Ang Boon Chye and Another v Ang Tin Yong
[2008] SGHC 177

Case Number : Suit 803/2007

Decision Date : 21 October 2008

Tribunal/Court : High Court

Coram : Tan Lee Meng J

Counsel Name(s) : Mak Kok Weng (Mak & Partners) for the plaintiffs; Andrew Tan Tiong Gee / Anna Png (Andrew Tan Tiong Gee & Co) for the defendant

Parties : Ang Boon Chye; Wong Kee Yock — Ang Tin Yong

Partnership – Partners inter se

21 October 2008 Judgment reserved.

Tan Lee Meng J:

1 The plaintiffs, Mr Ang Boon Chye ("Chye") and Mr Wong Kee Yock ("Wong"), and the defendant, Mr Ang Tin Yong ("Yong"), are three of several partners of "All Family Food Court" ("the partnership"). Chye and Wong asserted that Yong is liable to them for additional income tax levied on them by the Inland Revenue Authority of Singapore ("IRAS") with respect to their share of the partnership's profits for the Years of Assessment 2000 to 2005 and interest on the additional tax payable by them. They also sought, *inter alia*, an account and inquiry of all transactions between them and Yong from 1999 to 2004 as well as the payment to them of their rightful share of the partnership's profits. Yong, who denied that he was liable to pay the additional tax levied on Chye and Wong, sought the dissolution of the partnership on the ground that it is just and equitable for this to be done.

Background

2 The partnership, which was registered on 19 December 1996, is a food court operator and a retailer of beverages and tobacco. Its principal place of business is at Block 258 Pasir Ris Street 21, #02-333A, Loyang Point Shopping Centre, which is leased from the Housing and Development Board.

3 Yong, the manager of the partnership, and his brothers, Mr Ang Ting Chun ("Chun") and Mr Ang King Keong, hold 50% of the shares in the partnership. Chye and Wong, who like Yong, are experienced investors in the food court business, hold the remaining 50% in equal shares.

4 It was agreed at the outset that the partnership would operate only one account, namely DBS current account no 020-XXXXXX-X. It was further agreed that partnership's cheques had to be signed by two partners, one of whom was to be Yong or any of his brothers and the other either Chye or Wong.

5 From 1999 to 2004, the partnership made profits which were distributed to the partners. It was not disputed that from 1999 to 2004, Chye and Wong each received the following amounts as "profits", "bonuses" or "advances" that were never paid back to the partnership. The amounts paid out to each partner for 1999, 2000, 2001, 2002, 2003 and 2004 were $51,000, $57,500, $55,000, $51,000, $47,000 and $13,000 respectively.

6 Although profits were made between 1999 to 2004, the partnership's accounts were falsified for the purpose of evading income tax. As such, from 1999 to 2004, the partnership either declared to the IRAS that it had made a loss or under-declared its profits.

7 Despite having pocketed the profits distributed to them, Chye, Wong and Yong relied on the falsified partnership accounts to evade personal income tax when submitting their own income tax returns to the IRAS. All of them lied to the IRAS about the amount each of them received from the partnership from 1999 to 2004.

8 Following an investigation into the financial affairs of the partnership, the IRAS found that the partnership did not declare income amounting to $2,146,141.85 for the Years of Assessment 2000 to 2005.

9 All the partners were served with Notices of Additional Assessment. As Chye had a 25% share of the partnership, the IRAS informed him that he would be taxed on his additional income of $536,535.00. Wong, who also had a 25% share of the partnership, was also taxed in the same manner.

10 Chye and Wong asserted that Yong should pay the additional income tax levied on them by IRAS because they had entrusted the "entire management of the partnership" to Yong. In addition they sought the following:

(i) an account and inquiry of all transactions of the partnership for the years 1999 to 2004;

(ii) an account and inquiry of all dealings and transactions between them and Yong for the years 1999 to 2004;

(iii) payment of their rightful share of the partnership's profits after taking into account the omitted income and interest thereon less the additional income tax claimed; and

(iv) interest on the additional tax paid by them to the IRAS.

11 Yong, who asserted that both Chye and Wong participated in the management of the partnership, counterclaimed for the dissolution of the partnership. Relying on s 35(e) of the Partnership Act (Cap 391) ("the Act"), Yong also sought an order that he sell his minority shares in the partnership to the other partners as well as an order that there be an inquiry on the partnership's financial position to ascertain the fair and market value of his share in the partnership.

The plaintiffs' claim for the additional income tax paid by them

12 Whatever other claims Chye and Wong may have against Yong in relation to the partnership's affairs, their claim for reimbursement of the additional income tax payable by them to the IRAS did not get off the ground.

