

Koh Ewe Chee v Koh Hua Leong and Another  
[2003] SGHC 24

**Case Number** : OS 533/2000, SIC 600877/2002  
**Decision Date** : 11 February 2003  
**Tribunal/Court** : High Court  
**Coram** : Tay Yong Kwang J  
**Counsel Name(s)** : Raj Singam, Gopinath Pillai and Tan Siu-Lin (Drew & Napier LLC) for the Plaintiff;  
Chandra Mohan (Rajah & Tann) and Lim Khoon (Lim Hua Yong & Co.) for the Defendants  
**Parties** : Koh Ewe Chee — Koh Hua Leong; Koh Yew Huat

**The Background**

1. The parties in these proceedings are brothers, the Plaintiff being the eldest and the First Defendant being the youngest. Their father was Koh Sim, a rag-and-bone man involved in the buying and selling of second hand goods (i.e. the "karang guni" trade). The modest business grew and in 1965, the father registered it as a partnership called Sin Wah Seng ("SWS"). The first three partners were the father, the Plaintiff and the Second Defendant. The First Defendant became a partner in place of his father in 1978. When their father passed away in 1979, the First Defendant was the executor and beneficiary of the entire estate including the father's share in SWS. As time passed, things did not go well between the Plaintiff and his two younger siblings.

2. In an earlier action (Originating Summons No. 1930 of 1999) commenced by the two Defendants here, an order that the partnership be dissolved and that receivers and managers be appointed over its assets and liabilities was sought. The Defendants had appointed Chio Lim and Associates, a firm of certified public accountants, to review the partnership accounts with the intention of appointing them as receivers and managers but the Plaintiff disagreed with their choice. A report entitled "Sin Wah Seng - Special Review of the Accounting Records June 1997" ("the Chio Lim Report") had been prepared by Chio Lim and Associates. On 11 February 2000, the present Defendants served a notice of dissolution of the partnership on the Plaintiff. They then sought to amend their Originating Summons by adding a prayer for a declaration that the partnership had been dissolved on 11 February 2000. When their application came up for hearing on 13 March 2000, they withdrew it and informed the court that they would be discontinuing the Originating Summons, which they did on 6 April 2000. This was followed by the filing of the present action the next day by the Plaintiff.

3. This Originating Summons was commenced on 7 April 2000 seeking an order that Pricewaterhouse Coopers ("PWC") be appointed as receivers and managers of the partnership SWS which was dissolved on 11 February 2000. On 7 June 2000, the order sought was granted by T Q Lim JC who appointed Timothy James Reid and Chan Ket Teck of PWC jointly and severally as receivers and managers of SWS to take an account of the partnership debts/liabilities at the date of its dissolution.

4. In the present action, the receivers and managers, PWC, then prepared a report on 12 October 2001 ("the PWC Report") on the status of the partnership properties. This report was not disputed by the parties. There were seven properties in issue. PWC concluded that one was a partnership asset (1 Syed Alwi Road #01-02 Siong Lim Building) and another should be shared equally by the parties outside the ambit of the partnership (27 Kang Choo Bin Road). PWC was however unable to determine the status of the other five.

5. On 12 March 2002, the Plaintiff applied by way of Summons in Chambers No. 600395 of 2002 under the "liberty to apply" clause in the order of 7 June 2000. In that application, he applied for an order declaring that SWS was a sole proprietorship and that he was the sole proprietor. He also asked that the Court discharge the receivers and managers, declare that he was the sole owner of three of the seven properties and that the remaining four properties were held on resulting trust by the Defendants for him and order them to transfer legal title in the properties to him.

6. In his judgment of 3 May 2002, Choo Han Teck JC held that where substantial changes were intended to be made to the original or main orders, an application under a "liberty to apply" clause was not the proper procedure. The judge went on to explain why the application before him was a clear example of that. He commented that the action was taken out by the Plaintiff more than two years ago to appoint receivers and managers over an entity which the Plaintiff regarded as a partnership. After reviewing the assertions of fact made by the Plaintiff in support of his application, the judge said:

"The point is, the assertions now made are so fundamentally opposed to the basis of his application and his own declarations under oath that Sin Wah Seng was a partnership and that the Defendants were his partners. To correct so fundamental a premise, the entire order of court of JC Lim must be overturned and set aside and fresh pleadings be drawn up. It is not a minor improvement to be dealt with, least of all, under a "liberty to apply" appendage. The present cause was therefore irremediably lost from the outset".

The judge then dismissed the Plaintiff's application with costs.

### **The Present Application Before Me**

7. As the parties were in dispute over which of the properties were partnership properties and their respective shares therein, the Defendants took out the present application (Summons in Chambers No. 600877 of 2002) for the following orders:

(1) that the receivers and managers of SWS distribute all the assets of the partnership to the partners in equal shares;

(2) a declaration that the property known as No. 27 Kang Choo Bin Road is jointly owned by all three partners in equal shares or alternatively is a partnership asset; and

(3) that an inquiry be held as to who is/are the beneficial owner(s) of the following properties and if there are more than one beneficial owner, their respective shares therein:

- (a) 82/82A Jalan Senang
- (b) 12 Palm Grove Avenue
- (c) 1 Syed Alwi Road #01-05, Siong Lim Building
- (d) 2 Kallang Pudding Road #01-04, Mactech Building
- (e) 2 Kallang Pudding Road #01-12, Mactech Building.

