

Ang Tin Yong v Ang Boon Chye and another
[2011] SGCA 60

Case Number : Civil Appeal No 209 of 2010
Decision Date : 04 November 2011
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA; Andrew Phang Boon Leong JA
Counsel Name(s) : Mr Andrew Tan Tiong Gee and Ms Anna Png (Andrew Tan Tiong Gee & Co.) for the Appellant; Mr Mak Kok Weng (Mak & Partners) for the Respondents.
Parties : Ang Tin Yong — Ang Boon Chye and another

Contract – Interpretation – Partnership Law

[LawNet Editorial Note: This was an appeal from the decision of the High Court in [\[2011\] SGHC 124.](#)]

4 November 2011

Chao Hick Tin JA (delivering the grounds of decision of the court):

Introduction

1 This appeal arose out of an application by Ang Boon Chye and Wong Kee Yock (“the Respondents”) for leave to apply for an order of committal against Ang Tin Yong (“the Appellant”) under O 52 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) (“the Rules of Court”). The trial judge (“the Judge”) granted leave to the Respondents to apply for a committal order against the Appellant. After hearing the parties, we allowed the appeal and set aside the leave granted to the Respondents to apply for a committal order. We now give our reasons.

The background

2 The Appellant and the Respondents were in a partnership operating a food centre business known as the “All Family Food Court”. The partnership comprised five partners. It made profits during the years 1999 to 2004 and the profits were distributed amongst the partners yearly. However, to evade tax, the partners falsified their partnership accounts to declare a loss or under-declare the partnership’s income. The Inland Revenue Authority of Singapore (“IRAS”) eventually found out about this, and it served all the partners with Notices of Additional Assessment and taxed the Respondents on the additional income received.

3 The Respondents then brought a suit in the High Court against the Appellant to seek, amongst other reliefs, an account and inquiry of all partnership transactions during the years 1999 to 2004 and a payment of their rightful share of the partnership profits and interest on the tax they had paid. In *Ang Boon Chye & another v Ang Tin Yong* [2008] SGHC 177, a judgment dated 21 October 2008, the High Court, having ruled that the Respondents were not unaware of the improper practice of under-reporting to IRAS adopted by the Appellant, ordered at [35]:

[T]hat 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.

4 Thereafter the Respondents applied for an order requiring the Appellant to lodge an account by 2 April 2009 in respect of all partnership transactions effected for the period 1999 to 2004 and to give the Respondents access to all books, vouchers, bank statements and other documents in his possession which related to the accounts. On 1 December 2008, the Assistant Registrar granted the order ("the AR's Order"). An appeal by the Appellant against the AR's Order was dismissed by the High Court on 5 January 2009.

5 On 23 September 2010, the Respondents filed a summons for leave to apply for committal against the Appellant ("the Leave Application") and a Statement pursuant to O 52 r 2(2) of the Rules of Court ("the Statement") stating the grounds in support of their application. In the Statement, the Respondents averred that the Appellant had failed to comply with the AR's Order, and in the affidavit filed, the Respondents affirmed that they had still not been paid their proper share of the partnership profits. In response, the Appellant filed an affidavit opposing the Respondents' application stating, amongst others, that the Statement was defective for lack of particulars, and that in any case the Respondents had since retired from the partnership and had in a retirement deed assigned away all their "share and interest" in the partnership.

6 At this juncture, we ought to highlight the very material development in the relationship between the parties which was alluded to by the Appellant in his affidavit (see [\[5\]](#) above) to resist the Leave Application. This was that before the Respondents made the Leave Application, they had already decided to retire from the partnership and in pursuance thereof had reached a settlement with the Appellant and the other two partners. Consequently, on 8 August 2009, one year before the Leave Application was made, the Respondents executed a deed with the other partners ("the Deed") under which the Respondents would be deemed to have retired from the partnership on 31 July 2009 and it was also provided that the Respondents would, for a specified consideration, assign all their shares and interest in the partnership to the continuing partners, amongst whom was the Appellant.

