

Tong Guan Food Products Pte Ltd v Ong Leong Chuan
[2000] SGHC 222

Case Number : Suit 1633/1999
Decision Date : 31 October 2000
Tribunal/Court : High Court
Coram : Tan Lee Meng J
Counsel Name(s) : Hri Kumar and Ajay Advani (Drew & Napier) for the plaintiffs; Hee Theng Fong, Chua Ai Chun and Gary Choo Ka Whye (Hee Theng Fong & Co) for the defendant
Parties : Tong Guan Food Products Pte Ltd — Ong Leong Chuan

JUDGMENT:

Cur Ad Vult

1. In this case, the plaintiffs alleged that the defendant, their former managing director, breached his fiduciary duties to them by misusing company funds for unauthorised purposes, an allegation denied by the defendant.
2. The plaintiffs initially sought a number of remedies in relation to the alleged misuse of company funds. However, during the course of the trial, they and the defendant agreed to appoint an accountant to determine the veracity of all but one of the allegations of misuse of funds.
3. The only allegation of misuse of funds outside the ambit of the task entrusted to the accountant concerned the propriety of a payment by the plaintiffs of \$100,000 to the defendant's sister, Ong Siew Ann. The plaintiffs contended that this payment of \$100,000 was improper because it was made with respect to the purchase by the defendant of Siew Ann's shares in the plaintiff company. It was not disputed that Siew Ann did not have any shares in the plaintiff company in her own name. However, it was alleged that the defendant, in accordance with his late father's wishes, held 10% of the shares in the plaintiff company on trust for Siew Ann. This allegation was strenuously denied by the defendant. Both the plaintiffs and the defendant agreed that the only issue which they required the court to determine was whether or not the defendant held 10% of the shares in the plaintiff company on trust for Siew Ann.

A. BACKGROUND

4. The plaintiffs are part of the Tong Garden group of companies in Malaysia, Singapore, Thailand and China. The group is well known in the snack food and nuts industry and its roots lie in a business started by the defendant's father, the late Ong Tong Guan. The plaintiffs' present shareholders are all children of the late Ong Tong Guan.
5. The late Ong Tong Guan had 10 children from his marriage to the defendant's mother. They are as follows:
 - (a) Ong Siew Hua, the eldest child
 - (b) Ong Leong Chuan, the defendant and the eldest son
 - (c) Ong Boon Chuan, the second son
 - (d) Ong Heng Chuan, the third son
 - (e) Ong Siew Kuan, the second daughter

- (f) Ong Teck Chuan, the fourth son
- (g) Ong Siew Chin, the third daughter
- (h) Ong Siew Ann, the fourth daughter
- (i) Ong Eng Chuan, the fifth son
- (j) Ong Siew Lay, the fifth daughter and youngest child.

Apparently, the late Ong Tong Guan had another wife and a number of children in China but that is irrelevant for the purpose of this action.

6. Ong Tong Guan gave oral instructions regarding the distribution of his assets shortly before he died. The defendant, his mother and his brother, Ong Boon Chuan, were present when he gave those instructions. As far as the distribution of shares in the plaintiff company was concerned, the new shareholding arrangement was, on the instructions of the defendant, recorded in the minutes of a company meeting purportedly held on 3 July 1984 but it was common ground that no such meeting took place on that day. A few days before Ong Tong Guan died, he made a will, the effect of which was to bequeath the remainder of his estate to the plaintiffs.

7. The root of the problems facing the children of the late Ong Tong Guan may be traced to the fact that they cannot agree on what were their father's final instructions regarding the distribution of the shares in the plaintiff company. As has been mentioned, only the defendant, his brother, Boon Chuan, and their late mother were present when Ong Tong Guan distributed the shares. According to the defendant, the shares were distributed by his late father in the following manner:

- (a) 30% to him
- (b) 20% to his brother, Ong Heng Chuan
- (c) 20% to his brother, Ong Teng Chuan
- (d) 10% to his late mother
- (e) 10% to his sister, Ong Siew Kuan
- (f) 10% to his sister, Ong Siew Chin.

