

Po Chiak Keng Tan Si Chong Su v Goh Joo Heng
[2007] SGHC 195

Case Number : Suit 615/2005, 136/2006, 137/2006
Decision Date : 15 November 2007
Tribunal/Court : High Court
Coram : Judith Prakash J
Counsel Name(s) : Rey Foo (K S Chia Gurdeep & Param) for the plaintiff; Wong Siew Hong (Infinitus Law Corporation) for the defendant
Parties : Po Chiak Keng Tan Si Chong Su — Goh Joo Heng

15 November 2007

Judgment reserved.

Judith Prakash J

Introduction

1 This judgment is given in respect of three suits that were consolidated and heard together. The first action, Suit 615 of 2005 ("Suit 615"), was commenced on 26 August 2005. The plaintiff in the action is Po Chiak Keng Tan Si Chong Su ("the Association"), an association registered under the Societies Act (Cap 311, 1985 Rev Ed) which administers the ancestral temple of the Tan clan in Singapore ("the temple"). The temple is located at 15 Magazine Road, Singapore. At all material times, the secretary of the Association was one Tan Khuan Seng ("TKS"). The defendant in Suit 615 is Goh Joo Heng ("GJH").

2 On 4 May 2004, an agreement ("the Agreement") was concluded between GJH and the Association whereunder GJH was appointed as the main planner to organise and manage the affairs of the temple for a period of two years. The Association terminated the Agreement prematurely and subsequently claimed in Suit 615 that GJH was in breach of contract. It asked for an order that GJH indemnify it against claims made by certain creditors and also for an inquiry as to damages for breach of the Agreement or for an account of money had and received by GJH under the Agreement.

3 The second action is Suit 136 of 2006 ("Suit 136"). In this action, GJH is the plaintiff and the Association is the defendant. GJH has asked for a declaration that the termination of the Agreement was wrongful and also has asked for damages to be assessed or for an order that the Association specifically perform the Agreement.

4 The third action is Suit 137 of 2006 ("Suit 137"). It was actually commenced as a Magistrate's Case in 2005 but was subsequently transferred to the High Court. The plaintiff in Suit 137 is a company called Tan Insurance Brokers Pte Ltd ("TIBPL") in which TKS is a director and major shareholder. The defendant is GJH and the action was started to recover the sum of \$20,000 which TIBPL alleged it had lent to GJH as a friendly loan.

5 The first two actions namely Suit 615 and Suit 136 are, effectively, mirror images of one another and must be dealt with together. The third action is, however, not only independent but much more straightforward and I will therefore deal with it first.

Suit 137

6 The statement of claim in this suit was brief. It stated that TIBPL had on 19 March 2005 granted a loan of \$20,000 to GJH and that a payment voucher no. 205725 had been signed by GJH in respect of the loan. The loan was averred to be an interest-free friendly loan that was repayable on demand. The statement of claim ended with the averment that despite demands GJH had refused or neglected to repay the loan. In the defence, GJH admitted that he had sought and obtained a friendly loan from TKS in early 2005 for \$20,000 but denied that he had ever requested to borrow money from or received any loan from TIBPL. He also denied that he had ever had any dealings with TIBPL.

7 In his affidavit of evidence-in-chief filed for the trial of the consolidated action, GJH said that in March 2005, he was facing cash flow problems and had lost well in excess of \$120,000 by reason of events organised for the Association. TKS said that he would support GJH by lending him \$100,000. GJH therefore visited TKS in his office on 19 March 2005 expecting to receive \$100,000. There, however, he was given only \$20,000. This was a friendly loan with no fixed repayment terms although, he said, in accordance with the arrangement which had been made for a loan of \$40,000 which he had previously taken from TKS, he was to repay the new loan from his share of the takings of the donation boxes, as and when he was able, after deducting the running expenses of the temple.

8 In his closing submissions, all that GJH said about this claim was that the \$20,000 was part of the loan of \$100,000 promised by TKS. He was obviously maintaining his stand that the lender was TKS and that he was not liable to repay the loan to TIBPL.

9 I do not accept this submission. GJH received the money in TIBPL's office. He signed a voucher on TIBPL's letterhead which stated that the money was paid to him as a "Friendly Loan" and which bore the amount and identified the cheque that was cashed in respect of the loan. GJH confirmed in court that the signature on the voucher was his signature. When he was asked why he had not paid back the \$20,000, he explained that he was unable to pay the money and when it was put to him that he had no defence to the claim for \$20,000, he agreed that that was so. In these circumstances, there really is no defence to the claim. Whilst GJH may have asked TKS in person for a loan, he was happy to receive it from TIBPL and, at that time, made no fuss or even query about the identity of the lender. The defence that he put up was a delaying tactic. As far as this action was concerned, therefore, there should be judgment for TIBPL for the sum of \$20,000 and interest thereon.

Suits 615 and 136: the background

10 The temple is one of the oldest Taoist temples in Singapore and has been gazetted as a national monument. Three main deities are worshipped there. The most important of these is Kaizhang Shenwang ("Shenwang") who is the patron deity of the Tan clan and is widely worshipped in the Chinese province of Fujian and also in Taiwan. The temple houses the only ancestral hall of the Tan clan in Singapore and membership in the Association is open only to persons with that surname.