Decision of the Judge below

7 On 8 November 2010, the Judge who heard the Leave Application, granted leave to the Respondents to commence contempt proceedings against the Appellant for his failure to comply with the AR's Order. In his grounds of decision, the Judge held that the Appellant had simply failed to explain his failure to comply with the AR's Order and that although, pursuant to the settlement as evidenced by the Deed, the Respondents had no more interest in the partnership accounts, the fact remained that the Appellant had not complied with the AR's Order. The Judge also held that the Respondents' retirement from the partnership did not release the Appellant from his obligation to provide accounts as ordered and did not extinguish the Respondents' right to take action on the Appellant's failure to comply with the AR's Order.

Issues

8 The Appellant appealed against the Judge's decision to grant leave. He argued in this appeal that the Respondents no longer had any *locus standi* to obtain leave to enforce the judgment they had previously obtained because they had reached an overall settlement with the Appellant and the other partners on their dispute relating to the partnership. Pursuant thereto, the Respondents had retired from the partnership and had transferred all their shares and interest in the partnership to the other continuing partners for consideration. The alternative argument made by the Appellant to resist the Leave Application was that the Statement was defective as it lacked particulars, having failed to specifically state the exact nature of the breaches and the nature and format of the accounts required to be produced under the AR's Order.

Whether the Respondents had *locus standi* to seek leave to commence committal proceedings

9 We will first deal with the main issue of whether the Respondents lacked *locus standi* to apply for leave to enforce the AR's Order. To determine this issue, a prior question to be addressed is whether the Respondents had, under the Deed, assigned away all their rights and interest in the partnership. If the Respondents had indeed so assigned away their rights and interest in the partnership, the next question would be whether it necessarily followed that they no longer had the *locus standi* to seek leave to commence committal proceedings against the Appellant. At this juncture, it would be appropriate to set out the pertinent clauses of the Deed:

2. A balance sheet as at the Succession Date [*ie*, 31 July 2009] and a profit and loss account from the date when the last partnership account was taken to the Succession Date shall be prepared by the partnership as soon as reasonably possible after the Succession Date.

3. Any undrawn balance of the Outgoing Partners' share of the net profits of the partnership for the period since the date when the last partnership account was taken to the Succession Date ... be paid to the Outgoing Partners in accordance with their share in the Partnership within seven {7} days ...

4. In consideration of the price of SGD 150,000.00 to be paid to each of the Outgoing Partners in the manner provided for in Clause 5 hereof the Outgoing Partners hereby assign to the Continuing Partners all the share and interest of the Outgoing Partners of and in the goodwill book debts and credits and all property of or belonging to the parties hereto in connection with the partnership to hold unto the Continuing Partners in equal shares.

10 What is the intent and scope of the Deed? This would, of course, depend on the proper construction of the document. In *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 ("*Zurich Insurance*") this court had the occasion to consider the principles governing the construction of contracts and it endorsed (at [131]) the following principles set out by Gerard McMeel, *The Construction of Contracts: Interpretation, Implication and Rectification* (Oxford University Press, 2007) at paras 1.124–1.133:

The aim of construction

First, the aim of the exercise of construction of a contract or other document is to ascertain the meaning which it would convey to a reasonable business person.

The objective principle

Secondly, the *objective principle* is therefore critical in defining the approach the courts will take. They are concerned usually with the expressed intentions of a person, not his or her actual intentions. The standpoint adopted is that of a reasonable reader. [See in this regard the earlier discussion at [125]–[127] above].

The holistic or 'whole contract' approach

Thirdly, the exercise is one based on the *whole contract* or an *holistic approach*. Courts are not excessively focused upon a particular word, phrase, sentence, or clause. Rather the emphasis is on the document or utterance as a whole.

The contextual dimension

Fourthly, the exercise in construction is informed by the *surrounding circumstances* or *external context*. Modern judges are prepared to look beyond the four corners of a document, or the bare words of an utterance. It is permissible to have regard to the *legal, regulatory, and factual matrix* which constitutes the background in which the document was drafted or the utterance was made.

Business purpose

Fifthly, within this framework due consideration is given to the *commercial purpose* of the transaction or provision. The courts have regard to the overall purpose of the parties with respect to a particular transaction, or more narrowly the reason why a particular obligation was undertaken.

...

Avoiding unreasonable results

Eighthly, a construction which leads to very unreasonable results is to be avoided unless it is required by clear words and there is no other tenable construction.