13 At the outset, it must be stressed that Chye and Wong were just as deeply involved as Yong in the illegal scheme to hide the partnership's profits from the IRAS in order to evade tax. In fact, Chye approved and signed the false accounts that had been submitted to the IRAS. This led Wong to assert that Chye and Yong were more culpable than him. What was rather startling was that Ms Sally Ong Leh Khim ("Ms Ong"), the book-keeper who prepared the partnership's accounts, testified that *all* the parties to the present suit were parties to a fraudulent scheme to deceive the IRAS in order to evade income tax and that they knew the consequences of their actions.

14 Both Chye and Wong admitted that they knew that the accounts submitted to the IRAS had been tempered with to hide the partnership's profits. Notwithstanding this, both of them submitted their personal income tax returns on the basis of the false figures in the partnership's accounts. Chye and Wong must have known that Notices of Additional Assessment might be sent to them by the IRAS but they were shocked when the IRAS made a finding that the partnership had hidden far more profits than what they themselves had perceived to have been hidden from the IRAS. It would be an affront to justice if Chye and Wong succeed in their claim against Yong for the additional taxes that they paid to the IRAS, and especially so when part of the additional tax is in relation to the amounts that they and Yong had tried to hide from the IRAS.

15 More importantly, even if there had been no illegality involved, a person cannot, without more, expect his partners to pay his personal income tax. This is clear from the decision of the Court of Appeal in *Chiam Heng Chow & Anor (executors of the estate of Chiam Toh Say, deceased) v Mitre Hotel (Proprietors)(sued as a firm) & Ors* [1993] 3 SLR 547 ("*Mitre Hotel*"). In that case, a partnership ran a hotel at Killiney Road. One of the partners, C, was taxed by the IRAS on the basis of his share of the partnership's profits from 1976 to 1983 even though he had not received any profit for the stated period. In November 1984, C sued the partnership and his partners, claiming his share of the profits from 1976 to 1983 or, alternatively, a refund of the income tax that he paid on his unpaid share of the profits for the stated period. C died in February 1990 and his executors were added as plaintiffs to the action. The trial judge, who dismissed C's claim for profits on the ground that he had ceased to be a partner as from March 1975, held that as C had paid income tax on a share of the partnership's profits, he could recover this amount from the defendants. The Court of Appeal held that as C had not ceased to be a partner as from March 1975, he was entitled to recover his share of the partnership's profits subject to the defence of limitation of action with respect to profits that should have been claimed more than 6 years ago. More pertinent to the present case, the Court of Appeal also held that C's alternative claim for reimbursement of the income tax paid by him on his share of the partnership's profits from 1976 to 1983 was not tenable. LP Thean JA, who delivered the judgment of the Court, explained at p 559 as follows:

> We agree … that there was no legal obligation on the part of the respondents to refund to the appellants the tax [C] had paid. The Comptroller had raised the tax on [C] directly on his share of profits and if there was any claim for a refund that claim should be directed towards the Comptroller. The respondents would have no knowledge of the basis and rate of tax on which the Comptroller raised the assessment on [C] and such assessment would not be made on the same basis and at the same rate as those raised on the second and third respondents.

16 It follows that instead of claiming a refund of the income tax paid with respect to the IRAS Notices of Additional Assessment from Yong, Chye and Wong should focus on the recovery of their rightful share of the partnership's profits.

17 For the reasons stated, the claim of Chye and Wong against Yong for the additional tax levied on them by the IRAS in relation to their share of the partnership's profits is dismissed.

Order for an account to be taken and payment of share of profits

18 The plaintiffs' application for an account to be taken and their claim for their rightful share of the profits of the partnership will next be considered. Chye and Wong relied on s 28 of the Act, which provides as follows:

> Partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives.

19 Yong asserted that Chye and Wong are not entitled to an order for an account to be taken for two reasons. First, in [13] of his Defence, he pleaded as follows:

> [T]he Defendant states that he is discharged to give account and an inquiry to the 1st Plaintiff by virtue of accord and satisfaction through the payment and acceptance of monetary profits by the 1st Plaintiff as well as the 2nd Plaintiff.

20 With respect to accord and satisfaction, in *British Russian Gazette and Trade Outlook Limited v Associated Newspapers Limited* [1933] 2 KB 616, Scrutton LJ stated as follows:

> Accord and satisfaction is the purchase of a release from an obligation whether arising under contract or tort by means of any valuable consideration not being the actual performance of the obligation itself. The accord is the agreement by which the obligation is discharged. The satisfaction is the consideration which makes the agreement operative.

