IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 226

Suit No 913 of 2018

Between

(1) Betty Lena Rewi
(2) Pitone Leauga

… Plaintiffs

And

(1) Brian Ihaea Toki
(2) Stacey Oscar Phua Chunming
(3) Vessel Offshore Management Pte Ltd

… Defendants

And

(1) Vessel Offshore Management Pte Ltd

… Plaintiff in Counterclaim

And

(1) Betty Lena Rewi
(2) Pitone Leauga

… Defendants in Counterclaim

GROUNDS OF DECISION

[Partnership] — [Dissolution] — [Effect]

[Partnership] — [Duties]
[Partnership] — [Partners inter se] — [Accounts]

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v
Brian Ihaea Toki and others

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23 October 2020

Chua Lee Ming J:

Introduction

1 The 1st plaintiff, Ms Betty Lena Rewi and her husband, the 2nd plaintiff, Mr Pitone Leauga, were in a partnership with the 1st defendant, Mr Brian Ihaea Toki, and his wife, the 2nd defendant, Ms Stacey Oscar Phua Chunming, which was dissolved in 2013. The present dispute concerned the use and sale of the partnership asset, a vessel known as the MV *Ngati Haka* ("the *Ngati Haka*"), post-dissolution and the final partnership accounts.

2 The *Ngati Haka* was registered in the name of the 3rd defendant, Vessel Offshore Management Pte Ltd, which was owned by the 1st and 2nd defendants. Before the partnership was dissolved, the 3rd defendant managed the *Ngati Haka* for the partnership and chartered it out on behalf of the partnership. After the partnership was dissolved, the 1st and 2nd defendants retained control of the

Ngati Haka and essentially carried on chartering out the *Ngati Haka* through the 3rd defendant, as it had done before the partnership was dissolved. Eventually, the 1st and 2nd defendants sold the vessel in September 2017 for USD790,000.

3 I found that the 1st and 2nd defendants were not entitled to continue operating the *Ngati Haka* as a business post-dissolution. I also found that in failing to accept an offer of USD1.2m that was made for the *Ngati Haka* in September 2014, the 1st and 2nd defendants had breached their duty to sell the *Ngati Haka* as soon as they reasonably could, in order to wind up the affairs of the partnership. I gave certain directions with respect to the finalisation of the partnership accounts, finding ultimately that the amount due to the plaintiffs was US$387,429.67. Finally, I dismissed the 3rd defendant's counterclaim for the plaintiffs' share of management fees and expenses for the period between 1 September 2017 and 30 November 2017.

4 The defendants have appealed against my decision.

Background facts

5 The 3rd defendant was incorporated in January 2010. At all material times, the 1st and 2nd defendants were the only directors and shareholders of the 3rd defendant. The 3rd defendant's main business was the provision of ship management and chartering services, and security consultancy services including the provision of armed personnel for the protection of commercial shipping and anti-piracy operations in the Gulf of Aden and East Africa.

6 The 3rd defendant acquired two escort vessels; one of these two vessels was the *Ngati Haka*.

7 On 1 August 2010, the plaintiffs and the 1st and 2nd defendants entered into a Vessel Partnership Agreement in respect of the *Ngati Haka* ("the Agreement").[1] The plaintiffs' share in the partnership was 40% and the 1st and 2nd defendants held the remaining 60% share. It was common ground that the *Ngati Haka* was beneficially owned by the partnership at all material times. The business of the partnership was to charter out the *Ngati Haka* for profit.

8 The partnership agreement was a simple one-page document and it was not disputed that the agreement was also governed by oral terms. One of the oral terms was that the 3rd defendant would manage and operate the *Ngati Haka*. The 3rd defendant charged a fee for doing so.

9 The 3rd defendant offered the *Ngati Haka* (on behalf of the partnership) to its customers for charter. If required by the customer, the 3rd defendant would also provide security services.

10 Disputes subsequently arose between the plaintiffs and the 1st and 2nd defendants. The partnership was dissolved by mutual agreement on 8 October 2013, with retrospective effect from 1 August 2013.[2] The plaintiffs and the 1st and 2nd defendants also agreed to place the *Ngati Haka* for sale in the open market.