11 Prior to his contract with the Association, GJH had been involved in organising events for and managing the affairs of a number of Buddhist and Taoist organisations in Singapore. Between 2001 and 2003, he had acted as administrator for a prominent temple in Loyang. As a result he was familiar with the organisation and workings of such clan associations and temples and had experience in managing religious celebrations.

12 As stated, the Agreement between the Association and GJH is dated 4 May 2004. It is written in Mandarin and in it the Association is called Party A and GJH is called Party B. The material provisions of the Agreement (as they appear in the English translation thereof) are as follows:

[1] Both Parties A and B hereby enter into this Contract for the purpose of joint co-operation and development of the temple affairs of Po Chiak Keng. Party A appoints Party B as the main planner of the affairs of Po Chiak Keng. Party A agrees to Party B managing and operating the daily affairs of Po Chiak Keng's main hall and the two side halls, including memorial ceremony and worship and organizing religious and community activities.

[2] Parties A and B agree that Party A shall receive 20% and Party B 80% of all incomes from the main hall and the two side halls of Po Chiak Keng whereas all the income from the rear "Gong De Tang" shall go to Party A.

[3] Party A shall receive 20% and Party A 80% of the incomes from the sales of joss sticks, candles and incense papers.

[4] The General Secretary of Po Chiak Keng shall keep the key to the donation box. The box shall be opened once a week in the presence of witnesses from both Parties.

[5] Donations received during the 4 days of the birthday celebration of "Shen Wang", i.e. on the 13th, 14th, 15th and 16th of the second lunar month of each year shall go to Party A.

[6] Sponsorship in the form of money and gifts in kind shall not be treated as income but shall all go to the activity fund. If there is any surplus, then Party A shall receive 20% and Party B 80%.

[7] Receipts in the name of Po Chiak Keng shall be issued for voluntary donations. Party A shall receive 20% and Party B 80% of the donations. Donations received during the spring and autumn ceremonial worships shall all go to Party A.

[8] Party A agrees to give Party B a minimum of two years. This contract can only be terminated if Party B has illegal activities such as gambling, illegal workers and drug consumption at Po Chiak Keng.

[9] Except for fire insurance, all other expenses shall be borne by Party B.

[19] Party B shall propagate the "Kai Zhang Shen Wang" of Po Chiak Keng and jointly make Po Chiak Keng prosperous. If there is any activity that harms Po Chiak Keng's reputation and interest, then Party A shall be entitled to terminate the Contract within 3 months.

[20] Both Parties agree that execution of the Contract be commenced from 4 May 2004.

13 The Association contended in its statement of claim that implied in the Agreement were terms that GJH owed duties of trust, good faith and fidelity to the Association in respect of moneys that would be received by him on behalf of the Association.

14 After his appointment, GJH took various steps to reorganise the temple and to attract more devotees to it. He established a 24-hour hotline for it, made contact with former devotees and invited them to return to the temple and arranged for the temple to be open 24 hours a day, seven days a week so that devotees who worked irregular hours would be able to visit the temple at their convenience. He arranged for beverages and biscuits to be available around the clock to devotees. Apart from looking after the day-to-day affairs of the temple, GJH organised special events. The first of these special events was the Tuan Wu Jie in June 2004 which attracted about 2,000 devotees. Next, there was the mid-summer festival and for this GJH organised a 2-day event during which

special rice balls were given away free.

15 The third event organised by GJH was what the parties called "The Mega Mid-Autumn Festival Celebrations" ("the mid-Autumn festival"). This took place in September 2004. A statue of Shenwang was brought from the main temple in Zhangzhou City, China to Singapore for the event and the statue was placed in a sedan chair and carried by devotees to the temple in a procession. The celebration thereafter ran for ten days from 18 September 2004. According to GJH, he spent over \$500,000 on this festival but collected only some \$400,000 in donations. He therefore incurred a deficit of about \$100,000 but he considered the event a success because of the number of registrants who took part in the celebrations and because it raised the public profile of the temple.

16 The next event was the 2005 Lunar New Year celebrations. These were successful and GJH was able to repay a \$10,000 loan which he had taken from one Tan Eng Lim and a \$40,000 loan which he had taken from TKS from his share of the takings of these celebrations.

17 The final event organised was the Shenwang Birthday Celebration in 2005. This occurred in mid-March 2005 and was also well received.

18 According to GJH, by the beginning of April 2005, the temple's financial situation had improved significantly from what it had been in March 2004. He said that the income from the donation boxes was comfortable. Prior to his appointment, the takings from the boxes had been hardly enough to pay the daily expenses of the temple but because of the success of the events he had organised, devotee attendance had increased significantly and collections from the regular donation boxes had gone up to about \$20,000 a month. GJH had, however, lost money over the various events and he informed some of the committee members that it would probably take him up to 2006 to repay the creditors by which time his contract would be ending. At about this time, there was a proposal to extend GJH's appointment by a further two years and some discussions took place on this. A draft agreement was prepared which provided for the extension and also that in years three and four, GJH's share of the takings would be 75% and the Association's share would be 25%. This new agreement was, however, never signed.

