Technics Pte Ltd v Tee Chin Hock* [2004] 4 SLR 424. The facts there were relatively closer to home but still quite distinguishable. In that case, the co-director, one Tan Siam Weng ("Tan"), had left the running of the business of the plaintiff company to the defendant, Tee Chin Hock ("Tee"), as Tan was busy managing his own shipyard. Consequently Tan did not question Tee on expenses which Tee had incurred on the company's behalf and would sign whatever accounts that Tee had presented to him. He also signed blank cheques on behalf of the company. Tee told Tan that the company was not making money despite the increase in job orders and Tan decided to close down the company. He requested Tee to draw up the company's accounts for liquidation. When eventually Tee requested Tan to sign the company's accounts and the directors' report for one of the financial years, Tan noticed that there were errors and refused to sign. Subsequently, Tee signed various admission letters. In those circumstances, the trial judge found that Tan could not be faulted for relying on Tee to manage the company's operations as Tan's role was that of an investor only.

60 Mr Singh also relied on *Re Ice-Mack Pte Ltd* [1989] SLR 876 to submit that there "an audit confirmation was rejected in view of the close relationship between claimant and the wound up company and the circumstances of the case". The last part of that submission was significant as it is obvious that the circumstances of each case must be considered. In that case, AA Valibhoy and Sons (1907) Pte Ltd ("AA Valibhoy") had filed a proof of debt allegedly owing to it by Ice-Mack Pte Ltd

("Ice-Mack") after an order was made to wind up Ice-Mack. The proof of debt was rejected by the Official Receiver. AA Valibhoy's appeal to the High Court was dismissed. The court noted that the evidence offered to substantiate the claim consisted of a progressive miscellany of pages extracted from AA Valibhoy's own ledgers, its own audited accounts, an isolated certificate from its own accountants, and an audit confirmation signed for Ice-Mack just before Ice-Mack was wound up, and by no less than the same person who was then filing affidavits on behalf of AA Valibhoy. In those circumstances, it was no wonder that the court did not place much weight on the evidence produced including the audit confirmation.

61 I was of the view that while the Plaintiff was a simple person, he was not the simpleton that he had portrayed himself to be. It was undisputed that he was in charge of the operational aspects of the business of the Company including the supervision and scheduling of orders and the management of the boatmen. As at 1995, the Company was operating 14 launches that could carry more than 12 passengers each and 20 launches that carried less than 12 passengers each. The Company employed 42 workers and engaged more than ten subcontractors as boatmen. From time to time he would hand cash to boatmen as advances and get them to acknowledge receipt thereof on cards which contained the boatmen's respective names. The Plaintiff was also responsible for purchase of spare parts and repairs although he said he would consult the First Defendant on the same. The Plaintiff handled cash of thousands of dollars each month.

62 As regards the Plaintiff's allegation that he had signed blank cheques, it was also his evidence that he had stopped signing blank cheques by the end of 1997. In view of this and his experience in handling cash, he would have known the amounts of each cash cheque he had signed from 1998, if not earlier, and the amount of cash he had actually received from the First Defendant. He must have been aware of the discrepancy from at least 1998 and yet there was no protest from him then. In my view, this demonstrated that he was familiar with the practice whereby the First Defendant would hand over cash of amounts less than what the cash cheques were drawn for. In my view, his knowledge thereof was before 1998. I also did not accept that all the cheques he signed before 1998 were blank cheques.

63 As for the Plaintiff having signed the audited accounts for each of the years in question, as well as for 1999 and 2000, the First Defendant relied on the evidence of Mr Sim who said that he had spent about an hour with the directors on each occasion when they had come to his office to sign the accounts and had explained the high cash balances the Company was supposed to have and the entries and adjustments made to clear the petty cash accounts as well as the nature and effect of the documents the directors were signing before the directors signed the accounts. Mr Sim also said that he had told the directors that if they did not understand his explanation, they could seek explanations from third parties. As I have mentioned, the Plaintiff's version was that each time Mr Sim would attempt to explain the audited accounts but Mr Sim was interrupted by the First Defendant who assured the Plaintiff that it was alright for him to sign.