11 Following the dissolution of the partnership, the 3rd defendant instructed a firm of auditors, TKNP International Accounting Services Pte Ltd ("TKNP"), to provide an audit of the accounts and earnings of the *Ngati Haka* from 1 January 2010 to 31 July 2013. The accounts prepared by TKNP dated 23 December 2013[3] ("the 1st Accounts") showed that as at 31 July 2013, the partnership was in a loss position to the tune of US$770,170.97.[4]

12 The plaintiffs disputed the 1st Accounts. Several items were disputed, including the management fees charged by the 3rd defendant, and the partnership's entitlement to the profits of the security services provided by the 3rd defendant.

13 On 7 September 2015, the plaintiffs commenced action in High Court Suit No 914 of 2015 ("S914/2015") against the 1st and 2nd defendants for various breaches of the partnership agreement.[5] The 3rd defendant was not a party to S914/2015. However, the 1st and 2nd defendants agreed for the purposes of S914/2015 that they had the authority to represent and bind the 3rd defendant.

14 S914/2015 was tried before me. On 4 May 2017, I gave my decision in S914/2017,[6] which included the following findings:

(a) The partnership was liable to pay the 3rd defendant (*ie*, Vessel Offshore Management Pte Ltd) a sum of US$100,000 per annum as reasonable remuneration for the management and operation of the *Ngati Haka*.

(b) The security services provided by the 3rd defendant were not part of the partnership's business and the partnership was not entitled to the profits of the security services.

15 Pursuant to my directions, TKNP adjusted the 1st Accounts to reflect the various findings that I had made ("the 2nd Accounts").[7] Based on the 2nd Accounts, I decided in S914/2015 that the partnership suffered a net loss of US$160,250.39 for the period from 1 January 2010 to 31 July 2013.[8] There was no appeal against my decision in S914/2015.

16 Notwithstanding the dissolution of the partnership, the 1st and 2nd defendants (purportedly on behalf of the partnership) continued with the business of chartering out the *Ngati Haka* through the 3rd defendant, which continued to manage and operate the *Ngati Haka.* Several charters of the *Ngati Haka* were entered into post-dissolution. Eventually, on 1 September 2017, the *Ngati Haka* was sold for US$790,000. The plaintiffs agreed to the sale of the *Ngati Haka* but reserved their rights as to the price.[9] The *Ngati Haka* was delivered to the buyer on 1 November 2017.[10]

17 On 19 December 2017, TKNP updated the 2nd Accounts to reflect the position for the partnership as at 31 August 2017 ("the 3rd Accounts").[11] The 3rd Accounts included the revenue and expenses relating to post-dissolution charters of the *Ngati Haka*. Based on the 3rd Accounts, a sum of US$209,000.14 (representing 60%) was to be distributed to the 1st and 2nd defendants and a sum of US$161,661.92 (representing 40%) was to be distributed to the plaintiffs.[12]

18 On 8 January 2018, the 3rd defendant sent the plaintiffs a cheque for US$166,661.92 and said that acceptance of the cheque would be "full and final settlement and discharge" of the plaintiffs' 40% share of the *Ngati Haka*.[13] The plaintiffs did not accept the cheque.

19 On 18 September 2018, the plaintiffs commenced the present action.

The parties' respective cases

20 The essence of the plaintiffs' claim was that the 1st and 2nd defendants, by themselves and/or through the 3rd defendant, breached their duties in failing to sell the *Ngati Haka* and wind up the partnership, within a reasonable time after the dissolution of the partnership. The plaintiffs claimed that the 1st and

2nd defendants were not entitled to continue with the business of chartering out the *Ngati Haka* after the dissolution of the partnership and that the partnership accounts should exclude the profit and loss relating to the post-dissolution charters. According to the plaintiffs, the 1st and 2nd defendants could have sold the *Ngati Haka* in September 2014 for US$1.2m.