19 On or about June 2005, TKS instructed the Association's solicitors to write to GJH's solicitors to state that GJH had repudiated the Agreement and that the Association would be treating that repudiation as a termination of the Agreement. The reasons for this action, according to TKS, were first that the Association had discovered that GJH had failed to make payment for goods and services contracted for by him and debts totalling more than \$135,000 were outstanding, and secondly, GJH had failed to account for various sums of money that had been received by him or his agents on his behalf.

The pleadings and the issues

20 In its statement of claim and subsequent submissions, the Association alleged that by reason of one or more of the following grounds, GJH had breached various clauses of the Agreement:

- (a) by failing to make payment of outstanding sums due to suppliers, GJH had breached cl 9;
- (b) because GJH had contracted with these suppliers using the Association's name instead of his own, and all unpaid invoices and claims were addressed to the Association, the reputation of the Association had been damaged by the non-payment of the outstanding debts and this was a breach of cl 19;

(c) by failing to disclose, account for and make payment of, the Association's share of various donations that were received during the various festivals and activities, GJH had breached one or more of cll 2, 3, 5, 6 and 7;

(d) by failing to disclose, account for and make payment of the Association's share of various sums of money including donations which GJH had collected from the public, he was in breach of his duties of trust, good faith and fidelity.

21 By the defence filed in Suit 615 (which he amended on 25 January 2007 after the trial had started), GJH made the following material averments:

(a) that his principle obligations under the Agreement lay in cl 1 and the arrangement for the sharing of takings in cll 2 and 3 of the Agreement did not cover the special celebrations organised in particular the 2004 mid-Autumn festival, the 2005 Lunar New Year celebrations and the 2005 Shenwang birthday celebrations;

(b) special celebrations like those mentioned above were subject to cl 6 of the Agreement and were matters of special arrangement to be agreed between the parties;

(c) with respect to the 2004 mid-Autumn celebration, there was an oral agreement between the parties that GJH would receive all proceeds and be liable for all losses arising out of the same;

(d) with respect to the celebrations that took place in 2005, it was orally agreed that save for the takings from the donation boxes within the precincts of the temple, all other takings would be given to him and he would be liable for all losses arising out of these celebrations;

(e) with particular reference to the Shenwang birthday celebrations, there was an oral agreement that the Association would receive only 20% of the income from the donation boxes in the precincts of the temple and all income and donations from the ancestral hall and that apart from those sums, all proceeds would go to GJH;

(f) that he had incurred losses of more than \$180,000 in total as a result of all the events he had organised for the Association but that he had made all efforts to pay these debts to his suppliers and, generally, had paid his suppliers up to March 2005;

(g) that the suppliers had not issued any demands against the Association and further had not threatened legal proceedings before June 2005;

(h) GJH admitted that he had a duty of good faith in his dealings with the Association and averred that at all material times he had carried out and performed his obligations under the Agreement in accordance with the spirit thereof;

(i) some time in May or June 2005, there was a dispute in the management committee of the Association ("the committee") and the faction led by TKS had sought GJH's support but GJH had declined to become involved in the Association's factional politics. Consequently, TKS and the members of his faction had instructed solicitors to terminate the Agreement between the parties and such purported termination had been affected before the new committee of the Association had been sworn in; and

(j) as a result of the wrongful termination of his appointment, GJH had been prevented from performing his obligations after 28 June 2005 and was therefore unable to make further payments

to his suppliers.

22 The two broad issues that arise out of the foregoing are, therefore:

- (a) by failing to pay his suppliers was GJH in breach of cl 9 and, if so, was the reputation of the Association damaged by such non-payment, thereby putting GJH in breach of cl 19 of the Agreement;
- (b) did GJH fail to disclose, account for and make payment of the Association's share of various donations and, in this connection, were there oral agreements between the Association and GJH permitting him to retain all the proceeds of certain activities; and
- (c) in any event, was the early termination of GJH's appointment under the Agreement wrongful?

Non-payment of suppliers

23 In para 6 of the statement of claim in Suit 615, there is a list of suppliers who provided goods or services for the various activities at the temple organised by GJH and whose bills had not been paid in full. Thirteen suppliers were named of whom the first three had outstanding invoices dating from August and September 2004. The next ten suppliers had issued invoices on dates between 8 January 2005 and 2 April 2005. The total amount owing was put at \$135,645.97. When GJH took the stand, he was asked about these debts. He confirmed that all of the amounts set out in the statement of claim were actually due from him to the various suppliers. When he was asked whether he had to date (*i.e.* May 2007) made payment of any of the amounts, he asserted that he had paid three amounts to wit:

- (a) he had paid in full the debt of \$680 owing to Yuen Hua Service Enterprise;
- (b) he had partially paid the debt of \$3,001.25 owing to Kee Wee Hup Food Manufacture Pte Ltd and had thereby reduced the outstanding balance to \$2,000; and
- (c) he had partially paid the debt of \$3,550 owing to Yap & Loh Transportation and had thereby reduced the outstanding balance to \$2,000.

On GJH's own evidence therefore, as at May 2007, the amount of the indebtedness had been reduced by only \$3,201.25. There would still, on this basis, be \$132,444.72 outstanding. It should also be noted that in the course of the trial, the Association adduced evidence of a debt due to another creditor, a company called Sin Hiap Mui amounting to the sum of \$43,123.40. GJH confirmed that this amount was due and that it was also payable by him.