8. On 29 July 2002, Lee Seiu Kin JC made directions as to the filing of affidavits by the parties. The judge ordered the Plaintiff to serve a copy of the Chio Lim Report on PWC so that PWC could

comment on that report. He then ordered the matter to be tried.

9. On 3 October 2002, Timothy James Reid of PWC filed his affidavit enclosing a report of the same date ("PWC Comments") setting out his comments on the Chio Lim Report.

10. At the hearing before me, the PWC Report, the Chio Lim Report (subject to what I state below) and the PWC Comments were admitted by consent. For the Chio Lim report, it was agreed that all references to an interview between the accountant and Gan Beng Tuck, the part-time bookkeeper of SWS, and the inferences drawn therefrom be deleted from the report. This was because none of the parties at the commencement of the hearing intended to call Gan as a witness and no affidavit was filed by him. I was also told that he was quite sickly. It was further agreed that the Defendants present their evidence before the Plaintiff's as this application was taken out by them.

### **The Defendants' Case**

11. During the hearing, I asked the Defendants' solicitors to prepare an aide-memoire on the seven properties in issue in order that all relevant information pertaining to them could be compendiously captured. I reproduce below the aide-memoire prepared by the Defendants' solicitors with some additional information inserted by the Plaintiff's solicitors:

#### **"AIDE-MEMOIRE ON PARTNERSHIP PROPERTIES**

##### **1. No. 82/82A Jalan Senang**

Registered in the names of Koh Sim ("KS"), Koh Yew Huat ("KYH") and Koh Ewe Chee ("KEC") as joint tenants

Purchased on 23 October 1969 (according to title deed)

According to Koh Hua Leong ("KHL"), purchase price was about \$64,000

No documentary evidence on mode of payment

##### **2. No. 12 Palm Grove Avenue**

Sale and Purchase Agreement executed between KEC and vendor on 6 July 1977

Registered in the names of KS, KEC and KYH as tenants in common in equal shares on 10 October 1977

According to M/s Wee Swee Teow, purchased in 1977 for \$275,500

Mode of payment:

i) Maybank cheque for \$27,500 drawn on KEC's personal account;

ii) Maybank cheque for \$80,000 drawn on KEC's personal account;

iii) Standard Chartered Bank cheque for \$100,000 from unknown source; and

iv) Maybank cheque for \$78,120 drawn on Sin Wah Seng i.e. Business Account.

### 3. #01-02 Song Lin Building

Registered in the names of KEC, KYH and KHL as joint tenants on 1 June 1984

According to M/s Wee Swee Teow, purchased in 1981 for \$983,958

Recorded as a partnership asset

Mode of payment was 10 Maybank cheques issued in favour of Industrial & Commercial Bank Limited for the account of Ko Hong Realty (Pte) Ltd. Account from which the cheques were drawn is unspecified.

### 4. #01-05 Song Lin Building

Registered in the name of KEC on 30 September 1986

According to M/s Wee Swee Teow, purchased in 1986 for \$520,000

Mode of payment:

i) Maybank cheque for \$52,000 )

drawn on Business Account ) charged to KEC's current

ii) Maybank cheque for \$288,016 ) account with the firm.

drawn on Business Account; and )

iii) Maybank cheque for \$200,000 drawn on KEC's personal account.

### 5. No. 27 Kang Choo Bin Road

Registered in the names of KEC, KYH and KHL as tenants in common on 15 August 1989

According to M/s Wee Swee Teow, purchased in 1989 for \$400,000

Mode of payment:

i) Maybank cheque for \$40,000 drawn on Business Account

ii) Maybank cheque for \$374,035 drawn on Business Account

Total purchase price was divided into three and charged to KEC, KYH and KHL's current accounts with the Partnership

6. #01-04 Mactech Building

7. #01-12 Mactech Building

Registered in KEC's name on 10 January 1996

Option initially granted in Sin Wah Seng's name but was subsequently transferred to KEC's name following a letter from Sin Wah Seng

According to M/s Wee Swee Teow, purchased together on or around 25 February 1991

Purchase price for #01-04 was \$625,000, purchase price for #01-12 was \$843,000

According to PWC's report, mode of payment was several Maybank cheques totalling \$1,485,620 of which \$328,500 was verified to have been paid from the Business Account in 1991 and recorded in the "City Development Ltd" account. The balance was confirmed by Maybank to have been drawn on KEC's personal bank account.

The \$328,500 paid from the Business Account in 1991 was subsequently charged to KEC's current account with the firm in 1993."