21 The 1st and 2nd defendants denied any breach of duties. They claimed that no firm offer to purchase the *Ngati Haka* was received until July 2017 and that the sale of the *Ngati Haka* for US$790,000 in September 2017 was at the best price obtainable. The 1st and 2nd defendants also claimed that they had the obligation to continue to charter out the *Ngati Haka* until it was sold. Accordingly, they claimed that the 3rd Accounts (which included the profit and loss arising from the operations of the *Ngati Haka* post-dissolution) were correct.

22 As the 3rd Accounts were drawn up to 31 August 2017, the 3rd defendant counterclaimed against the plaintiffs for the plaintiffs' 40% share of the management fee and expenses for the period between 1 September 2017 and 30 November 2017.

23 In their respective defences, the defendants also claimed that the plaintiffs had accepted the cheque for US$161,661.92, which was issued on the basis that acceptance of the cheque would be in full and final settlement of the plaintiffs' share in the partnership (see [18] above). However, it was clear that the plaintiffs had not accepted the cheque and this defence was not pursued at the trial.

The issues

24 The issues before me were:

(a) whether the 1st and 2nd defendants were entitled to continue to charter out the *Ngati Haka* post-dissolution, without the plaintiffs' agreement;

(b) whether the 1st and 2nd defendants failed to sell the *Ngati Haka* within a reasonable time post-dissolution;

(c) how the partnership accounts should be drawn up; and

(d) whether the 3rd defendant was entitled to claim against the plaintiffs for the plaintiffs' 40% share of the management fees and expenses for the period between 1 September 2017 and 30 November 2017.

Chartering out the *Ngati Haka* post-dissolution

25 The plaintiffs' case was that upon dissolution, the business of the partnership ceased, as did the 1st and 2nd defendants' authority to bind the partnership. Therefore, the 1st and 2nd defendants had no authority to bind the partnership to the post-dissolution charters of the *Ngati Haka*. It followed that the revenue and expenses relating to the *Ngati Haka*'s post-dissolution charters ought not to be included in the partnership accounts. The plaintiffs pointed out that the 1st and 2nd defendants' authority to bind the partnership post-dissolution was limited under s 38 of the Partnership Act (Cap 391, 1994 Rev Ed) which reads as follows:

> **Continuing authority of partners for the purposes of winding up**
>
> **38.** After the dissolution of a partnership, the authority of each partner to bind the firm, and the other rights and obligations of the partners, continue notwithstanding the dissolution so far as may be necessary to wind up the affairs of the partnership, and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise:

> Provided that the firm is in no case bound by the acts of a partner who has become bankrupt; but this proviso does not affect the liability of any person who has after the bankruptcy represented himself or knowingly suffered himself to be represented as a partner of the bankrupt.

26 There were no transactions that had been begun but which were unfinished at the time of the dissolution. The previous charter had ended in June 2013.[14]

27 The defendants made several submissions. First, they submitted that the post-dissolution charters that the *Ngati Haka* entered into were within the object and ambit of s 38 of the Partnership Act, because these charters helped to defray the expenses of the *Ngati Haka*'s upkeep and maintenance pending sale.[15] However, this was not the defendants' pleaded case. In any event, in my view, it was clear that the post-dissolution charters were not necessary for purposes of winding up the affairs of the partnership.

28 The defendants referred to *Cragg v Ford* [1842] 1 Y & C Ch Cas 280 ("*Cragg*") and *Boghani v Nathoo* [2012] Bus LR 429 ("*Boghani*") in support of their argument. It was not clear from the defendants' submissions how these two cases helped their case.

29 In *Cragg*, the plaintiff and defendant were partners. Upon dissolution of the partnership, the defendant undertook the duty of winding up its affairs. The partnership incurred a loss due to the defendant's decision to delay the sale of some cotton, which belonged to the partnership at the time of its dissolution. The court held that the loss was chargeable to the partnership because the defendant had made the decision to delay the sale in honest exercise of his judgment and the plaintiff could himself have sold the cotton.

30 In *Boghani*, the partnership carried on the business of hotel development. At the date of the dissolution, the partnership assets included two uncompleted hotel developments. The court held that the completion of the uncompleted developments was not necessary in order to wind up the partnership and ordered the sale of the developments.