24 GJH was also cross-examined on his understanding of cl 9 of the Agreement. He agreed that under this clause, all expenses in relation to the performance of his duties under the Agreement had to be borne by him. He agreed that he had not raised any defence in his pleadings with regards to the outstanding amounts pleaded in the statement of claim. Whilst he did not agree with counsel's suggestion that he had a habit of incurring debts without regard for the consequences, he did agree that he was in breach of cl 9.

25 It was also material that although under cl 9 GJH was supposed to pay the expenses of the events that he organised, he had obtained the services and goods mentioned in the statement of claim by informing the suppliers that the purchaser of the same was the temple. He agreed that the invoices and claims of all these suppliers had been made out to the Association rather than to himself

personally. He did not agree, however, that as far as the suppliers were concerned, they were looking to the Association to make these payments or that his non-payment of the claims had resulted in the reputation of the Association being tarnished.

26 Counsel for the Association submitted that GJH had recognised the Association as unique and had accepted that the temple was a national monument, one of the oldest Taoist temples in Singapore and historically significant. He had also gone to great lengths both in his affidavit and through questions put to TKS by his counsel, to show the court how the activities organised by him had brought even more repute to the Association. Counsel went on to submit that because of the Association's reputation, the suppliers would have been more willing to extend to the Association (whose name GJH used) generous payment terms which they may not have given to other persons who did not have such good reputations. It was submitted that the non-payment of invoices and claims would definitely affect the reputation and standing of the Association in the eyes of the unpaid suppliers and those who knew that the debts had not been settled. It was therefore submitted that by failing to pay the suppliers, GJH had adversely affected the reputation of the Association and was in breach of cl 19.

27 GJH's rejoinder was that there was no evidence in court whatsoever that the Association's reputation and interest had been adversely affected in any way. This allegation had been concocted *ex post facto* by the Association to justify his wrongful termination. As for the existence of the debts, GJH submitted that it was to be expected in the normal course of events when organising activities of the size and scale that GJH had organised on behalf of the temple that there would be trade creditors. The various trade creditors had been paid, albeit, partially and progressively, up to the time of GJH's termination. Up to the time of the court proceedings, none of the trade creditors named had commenced action or even threatened to commence action against GJH.

28 In any event, the Association was aware that there were trade creditors. In November 2004, after the mid-Autumn festival celebration, GJH had submitted his accounts and informed the committee of the Association that he had suffered a loss. It was because of this that various committee members including TKS had lent money to GJH in 2004. Those loans were meant to tide GJH over so that he could continue with his work. Similarly after the 2005 Lunar New Year celebrations, GJH had rendered an account and had apprised the committee of his losses. It was for that reason that TKS had lent him a further \$20,000. GJH had also made a formal report to the committee on 14 May 2005 that he still owed his suppliers more than \$100,000. Thus, the Association was aware at all material times that the expenses of the activities organised by GJH had exceeded his takings and he needed more time to make payment of the outstanding amounts. It was submitted that since the Association was aware of GJH's indebtedness at all material times it could not rely on cl 19 to terminate the Agreement and that such termination had been done in bad faith. It was further submitted on GJH's behalf that even if he had damaged the reputation of the Association, under cl 19 he could not be summarily dismissed. The Association had to give him three months' notice. No such notice had been given and therefore the termination was wrongful on this ground as well.

29 Having considered the evidence and the submissions, I find that GJH was in breach of cl 9 because he undertook to bear all expenses of the temple (excluding the cost of fire insurance) in exchange for the agreed share of moneys received by the temple from various sources as specified in cl 2, 3 and 7. I think that it is implied by this clause that not only would GJH pay these expenses, but also that he would contract for them in his own name to the extent that he arranged for goods and services to be supplied to the temple. Instead of making contracts in his own with third parties, however, GJH contracted in the name of the Association. That was a breach of contract. That breach did not in itself, however, entitle the Association to terminate the Agreement. As it is clear from cl 8,

the Agreement could only be terminated early if GJH was involved in illegal activities at the temple like gambling, employment of illegal workers and drug consumption. Whilst breaching a contract may be considered unlawful, by no stretch of the language would it be considered to be in the same category of illegal activities as gambling, employing illegal workers and consuming unlawful drugs.

30 The Association recognised this limitation in the consequences of a breach of cl 9 and therefore placed more reliance on the alleged breach of cl 19. Apart from obliging GJH to propagate Shenwang and make the temple prosperous, this clause allows the Association to terminate the Agreement if there is any activity carried on by GJH that harms the temple's reputation and interest. There was no doubt in this case that GJH had incurred debts in the name of the Association to the tune of more than \$100,000. I do not believe that he had told TKS or any other member of the committee that the debts had been incurred in the name of the Association. I accept his evidence, in preference to that to TKS, that he had notified TKS and other members of the committee of his losses from time to time. It was because he told these persons that he had incurred liabilities by reason of the events that he organised for the temple, that they were willing to lend him money to tide over these difficulties. Whilst I accept that he told them that he had made losses, I note that it was never put to TKS that GJH had informed him that the suppliers were under the impression that they had contracted directly with the Association and were expecting the Association to make payment of the outstanding bills. Further, GJH himself although stating on several occasions that he had declared that he had made losses, never alleged that he had made TKS aware that he had used the name of the Association for his contracts. I therefore consider that it must have been a shock to TKS and other committee members when they discovered that the suppliers considered the Association, rather than GJH, to be the debtor. Counsel for GJH submitted that up to the time of the trial, GJH had not been sued for any of these debts. That is not surprising since the debts were incurred in the name of the Association.

