

Sim Yak Song and Others v Lim Chang and Another
[2003] SGHC 68

Case Number : OS 1810/2002
Decision Date : 29 March 2003
Tribunal/Court : High Court
Coram : Tan Lee Meng J
Counsel Name(s) : Philip Fong and Chang Man Phing (Harry Elias Partnership) for the plaintiffs; Tan Hee Liang (Tan See Swan & Co) for defendants
Parties : Sim Yak Song; Ng Bak Kim; Ng Han Cher; Sim Choon Yong; Phee Ser Guan — Lim Chang; Tock Siok Cheng

Civil Procedure – Originating processes – Whether originating summons can be converted to writ to allow defendants to make counterclaim

Partnership – Retirement – Effect – Whether retired partners retained any stake in partnership property

1. In their originating summons, the plaintiffs, the present partners of Beauty Factors ("BF"), sought an order that the defendants, their former partners, Lim Chang ("Lim") and Tock Siok Cheng ("Tock"), whose names appear on the title deed of a factory owned by the partnership, sign the requisite documents to transfer the said property to them. Lim and Tock, who refused to sign these documents, sought to have the originating summons converted to a writ on the ground that there is a dispute between them and their former partners as to whether or not they had received a fair payment for their shares when they withdrew from the partnership. I granted the order sought by the plaintiffs and now give the reasons for my decision.

2. BF, which imports cosmetic products and toiletries for sale in Singapore, was formed in 1978. Since the partnership started, the first plaintiff, Sim Yak Song ("Sim") has been the managing partner. Lim joined the partnership in July 1979 and withdrew from it on 24 May 2000 while Tock joined the partnership in April 1999 and withdrew from it on 3 September 2001.

3. There was no written partnership agreement and the partnership was managed in an informal manner as all the partners are relatives. The dispute between the parties concerned a factory at No 121 Kaki Bukit Avenue, Singapore 415995 (the "Kaki Bukit property"), from which BF operates its business. This property was purchased with partnership funds in June 1999 for S\$1,339,650. The then partners, including Lim and Tock, signed the Sale and Purchase Agreement. Although the property was purchased when Lim and Tock were still partners of BF, the transfer of the title to the property to those who signed the Sale and Purchase Agreement in 1999 only took place in 2001, by which time Lim and Tock had left the partnership. Both of them refused to execute the requisite documents to transfer the property to the present partners of BF. Hence, the present partners commenced the originating summons presently being considered.

4. It was common ground that the Kaki Bukit property is partnership property and that when Lim and Tock withdrew from the partnership, they received the sums of \$80,420 and \$268,690.79 respectively from the partnership. The plaintiffs contended that based on these undisputed facts, Lim and Tong have no beneficial interest in the Kaki Bukit property. As such, they cannot refuse to transfer the said property to the existing partners of BF.

5. Both Lim and Tock asserted that they were not paid an adequate amount when they withdrew from the partnership and that the Kaki Bukit property was not included in the calculation of the amount to which they were entitled upon their retirement. Tock's father, Tock Seng Guan, who acted on her

behalf in partnership matters, stated her case as follows in paragraph 11 of his affidavit:

I wish to say that there was no possibility of any objection to the payment out when my daughter withdrew from the partnership because documents and materials were not made available to me voluntarily to make such an objection.... I thought that Sim Yak Song would be fair by making a reasonable payment. It was only subsequently when the past accounts were looked at more carefully by my professional advisors that I discovered to my horror that Sim Yak Song had been totally unreasonable and unfair in paying the sum of \$268,690.79.

6. Claiming that there are disputes relating to the partnership accounts and that Sim had dealt improperly with partnership assets, both Lim and Tock wanted the originating summons to be converted to a writ so that their grievances could be the subject matter of a counterclaim.