12. The Defendants (who affirmed two affidavits jointly) testified that on 28 June 2000, PWC sold the stocks and the motor vehicles of the partnership to the Plaintiff, now operating as Sin Wah Seng Trading for the amount of \$320,091.04. The Defendants accepted the PWC Report's conclusions that #01-02 Siong Lim Building was a partnership asset and that 27 Kang Choo Bin Road, although not a partnership asset, belonged to the three brothers in equal shares. More than two years had passed since the dissolution of SWS and no distribution of any of the partnership's assets had taken place.

13. In the PWC Report's Executive Summary, the following comments were made (with the Plaintiff referred to as "KEC" and the Defendants as "KHL" and "KYH" respectively and Siong Lim Building referred to as "Song Lin Building"):

"Our conclusions reached in respect of the seven disputed properties are:

1) Only #01-02 Song Lin Building can categorically be regarded as a Partnership asset. This is evidenced by the fact that the Property was recorded as an asset in the Partnership accounts and supporting documentary records. The Partnership has paid for virtually all the Property expenses and these were recorded as partnership expenses. There is also a confirmation from M/s Wee Swee Teow & Co., the solicitors engaged in the sale and purchase of properties, that the Property was purchased by the Partnership.

2) The Partnership may have an equity interest in 12 Palm Grove as funds from the Partnership account had contributed, in part, to the purchase price of the Property and the Partnership has borne certain expenses of the Property for several years. The Property is however not recorded as a partnership asset in the available Partnership accounts.

3) No 27 Kang Choo Bin Road should not be regarded as Partnership asset. We conclude it should be regarded as an asset to be shared equally by KEC, KYH and KHL outside the partnership. This is evidenced by loans made to each partner of an equal amount by the Partnership which were used to purchase the Property. The Property is not recorded as an asset in the Partnership accounts.

4) The remaining four properties of 82/82A Jalan Senang, #01-05 Song Lin Building, #01-04 and #01-12 Mactech Building cannot categorically be regarded as Partnership assets as:

a) these properties have not been recorded as assets in the available Partnership accounts and

b) there is no record in the available Partnership records which shows that the Partnership paid for the Properties other than that certain property expenses were borne by the Partnership for a certain period. Except for 82/82A Jalan Senang, KEC has produced documents to substantiate his claim that he had personally paid for part of the purchase price of the other three properties.

Due to:

1) insufficient conclusive evidence and information;

2) inconsistent treatment of certain property expenses in the Partnership accounts; and

3) the dispute over the share of the Partnership by KEC, KYH and KHL, we have not been able to categorically conclude whom is/are the beneficial owners(s) of the following properties:

a) No 82/82A Jalan Senang

b) No 12 Palm Grove Avenue

c) 1 Syed Alwi Road Unit #01-05 Song Lin Building

d) 2 Kallang Pudding Road Unit #01-04 Mactech Building and

e) 2 Kallang Pudding Road Unit #01-12 Mactech Building.

While KEC is disputing the share of the partnership that KHL and KYH are entitled to, it is appropriate to record that from 1986 the Partnership accounts were prepared and certain of the available tax computations show that each partner had contributed capital and received profit distributions on equal basis".

14. In their second joint affidavit, the Defendants refuted some of the assertions made by the Plaintiff. On the allegation that their father was not interested in the business but only wanted to smoke opium, they said their mother told them that their father only began consuming opium as a pain-killer in the mid-1970s when he was diagnosed with liver cancer. Until then, their father was in fact heavily involved in the karang guni business. Their mother would run the shop at 15A Larut Road while their father made his rounds from dawn to dusk in the British army camps in Sembawang to buy used goods. They denied that their father ceased his involvement with the business in 1963.

15. In respect of the Plaintiff's evidence that he had made money from tontines, the Defendants said it was their parents who took part in such as most of the tontine operators were good friends of their father. The Plaintiff was never involved in such activities. The Defendants did not know why their father chose the name Sin Wah Seng for the partnership but it was not because it was named after the Plaintiff, as he alleged, as he was never known by the name Wah Seng.

16. An account was opened with Malayan Banking Berhad for the business. Their father had a

personal account with Standard Chartered Bank and he would transfer funds from his personal account into the business account whenever the need arose.

17. The business thrived due to their parents' diligence. They rented a new shop at 19 Larut Road by paying \$9,000 to the existing tenants to move out. Their mother did the negotiations and raised the necessary funds. Their cousin, Koh Geok Chuan, was employed to help out in the growing business. Their mother tended to the shop everyday until the time of dissolution of SWS. In 1971, their parents purchased 19 Larut Road with the funds of SWS.

18. In 1969, the Plaintiff got married and their father bought 82/82A Jalan Senang using SWS's funds in order that the Plaintiff could have a home of his own. The property was registered in the joint names of their father, the Plaintiff and the Second Defendant. In 1970, their parents rented a terrace house at 56 Veerasamy Road to store their goods. As the house was big enough to accommodate the Plaintiff and his wife together with the Second Defendant, the three of them moved to Veerasamy Road so that the Jalan Senang property could be rented out. The Second Defendant moved back to Jalan Senang in 1985.