31 It was submitted on GJH's behalf that to show that the reputation of the Association had suffered, at the very least, the Association needed to produce evidence of writs of summons that had been issued or claims that had been filed in the Small Claims Tribunal indicating that there were disgruntled suppliers who had not been paid. There was no such evidence and not even evidence of any letter threatening legal proceedings. As there were no such threats or demands, this was a spurious ground for termination. I do not accept that submission. The fact that no one has sued a debtor for non-payment does not mean that the debtor's reputation has not been injured. The creditor will know that the debtor has not paid his debt and would think less of the debtor for that reason.

32 I hold that by incurring debts in the name of the Association and by failing to pay these debts promptly so that by June 2005, there were debts that had been outstanding for periods of between two months and ten months, GJH had acted in a way that had harmed the reputation and interest of the Association. The only person who gave evidence for the Association was TKS. It was his view that the reputation and interest of the Association had been harmed by this conduct. The Association was also, however, able to produce letters from some of the suppliers demanding payment or reminding the Association of its overdue obligations. I accept this evidence and I also hold that it is injurious to a person's reputation if third persons believe that the first person has failed or refused to pay its debts in due time and even though the third persons may be the creditors rather than independent parties. The provisions of cl 19, however, are clear. Termination on this ground requires three months' notice. The Association did not give the necessary notice but purported to terminate the Agreement forthwith. That termination could not be done.

Breach of other duties

33 The conclusion I come to above is not the end of the matter. GJH accepted that, under the

Agreement, it was implied that he had a duty of good faith to the Association. This meant that in performing his duties, he had to ensure that, *inter alia*, he accounted to the Association for all moneys that he received and did not take more than he was entitled to under the Agreement.

34 From the closing submissions made on behalf of GJH, it is clear that he accepted that, generally speaking, moneys collected in the temple were to be divided in the agreed proportions, *i.e.* 80% to GJH and 20% to the Association. It is also clear that he accepted that certain moneys received in connection with the three big events organised by him had not been divided in that way. His stand was that in those cases, the normal allocation was not applied because the parties had specifically agreed otherwise.

35 GJH first argued that mid-Autumn festival, the Lunar New Year celebrations and the Shenwang birthday celebrations did not form part of his contractual duties under cl 1 as those duties were only to manage and operate the *daily* affairs of the temple. Under cll 5 and 7, the Shenwang birthday celebrations and the mid-Autumn festival were specifically excluded in the scope of his duties because during that period, all takings were to go to the Association. As events transpired, however, GJH proposed that there be a mega mid-Autumn festival celebration and he was requested to organise the event. Due to the scale of the event, there was a special arrangement whereby all the takings were set aside and given to him. This special agreement was entered into with the knowledge and consent of the committee and the accounts for the event were prepared and a report laid before the committee on 6 November 2004. This report was accepted. Therefore no issues flow from the same. The 2004 accounts were closed and tabled at the annual general meeting in 2005 before GJH's appointment was terminated and at that stage, there was no indication that anything was out of order.

36 Secondly, in relation to the Lunar New Year celebrations and the Shenwang birthday celebrations, he submitted that the evidence again showed that a special arrangement was entered into whereby GJH would take all of the donations from the donation boxes outside the temple precincts whereas the donation boxes in the temple precincts were subject to the 80/20 split. The accounts were reported to the committee meeting held on 14 May 2005. No issues or concerns were raised at that meeting.

37 The above submissions were, it was alleged, supported by evidence given not only by GJH himself but also by four other members of the Association. These were Tan Teck Seng aka Chen Ter Cheng ("Tan Teck Seng"), Tan Eng Lim and Tan Eng Kwee who were all members of the committee at the material time and Tan Ngai Seng who was an ordinary member of the Association. As far as GJH himself was concerned, he said in his affidavit of evidence-in-chief that he had presented the proposal to organise a "mega" mid-Autumn festival in September 2004 to TKS and the latter had agreed to it on the basis that GJH would be solely responsible for all the costs of organising the event since such costs would be "enormous" in view of the fact that overseas guests would have to be invited to the event. TKS also agreed that the collections from August till the end of the event would not be split but would be given entirely to GJH to help him defray the costs of the event. As for the Lunar New Year celebrations, at a committee meeting, the committee instructed him to arrange a grand celebration for the 2005 Lunar New Year celebration. GJH agreed to the plan but informed the committee that he was in a financially tight situation because he had incurred a significant loss in the course of organising the mid-Autumn festival. It was then proposed that any collections from the Lunar New Year celebration (aside from the collections in the usual donation boxes) be paid over entirely to GJH to help him defray the costs of those celebrations. This proposal was purportedly made in the presence of Tan Eng Lim, Tan Eng Kwee and Tan Teck Seng.