8. If the defendant is right, this would mean that five of his siblings, namely two of his brothers, Boon Chuan and Eng Chuan, and three of his sisters, Siew Hua, Siew Lay and Siew Ann, did not get any shares in the plaintiff company. However, Boon Chuan, Eng Chuan and Siew Lay received other gifts from their father. It follows that apart from Ong Siew Hua, who received neither shares nor any other property from their father because she married someone whose business competed with that of the plaintiffs, Siew Ann is the only other sibling who inherited nothing from her father.

9. The defendant's brother, Boon Chuan, disagreed that the defendant was given 30% of the shares in the plaintiff company or that their father left nothing to Siew Ann. In paras 5, 6 and 7 of his affidavit of evidence-in-chief, he explained:

Sometime before my father passed away, he called a meeting between the defendant, my mother and myself. My sister, Ong Siew Kuan, was supposed to attend but did not do so as she was ill on that day.

At the meeting, my father told us that he wanted to give his sons a 20% share each in the Plaintiffs

while his daughters would get a 10% share each. However, since I was involved in a related family business, I was to get shares in that company instead of the Plaintiffs. Another brother, Ong Eng Chuan was to receive shares in another company instead of the Plaintiffs as well.

10. Boon Chuan said that in accordance with his father's instructions, three of his brothers, namely the defendant, Heng Chuan and Teng Chuan, each got 20% of the shares in the plaintiff company while the remaining 40% was split equally between his four sisters, Siew Kuan, Siew Chin, Siew Ann and Siew Lay, with each getting 10%. He added that Siew Lay's 10% was to be held on trust for her by their mother while Siew Ann's 10% was to be held on trust for her by the defendant. This explains why 30% of the shares in the plaintiff company were registered in the defendant's name.

11. The stage was thus set for disputes between the defendant and his siblings, which ranged from Siew Ann's shares to the way in which the defendant ran the company. In 1999, the defendant was removed from the position of managing director of the plaintiffs by his siblings. Subsequently, the plaintiff company instituted this action against the defendant.

B. WHETHER THE DEFENDANT HOLDS SHARES ON TRUST FOR ONG SIEW ANN

12. Whether or not the defendant holds 10% of the shares in the plaintiff company on trust for Siew Ann is crucial to the plaintiffs' case because the plaintiffs alleged that their funds had been used to fund the defendant's purchase of the said 10% from Siew Ann. The plaintiffs submitted that if the circumstances surrounding the payment of the \$100,000 are closely examined, evidence showing the existence of such a trust will be found.

13. The defendant, who strenuously denied that he held 10% of the shares in the plaintiff company on trust for Siew Ann, initially took the position that the distribution of shares was in accordance with his late father's wishes. However, during cross-examination, he took a different stand and claimed to have had "the final say" in these matters. The relevant portion of his evidence is as follows:

Q. If Ong Siew Lay was working for the company, there is nothing to distinguish between Ong Siew Chin and Ong Siew Lay and no reason not to give her shares.

A. She contributed so little. I had the final say.

Q. You never mentioned in your affidavit that you had the final say.

A. The affidavit was not very clear about this.

Q. In para 55 of your affidavit for another action, OS No 1944 of 1999, you said that your father adopted your suggestions.

A. That is not correct.

14. Apart from contradicting his original stand as to whether it was he or his late father who decided on the distribution of shares in the plaintiff company, the defendant also took a different position from that stated by him in his affidavit of evidence-in-chief in OS No 1944 of 1999 with respect to what else had been decided by his late father regarding the distribution of his other property.

15. After reiterating that no shares were held on trust for Siew Ann, the defendant next asserted that his siblings raised the question of a trust only recently in order to reduce his percentage of shares in the plaintiff company. Contrary to what the defendant asserted, it does not appear that the question of Siew Ann's shares arose recently. To begin with, Siew Ann contended that before her father died, the defendant told her that she had 10% of the shares in the plaintiff company. In paras 52 and 53 of her affidavit of evidence-in-chief, she stated as follows:

52. In fact, it was the defendant himself who told me that I was to get a 10% share in the plaintiffs.

53. I remember that shortly before my father passed away, he was very ill. My mother wanted to perform some prayers for my father and the defendant, together with his wife and I went to purchase some items for prayers. While the three of us were in the defendant's car, he told me that I was lucky as my father had given me a 10% share in the plaintiffs.