64 I will now say something about the conduct of various persons when the Plaintiff started to query about the accounts. According to the Plaintiff's son, Yeoh Chong Heng, he had wanted to use his father's name to obtain a loan to buy a car in June 2003. Chong Heng asked the Plaintiff for his Income Tax Notices of Assessment. The Plaintiff then got his wife to hand Chong Heng some tax documents. Chong Heng noticed that the Notice of Assessment for the Year Ending ("Y/E") 2000 stated the Plaintiff's income to be \$234,000. For Y/E 2001, there were dividends of \$150,287 and income from employment was \$84,000. Chong Heng was surprised at the \$234,000 figure as the Plaintiff had told him sometime ago that his salary was \$6,000 a month with some bonus from time to time. He asked the Plaintiff whether he had received the sum of \$234,000 for Y/E 2000 and the \$150,000 as dividends for Y/E 2001. The Plaintiff said he had not. The Plaintiff then told him that

sometime in the last year, *ie* 2002, the Plaintiff had been asked to sign a document which said that he owed the Company money. He had refused as he did not owe the Company money. He was troubled but as he did not know what to do, he left matters as they were. Chong Heng asked the Plaintiff for a copy of the Company's accounts and he was handed the audited accounts for 2001. I would add that while the Plaintiff complained that he only had one set of accounts for 2001 in his possession, he had accepted that, prior to inquiries being made in 2003, the First Defendant had not prevented him from accessing the accounts or obtaining a copy of any of the audited accounts.^[2] Chong Heng's mother could not shed much light on the matter. Since then, Chong Heng has been assisting the Plaintiff to make inquiries including inquiries with the auditors and the Inland Revenue Authority of Singapore. Mr Sim was not co-operative and did not volunteer any information or documents and the Plaintiff had to seek professional help from other accountants and solicitors. Eventually the Plaintiff filed Originating Summons No 1489 of 2003 for inspection of the Company's accounting records with a public accountant. Thereafter, there were some "without prejudice" meetings. Some accounts, as well as some of the auditor's working papers, were furnished to J H Tan who was the accountant assisting the Plaintiff then. Mr Tan furnished the Plaintiff with a schedule prepared by him showing movements in the directors' accounts from 1995 to 2001 and noted the debit entries of \$300,000 for 1995 and \$787,737.80 for 1996 which was made to the Plaintiff's account. The Plaintiff was shocked. Further inquiries were made by the Plaintiff's solicitors with the auditors. Eventually, the Plaintiff filed an application by way of Summons in Chambers No 6387 of 2004 on 18 November 2004 for an order that the auditors make discovery of documents. The application was opposed but an order for discovery was made. This order entailed an inspection of the auditors' files. However the auditors objected to Chong Heng attending the inspection of the files as the Plaintiff's representative and another ruling had to be made to allow Chong Heng to represent the Plaintiff. Pursuant to the inspection, the Plaintiff's solicitors requested the auditors to furnish a copy of the contents of their audit files for the years 1995 to 2001. The auditors refused on the basis that the request for all the files was unreasonable. The auditors applied for directions from the court and were directed to furnish a copy of all the documents requested. This was done. Subsequently, the Plaintiff filed the action, Suit No 163 of 2004, which I heard.

65 Mr Sim said that when inquiries were initially made of him, he had not wanted to take sides and so he directed the Plaintiff to make his inquiries with the Company. If both the Plaintiff and the First Defendant had agreed to his furnishing information, he would have been happy to do so but there was no such joint request. As regards the application for the auditors to make discovery of documents, Mr Sim said that his solicitors had said the auditors would leave the matter to the court. This evidence was given to support his suggestion that he was neutral. However, Mr Sim's own affidavit filed in response to that application demonstrated that he was objecting to the application.