38 At this stage, I must say that I was not impressed with the evidence given in relation to this

aspect of the case by GJH and the other witnesses he called. GJH himself was not always a satisfactory witness in relation to money matters. He tended to be evasive and to prevaricate and some of his evidence, especially in relation to the procedure for opening the donation boxes and recording the amounts received was, frankly, incredible. He said that although the donation boxes were opened in the presence of his representative, the record book that was signed on each such occasion would not operate as a receipt in respect of the moneys given to him on such occasion. The signature only meant that the amount noted in the record book was the amount that had been taken out of the donation box on that occasion. His representative did not, he said, sign any paper to show the amount that he received. He had no records therefore of what was received and he had no way of checking that his representative had taken the correct amount of money from the boxes and passed on the same amount to him. He therefore relied entirely on the trustworthiness of his representatives. He also stated that once the money was collected, sometimes it was banked in, sometimes it was passed to him and sometimes it was left in the office and used for operating cost. He maintained that he had no records of the amounts collected. Therefore, when one of his representatives resigned, he had to go back to the Association's records which were kept by Tan Teck Seng and check the figures there.

39 GJH maintained that there had been two different oral agreements which varied the arrangement for the apportionment of the funds collected. The first was in relation to the mid-Autumn festival and the other was in relation to the events in 2005. He maintained that these oral agreements had been made between him and TKS and that he had insisted on these variations because otherwise he would not have had enough money to organise these events. As I stated, he sought to rely on the corroborative evidence given by three other members of the committee. These witnesses, however, were not very credible on this point. Also, they told varying stories. In the case of Tan Teck Seng, he said that for the mid-Autumn festival, TKS instructed that 100% of the takings from the donation boxes were to be given to GJH. This was done to help GJH as the latter had spent a lot of money on the event. He could not remember the date on which the instructions were given to him but said that it was some time near to the date of the event. Then, in respect of the Lunar New Year celebrations, Tan Teck Seng said that there was supposed to be a 20/80 split between the Association and GJH. In respect of the Shenwang birthday celebrations, the 20/80 split was effected in respect of the takings from the donation boxes inside the temple but as far as the donation boxes outside the temple were concerned, all the proceeds were given to GJH. This happened under the instructions of TKS but again, Tan Teck Seng could not remember the date when the instruction was conveyed to him. Tan Teck Seng did not say that this was a proposal put forward at a committee meeting and accepted at that meeting.

40 The next witness, Tan Eng Kwee, said nothing in his affidavit of evidence-in-chief about the oral agreements. When he was asked about these matters in court by counsel for GJH, he was not able to answer whether there had been any special arrangements with regards to the sharing of the donation box takings during the mid-Autumn festival. As far as the Lunar New Year and Shenwang birthday celebrations were concerned, however, he asserted that the takings from all the outside donation boxes were given to GJH but the takings from the boxes inside the temple were divided in accordance with the usual 20/80 basis. During cross-examination, he was asked how he knew that during the Lunar New Year and Shenwang birthday celebrations the takings from the external boxes were to be given to GJH. His first answer was that GJH was responsible for the celebrations and all the expenses incurred. When he was asked the question again, he said that the Agreement on this matter was made at meetings. When asked to describe those meetings, his answer was "Mr Goh said that the celebration will incur huge expenses and I believe that [the Association] will not be able to organise it without him. It was agreed that Mr Goh would take care of everything and then he would get the donations". When asked who was present at these meetings, he asserted that many people had been present and that there should be a record of the Agreement. He was asked whether the

meetings were meetings of the committee or among all the members of the Association and again he replied "[q]uite a number of people attended the meeting. There should be a record". When pressed as to whether he remembered if it was a formal or informal meeting, he replied that it was not a general meeting but a committee meeting. He was then shown the minutes of a committee meeting held on 6 November 2004 after the mid-Autumn festival and it was pointed to him that he was present at that meeting. It was put to him that there was nothing in the minutes that showed any record of any agreement to allow GJH to collect 100% of the takings from the external boxes. When faced with the record, the witness maintained that there was an oral agreement during the meeting.

41 The next witness, Tan Ngai Seng, stated during examination-in-chief that the arrangements made for the 2005 Lunar New Year and Shenwang birthday celebrations were that the Association would have a share of the donations in the two boxes inside the temple whereas the donations in the boxes outside the temple would be given to GJH. Under cross-examination, he was asked how he knew about this special arrangement. His answer was that TKS had informed "us". When asked how the information had been given, the answer was "he announced it to many people" and that this announcement had been made prior to the 2005 Lunar New Year celebration. The witness could not remember when the announcement was made. He could not remember whether it was at a formal gathering or an informal gathering. When he was asked whether he was present when the announcement was made, the somewhat cryptic reply was "when he announced to the others, I was not present, but I was at the temple when he was telling the others". He then said he heard TKS say this himself and elaborated that he did not hear the announcement himself because he did not have the right to attend committee meetings. When he was asked how in that case he knew about the announcement, he said "at other times when I helped out in the temple and then [TKS] told me".

42 The final witness on this point was Tan Eng Lim. He told the same story about the arrangements for the donations received for the 2005 events. During cross-examination, when asked how he knew about these arrangements, he replied that there were meetings sometime in October or November 2004. He then clarified that there was one meeting held in November 2004 at he was present. He was then shown the minutes of that particular meeting and it was put to him that there was nothing in the minutes which reflected the arrangements he mentioned. Tan Eng Lim's reply was:

Mr Goh was the one who --- he was --- he took charge of the installation of the lights --- the lighting and also the pitching of the tents and the expenses were huge. Therefore the donations should be given to him.