16. During cross-examination, Siew Ann reiterated that the defendant told her that he held 10% of the shares in the plaintiff company on trust for her. Her answer was as follows:

Q. Only the defendant and Ong Siew Kuan told you that you had 10% shares in Tong Guan?

A. Depends on which time. I heard from [the defendant] first and then Siew Kuan told me, and later on, other members of the family told me.

17. Siew Ann also made it clear that when the defendant arranged for her to be paid \$100,000 from the company's funds, they both had no doubt that the payment was in respect of the 50,000 shares held on trust for her. This will be dealt with in greater detail later on when the purpose of this payment is discussed.

18. The defendant's sister, Siew Kuan, who claimed to have been instructed by her late father to ensure that Siew Ann received the 10% of the company shares held on trust for her, also disagreed that the question of the trust shares is a recent issue. She said that shortly before her father died, he changed his mind about having the shares held on trust for Siew Ann and wanted the defendant to transfer the 10% to Siew Ann immediately. In paras 6 and 7 of her affidavit of evidence-in-chief, she said:

6. Sometime in 1984, a few days before my father passed away, the then company secretary, Mr Seet Swee Leng, came to our house with some transfer forms for OSA's 10% share to be transferred to her.

7. The defendant objected strenuously to the transfer being carried out there and then and yelled at my father. My father, who was then very ill, did not or was not able to resist. Seet Swee Leng therefore left our house without having the transfer documents executed.

19. The defendant's brother, Boon Chuan, also testified that the defendant quarrelled with their father over Siew Ann's shares. During cross-examination, he confirmed what Siew Kuan said about the quarrel when he said:

Q. See para 5 of Ong Siew Kuan's affidavit. Have you seen the document?

A. No, but I know about the incident. My father asked [the company secretary] to come along for transferring 10% of the shares to Siew Ann. I heard the shouting. [The defendant] shouted at my father. He said that the meeting agreed that he hold Siew Ann's shares on trust for her. Why change now? Then the [company secretary] left because of the argument.... My father was very sick. He just waved his hand, asked [the defendant] to go out and the matter was left aside.

20. Siew Kuan referred to numerous quarrels which she had with the defendant over the trust shares. In paragraph 10 of her affidavit of evidence-in-chief, she said:

[F]or more than 2 years after my father's death in 1984, the defendant failed to transfer the shares to OSA. I constantly reminded the defendant to do so and there were some rows between the defendant and I over this issue.

21. Siew Kuan stood her ground during cross-examination. Her answers were as follows:

Q. Have you tried to ask the company secretary to prepare documents for Leong Chuan to sign?

A. No. I asked Leong Chuan when he is transferring the shares to Siew Ann. My father asked me to make sure that Leong Chuan transferred the shares to Siew Ann. So when Siew Ann came to work, I asked him about it...

Q. Why did you not gather the family including your mother to tell Leong Chuan to transfer the shares to Siew Ann?

A. I told my brother who scolded me and that is why he came up with the option.

22. That there was a measure of discord in the family over, inter alia, the defendant's refusal to transfer the 50,000 shares was confirmed by Siew Ann, who declared that she was upset by the constant bickering over her shares. During cross-examination, she said:

Q. Since 1984 until today, Ong Boon Chuan never told you about the 10% shares?

A. He mentioned it recently when everybody brought up the matter...

Q. This year?

A. In 1986.

Q. In 1986, in what circumstances did Ong Boon Chuan tell you you had 10% shares in the company.

A. There was a fight in the family.

23. Siew Ann also said that she was prepared to part with her shares to the defendant to bring a measure of peace to the family. When questioned by the defendant's counsel as to why, if indeed she had shares, she did not sell her shares to her other siblings, she replied as follows:

At that point of time, I know that [the defendant] was very greedy. If I can give him 10% to stop the quarrelling, I am very happy.

24. The defendant denied that he told Siew Ann that he held shares on trust for her. He also denied that there was any attempt to have him transfer shares to Siew Ann while his father was alive or that he had been asked on several occasions to hand over the shares after his father's death. His evidence, when cross-examined, is as follows:

Q. When your father changed his mind and wanted you to transfer the 10%, you shouted at him and demanded that he stick to the original agreement that you hold the shares on trust.

A. No such thing.

Q. Ong Siew Kuan and your mother demanded several times after your father's death that you transfer the shares to Siew Ann.