19. Around 1973, their father's friend recommended 3 Jalan Kudah to him. Their father viewed the property and decided to purchase it in the joint names of himself, the Plaintiff and the Second Defendant. This was acquired by the government in 1976. The compensation amount of \$133,000 was paid by three cheques of \$44,000 each.

20. In 1977, their father decided to purchase 12 Palm Grove Avenue to replace 3 Jalan Kudah. The compensation money was to be used to finance part of this purchase. As their father was quite ill then, he allowed the Plaintiff to handle the transaction. The cheques payable to their father and to the Second Defendant were therefore handed over to the Plaintiff. After completion of the purchase, the Plaintiff and his family together with the Second Defendant went to live there. The backyard of that property was used to store SWS's goods. The three brothers and Koh Geok Chuan, their cousin, helped in the unloading of the goods onto the property. They did not know how, in 1995, the Plaintiff managed to raise \$1.2 million to construct a new house on that property but surmised that the money was part of the funds of the partnership.

21. Their father had always wanted his three sons to be equal partners in the business. For that reason, he left his entire estate, which was mainly his share in SWS and its assets, to the Plaintiff in his will made on 23 December 1972.

22. Between 1980 and 1990, the Defendants received only \$1,000 each per month. Quarrels erupted from time to time with the Plaintiff as the Defendants felt that they, as partners, were entitled to more money because SWS was doing fairly well. It was only after much persuasion that the Plaintiff increased the amount to \$1,500 per month. They restrained themselves for a long time not to demand more from the Plaintiff by virtue of their blood ties.

23. After some time, it became obvious to the Defendants that the Plaintiff resented their presence in SWS and they saw no purpose in continuing the partnership. They denied that the Plaintiff had ever offered them two properties to appease them and in exchange for their departure from the partnership.

24. In cross-examination, the First Defendant said the financial matters of the partnership were essentially in the hands of their parents between 1965 and 1979. In the 1970s, their father's health began to deteriorate and he wanted to hand over the financial affairs of the business gradually to the Plaintiff. After their father died in 1979, the Plaintiff had complete control over SWS's financial

affairs. The bookkeeper, Gan Beng Tuck, was appointed by their parents and the First Defendant only saw him at SWS's premises once or twice a year. He agreed that all the entries in the accounting books were written by Gan who did the accounts between 1965 and 1997.

25. As a teenager in the 1960s, the First Defendant would help out by doing some chores for his father after school such as collecting money from third parties or delivering some goods. He began working in SWS on a full-time basis only after completing his national service in 1971. As SWS was a family concern, his father advised the three brothers to work together to develop its business. The First Defendant, who was not yet a partner then, made deliveries to places which were further away from the office, collected payment and helped in the administrative work for the import and export of goods. He also operated a forklift to unload goods that arrived at the store and went to the bank to arrange letters of credit. The scope of his work did not change much after he became a partner. As it was a family business, there was no clear demarcation of duties. The three brothers also had informal discussions but it was the Plaintiff who made the decisions. He denied that SWS was involved in only import of goods and not in export. He had limited literacy in English but most of SWS's customers spoke in Chinese dialects. SWS also employed a clerk.

26. The First Defendant's former car, its road tax and its insurance premium were paid for by SWS. His present car, like the Plaintiff's car, was also paid for by SWS. His salary as determined by the Plaintiff was \$1000 per month. After 1990, it was increased to \$1,500 per month. He received a yearly bonus of \$3,000. Whenever the Defendants asked for a higher amount, the Plaintiff would tell them the amount was sufficient so long as they had enough to spend. Even when it was the Chinese New Year, he would tell them the festivities only lasted one or two days. When he needed to go to China to seek treatment for his injured back, he told the Plaintiff he did not have sufficient money for that purpose and was given a cheque for \$8,000 from SWS's account. He did not have to return the money to SWS.

27. Gan Beng Tuck created a current account in the firm for each of the three partners. The First Defendant added that all accounts of SWS were handled by the Plaintiff and Gan. According to the accounting records prepared by Gan under the instructions of the Plaintiff, the First Defendant had withdrawn \$607,390 while the Plaintiff had withdrawn \$491,128. He did not know how these figures came about. Further, he had left SWS after a quarrel with the Plaintiff in 1986 over his meager salary and only rejoined the firm some three years later after much persuasion by their mother. He did not know how much the Plaintiff was paying himself from the firm's money. He also knew nothing about the \$1,269,391 shown in the accounts as having been paid into the firm by the Plaintiff.

28. When challenged on his evidence that his father had an account with the Standard Chartered Bank, the First Defendant said he knew his father had an account with that bank because he had gone to deposit cheques for his father at that bank.

29. Lim Kim Yan, the 93 year old mother of the three brothers, testified from a wheelchair. She was now living with her daughter. She said the Plaintiff greatly overstated his involvement in the business of SWS and marginalized that of everyone else in the family, including her late husband. She helped her husband in the business at a time when the three brothers were too young to be of any real help. The Plaintiff, contrary to what he said, was never known as Wah Seng.