He then maintained that TKS made the announcement although it was not reflected in the minutes of the meeting. Counsel then asked him whether he agreed that such an important decision should be reflected in the minutes of the meeting. The witness was silent for a long time and finally it was put on record that he was unable to answer the question. Thereafter, counsel put to him that at no time was there ever any arrangement between the Association and GJH that GJH would be entitled to keep all the collections from the donation boxes outside the temple. The response then was "That's what [TKS] informed me". The witness therefore did not maintain his original position that the decision was one made at a committee meeting at which he was present.

43 From the above account of the evidence it can be seen that the witnesses' accounts were inconsistent with each other and also inconsistent with the minutes of the meeting of November 2004. Tan Ngai Seng's evidence was particularly difficult to believe. Apart from Tan Teck Seng, none of the other witnesses called by GJH was able to say anything about the arrangement for the mid-Autumn festival.

44 The Association submitted that with regards to the alleged oral agreements, I had to weigh the

words of GJH and his witnesses against TKS' denial that such agreements had been concluded. It pointed out that all the witnesses were involved in disputes with the Association. The four members of the Association who had testified on behalf of GJH could not be regarded as independent and impartial witnesses as they too were presently embroiled in law suits against the Association (to wit, Originating Summons No 1560 of 2005 and Originating Summons No 1714 of 2006). Further doubt was cast on the credibility of the allegation by the fact that it was not raised until the trial had started and this had forced GJH to amend his pleadings during the trial itself. The amendments effected during the trial were the ones that had put in positive defences whereas before then, the defence had consisted basically of bare denials. The Association also submitted that no mention of the alleged oral agreements had been made in the affidavits of evidence-in-chief of GJH's witnesses. Finally, evidence of the alleged oral agreements, the Association submitted, was inadmissible because it was in clear conflict with the provisions of cll 2, 3, 5, 6 and 7 of the Agreement.

45 The submission on inadmissibility related to s 94 of the Evidence Act (Cap 97, 1997 Rev Ed) which provides:

Exclusion of evidence of oral agreement

94. When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to section 93, no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument or their representatives in interest for the purpose of contradicting, varying, adding to, or subtracting from its terms subject to the following provisions:

...

(b) the existence of any separate oral agreement, as to any matter on which a document is silent and which is not inconsistent with its terms, may be proved; in considering whether or not this proviso applies, the court shall have regard to the degree of formality of the document;

46 In this case, the Agreement had been proved in the manner required by s 93 of the Evidence Act and therefore the Association submitted that evidence of an oral agreement should not be allowed for the purpose of contradicting or varying the terms of the Agreement. It submitted that the exception in s 94(b) did not apply to the oral agreements alleged by GJH.

47 As regards the mid-Autumn festival, it would be recalled that the alleged oral agreement as stated in the amended defence was that GJH would receive all proceeds of the celebration. In his affidavit of evidence-in-chief, GJH went further and asserted that the oral agreement was that the collections from August 2004 until the end of the event would be entirely given over to him. It would be noted that this was quite an extension of his claim as the mid-Autumn festival started only on 18 September 2004. Clause 2 of the Agreement provided that the Association was to receive 20% of all income from the main hall and the two side halls as well as all income from the rear hall. Thus, it is apparent that the terms of the oral agreement as alleged contradicted and varied the provisions of cl 2 of the Agreement under which the Association was entitled at all times to a portion of the income from the main and side halls and all income from the rear hall. I find that by virtue of s 94 of the Evidence Act, the oral evidence of GJH and Tan Teck Seng is not admissible for the purposes of proving the oral agreement in relation to the takings of the mid-Autumn festival.

48 Turning to the celebrations in 2005, the defence alleged that it was orally agreed that save for the takings from the donation boxes within the precincts of the temple, all other takings would belong

to GJH. Clause 2 of the Agreement does not cover this situation as it only relates to the proceeds of the internal donation boxes and the alleged oral agreement covered takings from external boxes. However, cl 5 of the Agreement provided for donations received during the four days of the birthday celebration of Shenwang to go entirely to the Association. Thus, as far as these celebrations are concerned, admitting evidence of a different oral arrangement would be in breach of s 94 of the Evidence Act.

49 The Agreement did not provide specifically for the application of donations given during Lunar New Year celebrations. The Association's stand was that it was clear under cll 2, 3, 5, 6 and 7 that generally, donations were to be subject to the 20/80 split. Clause 7 especially was an indication of this since it provided that voluntary donations were to be subject to this split and the term "voluntary donations" would cover any and all monetary gifts given to the temple or the Association. It therefore argued that to admit evidence of the alleged oral agreement in relation to the Lunar New Year celebrations would be to allow evidence of an agreement that was inconsistent with the terms of the Agreement and should not be permitted under s 94(b).