A. No such thing.

25. The defendant also alleged that it was not true that his late mother held 10% of the shares in the plaintiff company on trust for another of his sisters, Siew Lay. He said that his siblings lied about the existence of this trust in favour of Siew Lay in order

to reinforce their claim that he held 10% of the shares in the plaintiff company in favour of Siew Ann. He also pointed out that after the shares in his mother's name were sold for \$2 million to his brother, Boon Chuan, the money was returned to Boon Chuan. He thus submitted that the sale of shares to Boon Chuan was a sham transaction. It was pointed out that in his affidavit of evidence-in-chief in another action, OS No 1944 of 1999, Boon Chuan had said that his late mother wanted to sell the shares to distribute the proceeds to "some of the children". However, this does not give the complete picture. In para 25 of the affidavit in question, Boon Chuan made it clear that his mother held the shares on trust for Siew Lay. If his mother had actually distributed the proceeds of the sale of the shares, Siew Lay's rights would have been infringed. Boon Chuan and his other siblings were not asked to clarify the position during cross-examination.

26. Siew Lay testified that she was aware that her late mother held 10% of the shares in the plaintiff company on trust for her. When cross-examined, she said:

Q. When did you first know that you had 10% of the shares in Tong Guan?

A. When my father was ill.

Q. Who told you?

A. My father, my mother, my sister, Ong Siew Kuan.

Q. Your father told you directly or through Siew Kuan?

A. My father told me personally.

27. Siew Lay also testified that after her shares had been sold to her brother, Boon Chuan, she invested the proceeds of the sale in Boon Chuan's business. When cross-examined as to who made the decision to sell and to invest the money, she said:

Q. Did your mother tell you that the shares would be sold and that a big sum of money would come in?

A. It was my idea for the shares to be sold. My mother always asked me whether I wanted shares or money. I said I wanted money.

Q. When was the decision made as to what to do with the \$2 million?

A. When my elder brother decided to buy my mother's shares and subsequently, my mother discussed with me.

Q. What is the rate of interest?

A. It has not occurred to me what is the rate of interest. He is my brother and I did not impose the rate of return. I believe that if his company makes a profit, he would share his profits according to his conscience. I did tell him that if I need my money back, he would have to return it to me.

28. I accept that Siew Lay's late mother held 10% of the shares in the plaintiff company on trust for her. In any case, it was not disputed that Siew Lay was given part of the money in her father's Central Provident Fund account. As such, counsel for the plaintiffs pointed out that whether or not Siew Lay was given shares in the plaintiff company, Siew Ann remains the only sibling excluded from the distribution of their late father's assets with the exception of Siew Hua, who, as has been mentioned, was deliberately excluded because her husband's business competed with that of the plaintiffs.

29. It is regretted that neither the plaintiffs nor the defendant were able to contact the company secretary, Seet Swee Leng, who could have shed some light on what happened more than one and a half decades ago. All the same, after having had the

opportunity to assess the witnesses and their relevant testimony, I accept that on the basis of the evidence discussed thus far, the inescapable conclusion is that the defendant holds 10% of the shares in the plaintiff company on trust for Siew Ann. The plaintiffs' case is further strengthened by the evidence discussed below.

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Why was Ong Siew Ann paid \$100,000?

30. The circumstances under which Siew Ann was paid \$100,000 by the plaintiff company throw some light on whether or not the defendant had been instructed by his father to hold 10% of the shares in the plaintiff company on trust for Siew Ann. The relevant facts are as follows. In 1986, the defendant offered Siew Ann, who was then working for the plaintiffs for \$1,000 per month, two options, both of which were recorded in a memorandum. The terms of the said memorandum are as follows:

I, Ong Siew Ann, agree that:

(1) To have 50,000 shares in Tong Guan Food Products Pte Ltd with the following conditions:-

a) to work in the abovenamed Company for eight years, that is from Year 1983 to 1990.

b) to be honest to the Company.

On the condition that I receive 50,000 shares of \$1.00 each fully paid from the company by August 1986.

OR

2) To have \$100,000 Cash only from Mr Ong Tong Guan Estate and with the following conditions:

a) to work in Tong Guan Food Products Pte Ltd for at least five years that is from Year 1983 to 1987.

b) to be honest to the company.

31. As it turned out, Siew Ann preferred the second option and the \$100,000 was paid to her out of her late father's estate account. It was not disputed that the money in this account belonged to the plaintiffs as the late Ong Tong Guan had willed his estate to the plaintiffs.