21 In the present case, the question of accord and satisfaction did not arise as there was no proof that Chye and Wong had agreed to forego their right to a proper share of the partnership's profits by accepting the amounts that they had received from the partnership thus far.

22 Yong next asserted that the plaintiffs' application for an order for an account to be taken and their claim for their rightful share of the profits for the years 1999, 2000 and 2001 are barred by the Limitation Act (Cap 163, 1996, Rev Ed). Chye and Wong argued that the Limitation Act does not apply at all.

23 A distinction must be made between an application for an order for an account to be taken of the partnership's dealings and assets and a claim for the payment of profits. While the time bar in question is irrelevant for the purpose of considering whether an order should be made for the taking of an account of a partnership that has not been dissolved, it ought to be noted that in *Mitre Hotel* (*supra*, [15]), the Court of Appeal held that the Limitation Act applies to a claim for a specific sum owed to a partner under the terms of the partnership agreement. In that case, the deceased partner had staked a claim for his share of profits from 1976 to 1986. The court ruled that as the writ was taken out on 26 November 1984, the deceased partner's claim for his share of profits for 1976 and 1977 had been time-barred and he could only successfully claim his share of profits from 1978 onwards.

24 As for whether an order should be made in the present case for an account to be taken, it is worth noting that it was once thought that such an order should only be made upon the dissolution of the partnership. However, the present position is put as follows in *Lindley & Banks on Partnership* (18th Edn, 2002, Sweet & Maxwell) ("*Lindley & Banks*") at p 615:

> Although it was formerly considered that an account could only be taken between partners with a view to a dissolution, it has long been recognised that *a strict application of this rule would lead to injustice.* Lord Lindley observed:
>
> > "*The old rule* …. that a decree for an account between partiers will not be made save with a view to the final determination of all questions and cross-claims between them, and to a dissolution of the partnership, *must be regarded as considerably relaxed*, although it is still applicable where there is no sufficient reason for departing from it."
>
> [emphasis added]

25 In the present case, all parties claimed to know much less than what they actually knew about the partnership's accounts and much time was wasted by their long-winded and evasive answers to questions regarding the partnership's financial affairs. I do not believe that Chye and Wong were totally in the dark about the partnership's finances. Chye, who signed the partnership's cheques, payment vouchers and the partnership's accounts for transmission to the IRAS, conveniently claimed that he was not familiar with the partnership's financial affairs. I do not accept that he had signed the partnership's cheques or payment vouchers blindly without bothering to understand what was happening in the food court. As has been mentioned, Chye and Wong are very experienced in the food court business. In fact, they had been partners in the food court business for 20 years and both of them had invested in other food courts as well. Both of them were not so foolhardy about their investment in the partnership as to sit idly by without keeping themselves abreast of what was happening at the food court in question.

26 The partnership arrangements were such that the Yong and his brothers did not have total control of the partnership's finances. That was why either Chye or Wong had to sign cheques issued by the partnership together with Yong or any of his brothers in the partnership for the cheques to be honoured.

2 7 As for Wong, he admitted that he was very concerned about the fact that a food court business involves many cash transactions. In this context, the following part of the proceedings is relevant:

Q There were daily collections of cash … [from the sale] of beverages, food, drinks …

A Yes.

Q And you were concerned that because there are so much cash lying around, you take [an] interest in this new All Family Court. Am I right?

A Yes.

28 Although all the parties knew more than they admitted about the partnership's accounts, what cannot be overlooked is that there were far too many unanswered questions regarding the said accounts. It was quite unsatisfactory that the signed and unsigned copies of the partnership's accounts presented to the court could not be reconciled and were inconsistent with the IRAS' position on the income of the partnership. Furthermore, there were missing accounts. Even Yong admitted that there were problems with the accounts. The relevant part of the proceedings is as follows:

> Q The true accounts and the fictitious accounts and the money actually received by the 1st and 2nd plaintiff do not tally at all. There are three different figures.
>
> A Is it all don't tally, even with the IRAS figures also don't tally?
>
> Q All don't tally.
>
> A Yah, I also do not know why, yes.

