Lee Siew Ngug and others *v* Lee Brothers (Wee Kee) Pte Ltd and another [2015] SGHC 106

Case Number	: Originating Summons No 503 of 2014 (Registrar's Appeal Nos 398 and 399 of 2014)
Decision Date	: 23 April 2015
Tribunal/Court	: High Court
Coram	: Kan Ting Chiu SJ
Counsel Name(s)	: Tan Kheng Ann Alvin (Wong Thomas & Leong) for the 1st Defendant/Appellant; Low Chai Chong and Alvin Liong (Rodyk & Davidson LLP) for the 2nd Defendant/Appellant; Wong Soon Peng Adrian, Andrea Baker and Chan Yong Neng (Rajah & Tann Singapore LLP) for the 1st, 2nd and 3rd Plaintiffs/Respondents.
Parties	: Lee Siew Ngug and others — Lee Brothers (Wee Kee) Pte Ltd and another

Civil Procedure – Jurisdiction – Inherent

23 April 2015 Judgment reserved.

Kan Ting Chiu SJ:

Background

1 The matter came before me as appeals by the two Defendants against the dismissal of their applications to strike out the three Plaintiffs' action.

2 The Plaintiffs and the Defendants are related to the late philanthropist Lee Wee Nam. The Plaintiffs are his grandsons, and the 1st Defendant, Lee Brothers (Wee Kee) Pte Ltd ("Lee Brothers" or "the company"), and the 2nd Defendant, Lee Hiok Kee Pte Ltd, are companies which were controlled by him and his family.

3 The three Plaintiffs are shareholders and members (the two terms are used interchangeably) of Lee Brothers. They became shareholders of the company in October 2012. They are minority shareholders, each holding 6,888 shares. The 2nd Defendant has been a member of the company since May 1963, and is the majority shareholder, holding 620,920 shares. The Plaintiffs are unhappy with the 2nd Defendant, which they accused was abusing its position as the largest shareholder of Lee Brothers by disregarding the wishes of the minority shareholders. The Plaintiffs' complaints were that the 2nd Defendant had utilised its shareholding to retain control of the board of directors of Lee Brothers, to resist a proposal to wind up the company, and to allow the 2nd Defendant to remain as a member of the company. [note: 1]

The Plaintiffs' Originating Summons

4 The Plaintiffs instituted these proceedings to remove the 2nd Defendant as a member of Lee Brothers on the ground that the 2nd Defendant is not qualified under the provisions of the Memorandum of Association of the 1st Defendant, from being a member of the company. (There is no

dispute between the parties that Article 6 of the Memorandum stipulates that membership of the 1st Defendant is limited to seven classes of natural persons).

5 The Plaintiffs filed their originating summons against the Defendants under Order 92 Rule 4 of the Rules of Court (Cap 322, R5, 2014 Rev Ed) ("ROC") and/or the inherent jurisdiction of the court on 29 May 2014 and amended the prayers on 3 November 2014. The amended prayers are for –

1. a declaration that the members of the 1st Defendant shall be restricted to natural persons;

2. a declaration that the 2nd defendant cannot legally be a member of the 1st Defendant;

3. an order that the 2nd Defendant be removed as a member from the share register of the 1st Defendant;

4. further or alternatively, an order that the allotments of shares in the 1st Defendant to the 2nd Defendant be declared invalid and/or for the entries in connection with these shares be deleted from the register of members of the 1st Defendant;

5. further and/or alternatively, an injunction restraining the 2nd Defendant, its agents, representatives and/or assignees, from exercising any rights as a member of the 1st Defendant;

6. costs; and

7. such further or other reliefs as this Honourable Court deems fit.

6 Before the amendments were made, the Defendants had applied separately in July and August 2014 to strike out the Plaintiffs' action under O 18 r 19 of the ROC for being frivolous, vexatious and being an abuse of the process of court. When the Defendants' applications came before an Assistant Registrar on 8 December 2014 to strike out the originating summons, the hearing proceeded on the basis of the amended summons. The Assistant Registrar dismissed both applications because she found that "there appears to be some authority to suggest that the Court has powers to rectify the register beyond s 194". [note: 2]

7 The Defendants' applications were essentially based on s 194(1) and (4) of the Companies Act (Cap 50, Rev Ed 2006) which provide that:

> **194**.—(1) If —
>
> (*a*) the name of any person is without sufficient cause entered in or omitted from the register; or
>
> (*b*) default is made or unnecessary delay takes place in entering in the register the fact of any person having ceased to be a member,
>
> the person aggrieved or any member or the company may apply to the Court for rectification of the register, and the Court may refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party to the application.
>
> …

(4) No application for the rectification of a register in respect of an entry which was made in the register more than 30 years before the date of the application shall be entertained by the Court.