31 In my view, neither *Cragg* nor *Boghani* assisted the defendants. In *Cragg*, the defendant was clearly authorised to sell the cotton for the purposes of winding up the affairs of the partnership. In the present case, the 1st and 2nd defendants had no authority to enter into the post-dissolution charters on behalf of the partnership because they were clearly not necessary for the purposes of winding up the affairs of the partnership. As for *Borghani*, in fact, that case is against the 1st and 2nd defendants. In *Borghani*, the Court rejected the defendant's contention that the developments should be completed and then sold. Instead, the Court ordered the developments to be sold because completing the developments was not necessary in order to wind up the partnership. Likewise, in the present case, the post-dissolution charters were not necessary in order to wind up the partnership. The *Ngati Haka* should have been sold instead of being chartered out.

32 Second, it was not disputed that there was no express consent from the plaintiffs to the 1st and 2nd defendants continuing to operate the *Ngati Haka* as a business post-dissolution. However, the defendants submitted during oral closing submissions that the plaintiffs knew that the defendants were continuing to operate the *Ngati Haka* as a business post-dissolution and had not objected to the same. The defendants also submitted that the plaintiffs were estopped from claiming any breach of duty.[16] However, the defendants had not pleaded acquiescence or estoppel as a defence and were therefore not entitled to raise these in closing submissions.

33 Third, the defendants submitted that it was reasonable to infer an implied term that each party would continue post-dissolution to act in the best interest of the partnership to preserve the value of the *Ngati Haka* and prevent further loss to the partnership pending the sale of the *Ngati Haka*.[17] On this basis, the defendants argued that they were required to accept gainful employment for the *Ngati Haka* so long as they believed it to be in the best interest of the partnership to do so. I rejected the defendants' submission. It was again not the defendants' pleaded case. Further, I saw no reason why such a term should be implied. Dissolution of the partnership meant that the business of the partnership ceased. It did not make sense to imply a term which permitted the business of the partnership to be continued, post dissolution. This would have defeated the purpose of dissolving the partnership in the very first place.

34 Fourth, the defendants submitted that they owed a duty to take reasonable steps to mitigate the loss that the partnership had already incurred as of the date of dissolution.[18] Once again, this had not been pleaded. In any event, this too would have defeated the purpose of dissolving the partnership. Obviously, there was no certainty that doing so would have been profitable. In fact, the partnership had suffered a net loss of US$160,250.39 for the period from 1 January 2010 to 31 July 2013 (see [15] above). In my view, the 1st and 2nd defendants had neither the duty nor the authority to continue to expose the partnership to the risks of carrying on the business post-dissolution, without the plaintiffs' agreement.

35 What then was the defendants' pleaded case? The 1st and 2nd defendants pleaded that notwithstanding the cessation of the partnership business, the plaintiffs and the 1st and 2nd defendants continued to "have obligations vis-à-vis each other *qua* co-owners" and that the 3rd defendant would "continue to manage and operate the *Ngati Haka*" until it was sold.[19] This

defence however, was not pursued in their closing submissions. In any event, in my view, this defence was unsustainable.

36 In conclusion, I agreed with the plaintiffs that the 1st and 2nd defendants were not entitled to continue the business of the partnership, after its dissolution, by chartering out the *Ngati Haka*. They had no authority to bind the partnership to the post-dissolution charters of the *Ngati Haka*. The revenue and expenses relating the *Ngati Haka*'s post-dissolution charters could not therefore be included in the partnership accounts. I agreed with the plaintiffs that pending sale, the 1st and 2nd defendants should have placed the *Ngati Haka* in cold lay-up, during which the vessel would be idle and its machinery taken out of service. The cost of maintaining the vessel in cold lay-up would have been much lower than that required to keep the vessel in readiness for charter.

Sale of the *Ngati Haka*

37 On 14 January 2014, the 1st and 2nd defendants' then solicitors informed the plaintiffs that a brokerage firm, M/s John Hughes Associates ("JHA"), had been engaged to market the *Ngati Haka* globally.[20]

38 The 1st and 2nd defendants obtained a valuation of the *Ngati Haka*. The report, dated 31 January 2014, valued the *Ngati Haka* at US$845,000.[21] However, the 1st and 2nd defendants set the asking price for the *Ngati Haka* at US$2.2m.