50 Having looked at the Agreement again, I accept this argument. It appears to me that the intention of the parties was that whatever proceeds were received in relation to events in the temple and whether the moneys were collected from the boxes inside the precincts or outside the precincts, the Association would receive 20% of the same whilst GJH would receive 80% of the same because he was bearing all the expenses and therefore would be entitled to the greater share of the proceeds. The only exception to this was provided in cl 6 because it dealt with donations received for the purpose of sponsoring a particular event. In that case, the money given was not to be treated as income but was to be applied to the "activity fund" and any surplus would be divided in the usual proportions between the parties. By the words "activity fund" I think what was intended was a particular account to fund the event in question. All donations for that event would have to be credited to that account and, after the event was over, if the moneys in the account were more than sufficient to pay for the event, the surplus would be distributed in the agreed proportions. Otherwise, the moneys would be applied entirely towards the expenses of the event. The fact that even in such a situation of specific sponsorship the parties provided for the distribution of the surplus in the agreed ratio indicates to me that those proportions were intended to govern all collections notwithstanding that some donations may have been made to external boxes. I therefore consider the evidence of the oral agreements asserted by GJH to be inadmissible as being inconsistent with the terms of the Agreement.

51 In any case, I should state here that I do not accept the evidence put forward by him on the oral agreements. I did not find his witnesses satisfactory on this point and the inconsistencies between the accounts given make it difficult for me to accept them as witnesses of truth on this issue. GJH himself exaggerated and in his evidence made a claim for more than he had pleaded was his due.

52 I also consider that GJH was in breach of contract in that he failed to disclose, account for and make payment of the Association's share of donations. It was clear from the evidence that he did not declare to the Association the sum of \$297,576 which represented the proceeds of the donation boxes when they were opened on ten dates between 20 September 2004 and 30 October 2004. During cross-examination, GJH told the court that he did not disclose these proceeds because "I did not receive any money during this period, that's why there was no record because the money was being hold (*sic*). It's being hold by the temple at that period". When Tan Teck Seng was questioned on these same moneys, however, he stated that he had paid all of the proceeds received from 20 September to 16 October 2004 over to GJH. There was a clear contradiction in the evidence. I have previously noted the unsatisfactory state of GJH's evidence in relation to the records that he

kept when the donation boxes were opened. I therefore accept Tan Teck Seng's evidence in this connection in preference to that given by GJH.

53 Further, it was apparent from the evidence that GJH had received the following moneys from the public:

- (a) \$2 from each registrant for the mid-Autumn festival in September 2004; and
- (b) payments from members of the public to have their greetings advertised in the Chinese newspapers during the mid-Autumn festival.

When GJH was cross-examined about discrepancies between the numbers of registrants for the festival declared in paras 47 and 54 of his affidavit of evidence-in-chief and the number of registrants disclosed by his accounts, he was unable to provide a clear explanation for the difference in the numbers. He finally admitted that 65,000 people registered for the festival and that meant that \$130,000 would have been paid as registration fees. Yet, his accounts only declared a sum of \$59,092 as having been received under this item. In any case, his accounts were only shown to the Association when his affidavit of evidence-in-chief was served on it prior to the trial. It was not until then that the Association discovered that the relevant amounts had not been disclosed.

54 In relation to the newspapers advertisements, GJH again gave confusing and evasive evidence. In his accounts, GJH declared that he had been paid \$80,266 by devotees for the advertisements. He was asked in court how much it had cost him to take out the advertisements. It took a long time to get a proper answer to this question but finally, after checking his figures overnight, GJH confirmed that the advertisements cost \$41,000. He had therefore received \$39,266 more than he paid and he did not account to the Association for this difference.

55 I should also note that in relation to the specific events that GJH organised, he was required by virtue of cl 6 of the Agreement to pay moneys received in sponsorship towards the "activity fund". The word "sponsorship" must refer to specific events rather than general activities at the temple. GJH organised three major specific events but he did not set up any activity fund or any separate account for any of these events into which sponsorship moneys could be paid or credited. No documents were produced in court to show the existence of any such fund. Since the clause provided that the surplus moneys, if any, in an activity fund were to be distributed between the parties, GJH was obliged to keep a separate record of all sponsorship moneys and to account to the Association for the same. He did not do so and that was a breach of contract.

56 I am satisfied that there is sufficient evidence in this case to show that GJH was in breach of his duty to account to the Association and to share various proceeds with it. Such conduct in his part justified the premature termination of his appointment even though at the time of termination, the committee was not fully aware of all his breaches.

Conclusion

57 I therefore make the following orders:

- (a) Suit 137 of 2006

Judgment shall be entered for TIBPL against GJH for the sum of \$20,000 and interest thereon at 6% per annum from the date that the writ in the action was filed and costs on the Subordinate Courts' scale;

(b) Suit 136 of 2006

This action is dismissed and GJH shall pay the Association's costs in respect thereof as taxed or agreed.

(c) Suit 615 of 2005

Judgment shall be entered for the Association against GJH and the following specific orders are made:

- (i) It is declared that GJH shall indemnify the Association against any and all claims made against it by the persons named in cl 6 of the statement of claim in this action and shall further indemnify all expenses incurred by the Association in connection with any and all of the said claims;
- (ii) GJH shall account to the Association for all moneys had and received by him in respect of or in connection with all activities organised by him on behalf of the Association and further in respect of all donation boxes established by the Association whether within or outside of the temple precincts;
- (iii) There shall be an order for the payment of all sums found to be due to the Association upon the taking of the above account;
- (iv) There shall be liberty to apply;
- (v) GJH's counterclaim is dismissed; and
- (vi) GJH shall pay the Association's costs of the claim and of the counterclaim as taxed or agreed.

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