[emphasis in original]

11 Clearly, an objective approach must be taken to determine the intentions of the contracting parties as expressed in the document. What must be sought is the meaning that the contract conveys to a reasonable person having the background knowledge that would have been reasonably available to him. A holistic approach must be taken and regard must also be had to the commercial purpose of the contract and circumstances in which the contract was made (see Kim Lewison, *The Interpretation of Contracts* (Sweet & Maxwell, 4th Ed, 2007) at paras 2.02, 2.03 and 2.07).

12 The Deed was an agreement between the parties (plus two other persons who were partners in the partnership) who were in a commercial relationship. It was clear from a perusal of the Deed that its object was to effect a clean break of the partnership relationship between the continuing partners and the outgoing partners. Construing the Deed in such a manner would accord with business common sense and its commercial purposes. In *Mannai Investment Co v Eagle Star Life Assurance Co Ltd* [1997] AC 749, Lord Steyn endorsed such an approach to interpreting commercial contracts. He stated at 771:

In determining the meaning of the language of a commercial contract, ... the law therefore generally favours a commercially sensible construction. The reason for this approach is that a commercial construction is more likely to give effect to the intention of the parties. Words are therefore interpreted in the way in which a reasonable commercial person would construe them. And the standard of the reasonable commercial person is hostile to technical interpretations and undue emphasis on niceties of language.

[emphasis added]

13 It was not in dispute that the balance sheet and the profit and loss account envisaged under cl 2 of the Deed had been prepared and furnished to the parties to the Deed. No issue had been raised that the payment which was required to be made to the outgoing partners under cl 3 had been

effected. Clause 4 of the Deed expressly stated that in consideration of the payment of \$150,000 to each of the Respondents, the Respondents would assign all their "share and interest of ... and in the goodwill book debts and credits and all property of or belonging to the parties ... in connection with the partnership", to the continuing partners (which included the Appellant). While we would not say that this clause is a model of clarity, it is nevertheless apparent, on a plain reading of those underscored words, that upon receipt of the payment of \$150,000 by each of the Respondents, they would have no more rights or interest in the partnership accounts or assets. Keeping in mind the object of the arrangement encapsulated in the Deed, it would follow that whatever interest the Respondents might have in pursuing the AR's order would have been subsumed under the settlement accord set out in the Deed. To suggest that after the Deed had been executed the Respondents still retained some interest in the partnership assets or accounts, would go against good commercial sense and the plain terms of the Deed.

14 The duty to disclose and render accounts of partnership transactions arises out of the fiduciary relationship which exists between partners (see Yeo Hwee Ying, *Partnership Law in Singapore* (LexisNexis, 2000) at p 174). This right is in fact reflected in s 28 of the Partnership Act (Cap 391, Rev Ed 1994). Partners can institute an action against other partners to obtain an account of transactions concerning the partnership. Also, in *Lindley & Banks on Partnership* (Sweet & Maxwell, 17th Ed, 1995) at para 23-75, Lord Lindley wrote: "[t]he right of every partner to have an account from his co-partners of their dealings and transaction is too obvious to require comment." Therefore, an order for an account of partnership transactions is a relief sought as between *partners*. At the time when the AR's Order was made, the Respondents were still partners (together with the Appellant and two others) of the partnership and had an interest in the accounts and assets of the partnership. Up to that point, the Respondents would have been entitled to enforce the AR's Order by way of an application for committal. However, upon retiring from the partnership and assigning all their rights and interest in it for consideration as set out in the Deed, the Respondents would have had no more interest in the partnership accounts or property. Neither would they have any more interest in enforcing the AR's Order. To grant leave to enable the Respondents to enforce the AR's Order in such circumstances would be an exercise in futility and in breach of the spirit of the Deed, and indeed of an implied term of the Deed. The two oft-cited tests applied to determine if a term should be implied into a contract are the "business efficacy" test set out in *The Moorcock* (1889) LR 14 PD 64 at 68 and the "officious bystander" test set out in *Shirlaw v Southern Foundries (1926) Ltd* [1939] 2 KB 206 at 227. The former would imply a term if it was necessary to give efficacy to a contract while the latter would imply a term if it was so obviously a stipulation in the agreement that parties must have intended it to form part of their contract (see *Chitty on Contracts* vol 1 (Sweet & Maxwell, 30th Ed, 2008) at paras 13-005 and 13-007). Both these tests are complementary (see *Panwah Steel Pte Ltd v Koh Brothers Building & Civil Engineering Contractor (Pte) Ltd* [2006] 4 SLR(R) 571 at [11]). We had no doubt that at the time the Deed was entered into by the parties, if an officious bystander were to suggest that they include an express provision providing that the AR's Order be extinguished upon execution of the Deed, their unified response would have been "oh, of course". Likewise it cannot be disputed that this term would be necessary to give business efficacy to the Deed. Implying such a term would accord with the parties' intentions when they entered into the Deed.