It bears noting that not all rectifications of entries older than 30 years are prohibited, because s 194 (1) and (4) refer to applications to court to rectify. Rectifications can be made without orders of court, for example, when they are made by agreement.

8 The Defendants contend that the Plaintiffs' application to remove the 2nd Defendant from Lee Brothers' register is prohibited by s 194(4) as the 2nd Defendant had been registered as a member of the company for more than 30 years, since 4 May 1963.

The Plaintiffs' response to the striking out application

9 The Plaintiffs' response to the Defendants' applications to strike out their application for rectification is –

1. The Plaintiffs are not relying on s 194 in their application,

2. The Plaintiffs are invoking the court's equitable power and jurisdiction to order rectification, and

3. The Plaintiffs should not be denied their contractual right as members of the 1st Defendant to enforce Article 6 of the Memorandum of Association. [note: 3]

Evaluation of the arguments

10 As the Plaintiffs have confirmed that they are not relying on s 194 in their applications, and have expressly stated in their application that it is "In the matter of Order 92 Rule 4 of the Rules of Court and/or the Inherent Jurisdiction of the Court", but are relying on the inherent power or jurisdiction of the courts and their contractual right, I will start by considering the circumstances in which the Plaintiffs can invoke the equitable power and jurisdiction, and their reliance on their contractual right to enforce Article 6 as a separate basis for their application. After doing that, I will consider whether the Defendants can rely on s 194(4) to strike out the originating summons.

11 The Plaintiffs submit that "it is trite that the Courts may rectify a company's share register as **part of its equitable jurisdiction**. This power and jurisdiction is **in addition to any statutory provision** that provides for the rectification of a company's share register by the Court" [note: 4] [emphasis in original] and that s 194 does not apply to the equitable jurisdiction to rectify because:

1) the Courts' equitable jurisdiction to rectify a company register **runs parallel** to its power to rectify a company register under Section 194 …

2) section 194 of the Companies Act is merely a **procedural provision** that cannot extinguish or limit the Courts' equitable jurisdiction to rectify a company register; and

3) the scope of Section 194 of the Companies Act is **limited** to the two grounds described therein at Section 194(a) and (b) and it does not cover all the cases in which the register may be rectified pursuant to the Court's equitable jurisdiction. [note: 5]

[emphasis in original]

12 I begin with a few comments on these submissions. First, while the Plaintiffs have cited some Australian cases which affirm the court's equitable jurisdiction to rectify a register – *In the Matter of Motasea Pty Ltd* [2014] NSWSC 69, *In the Matter of Mogul Stud Pty Ltd* [2012] NSWSC 1639, *Price v Powers* [2005] WASC 154 and *Grant v John Grant & Sons Pty Ltd* (1950) 82 CLR 1, as well as a Malaysian case in *Re Len Chee Omnibus Ltd* [1969] 2 MLJ 202, those cases did not consider whether the power is to be used freely or sparingly, and how the inherent power is to be invoked when there is a statutory regime like s 194 in place. Secondly, it is wrong to characterise s 194 as a procedural provision. Section 194(4) is more than procedural when it limits the power of the courts to entertain applications to rectify entries more than 30 years old. Thirdly, whether s 194 covers every ground for rectification is not an issue in the present case. The Plaintiffs' application for rectification on the ground that the 2nd Defendant is not qualified to be a member of the 1st Defendant falls under s 194(1)(*a*) as an entry made without sufficient cause.