29 It is also rather alarming that a large part of the partnership's accounting records have been destroyed. Yong, who is the manager of the partnership, claimed that the partnerships' accounting records were got rid off every year because of, among other things, space constraints in the

partnership's office. However, there are doubts regarding his testimony as his brother and partner, Chun, was very evasive when he was questioned on how long the partnership's financial records were kept. The relevant part of the proceedings is as follows:

> Q Do you discard records for every previous year …?
>
> A All the records are --- all the accounts are there but after the mosquitoes and the worms or cockroach --- cockroaches and ---
>
> Q No, no, what I mean is every year, do you throw the accounts of the --- the records of the previous year?
>
> A *The records would be properly kept.*
>
> Q You see, your … brother … Ang Tin Yong says that every year you throw away the accounts of the previous year….
>
> A *I do not know….*
>
> Q [H]e says the accounts are thrown away each year, so either you are lying or he is lying.
>
> A Well, I do not know because I do not keep an eye on the accounts every now and then.
>
> [emphasis added]

30 That the partnership financial records should not have been destroyed after one year is obvious. After all, s 24(9) of the Act provides as follows:

> The partnership books are to be kept at the place of business of the partnership (or principal place, if there is more than one), and every partner may, when he thinks fit, have access to and inspect and copy any of them.

31 Counsel for the plaintiffs, Mr Mak Kok Weng, submitted that Yong obviously knew about the importance of keeping accounting records. After all, he had kept the payment vouchers in respect of payments to the partners. He submitted that the accounting records had been destroyed to hide relevant financial data from his clients.

32 There is also some controversy regarding the erasure of computer records of the partnership's accounts that were stored in the computer of the partnership's book-keeper, Ms Ong. According to Yong, Ms Ong told him that the computer data had been corrupted. However, Chye and Wong claimed that Yong had ordered Ms Ong to delete the partnership's financial records from her computer. Ms Ong was very evasive when she was cross-examined on this issue. Initially, she insisted that her computer had crashed but she soon wavered. The relevant part of the proceedings is as follows:

> Q I put it to you that you told them at this meeting that the records in your computer had been erased on the instructions of the defendant….
>
> A From the meeting I don't say that.
>
> Q *The when did you say that? …*
>
> A *I can't remember….*

Q [Y]ou did tell the 1st and the 2nd defendant [*sic*] that you erased the records of the accounts on the instructions of the defendant, yes? You said this or not? …

A *Just --- yah*.

Q You said that?

A *That was not in the meeting.*

Q Yes, but you …

A That was maybe --- *I can't remember, can't recall*. … Actually, … I told them … my computer crash ….

Q No, you said it was erased on the instruction of the 1st … defendant. You said that, right?

A *I can't remember accurately.*

[emphasis added]

33 Ms Ong's professed inability to remember whether or not she had been instructed to delete the partnership's accounts and her inconsistent answers cast serious doubts as to whether her computer had really crashed.

34 To be fair to Yong, he was not against some form of inquiry into the partnership's accounts. In his counter-claim, he had also sought "an order that an account and an inquiry be taken of the partnership's debts and liabilities, receipts and payments, its property and assets in order to ascertain the fair and market value" of his share in the partnership.

35 I thus order that an account be taken of all transactions of the partnership for the period 1999-2004. If it is found that some partners have not been paid their full share of the profits, then subject to stale claims for specific sums being barred by the Limitation Act, they should be paid their proper share.

36 While an order for the taking of accounts is inevitable, the feuding parties ought to take steps, together with their other partners who are not parties to this action, to determine the future of the partnership. Hopefully, all parties concerned can agree on a more realistic and sensible solution to their deep-seated problems by having one group buy the other group's shares or by selling the food court business to a third party. These were options canvassed by the parties during the trial. Depending on the course of action taken by the partners to solve their present problems, there may or may not be a need for the taking of accounts.

The counterclaim

37 Yong's counterclaim will next be considered. Yong applied to have the partnership dissolved pursuant to s 35(e) of the Act on the ground that he had been "unfairly and unkindly" treated by Chye and Wong. He pointed out that he was instrumental in getting both Chye and Wong to join the partnership and he felt betrayed by their action against him, and especially so since he had sacrificed the development of his own food court business by assuming the responsibilities of a manager of the partnership since it commenced its business in 1999. Yong also sought an order that the other

partners purchase his shares from him.

38 It is crucial to note that not all the partners are parties to the present action. The future of the partnership cannot be determined by the court without allowing all partners an opportunity to state their views. No attempt was made to have the other partners joined as parties to the proceedings. In *Pegang Mining Co Ltd v Choong Sam & Ors* [1969] 2 MLJ 52, 56, Lord Diplock reiterated that one of the principle objects of allowing an additional party to be added to an existing action is to "enable the court to prevent injustice being done to a person whose rights will be affected by its judgment by proceeding to adjudicate on the matter in dispute in the action without his being given an opportunity of being heard." Yong's application to have the partnership dissolved or to have his other partners purchase his minority shares is thus dismissed.

Costs

39 After taking all matters into consideration, I order Chye, Wong and Yong to bear their own costs.