66 I was of the view that Mr Sim's conduct belied his evidence as to how he had explained the high cash balances and the relevant entries and adjustments for each year. If he had done so, he would have been surprised at the Plaintiff's inquiries. He would also have taken the initiative to contact both sides to see them together, with or without their advisers, and remind them that he had taken the trouble to go through a detailed explanation before they had signed the audited accounts for each year. It was also in his interest for the directors to avoid further dispute and litigation over the matter bearing in mind his omission to perform his duties properly. Furthermore, if Mr Sim's evidence about his detailed explanations were true, then the First Defendant would also have initiated or encouraged such a meeting. Yet, there was no evidence that either Mr Sim or the First Defendant had suggested such a meeting for this purpose.

67 Furthermore, the audited accounts themselves did not disclose the entries or adjustments made. The audited accounts would show the aggregate amount owing by or to the directors generally but would not show the breakdown for individual directors. For Mr Sim to give the kind of detailed

explanation that he was saying he had given, he would have had to take the directors through the specific entries and adjustments which would entail going through various documents and not just the audited accounts. On balance, Mr Sim failed to convince me that he had done so. I accept that Mr Sim did give some sort of explanation for each year's accounts but this probably related to the profits or losses which the Company had made and not the kind of detailed explanation he was alleging.

68 However, although there was no such detailed explanation by Mr Sim, the Plaintiff was aware that he was signing off on the audited accounts of the Company. I was of the view that the Plaintiff was prepared to accept whatever was stated in the accounts with the knowledge that he had been handed less cash than what the cash cheques had been drawn for. While it was true that he had trusted the First Defendant, this trust was based on his belief that the Father was in control of the Company. He knew his Father had his own way of doing things and, by his own evidence which I reiterate, the First Defendant would not take any money without the Father's consent, while the Father was alive.

69 It is true that even after the Father had passed away on 1 March 1998, the Plaintiff continued to sign the audited accounts for 1998, 1999, 2000 and 2001. While this suggested that perhaps the Plaintiff was as trusting of the First Defendant as he alleged, there were two incidents after the Father's death which suggested otherwise.

70 The first incident was when the First Defendant had requested the Plaintiff to sign a directors' resolution dated 1 March 1998, *ie* the same date as the Father's death although the resolution might have been back-dated. The resolution was to add the First Defendant's wife, Tan Bee Lan, as an authorised signature of the Company's current account. The Plaintiff signed the resolution and then crossed out his signature. His explanation in his affidavit of evidence-in-chief as to how he came to delete his signature varied with his oral evidence during cross-examination. I need refer only to his oral evidence where he said that after he had signed the resolution, he spotted Tan Bee Lan's name and objected to her being included as a signatory. So he crossed out his signature and made a copy of it. The original was taken away by the First Defendant. The Plaintiff also said in oral evidence that the First Defendant had said he wanted his wife to be a cheque signatory so that if he were overseas, his wife and the Plaintiff could then sign the cheques. The Plaintiff said he responded by saying that if the First Defendant was intending to go overseas, he could sign a few blank cheques first. The Plaintiff confirmed that he was afraid that the resolution would have allowed the First Defendant and his wife to withdraw moneys without his knowledge.

71 As regards the second incident, the First Defendant had approached the Plaintiff in April 1999 to borrow \$300,000 from the Company. The First Defendant had approached the Plaintiff with a cheque which had been made out for \$300,000. The Plaintiff said he agreed to the loan because the First Defendant had already borrowed \$100,000 from the Company but he wanted the First Defendant to pay interest. So the Plaintiff made a photocopy of the cheque and he wrote some words in broken English below the photocopy for the First Defendant to sign thereon. The words were:

YEO PENG HAY CREDIT THREE HUNDRED THOUSAND FOR COMPANY YEO BROTHER INTEREST.
MONTHLY PD.

SIGN

72 The Plaintiff's evidence was as follows:

Q Was it you who requested a photocopy of the cheque he made and the acknowledgment

before you signed the cheque?