13 The issues raised are to be considered at two levels. Firstly it is necessary to know the conditions in which a court would exercise its inherent power/jurisdiction. This has been discussed in several decisions of our courts. In *Wee Soon Kim Anthony v Law Society of Singapore* [2001] 2 SLR(R) 821, Wee Soon Kim Anthony ("Wee") applied for the Law Society to take disciplinary proceedings against two solicitors. The two solicitors applied to court for it to exercise its inherent jurisdiction and allow them to intervene in the proceedings and oppose Wee's application, which the Law Society was already doing. The Court of Appeal, in its decision delivered by Chao Hick Tin JA, held at [27] that -

> It seems to us clear that by its very nature, how an inherent jurisdiction, whether as set out in O 92 r 4 or under common law, should be exercised should not be circumscribed by rigid criteria or tests. In each instance the court must exercise it judiciously. In his lecture on "The Inherent Jurisdiction of the Court" published in *Current Legal Problems 1970*, Sir Jack Jacob (until lately the general editor of the *Supreme Court Practice*) opined that this jurisdiction may be invoked when it is *just and equitable* to do so and in particular to ensure the *observance of the due process of law*, to prevent improper vexation or oppression and *to do justice* between the parties. Without intending to be exhaustive, we think an essential touchstone is really that of "need". …
>
> [emphasis added]

14 The Court went on to find at [29]-[30] that while the two solicitors had an interest in the outcome of Wee's application and their intervention would not prejudice his application, they were not allowed to intervene because there were no strong or compelling reasons for the court to invoke its jurisdiction.

15 The Court of Appeal dealt with the court's inherent jurisdiction to stay an appeal pending payment of outstanding taxed costs in *Roberto Building Material Pte Ltd and others v Oversea-Chinese Banking Corp Ltd and another* [2003] 2 SLR 353. The Court held in its judgement (at [16] and [17]) which was also delivered by Chao Hick Tin JA, that:

> By its very nature, the inherent jurisdiction of the court should only be exercised in special circumstances where the justice of the case so demands … this inherent jurisdiction should only be invoked in exceptional circumstances where there is a clear need for it and the justice of the case so demands.

16 In *Wellmix Organics (International) Pte Ltd v Lau Yu Man* [2006] 2 SLR(R) 117 Andrew Phang Boon Leong J (as he then was) gave thought to the effect and application of O 92 r 4 where an

existing rule already covers the situation, and concluded that (at [81]):

> … if there is an existing rule (whether by way of statute or subsidiary legislation or rule of court) already covering the situation at hand, the courts would generally *not* invoke its inherent powers under O 92 r 4, save perhaps in the **most exceptional circumstances** …
>
> [emphasis in original in italics, emphasis added in bold]

17 It is clear from these pronouncements that the court's inherent jurisdiction or power is not a tool of convenience to turn to whenever there is a problem to overcome. It is invoked sparingly when needed to do justice or to prevent injustice between parties. In a situation where there is an existing rule, a party which urges the court to invoke its inherent jurisdiction or power to circumvent the rule has to show that is in the interest of justice to disregard the rule.

18 This means that for the present case that the court may invoke its inherent jurisdiction or power *if* justice requires that the Plaintiffs be allowed to apply to remove the 2nd Defendant as a member of the company despite the prohibition in s 194(4), *and if* justice requires that the 2nd Defendant be removed as a member.

19 Does justice require that the court's inherent power be used to get around the prohibition, and will the use of the power ensure the due process of law is observed, or that justice is done? The 2nd Defendant was already registered as member when each Plaintiff acquired his 6,888 shares in the company in October 2012. The Plaintiffs knew, or should have known that the 2nd Defendant was a member when they became members themselves, and they knew or should have known that the 2nd Defendant had been a member for a long time.

20 While the Plaintiffs laid emphasis on the fact that the court has the inherent power/jurisdiction to rectify a company register, they did not put forward any reason why the power should be used to assist them to pursue their application when s 194(4) has been enacted to protect members of long standing from being removed.