30. She confirmed that 19 Larut Road was purchased by her and her husband in 1971 using SWS's funds. She also confirmed what the Defendants had said about 82/82A Jalan Senang. She also said that 3 Jalan Kudah was bought using the funds of the partnership. The decision to purchase 12 Palm Grove Avenue to replace 3 Jalan Kudah using the compensation money received from the government was made by her and her husband.



31. She agreed that it was always her husband's intention that their three sons share equally in the family business. Their only daughter had no share in the business. For that reason, he left his entire estate to the youngest son, the First Defendant. When she found out that the First Defendant had quarrelled with the Plaintiff and had left SWS, she persuaded him to return as she wanted all three sons to work together in the family business. The First Defendant was reluctant to do so but relented when he realized how much that meant to her. She confirmed that what the Defendants had said in their joint affidavit about her was correct.

32. In answer to questions put to her by counsel for the Plaintiff, Lim Kim Yan said she would like her three sons to benefit equally from the business regardless of their contributions. This was also the wish of her late husband. The three of them had worked together. Generally, the Plaintiff was in charge of collecting payments and issuing receipts, the First Defendant in charge of debts and customs declarations and the Second Defendant took care of the purchase of goods and assisted in their delivery. She would help to collect money from customers and hand the money to her husband.

33. She agreed that by the 1970s, her husband was very ill with liver cancer and was not spending time with the firm. He started taking opium in the late 1970s because of his illness. Gan Beng Tuck was the one who prepared the accounts of the firm since 1965. After the death of her husband, the Plaintiff took over the management of the firm. A friend of her husband, Peter Chew, assisted them in ordering wheelbarrows from Japan, the most profitable part of their business.

34. She was not able to say whether the Plaintiff participated in tontines. She said she actually did not know whether the compensation money for the acquisition of their property at 3 Jalan Kudah was used to pay for 12 Palm Grove Avenue. However, she said later in re-examination that the \$130,000 was used to purchase that property. Nevertheless, she maintained that all the properties were purchased using the firm's funds.

35. She disagreed that the Plaintiff was ever known as Wah Seng. He used to be called affectionately as Ah Yee. There was no particular reason why her husband chose the name SWS for the firm.

36. The final witness was the Second Defendant whose evidence was set out in the joint affidavits he swore with the First Defendant. He was now unemployed as the Plaintiff had asked him to leave the firm on 18 November 2002. He had continued working there despite the dissolution of the partnership in February 2000. In cross examination, he said he was the one who brought his mother to their lawyers to make her statutory declaration of 15 February 2001 and to do her affidavit of her evidence in chief of 17 July 2002. When his mother could not recall certain things during her conversation with the lawyers, he would remind her about them.

37. He testified that the Plaintiff was appointed the sole signatory of the firm's bank account by their father. The Plaintiff would issue cheques for them to purchase goods and would also deposit the business' cash and cheques into that account. After the demise of their father, the Second Defendant told the Plaintiff that there should be at least two signatories for the firm's account but the Plaintiff insisted on being the sole signatory.

38. He agreed that the Plaintiff handled the imported wheelbarrow business as their father could not read or write in English. The Plaintiff was assisted by the clerk, Peter Chew. However, it was their father who developed this new business. The Plaintiff was in full control of the financial matters of the firm and from 1965, he was in charge of the finance, the administration and the purchase of goods. Their father was still the head of the firm and the Plaintiff needed his approval before ordering goods and withdrawing money from the business account.

39. He signed as a witness on a letter dated 25 February 1991 from SWS to City Developments Ltd in respect of the purchase of the two Mactech properties, authorizing the developers to enter into the sale agreement with the Plaintiff as the purchaser and to transfer the 10% deposit to the credit of the Plaintiff. He was not told of the contents which were in English. He was not literate in English. He was asked by the Plaintiff in their business premises to sign and was merely told that the firm was buying two warehouses in Kallang Pudding. He saw SWS's stamp and the signature of the Plaintiff on the document. He then complied with the request and signed. Earlier, the Second Defendant had told the Plaintiff there was insufficient storage space for their goods and had asked him to look for more storage space. Subsequently, on the instructions of the Plaintiff, he went to the law firm of Wee Swee Teow & Company where a female lawyer told him SWS was purchasing two properties and asked him to sign as a guarantor. The lawyer told him he was signing as a guarantor only and the properties would not have his name as one of the owners. When he returned to the firm, he asked the Plaintiff why the properties were in his sole name when he was using the firm's money to purchase them and they quarrelled.

40. There were also many quarrels over the issue of the Plaintiff keeping the rentals for the properties bought with SWS's funds. Although the accounting books were accessible, the Second Defendant hardly ever looked at them. Being brothers, the Defendants trusted the Plaintiff and did not question him about the firm's earnings. Although they were unhappy with him, they did not take legal action against him because their mother told them not to.

41. In 1963, when Peter Chew went to their shop to look for their father, Peter Chew was already a bankrupt. The Plaintiff got to know him only after he had gone to the shop. The Second Defendant did not agree that the Plaintiff was solely responsible for starting and developing the import of new goods business. He needed the approval of their father as head of the business before ordering the goods.