32. The defendant's evidence regarding the memorandum and the options offered to Siew Ann is rather unsatisfactory. Initially, the defendant distanced himself from the terms of the memorandum and tried to give the impression in his affidavit of evidence-in-chief that the terms in question were drafted by Siew Ann. However, the following answers of the defendant during cross-examination showed that he decided the terms of the memorandum:

Q. Did you have any input in the drafting?

A. I cannot remember.

Q. The 50,000 shares. Who decided on the figure?

A. I did.

Q. The condition on working for 8 years. Whose idea was it?

A. Mine.

Q. The condition regarding honesty to the company?

A. Mine.

Q. The last line. Was it your idea?

A. It was mine.

Q. The \$100,000 case. Whose idea was it?

A. My idea....

Q. Condition 2(a). Who decided on this?

A. I did.

Q. Condition 2(b). Who decided on this?

A. I did....

Q. Who gave the instructions for the memorandum?

A. I did.

33. The defendant also gave the impression that it was Siew Ann who caused the \$100,000 due to her to be paid out of their late father's estate. In paras 43 and 45 of his affidavit of evidence-in-chief, he said:

43. *It also appears* that she had debited my father's account with the Plaintiffs.... I believe the entries were made to allow her to save on income tax.

45. *The money was not meant to come from my father's estate.* As explained above, it was OSA who prepared the accounting entries and she *probably* caused the payment to be made from my father's estate

(emphasis added)

34. Contrary to what the defendant had stated in his affidavit of evidence-in-chief, the following answers given by him during cross-examination made it crystal clear that he knew from the very start that the \$100,000 received by Siew Ann came from their late father's estate:

Q. The payment from Ong Tong Guan Estate. Whose idea was it?

A. Not sure whether I discussed it with Siew Ann or my idea. Maybe Siew Ann suggested it to save income tax....

Q. Are you suggesting that a 22 year-old girl who is not a director of the company has any say in where the money is to come from?

A. She can suggest.

Q. But you decide?

A. Yes.

35. Having determined that it was the defendant who drafted the terms of the memorandum, the implications of the two options offered to Siew Ann will next be discussed. At the outset, it must be noted that the 50,000 shares referred to in the first option amounts to 10% of the shares in the plaintiff company. Siew Ann made it clear she was fully aware of the fact that she had 50,000 shares in the plaintiff company when she signed the memorandum. She had no doubt whatsoever that the 50,000 shares stated in the memorandum referred to the 50,000 shares that were held on trust for her by the defendant. In para 87 of her affidavit of evidence-in-chief, she said:

It is indisputable that the Memorandum prepared by the defendant refers to me obtaining 50,000 shares in Tong Guan, which is 10% of the issued capital of Tong Guan. These shares were supposed to have been given to me. If I was not entitled to any shares, and only received the \$100,000 as 'a reward for her services', what was the purpose of the Memorandum? Why should there be any reference to shares at all?

36. More significantly, Siew Ann asserted that both she and the defendant were fully aware of the purpose of the payment to her of \$100,000. Her evidence, during re-examination, is as follows:

Q. By accepting the \$100,000, what was to happen to the shares held on trust for you?

A. They would belong to the defendant.

Q. Was this expressly discussed between you and the defendant?

A. Yes.

Q. What did he say to you?

A. He told me that by accepting the \$100,000, I no longer had 10% share in the company.

Q. It was clear to the two of you that you were selling him your 10%?

A. Yes.

37. Siew Ann added that she was convinced that the defendant did not intend to give her the 10% in question and that he wanted to keep her shares by paying her \$100,000. She said that her main aim in accepting the \$100,000 instead of the 50,000 shares was to stop the family quarrel over the defendant's failure to transfer her 10% to her.

38. According to the defendant, the 50,000 shares referred to in the memorandum were intended to be new shares to be issued to Siew Ann. He thus denies buying any shares from Siew Ann. His evidence is not convincing. For a start, he did not explain how the new shares were to be paid for. When cross-examined, he merely said that "the company will pay the incentive to her and she can pay for the shares". His evidence is as follows:

Q. Is it your case that the 50,000 shares referred to in the memorandum were to be new shares to be allotted.

A. Yes.

Q. Who was going to pay for the shares?

A. The company will pay the incentive to her and she can pay for the shares.

Q. This was not stated in your affidavit.

A. Why should I say?

Q. Can you issue shares without the directors' consent?

A. They all agreed.

39. As far as the defendant's claim that his fellow directors agreed to the issue of new shares is concerned, none of his fellow directors were asked whether or not they knew anything about the proposed increase of shares or the method of paying for them when they were giving evidence.