The 30-year challenge period

21 The 30-year period was first proposed by the committee appointed by the English Board of Trade in 1959 under the chairmanship of Lord Jenkins ("the Jenkins Committee") to review the Companies Act, 1948 and to recommend changes to the law. In paragraph 481 of the report of the committee which dealt with the preservation of documents, the Committee made a proposal:

> The evidence we have received indicates that the need to the documents and records relating to past transactions causes trouble, especially to large old companies. Entries in the share register relating to put members have to be preserved indefinitely, with the result that a large company whose shares are rapidly turned over accumulates a large and ever increasing stock of "closed accounts". We were informed that one company had accumulated 150,000 closed accounts during the forty years up to 1956. Furthermore, while the Act does not require the preservation of such documents as instruments of transfer, letters of allotment, allotment lists, paid dividend warrants and dividend lists, many companies think it necessary for their own protection to preserve these documents indefinitely. So far as documents relating to the payment of dividends are concerned, we do not see the need for any special exemption from the law relating to the limitation of actions. As regards instruments like share transfers and signed letters of allotment, which affect the title to shares, the most we can suggest is a statutory provision to the effect

> that the accuracy of any entry in a share register should not be liable to be impugned on the strength of transactions alleged to have occurred over thirty years ago. If a shorter period were prescribed an exception would, in our view, be called for in cases where fraud was alleged and, if such an exception were made, companies might still think it necessary to preserve the original documents of title. *After thirty years we think that any entry in the register could reasonably be held free from challenge.* Companies could then safely destroy the original documents of title and there would be negligible risk of prejudicing the victims of past frauds. If this proposal is accepted, section 110 could also be amended to permit entries relating to past members to be destroyed after thirty years.
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> [emphasis added]

22 The proposal was not implemented in England, but was taken up in Singapore in the Companies Bill No. 58/1966, in cl 162(4), which is identical to the current s 194(4) set out in [7]. The bill acknowledged its lineage to the report of the Jenkins Committee in the Explanatory Statement to the bill -

> Clause 162 gives the Court extensive power to rectify share registers. Subsection (4) is a new provision which has been recommended by the Jenkins Committee, whereby no application for the rectification of a register in respect of an entry made more than 30 years before the date of the application will be entertained.

23 The bill was enacted as the Companies Act 1967 with cl 162(4) becoming s 162(4), and when the current Companies Act replaced the Companies Act 1967 in 2006, s 162(4) was retained and re-numbered s 194(4).

24 This short review shows the intention and reason to protect entries which have been in a company register for more than 30 years from challenge. Should the inherent power of the court be used to enable the Plaintiffs to pursue their late challenge to the 2nd Defendant's position as a member in the company, which is prohibited by s 194(4)? A reference to other applications to a court to invoke the courts' inherent powers to deviate from rules of court and statutory provisions offers useful guidance.

25 In *Chinese Chamber Realty Pte Ltd and others v Samsung Corp* [2003] 3 SLR(R) 656, the plaintiffs wanted to apply for summary judgment against the defendant before the latter had filed its defence, contrary to the procedure set down in Order 14, ROC. (The defendant did not file its defence because it had applied to stay the action for the matter to be referred for arbitration). An assistant registrar gave the plaintiffs leave to apply for summary judgment without the defence. On the defendant's appeal, a judge disapproved of the assistant's registrar order, and stated at [14] that:

> The court undoubtedly has inherent powers to make such orders as may be necessary to prevent injustice or to prevent an abuse of the process of the court. However, where a matter of procedure is covered by the Rules of Court and those rules are clear, the court should be most circumspect in declining to follow those rules. Failure to follow the clear directions in the rules is tantamount to the court re-writing the rules to fit the "justice" of each case. Such an approach will introduce uncertainty into court procedures and is undesirable.

He ordered the defendant to file its defence despite the pending stay application, with the caveat that the filing of the defence would not be construed as a step in the proceedings, and that the applications for summary judgment and stay were to be heard together.

26 When the matter went on further appeal to the Court of Appeal in *Samsung Corp v Chinese Chamber Realty Pte Ltd and others* [2004] 1 SLR(R) 382, the order on the application for summary judgment was set aside. Chao Hick Tin JA who delivered the judgment of the Court stated at [12]:

> We endorse the views of the judge that generally where the Rules of Court have expressly provided what can or cannot be done in a certain circumstance, it is not for the court to override the clear provision in exercise of its inherent powers

and went on to hold at [16] that there were no compelling circumstances which required the court to invoke its inherent powers.

27 In *Tan Ah Thee and another (administrators of the estate of Tan Kiam Poh (alias Tan Gna Chua), deceased) v Lim Soo Foong* [2009] 3 SLR(R) 957 it was argued that the court has the jurisdiction to declare a marriage void although it fell outside of s 105 of the Women's Charter in which all the grounds on which a marriage is void are set out. That was rejected by Judith Prakash J who held at [38] that "it is clear that the jurisdiction of the court cannot be used to override a statutory rule that deals with the exact situation at hand, except, perhaps, in the most exceptional cases".