39 On 17 September 2014, Mr John Hughes ("Hughes") from JHA informed the 3rd defendant's employee, one Mr Daniel Tan ("Daniel"), that he had enquiries from West Africa about the *Ngati Haka* but that the asking price of US$2.2m was too high.[22] In his reply, Daniel asked whether lowering the price by US$200,000 to US$300,000 "will make it".[23]

40 On 22 September 2014, Hughes informed Daniel that there was an offer of US$1.2m from potential Nigerian buyers and that he had replied to say that the "owners were not that desperate as to give a 100 percent reduction in price".[24]

41 On the same day, Daniel told Hughes that he had informed the 1st defendant about the offer from the Nigerian buyers and that the 1st defendant "will advice a counter offer later".[25]

42 On 23 September 2014, the 1st defendant told Hughes that the offer was "a bit steep off the mark from my initial US$2.2 Mil" and that if the buyers were "serious enough they will come closer to [US$1.8m] otherwise we are talking Chickens and Ducks".[26] The offer from the Nigerian buyers was not pursued further.

43 On 20 January 2015, the 3rd defendant received a query from a German ship broker for a "firm price" for the *Ngati Haka*.[27] Daniel forwarded the e-mail to the 1st defendant. It appeared that this was not pursued further.

44 In response to a query from Hughes on 24 February 2015, the 1st defendant told him that "my price is still fixed as per our last dialogue, so if we hit that mark then she is for sale".[28]

45 On 14 July 2015, Hughes informed the 1st defendant and Daniel that he was working with a German broker who had a client who was interested in purchasing the *Ngati Haka* but the asking price of US$2.2m was "far too high".[29] In his reply on 15 July 2015, the 1st defendant said that he would let the vessel go "if the price is right and the buyer is sincere" and told Hughes to give him "an offer we both cannot refuse".[30] Nothing came out of this enquiry.

46 By April 2016, the demand from the oil and gas industry for vessels had waned to the point that Hughes informed the 1st defendant that there was "zero interest" from the industry.[31]

47 On 2 September 2016, Hughes said that he had purchase enquiries from the Far East and on 3 September 2016, he asked the 1st defendant for the asking price.[32] The 1st defendant replied on 3 September 2016, saying that he was "willing to strip [the asking price of US$2.2m] down to US$1.5m because of the present industry situation" and added that "that can be negotiable depending on the seriousness of the buyer".[33] Hughes replied saying he would be "in touch next week" and the 1st defendant replied "no problems take your time, if we are going to this one right, lets not rush".[34]

48 A subsequent valuation of the *Ngati Haka* dated 14 June 2017 valued the vessel at US$280,000 "as it as afloat".[35]

49 On 25 July 2017, the 3rd defendant received an offer for the *Ngati Haka* at US$790,000. The sale of the *Ngati Haka* to Marine Logistics International Limited ("MOL") at US$790,000 was finalised and the Memorandum of Agreement ("MOA") was executed on 17 August 2017.[36] The Bill of Sale was signed on 31 August 2017. The vessel was finally delivered to MOL on 1 November 2017.

50 The plaintiffs submitted that the 1st and 2nd defendants did not make any efforts to sell the *Ngati Haka* within a reasonable time after dissolution and instead chose to carry on the business of the partnership despite the dissolution. In response, the defendants submitted that the sale of the *Ngati Haka* for US$790,000 in 2017 was at the best price obtainable in the circumstances of the case.

51 It was clear that the 1st and 2nd defendants undertook the duty to sell the *Ngati Haka* and wind up the affairs of the partnership. The *Ngati Haka* remained under their control post-dissolution. Also, they were the ones who engaged the services of JHA to sell the vessel, and the services of TKNP to draw up the partnership accounts. In my view, they were under a duty to sell the *Ngati Haka* as soon as they reasonably could, in order to wind up the affairs of the partnership.