40. I now turn to the second option offered to Siew Ann, which was that she would receive \$100,000 if she worked for the plaintiffs for five years. It was not disputed that if Siew Ann opted to take the \$100,000, she could leave the plaintiffs in 1987. On the other hand, if she opted for the 50,000 shares, she would have had to work for the plaintiffs for a further 3 years, that is until 1990. Siew Ann was not keen to work for the plaintiffs and the defendant admitted that he was aware of this. In view of this, counsel for the plaintiffs contended that the defendant offered his sister the more attractive second option, which allowed her to leave the company at an earlier date, to tempt her to surrender her shares for \$100,000, a very large sum of money for a young lady, who was then earning only \$1,000 per month.

41. The defendant asserted that both options were intended to induce Siew Ann to remain in the employment of the plaintiffs. He did not agree that the second option was more attractive to Siew Ann than the first option. In his view, the first option of 50,000 shares was the more attractive option. However, he was unable to show why the offer of 50,000 shares was, for Siew Ann, a better alternative than \$100,000 in cash. When cross-examined, he said:

Q. Look at your evidence that the first option is a better option. In 1986, had the company declared any dividends to the shareholders?

A. No.

Q. Could Ong Siew Ann sell her shares to the public?

A. No.

Q. Realistically, she could only sell the shares to the siblings?

A. Yes.

Q. Are you realistically saying that 50,000 shares is a better option than \$100,000?

A. Yes.

Q. And a more valuable option to a girl who did not want to work in the company?

A. Very difficult to say.

42. Apart from being unable to show that the first option was more attractive to Siew Ann, the defendant could not effectively counter the plaintiffs' assertion that the second option was more attractive. When cross-examined, he answered as follows:

Q. Your objective was to keep Ong Siew Ann in the company as long as possible?

A. Yes.

Q. Based on the two options, if Ong Siew Ann chooses to take \$100,000, she can choose to leave the company earlier?

A. Yes.

Q. If the memorandum was signed in 1986, this means that she could take the \$100,000 and walk out of the company within a few months.

A. Yes.

Q. Your evidence is that she never wanted to join the plaintiffs.

A. Yes.

Q. Are you serious that \$100,000 was intended to be an incentive to stay.

A. Yes.

43. The defendant's explanation as to why the second option was offered to Siew Ann is unconvincing. At first, he suggested that the \$100,000 was an incentive for Siew Ann to work in the company. He said that the company had just started its computerisation programme and Siew Ann could help the company in this field. In paras 37 and 38 of his affidavit of evidence-in-chief, he said:

37. After my father passed away, I was concerned that the plaintiffs needed to upgrade its computer systems. At that time, a new computer accounting system had just been installed. The only member of my family who was familiar with computer systems and had accounting knowledge, other than myself, was OSA and therefore, she was the most suitable person to handle the accounts for the plaintiffs.

38. It was therefore decided that the plaintiffs would offer OSA an incentive to work in the plaintiffs. This was the reason why OSA had signed a Memorandum

44. At the material time, Siew Ann was earning only \$1,000 per month. Surely, her services could not have been so valuable as to warrant an incentive payment of \$100,000. With this amount of money, the plaintiffs could have employed a number of more qualified persons to help in the computerisation programme.

45. The defendant shifted his ground when he suggested that Siew Ann wanted to go to Australia for further studies and that she was in need of money for her intended studies. However, Siew Ann denied that this was the case. In para 82 of her affidavit of evidence-in-chief, she said:

At no time did I tell my brother that I was going to Australia to study prior to my leaving Singapore. In fact, I only informed my mother of my decision to further my studies a day before I left Singapore for Australia. I did not need any money from my brother or the Plaintiffs for my studies.

In any case, Siew Ann did not withdraw her \$100,000 immediately. Instead, she left this sum of money with the company for a number of years and her \$100,000 was recorded in the plaintiffs' books as a loan to the company.