28 In *Tan Poh Beng v Choo Lee Mei* [2014] 4 SLR 462, the plaintiff sought to enforce a Malaysian order of court on the division of a matrimonial property in Singapore, although there are no enabling provisions which allow for that, and sought to invoke the courts' inherent powers. Edmund Leow JC found at [28] that "there is compelling evidence to show that Parliament was well aware of the lack of legal avenues to enforce foreign ancillary orders for the division of property in Singapore, but chose *not* to pass legislation to enable their enforcement here" and at [26] that "… I am precluded from exercising this court's inherent powers to fill in a lacuna in the law *that was deliberately left there by the Legislature*" [emphasis in original].

29 The Plaintiffs are seeking the court's assistance to circumvent a clear provision of the law that applications to rectify entries more than 30 years old shall not be entertained. No special or exceptional circumstances have been shown which would persuade a court to invoke its inherent powers and to ensure that justice is done. To the contrary, there are countervailing factors. The Plaintiffs knew that the 2nd Defendant was a member when they became members themselves. Their grievance is that the 2nd Defendant had persistently disregarded their interests as minority shareholders, but instead of filing an oppression action or other action in court, prove its case, and seek the appropriate relief and redress, they want the court to help them to get around s 194(4) and remove the 2nd Defendant from the company altogether, without having to allege or prove any wrongdoing. No reasonable person would say that justice requires the court to use its inherent powers to enable the Plaintiffs to do that.

30 It does not mean that s 194(4) extinguishes the possibility of a court exercising its inherent power in all cases. There can be exceptional cases. If, in this case, the parties had made an agreement supported by consideration to a rectification, and one party reneges on the agreement and refuses to proceed with the rectification after receiving the consideration, the inherent power of the court may be invoked to do justice for the aggrieved party.

31 The Plaintiffs also relied on a contractual basis for their application to rectify, in that they have a contractual right to enforce the articles of memorandum of a company, a right separate and distinct from s 194. [note: 6] There is a fallacy in this argument. While the articles of memorandum can act as a contract between a company and its shareholders, that contract does not stand alone, as all contracts have to conform and comply with the governing law. The contract arising out of Article 6

must be subject to s 194(4), with the result that there is no contractual right to remove the 2nd Defendant as a member of Lee Brothers.

Conclusion

32 Having found that the inherent powers of the court should not be invoked to override s 194(4), I have to determine how that finding affects the Plaintiffs' prayers set out in [5]. I will start with the more obvious ones. Prayers 2, 3 and 4 fall clearly within the ambit of s 194(4), and prayer 5 as well, as it is dependent on and consequential to those prayers. Prayer 1 is outside of the scope of s194(4) because it seeks a declaration on matters of the future, that the members of Lee Brothers *shall* be restricted to natural persons , and does not seek any rectification. The question is whether the Defendants need such a declaration. It is neither relevant nor necessary to the dispute between the Plaintiffs and the Defendants. There has been no disagreement that the members of Lee Brothers shall be restricted to natural persons, and a declaration in those terms is unnecessary and of no assistance to the Plaintiffs for removing the 2nd Defendant from the register. This prayer is frivolous and is an abuse of the process of court. Prayers 6 and 7 have no purpose or basis without the preceding prayers. In the circumstances all the prayers are liable to be struck out.

33 I allow the Defendants' appeals and set aside the Assistant Registrar's orders, including the orders on costs, and I order that the Plaintiffs' originating summons be struck out. The Defendants are to have the costs of the appeals here and below, as well as reasonable disbursements, to be taxed if not agreed.

[note: 1] Affidavit of Lee Siew Ngug filed 29 May 2014, paras 16, 17 18 & 20

[note: 2] Notes of Hearing, page 5 ll13-15

[note: 3] Plaintiffs' Skeletal Submissions para 13

[note: 4] Plaintiffs' Skeletal Submissions para 32

[note: 5] Plaintiffs' Skeletal Submissions para 35

[note: 6] Plaintiffs' Skeletal Submissions para 28