52 I found that in failing to accept the offer of US$1.2m that was made in September 2014 (see [40] above), the 1st and 2nd defendants breached their duty to sell the *Ngati Haka* in order that the affairs of the partnership could be wound up. The *Ngati Haka* was valued at US$845,000 in January 2014. There was no reason for the 1st and 2nd defendants not to accept the offer of US$1.2m. They did not even attempt to negotiate. Instead, they insisted (in my view, unreasonably) on selling at a price closer to US$1.8m. The 1st and 2nd defendants did not consult the plaintiffs before they decided not to accept the offer. The 1st and 2nd defendants did not give any credible reason for not accepting the offer of US$1.2m or for insisting on a price of $1.8m. There was nothing in the evidence that suggested that the sale would not have gone through if the 1st and 2nd defendants had accepted the offer of US$1.2m. The potential buyer's identity was known and the offer had been made without any other conditions. Further, as the plaintiffs submitted, the *Ngati Haka* was marketable but for the out-of-market pricing by the 1st and 2nd defendants.

53 In my view, the evidence showed that the 1st and 2nd defendants had insisted on a price of US$1.8m and were not keen to sell the *Ngati Haka* at US$1.2m because they believed that they could earn more by continuing to charter out the *Ngati Haka*. It was true that the 1st and 2nd defendants bore a 60% risk of these charters and that they did not intend to make a loss by

continuing with the charters. Nevertheless, the fact remained that having agreed to dissolve the partnership and to sell the vessel, it was not open to them to continue with the charters without the plaintiffs' agreement.

54 Further, by continuing to charter out the *Ngati Haka*, the 1st and 2nd defendants also stood to gain through the 3rd defendant. The 1st and 2nd defendants purported to engage the 3rd defendant to continue managing the *Ngati Haka*. The 3rd defendant charged management fees to the partnership. In addition, the 3rd defendant had the opportunity to provide security services when the *Ngati Haka* was chartered out. Between January 2014 and October 2016, the *Ngati Haka* was chartered out seven times; the 3rd defendant provided security services in five of the charters. By continuing to charter out the *Ngati Haka*, the 1st and 2nd defendants were able to earn revenue for themselves through the 3rd defendant, at the plaintiffs' expense.

55 In my view, based on the evidence, the inference was strong that the 1st and 2nd defendants finally decided to sell the *Ngati Haka* in 2017 because there was no demand for charters of the *Ngati Haka* and the market value of the vessel had fallen drastically. Also, as it turned out, between 2014 and 2016, the *Ngati Haka* in fact suffered operating losses every year.[37]

The partnership accounts

56 As stated earlier, the 1st and 2nd defendants:

(a) were wrong to continue to charter out the *Ngati Haka* post-dissolution and instead should have placed the *Ngati Haka* in cold lay-up pending its sale; and

(b) should have accepted the offer of $1.2m for the *Ngati Haka*.

57 The affairs of the partnership could have been wound up with the sale of the *Ngati Haka*. Therefore, the partnership accounts should be drawn up to the date that the sale of the *Ngati Haka* could reasonably be expected to have completed, if the 1st and 2nd defendants had accepted the offer of US$1.2m.

58 The sale of the *Ngati Haka* that took place in 2017 took just over three months from the time that the offer was received to completion of the sale (see [49] above). The 1st defendant was informed about the offer to purchase the *Ngati Haka* at US$1.2m on 22 September 2014. Using the time taken in the actual sale in 2017 as a guide, I decided that it would be reasonable to assume that if the 1st and 2nd defendants had accepted the offer of US$1.2m, that sale would have completed by 31 January 2015.

59 I therefore directed that the partnership accounts be drawn up to 31 January 2015 based on the following:

(a) The *Ngati Haka* was not chartered out and was placed in cold lay-up after the date that the parties agreed to dissolve the partnership (8 October 2013).

(b) The *Ngati Haka* was sold for US$1.2m and the sale was completed by 31 January 2015.