42. The Second Defendant agreed that the firm paid six instalments for his car, a Mercedes-Benz. However, he paid the balance. The firm paid property tax and income tax for him. He denied that he took money from the Plaintiff for his holiday trips to Thailand. He was thrifty and managed to make some money by trading in Rolex watches as a past-time. He also denied having spent little time in the firm.

43. The Second Defendant denied strongly that the Plaintiff was ever known as Wah Seng. He affirmed what their mother had said about the Plaintiff being referred to as Ah Yee.

44. Where the Jalan Senang house was concerned, the Second Defendant and the Plaintiff and his family used to live on the second level while the first level was either used to store the firm's goods or was rented to others. The rental cheques were made out to the Plaintiff and the title deeds were kept in a safe by the Plaintiff. The property tax for the house was paid by the firm. The Second Defendant denied that the house was meant to be the Plaintiff's family home or that it was paid by the Plaintiff. He further denied that the compensation money for 3 Jalan Kudah was handed over to the Plaintiff because the said property belonged to him. The Second Defendant lived three years in 3 Jalan Kudah and eight years in 12 Palm Grove Avenue. He was presently living in the Jalan Senang house with his wife and his children. He denied that the Plaintiff had added his name and their father's to the title deeds of the Palm Grove Avenue property on his own volition out of filial piety. A new house was erected on 12 Palm Grove Avenue despite the Second Defendant's objections. Neither Defendant contributed anything towards its costs. The property tax was paid by SWS.

## **The Plaintiff's Case**

45. Before the Plaintiff began his testimony, his counsel informed me that they had given Gan Beng Tuck's address to the Defendants and would like to know whether the Defendants intended to call Gan as their witness. If they did not, the Plaintiff would like to consider the option of calling Gan as his witness.

46. The 60 year old Plaintiff, who currently resides at 12 Palm Grove Avenue with his family, claimed in his affidavit of 6 March 2002 that all seven properties in question were paid by him and therefore belonged to him. The registration of SWS as a partnership was a mere formality. It was, for all intents and purposes, a sole proprietorship with him as the controlling mind. He provided the capital and worked hard, taking from the firm only so much as was required to maintain himself and his family. His personal funds were used interchangeably with SWS's. He never paid himself any salary or a share of profits. He made cash advances to the firm and did not charge any rent for its use of his property as a warehouse. In short, he summarized, "there was no distinction made between my money and the firm's money". All payments made by the firm towards the purchase of the properties therefore originated from him.

47. The Defendants played no part in building up the business of SWS. They did the occasional delivery of goods and collection of sale proceeds and were essentially employees of the firm. The PWC Report of 12 October 2001 was based on documentary records and the firm's accounts and did not take into consideration the historical development of the firm and its true nature.

48. The Plaintiff then proceeded to tell his version of how SWS came into being. His father used to have a permit to run a roadside karang-guni stall along the corridor outside 15A Larut Road. His father was not very interested in the business, preferring to spend his time smoking opium and leaving his mother to tend to the stall most of the time. The Plaintiff would also help out after school. In 1956, his father decided to sell the permit after a big quarrel with his mother over money and his opium smoking.

49. The Plaintiff was 13 years old then. He realized that his father's heart was no longer in the business. However, their family's livelihood depended on it. He then decided to drop out of school to help out at the stall. Together with his mother, he managed to persuade his father not to sell the permit. He helped his father collect old goods and learnt to recondition them for sale. He also managed to pick up some knowledge on how to repair car jacks. Having had only Primary Six education in the Chinese stream, he could not speak or write in English.

50. As his involvement in the business grew, his father became less involved, preferring to spend his time smoking opium. His father would only cycle around the neighbourhood occasionally to look for used goods to buy. The Second Defendant was only about 9 years old then. He had also dropped out of school and spent his time playing with friends. The First Defendant was 7 years old and was in a boys' home as there was nobody at home to look after him.

51. The Plaintiff toiled at the stall and managed to earn \$30 to \$40 a day to feed the family of 5. He faithfully saved whatever excess there was and accumulated \$500 to open a personal account with the nearby Bank of Tokyo in 1958. When that bank relocated, he opened a new personal account with Malayan Banking Berhad ("MBB", now known as Maybank) to replace the first account.

52. The Plaintiff also started participating in tontines, paying a \$100 monthly fee to the tontine operators, the big groups being Soon Huat Heng, Lim Ban Seng and Eng Guan.

53. With the tontine proceeds and his savings, he bought 120 new imported Japanese wheelbarrows in 1963 at the price of \$22 each from a company owned by Peter Chew who used to go

to the Larut Road area to persuade the vendors to sell his imported goods. He made "a handsome profit" on this first batch of wheelbarrows and therefore began to purchase more imported Japanese goods in greater quantities. As a result, the secondhand goods business started by his father gradually changed into a new trade in quality, imported goods and his father ceased to be involved in the business from then on. The then 16 year old Second Defendant would only go to the stall to look up friends and go drinking with them while the First Defendant was still living in the boys' home at that time.

