

Ang Boon Chye and another v Ang Tin Yong
[2011] SGHC 124

Case Number : Suit No 803 of 2007/C (SUM No. 4499 of 2010/N)
Decision Date : 20 May 2011
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : Mak Kok Weng (Mak & Partners) for the plaintiffs; Tan Tiong Gee Andrew (Andrew Tan Tiong Gee & Co) for the defendant.
Parties : Ang Boon Chye and another — Ang Tin Yong

Contempt of Court

20 May 2011

Kan Ting Chiu J:

1 The matter under consideration is an application for leave to commence committal proceedings under O 52 of the Rules of Court (Cap 322, R5, 2006 Rev Ed).

2 The two plaintiffs and the defendant were partners operating a business named "All Family Food Court" ("the business"). Disputes between them led to the filing of an action by the plaintiffs for the defendant to indemnify them against additional income tax imposed upon them in respect of their shares in the business and an account and inquiry of transactions between them and the defendant, and the payment to them of their rightful share of the profits of the business. The defendant, on the other hand, counter-claimed for the dissolution of the partnership.

3 The action came on for hearing before Justice Tan Lee Meng. In his judgment dated 21 October 2008, Tan J ordered that an account be taken of all transactions of the partnership for the period 1999 to 2004, and he dismissed the counterclaim.

4 Subsequent to the judgment, the plaintiffs applied for an order that the defendant, in particular, was to lodge the accounts for the partnership for the period 1999 to 2004. The defendant was not prepared to do that. He opposed the application, but an Assistant Registrar ("AR") made an order on 1 December 2008 that he was to lodge the accounts by 2 April 2009. The defendant took his objection further and appealed against the AR's order, but his appeal was dismissed by Justice Judith Prakash on 5 January 2009. Although the Order of Court of 1 December 2008 was affirmed, the defendant did not lodge the accounts.

The application

5 The plaintiffs decided to take committal proceedings against the defendant. On 23 September 2010, the plaintiffs took the first step to apply for leave to apply for an order of committal. The statement filed in compliance with O 52 r 2(2) referred to Tan J's judgment, the Order of Court of 1 December 2008, Prakash J's order of 5 January 2009 and stated that the defendant had not complied with the Order of Court of 1 December 2008. In the plaintiffs' joint affidavit filed in support of the application, they affirmed that the defendant did not lodge the accounts by 2 April 2009 as ordered. Going by that assertion, the defendant was *prima facie* in contempt of court.

6 Although r 2(2) prescribed that an application for leave was to be made *ex parte*, the plaintiffs notified the defendant of the application. The defendant had filed an affidavit on 20 October 2010 to oppose the application and his counsel was heard on the application.

The defendant's affidavit

7 The defendant devoted a good part of his affidavit to the judgment and the application, but inexplicably, he did not address the Order of Court of 1 December 2008, or explain his failure to comply with it. Instead, he deposed:

15. I submit that the Plaintiffs are coming to this in bad faith, when they have each of them received a sum of \$274,500.00 from their investment. If each of them thinks that he is entitled to more than the amount received \$274,500.00 than it is for him to prove it in Court of Law but not through this committal proceeding against me personally!

Plaintiffs' Agreement To Retire

16. To this end, I wish to inform this Court on the 31st day of July 2009, the 1st and 2nd Plaintiffs had retired from the "All Family Food Court." A Deed in writing dated 8th August 2009 as evidenced of such a retirement is enclosed herewith ... In consideration from retiring from the Partnership, each of the Plaintiffs was to receive a sum of \$150,000.00. It is interesting to note that all the Partners are/were furnished with the Partnership's Profit and Loss Account as well as the Balance Sheet. Further, in consideration of the price of \$150,000.00, the Outgoing Partners (1st and 2nd Plaintiffs) assign to the Continuing Partners (inclusive of the Defendant) all the share and interest of the Outgoing Partners of and in the goodwill book debts and credits and all property of or belonging to the Continuing Partners in equal shares.
17. This agreement in writing speak volume about the conduct of the 1st and 2nd Plaintiffs in this proceedings. After they have been paid handsomely, they still want "blood" from me and attempt to put me incarceration to deprive me of my personal freedom. Committal to prison is normally a measure of last resort!
18. I respectfully pray that the Plaintiffs' application be dismissed with costs.

8 In the deed the plaintiffs were described as "the Outgoing Partners" and the defendant and two other persons as "the Continuing Partners". The clauses relevant to the present application are:

1. (a) The Outgoing Partners shall be deemed to have retired on the 31st day of July 2009 ("the Succession Date").

(b) The retirement of the Outgoing Partners shall not dissolve [sic] the partnership as between the Continuing Partners which partnership shall continue from and after the Succession Date.
2. A balance sheet as at the Succession Date and a profit and loss account from the date when the last partnership account was taken to the Succession Date shall be prepared by the partnership as soon as reasonably possible after the Succession Date.
3. Any undrawn balance of the Outgoing Partners' share of the net profits of the partnership for

the period since the date when the last partnership account was taken to the Succession Date including the apportionment of the cash in the bank account, deposits held by Tuas Power, SP Services and HDB be paid to the Outgoing Partners in accordance with their share in the Partnership within seven (7) days upon receipt by the Partnership the balance sheet and profit and loss account mentioned under paragraph 2 hereof.

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

The deed made no reference to the judgment of 21 October 2008 and the Order of Court of 1 December 2008.

Review of the defendant's objections

9 The defendant's assertion that "all the Partners are/were furnished with the Partnership's Profits and Loss Account as well as the Balance Sheet" fell short of saying that he had complied with the Order of Court of 1 December 2008 and had lodged the accounts of the partnership for the period 1999 to 2004 by 2 April 2009.

10 If the Order of Court had been complied with, that would be the first thing for the defendant to assert, and all that he needed to do was to state that clearly and simply and to substantiate that with proof. The defendant knew that the plaintiffs' case was that he had not complied with the Order of Court. When he did not dispute that in his affidavit, he is deemed to admit it.

11 I should add that even if the defendant had provided the accounts *after* 2 April 2009 (he had not said that), he would not have complied fully with the Order of Court of 1 December 2008, and he is liable to be found guilty of contempt. Likewise, the plaintiffs' retirement from the partnership on 31 July 2009 *per se* did not release the defendant from his liability to provide the accounts by 2 April 2009, and did not extinguish their right to take action against him on his failure to comply.

Conclusion

12 The defendant should intervene and object to the plaintiffs' application at this preliminary stage only in exceptional circumstances such as:

- (a) the Order of Court had been complied with;
- (b) the plaintiffs waived their rights to the accounts;
- (c) the plaintiffs had undertaken not to take out committal proceedings,

or on other grounds which go to the plaintiffs' entitlement to apply for leave to commence committal proceedings.

13 If the defendant's position is that although he had not complied with the Order of Court, his failure did not tantamount to contempt of court, then he should hold back, and put forward his case at the second stage of the proceedings when the plaintiffs apply for an order of committal against him.

14 In the circumstances, I found that the conditions for leave to institute committal proceedings against the defendant had been satisfied, and the defendant had not presented any grounds to withhold leave. I granted the plaintiffs' application but the defendant is not satisfied with my decision, and has appealed against it.

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