(c) During the period from 8 October 2013 to 31 January 2015, the *Ngati Haka* incurred cold lay-up expenses at US$15,038.60 per month. This figure was derived from the expenses incurred for the six-month period from January to June 2017 (amounting to US$90,231.59)[38] during which time the *Ngati Haka* was not chartered out. In my view, these expenses were a reasonably good proxy for the costs of cold lay-up.

(d) A sale commission of US$50,000 should be charged to the partnership. This was the amount paid to JHA in connection with the sale of the *Ngati Haka* in 2017. In my view, this amount should be charged to the partnership since it would likewise have been payable if the 1st and 2nd defendants had accepted the offer of US$1.2m.

(e) The cost of the valuation that was done in January 2014 should be charged to the partnership. The expense was reasonably incurred and it was incurred before the offer of US$1.2m was received.

(f) The costs of drawing up the partnership accounts should be charged to the partnership.

(g) As the *Ngati Haka* was in Mombasa at the time that the parties agreed to dissolve the partnership, the costs of relocating the vessel to Singapore, for the purposes of selling it and winding up the affairs of the partnership, should properly be charged to the partnership.

(h) The management fees charged by the 3rd defendant after 8 October 2013 should not be charged to the partnership. The 1st and 2nd defendants were not authorised to continue with the business of the partnership after 8 October 2013. They were therefore also not authorised to enter into any agreement on behalf of the partnership, with the 3rd defendant for the management of the *Ngati Haka*.

60 TKNP drew up the partnership accounts accordingly. Based on the final accounts, the amount due to the plaintiffs was US$387,429.67.

The 3rd defendant's counterclaim

61 The 3rd defendant's counterclaim was for the plaintiffs' 40% share of the management fees and expenses for the period between 1 September 2017 and 30 November 2017. The reason for this counterclaim was that the management fees and expenses for this period had not been included in the 3rd Accounts which had been drawn up to 31 August 2017.

62 As stated earlier, the 1st and 2nd defendants were not authorised to enter into any agreement on behalf of the partnership, with the 3rd defendant for the management of the *Ngati Haka*, post-dissolution. Clearly, the 3rd defendants could not deny knowledge of the 1st and 2nd defendants' lack of authority to bind the partnership. Accordingly, I dismissed the counterclaim.

Conclusion

63 I concluded that:

(a) the post-dissolution charters of the *Ngati Haka* were not binding on the partnership and accordingly, the revenue and expenses relating to these charters were to be excluded from the partnership accounts;

(b) the *Ngati Haka* could have been sold in late 2014 for US$1.2m and the 1st and 2nd defendants breached their duties by failing to do so;

(c) the partnership accounts were to be drawn up to 31 January 2015 in accordance with the directions set out at [59] above. The result was that the amount due to the plaintiffs from the 1st and 2nd defendants was US$387,429.67; and

(d) the 3rd defendant was not entitled to its counterclaim and I therefore dismissed the counterclaim.

64 I ordered the 1st and 2nd defendants to pay interest on the sum of US$387,429.67 at 5.33% per annum from the date of the writ to judgment. I also ordered the defendants to pay the plaintiffs costs fixed at $100,000 plus disbursements to be fixed by me if not agreed.

Chua Lee Ming
Judge

Koh Chia-Ling, Timothy Quek and Norvin Chan (OC Queen Street) for the plaintiffs;
Lim Chen Thor Jason, Teng Boon Hui and Lim Xiao Ping (De Souza Lim & Goh LLP) for the defendants.

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1 1AB28.
2 1AB82–88 and 95–97.
3 1AB102–144.
4 1AB111.
5 2AB258–282.
6 3AB39–44.
7 3AB47–48.
8 3AB45.
9 Statement of claim, at para 12
10 1st defendant's Affidavit of Evidence-in-Chief, at para 53.
11 3AB252–270.
12 3AB269.
13 3AB294.
14 Notes of evidence, 25 March 2020, at 98:17–27, 100:2–18.

15 Defendants' Closing Submissions ("DCS"), at paras 73–74.
16 DCS, at para 56.
17 DCS, at para 57.
18 DCS, at para 75.
19 Defence of the 1st and 2nd defendants, at paras 3 and 5.
20 2AB37, at para 7.
21 2AB44–60, at 60.
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