54. Around 1965, Peter Chew's business failed and he became a bankrupt. Peter Chew told the Plaintiff he could import the goods himself but would need to register a business in order to obtain the requisite letters of credit. The Plaintiff told his father what Peter Chew said and, after some discussions, they decided to register the business. His father applied for registration, naming the business SWS, with "Sin" meaning "new" and "Wah Seng" being the name people used to call the Plaintiff in school. Peter Chew would be helping the Plaintiff with correspondence in English and be paid a small commission.

55. The Plaintiff opened a business account with MBB, using money he had saved and would normally have placed in his personal account to open the business account of SWS. He was the account's sole signatory. That account was used mainly to apply for letters of credit and to receive cheque payments made out to SWS. Cash payments continued to be banked into his personal account. He would transfer funds from his personal account to the business account and vice versa whenever one was short of funds. He would use both accounts interchangeably for the running of the business. He "made no distinction between what was mine and what was the firm's because I was in total control of both accounts". It did not occur to him that he could withdraw a share of the profits for himself. He supported the family and used the excess money for the expansion of the business.

56. Gan Beng Tuck was a bookkeeper who would go to the shop once a year to collect the sales book, purchase book, bills and receipts from the Plaintiff. Gan would then take these home with him to prepare the accounts of SWS. As the Plaintiff had no knowledge of accounting, he never gave Gan any instructions on how to prepare the accounts. Occasionally, Gan would ask him questions to differentiate between personal and business expenses. Gan did SWS's account from 1965 to 1997 without much help from the Plaintiff.

57. About a year after the registration of SWS, when it was time to do the tax returns, the Plaintiff discovered for the first time that his father had registered the business as a partnership comprising his father, the Plaintiff and the Second Defendant. He did not see any harm in that since he continued to be in full control of the business. He also did not understand the legal implications from this as he did not even know what a partnership was. The business was not worth much then anyway and it was more important to give his father face and respect his wishes.

58. After the registration of SWS, business in Japanese pulley systems and jacks was very good. The Plaintiff also imported goods from England and Italy with the help of Peter Chew. The space outside 15A Larut Road was too small for the thriving business. Therefore, in 1968, he took over a two-storey shop unit at 19 Larut Road after buying out a Malay family which was renting the premises by paying them \$7,000 as "kopi money". That was SWS's first proper place of business and it was fortuitous that the Plaintiff rented that house as the Bukit Ho Swee fire which occurred soon thereafter destroyed their family's attap house there. The family then moved into 19 Larut Road as well.

59. With the construction industry expanding rapidly during those years, SWS also had a booming

business. Despite that, the Plaintiff operated with minimal help on a cash-and-carry basis. The firm did not make deliveries and where it had to arrange for trucks to deliver bulk orders, it was the customer who had to pay for the hire of those trucks. A relative, Koh Geok Chuan, helped with the day-to-day running of the firm by doing things like carrying and stacking up the goods. The Plaintiff's mother also helped out occasionally with some light work. Peter Chew would go to the firm in the afternoon to write letters to the overseas suppliers. His father would merely loiter in the neighbourhood. His two brothers also rendered no assistance to the Plaintiff.

60. The Plaintiff placed more money with the tontines now. From \$100 per month, the payment became \$1,000 every month. With his prudent savings, he managed to buy 19 Larut Road for about \$6,000 around 1971. However, that house was insufficient for the family as it was used for storage as well. The First Defendant was also back with the family. Accordingly, in 1969, the Plaintiff decided to purchase a place of his own and bought 82/82A Jalan Senang for some \$69,000. He paid off the previous owners' outstanding loan of \$26,000 and paid the balance of some \$43,000 by cheque in two instalments to the law firm of Wee Swee Teow & Company. Although it was bought for his own residential use, his father told him to register the property in the joint names of the Plaintiff, his father and the Second Defendant. His father felt that the property should be kept in the family and if it was registered in their three names, none of them could sell the property without the consent of the others. The father's wishes were complied with out of filial respect and piety. The Plaintiff had no intention of selling the property anyway and all in the family were on good terms. The 27 year old Plaintiff then moved in to the newly acquired house with the Second Defendant.

61. That same year, the Plaintiff got married and his wife went to live in Jalan Senang, too. She also helped out in the business.

62. About a year later, the Plaintiff felt the house was too far from the shop. He therefore rented and moved to 56 Veerasamy Road which was near Larut Road. The ground level of the Jalan Senang property was then rented out while the Second Defendant continued living on the second level.

63. Around 1973, a property agent recommended to him 3 Jalan Kudah, a bungalow with an area of 15,000 square feet, which was being offered for sale at a cheap price. The Plaintiff bought the property for \$79,000 using his savings from the business and his tontine proceeds. Again, his father wanted him to register it in the same names to keep the property within the family and, "not foreseeing any dispute over ownership", the Plaintiff complied. He occupied this property with his wife and three children while setting aside a room for the Second Defendant who led his own life despite living in the same house. The back of the house was used as a store for some of the goods of SWS.