15 We noted the Respondents' argument that although they had assigned their shares and interest in the partnership pursuant to cl 4 of the Deed, they did not assign or waive their rights under the AR's Order that an account be taken of the partnership transactions between 1999 and 2004. But having regard to the Deed, what purpose would the taking of accounts serve as the Respondents had no more interest in the partnership? The Respondents seemed to be arguing that they still retained the right to enforce the AR's Order notwithstanding the settlement accord reflected in the Deed. The Judge would appear to have also taken this view. In our opinion, this approach is flawed because it looked only at the form rather than the substance of the matter. We would reiterate: the

Respondents had no more interest in the partnership accounts and assets. The persons who collectively had all the interest in the accounts and assets of the partnership were not asking that an account be taken in respect of the transactions effected by the partnership between 1999 and 2004. For the Respondents, one year after the settlement had been reached, to seek to enforce the AR's Order by way of contempt smacked of bad faith. The court would not allow its process to be used for such an improper collateral purpose. That the court retains an inherent jurisdiction to prevent an abuse of its processes has been established by this court in *Lai Shit Har and another v Lau Yu Man* [2008] 4 SLR(R) 348 at [22] ("*Lai Shit Har*"). The court in *Lai Shit Har* affirmed the view in *Chee Siok Chin v Minister for Home Affairs* [2006] 1 SLR(R) 582 at [34] ("*Chee Siok Chin*") that it would amount to a clear abuse of process where "the process of the court is not being fairly or honestly used but is employed instead for some ulterior or improper purpose or in an improper way" [emphasis in original]. *Chee Siok Chin* was followed by this court in *NCC International AB v Alliance Concrete Singapore Pte Ltd* [2008] 2 SLR(R) 565 at [71].

16 We will now briefly address the cases relied upon by the parties. The authority of *Kuo Ching Yun and another v H & L Investments Holding Pte Ltd* [1995] 3 SLR(R) 276 ("*Kuo Ching Yun*") was cited by the Appellant. However, we did not think that *Kuo Ching Yun* was of much assistance as in that case there was no clause like cl 4 of the Deed. Further, unlike in the present case where the assignment was made in writing, in *Kuo Ching Yun*, the assignment was oral and what arose for consideration were issues relating to the form of that assignment. On the other hand, the Respondents relied on the authority of *Hawthorn v Smallcorn* [1998] STC 591 ("*Hawthorn*") where the assignment by a retired partner of his share in the partnership was found *not* to have encompassed his right to claim a share of a repayment of overpaid value added tax while he was still a partner. Even though the decision in *Hawthorn* would appear to be at variance from that taken by us in this case, all we need say is that, as was rightly recognised by the judge in *Hawthorn*, ultimately it was all a matter of construing the effect of the relevant clause or clauses in the retirement deed.

17 For the aforesaid reasons, we were unable, with respect, to agree with the Judge who held that the Respondents were still entitled to obtain leave to enforce the AR's Order. The Respondents no longer had any interest in the partnership accounts or assets and thus no longer had the *locus standi* to apply for leave to enforce the AR's Order. This sufficiently disposes of the matter and there is no need for us to address the second issue raised by the Appellant concerning the sufficiency of particularisation of the Statement filed by the Respondents in the Leave Application (see [\[8\]](#) above).

Conclusion

18 In the result, we allowed the appeal and set aside the leave granted by the Judge to the Respondents to enforce the AR's Order. Upon hearing the parties on costs, we fixed costs of the appeal at the sum of \$5,000, inclusive of disbursements. Subsequently, counsel for the Appellant wrote in and drew our attention to the fact that the costs below had been reserved and that a significant amount had been incurred in relation to disbursements for this appeal. Although we allowed counsel to be heard a second time on costs and adjusted the costs order accordingly, we reminded counsel on the need to exercise greater care in submitting matters for the consideration of the court.