46. Finally, while giving oral testimony, the defendant suggested that the \$100,000 was a way of making up to Siew Ann for not having received any shares from the company and that the figure had been suggested by their mother. This was not referred to in the defendant's affidavit of evidence-in-chief.

47. The defendant's explanation with respect to the rationale for the options in the memorandum cannot be accepted. If the memorandum was, as the defendant asserted, intended to provide two forms of incentive to Siew Ann to remain in the service of the plaintiffs, the options provided for therein did not make any sense. I thus accept that the circumstances surrounding the memorandum support the plaintiffs' contention that the defendant holds 10% of the shares in the plaintiff company on trust for Siew Ann.

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No reason why Ong Siew Ann should have been excluded

48. The plaintiffs asserted that the late Ong Tong Guan was a very good father. As such, it was pointed out that while he may have given nothing to his eldest daughter, Siew Hua, because she married a competitor of the plaintiffs, it was unlikely that Siew Ann would have inherited nothing from her father. The fact that a child is the only one excluded from the distribution of his or her parent's assets is, without more, not a sufficient basis for concluding that the parent must have intended to provide for him or her. All the same, this assertion of the plaintiffs will be considered because the defendant's position on this matter invites questions with respect to the credibility of his evidence.

49. When giving oral evidence, the defendant declared that he did not know why his late father did not give Siew Ann anything. When questioned by his counsel, he merely said:

They were not talking to each other and she belonged to the Year of the Tiger. I don't know.

50. However, in his affidavit of evidence-in-chief, he was rather willing to suggest reasons as to why Siew Ann did not receive any shares in the plaintiff company. The defendant explained in para 32 of his affidavit of evidence-in-chief that his father never intended to give Siew Ann any shares. He said that this is evidenced by the original draft of the plaintiffs' Articles and Memorandum of Association, which showed that Siew Ann was not one of the original shareholders of the plaintiffs.

51. The original draft of the plaintiffs' Memorandum and Articles of Association does not help the defendant's case at all. After all, the defendant's brother, Teng Chuan, who was not an original shareholder of the plaintiffs, was given shares by their late father. On the other hand, another brother, Boon Chuan, an original shareholder, was asked by his late father to transfer his shares to the defendant. It follows that the Memorandum and Articles of Association are irrelevant for the purpose of determining whether or not Siew Ann's late father intended to give her any shares in the plaintiff company.

52. The defendant also relied on the minutes of an alleged meeting of the shareholders of the company on 3 July 1984 which purportedly recorded his late father's instructions but made no mention of a trust in favour of Siew Ann. It was accepted that no shareholders' meeting took place on 3 July 1984. It was also accepted that the defendant gave instructions for the minutes to be drafted. There is nothing in the minutes which is inconsistent with the existence of the trust in question and the fact that the trust is not recorded in the minutes does not prove that there is no such trust.

53. The defendant next asserted that for the purpose of distribution of shares, one of the matters taken into account was the siblings' contribution to the company. This was to bolster his case that having contributed much to the plaintiffs, he deserved a bigger percentage of shares than his siblings. However, this assertion is flawed. The defendant's brother, Heng Chuan, who worked for the company since 1973, received 20% of the shares in the company, the same amount as his brother, Teng Chuan, who, in the defendant's own words, was given 20% because he "will contribute in the future". Besides, if it is true that shares were given to Siew Kuan because she was then working in the company, this does not explain why in the defendant's scheme of things, Siew Lay was given no shares even though she was working in the company when their late father passed away. Obviously, whether or not the siblings were working in the company at the relevant time is not a factor to be taken into account when deciding whether or not Siew Ann was given any shares in the plaintiff company by her late father. What is abundantly clear is that the defendant's position with respect to why Siew Ann was not given any shares in the plaintiff company is unsatisfactory enough to raise questions about the credibility of his evidence.

CONCLUSION

54. This case involves an ugly family dispute between siblings. After considering the evidence and the credibility of the witnesses, I hold that the defendant holds 10% of the shares in the company on trust for his sister, Siew Ann. I find it most unlikely that all the defendant's siblings would come to court and lie about the existence of the trust for the sole purpose of reducing the defendant's shareholding in the plaintiffs.

55. The plaintiffs are entitled to costs, which shall be agreed upon or taxed.

Tan Lee Meng

Judge

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