A Yes.

Q It was you who wrote the handwritten words?

A Yes.

Q Your earlier evidence was that you trusted Peter absolutely?

A Yes, at first I trusted him but after my father's death, how could I just give him a loan like that. What if he denies taking the money?

Q What has your father's death to do with requiring the First Defendant to sign an acknowledgment?

A If father was around, he would not deny. If father was not around, he would deny.

...

Q Please explain why if your father was around, First Defendant would not deny the debt.

A Because he would tell father everything.

Q By "everything" you mean if he borrowed money, he would tell your father?

A He would tell father and me.

Q Are you saying that when your father was around, whatever money First Defendant borrowed from the company, he would tell you and your father?

A I am just giving an example. If father was around, he would tell father about Hai Huat and tell me.

Q If he wanted to borrow money from the company for his own use, he would tell father and you?

A I don't know about previous loans. As far as this one is concerned, he did inform me.

Q Your evidence was that if your father was alive, First Defendant would not deny the \$300,000 loan?

A That's why there would be no need to get the acknowledgment from him.

Q Was it because your father would know what monies were taken from the company?

A Yes.

Q AB 24. You required Peter to sign the acknowledgment before you signed the cheque?

A Yes.

73 I come now to the two audit confirmations for 1997 and 1999 which the Plaintiff signed and the one for 2001 which the Plaintiff said he had refused to sign.

74 The audit confirmation for 1997 was to confirm a debit balance in the Plaintiff's account. The evidence of the Plaintiff on his signature of confirmation vacillated. He initially confirmed the signature of confirmation to be his, then said he was not sure and then decided to accept that that was his signature. Again, I was of the view that the vacillation was not due to his mental condition but because he realised the significance of the signature of confirmation and initially he could not decide whether to accept the signature as his.

75 The audit confirmation for 1999 was also to confirm a debit balance in the Plaintiff's account. The Plaintiff accepted that the signature of confirmation was his, after he finally accepted the signature of confirmation for 1997 as his.

76 As I mentioned, the Plaintiff's position was that he had signed the audit confirmations for 1997 and 1999 because he trusted the First Defendant. He said he was not told that they were confirmations of his debt to the Company. He was suggesting that he did not understand the nature of the documents but I did not accept this evidence. I refer again to the two incidents after the Father's death.

77 In addition, the evidence of the Plaintiff about the income tax notices of assessment was revealing. He initially suggested that he was not aware that such notices would show his annual income but then he accepted that they would show what he was supposed to have earned. Indeed in one of his responses for the assessment for income earned in 1997, he said that he had asked the First Defendant why the tax was so high and the First Defendant had replied that as they had wanted to expand their business, the tax would be more. Whether the First Defendant had in fact said what was attributed to him or not, the Plaintiff's evidence revealed that he knew what the notices of assessment were about. Indeed, while he said that he had handed each notice of assessment to an accounts clerk, as the Company was paying his taxes, he had made a copy for himself. He admitted that he knew from the copies he kept how much the notices were saying he had earned for the respective years.

78 Mr Singh relied on my decision in *Arubugam Suppiah v Borgensten Curt Evert* [2001] SGHC 199 ("*Borgensten*") to submit that I had said that a director who had signed the audited accounts did not necessarily accept the position of the other director. I should point out that *Borgensten* was a decision on interlocutory applications and not a decision after a trial. Furthermore, when I said there that Mr Suppiah did not necessarily accept Mr Borgensten's position, this was because the accounts which Mr Suppiah had signed were themselves qualified by the auditors.

79 I reiterate that the Plaintiff had not only signed the audited accounts but the two audit confirmations for 1997 and 1999. I was of the view that when the Plaintiff signed each audit confirmation, he knew the nature of the documents and he knew that he was acknowledging a debt of a certain sum to the Company. The confirmation for 1999 would in effect cover all the entries and adjustments he was complaining about up to 1999 and would not entitle him to seek a reversal of such entries and adjustments. However, they would not cover the complaints about the entries in respect of two other accounts in 2001.