7. At the outset, it ought to be noted that the present case concerns the retirement of partners from a partnership and not the dissolution of a partnership. In this regard, the following words of LP Thean JA, who delivered the judgment of the Court of Appeal in *Chiam Heng Chow v Mitre Hotel (Proprietors)* [1993] 3 SLR 547, 555, are instructive:

[I]t is necessary to say a word on the distinction between a dissolution of a partnership and a retirement of a partner from a partnership. In the case of the former, the partnership is terminated and wound up and ceases to exist after settlement of the accounts.... In the case of the latter, the partnership is terminated only as regards the retiring partner while the *remaining partners continue to carry on the business in partnership (without the retiring partner) taking over the business as a going concern and the assets and liabilities*, and in such case, the parties would have the assets of the partnership valued and an account taken of the share of profits of the retiring partner. It is true that in this situation, there is technically a 'dissolution' of the old partnership with the creation of a *new partnership which takes on the assets and liabilities of the old partnership* without any break in the continuity of the business.

[emphasis added]

8. In *Sobell v Boston* [1975] 2 All ER 282, Goff J, who also made it clear that in the case of the retirement of a partner, the assets of the partnership are transferred to the remaining partners, added that the retiring partner becomes a mere unsecured creditor of the partnership. He explained the position at p 286 in the following terms:

In my judgment, what he is entitled to is the value of his share at the date of his retirement, including, of course, the then goodwill, the ascertainment of which must all events normally be a matter of enquiry, accounting and valuation, not sale. ... Accordingly he is merely an unsecured creditor and has no right to interfere or to ask the court to interfere in his debtor's business or to ask that it be saved for him to have recourse thereto to satisfy his demand ... All that he is entitled to is the value of his share in the assets of the partnership.

9. A similar position was taken by the English Court of Appeal in *Popat v Shonchhatra* [1997] 1 WLR 1367, 1372, where Nourse LJ said:

Although it is both customary and convenient to speak of a partner's "share" of the partnership assets, that is not a truly accurate description of his interest in them, at all events so long as the partnership is a going concern. While each partner has a proprietary interest in each and every asset, he has no specific entitlement to any specific asset and, in consequence, no right, without the consent of the other partners or partner, to require the whole or even a share of any particular asset to be vested in him.

10. As has been mentioned, Lim and Tock accepted that the Kaki Bukit property, which is listed in the partnership accounts as an asset of the partnership, was bought with partnership funds and is partnership property. As such, even though the Certificate of Title lists them and their former partners as joint tenants, they hold the asset on trust for the partnership. The position is put as follows in Halsbury's Laws of Singapore, Vol 15, at p 72:

Being an unincorporated entity, the partnership is not to hold land in its own name. Instead, title has to be held in the individual names of one or more partners and the manner of holding is thus inconclusive of the beneficial ownership of the assets. For any property included among the partnership assets, the partner holding the legal title is viewed as holding the property in trust for the partnership (with the beneficial interest vesting in the partnership)

11. It should also be borne in mind that section 22 of the Partnership Act (Cap 391) provides as follows:

Where land or any interest therein has become partnership property, it shall, unless the contrary intention appears, be treated as between the partners ... as personal or movable and not real estate.

12. It is evident from the above discussion of the rights of a retiring partner that Lim and Tock are not entitled to stake a claim to the Kaki Bukit property in the manner they have done. Having the present originating summons converted to a writ is not an option open to them for the simple reason that there is no underlying dispute in relation to the ownership of the Kaki Bukit property. While they may seek redress for what they perceive to be an injustice done to them with respect to the amounts they received when they withdrew from the partnership, they have no right to cling on to the Kaki Bukit property as they are merely unsecured creditors of the partnership if they can show that they are entitled to a higher sum when they withdrew from the partnership. In the final analysis, it must be borne in mind that while "a partner has an interest in each asset of the partnership, no partner may assert a right to control any particular asset". (See *Higgins and Fletcher on The Law of Partnership in Australia and New Zealand*, 7th ed, p 143). The position cannot be different when a partner has withdrawn from the partnership. As such, I ordered Lim and Tock to sign the relevant documents transferring the Kaki Bukit property to the present partners of BF.

13. The plaintiffs are entitled to costs.

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