80 As for the audit confirmation for 2001, there were three versions as to why it was not signed. The Plaintiff's version was that Mr Sim handed this document for him to sign after he had signed the audited accounts for 2001 and Mr Sim said it was a confirmation that the Plaintiff owed the Company \$355,459.19. When the Plaintiff heard this, he refused to sign it, as he did not agree that he was

owing the Company such an enormous sum. The Plaintiff's evidence was that he then asked the First Defendant about the confirmation. The First Defendant told him it was to balance the accounts and asked him to trust him. The Plaintiff refused. He kept on asking the First Defendant why he was being asked to sign the confirmation and all sorts of different reasons were given. The Plaintiff kept the matter to himself as he did not know what to do.

81 In cross-examination, the Plaintiff added that after he had refused to sign the confirmation, Mr Sim said that it was alright and Mr Sim gave him a copy of the signed accounts for 2001.

82 The First Defendant's version was also that the confirmation was placed before the Plaintiff after they had signed the audited accounts for 2001. Mr Sim explained the confirmation to the Plaintiff who declined to sign for the reason that as he had already signed the audited accounts, there was no need for him to sign the confirmation. The First Defendant denied that he had then asked the Plaintiff to sign the confirmation and also denied that the Plaintiff then got angry with him.

83 Mr Sim's version was that audit confirmations were sent out every year to debtors and creditors. He said he had not received audit confirmations from the directors for every year. He said that for the 2001 accounts, he had asked the directors whether they had brought the audit confirmations. The First Defendant had but the Plaintiff had not. The Plaintiff said the confirmation was not necessary since he had signed the audited accounts. Mr Sim denied that he had produced the audit confirmation for 2001 when the directors had met up with him. He was asked that even if he had not produced the confirmation, he could have produced another confirmation for the Plaintiff to sign when the Plaintiff did not bring the confirmation with him. He said that that was not the first time that an audit confirmation was not returned. The First Defendant had also omitted to return confirmations for some of the other years.

84 I was of the view that the Plaintiff and the First Defendant had got some of their facts on this point mixed up. What probably happened was that when Mr Sim had asked for the confirmations, the Plaintiff had asked what this was about and Mr Sim then explained the nature of the document he was asking about. As the Plaintiff had not brought his confirmation, Mr Sim said it was alright. If the Plaintiff was as upset about the confirmation as he alleged, he would then have queried the audited accounts which he had just signed and crossed out his signature thereon just as he did for the proposed resolution to appoint the First Defendant's wife as a cheque signatory.

85 Even if the Plaintiff's version about his not signing the audit confirmation for 2001 was correct, that did not assist him to avoid the consequences of signing the audit confirmation for 1999 as stated in [79] above.

86 Interestingly, the First Defendant's evidence was also that the audit confirmations signed by the directors did not mean that they owed the Company money.^[3] They were signed in order to balance the Company's accounts.^[4] This reinforced my view that both of them had been prepared to accept the accounts thinking that there would be no adverse consequence to them as the Father was alive then and, thereafter, because they were in any event the only directors and shareholders. As things stood, I was of the view that the Plaintiff had accepted the debit balance as at the end of 1999 and he had not made out his case for a reversal of the entries and adjustments in question up to 1999. As for the entries in question for 2001, I was of the view that it was not for the Plaintiff to seek their reversal as the entries were not made in respect of his account. Accordingly, while I dismissed various reliefs sought by the Plaintiff, I stated that my order would not preclude the estate of the Father and Sea-Dragon from challenging the amounts debited to their respective accounts or any step which the liquidator might wish to take in respect of such accounts.

Plaintiff's claims for reversal of entries and adjustments dismissed.

[1] See paras 11.2 and 14.1 of the Re-Amended Defence.

[2] See para 13 of his Re-Amended Reply.

[3] NE 287

[4] NE 287.

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