67. When this property was acquired by the government in 1976, the compensation amount of \$133,000 was paid in three cheques of \$44,000 each and, in acknowledgment of the fact that it was the Plaintiff who had paid for the property, his father and the Second Defendant handed him their cheques which he banked into his personal account.

68. In 1977, the Plaintiff saw an advertisement for and later agreed to buy 12 Palm Grove Avenue to replace the acquired property. The agreed price was \$255,000 but he was to discover subsequently that the owner had granted an option to another prospective buyer to purchase at the price of \$265,000. As he really liked the property and was too tired to go house-hunting again, he offered the owner \$275,000 and paid him another \$500 to retrieve the title deeds from his lawyers so that the sale could be concluded smoothly. The sale and purchase agreement was signed naming him as the sole purchaser as it was meant to be his family home.

69. He paid the price using his savings, the tontine proceeds and the compensation money. A total of four cheques were used:

- (1) MBB cheque 029623 for \$27,500;
- (2) MBB cheque 029624 for \$80,000;
- (3) Standard Chartered Bank cheque 412003 for \$100,000; and
- (4) MBB cheque 374571 for \$78,120.

The first two cheques were drawn on his personal account while the last one was drawn on the business account of SWS. The \$100,000 cheque was most likely a cash cheque issued to the Plaintiff by one of the tontine operators which he then used for part of the purchase price. When told later in cross-examination that his then solicitors, Wee Swee Teow & Company, had confirmed that this cheque was issued in favour of the law firm, he said it was a crossed cash cheque. He explained later it was possible in 1977 to sign over a cash cheque to a third party if the words "or order" were not crossed out.

70. Subsequently, 12 Palm Grove Avenue was registered in the same three names "in accordance with family practice for all properties intended to be kept within the family". The Plaintiff and his family have been residing there since 1977. The backyard was used as a store for SWS's goods which he would personally unload and store. Koh Geok Chuan would go to the house every morning to deliver goods to the shop.

71. Again, a room was set aside for the Second Defendant's use. About three years later, the two brothers quarrelled and the Second Defendant then moved back into the Jalan Senang house. The quarrel arose as a result of the Second Defendant's penchant for cars. He would change his car every two or three years and although the Plaintiff paid for all his previous cars, he refused this time to buy him a new Mercedes-Benz. The Plaintiff could not afford to pay for a luxury item like that as he already had to provide for his family, his aging parents, his siblings and his business.

72. In 1995, the Plaintiff won in a lottery. He then used his winnings and some savings to build a new house in addition to the existing one on the Palm Grove Avenue property. He spent \$1.2 million doing this.

73. The Plaintiff claimed he did not know his father had transferred his share in the partnership to the First Defendant in September 1978 and that the registered partners of SWS had thereafter been changed to him and the two Defendants. When his father passed away on 1 May 1979, leaving all his assets to the First Defendant in his will of 23 December 1972 (in which the testator was described as a merchant), the Plaintiff found out for the first time from his mother about this. However, he viewed this change as a mere formality as he remained in full control of all aspects of the business.

74. It was around the time of their father's demise that the First Defendant completed his national service and moved into 56 Veerasamy Road, the rent for which the Plaintiff continued to pay. The First Defendant started helping out at the shop by making deliveries and collecting money, using a lorry belonging to SWS. Deliveries were made once a day from about 10 am to 12 noon and only when necessary. After making the deliveries, or when there was no delivery to be made, the First Defendant was free to do whatever he wished and he would usually leave the shop. Occasionally, the Second Defendant would help with the deliveries, especially when the youngest brother was not around. Otherwise, he would hang out with his drinking buddies at the shop.

75. The Plaintiff paid his two younger brothers \$1,000 each month from 1980 to 1989. He also paid them year-end bonuses and paid for all their bills and expenses, including rent, utility and telephone bills, income tax, renovation bills and car instalment payments. He also paid for their holidays overseas using the firm's money as well as his own as he made no distinction between the two sources. SWS continued to be run as a sole proprietorship with the Plaintiff as the controlling mind, will and force and the sole contributor of capital and effort. Customers addressed him as "boss", knowing SWS was his and that "Wah Seng" was actually his name.

76. Knowing that the government was going to acquire 19 Larut Road compulsorily, the Plaintiff purchased #01-02 Siong Lim Building as SWS's new place of business in 1981. "In accordance with family practice", he registered this in the joint names of the three brothers. However, he continued to operate out of Larut Road until 1996, using the Siong Lim Building unit only as a store until then. The compensation money for 19 Larut Road was paid in two instalments. The first one of \$19,000 was used for the business. The second instalment of \$72,000 was banked into the business account. As he made a tidy profit from this, out of goodwill, he made out two cheques for \$24,000 each to his two brothers. In a later affidavit, he explained that he did prepare these two cheques but was told later by their mother that the two younger brothers had decided to give the money to their sister, Koh Ah Hua, to purchase a HDB flat. He therefore made out two cheques for \$24,000 each to their sister so that she would know that the money was a gift from the two Defendants. He also gave his \$24,000 to their sister.

77. In the mid-1980s, the First Defendant started having quarrels with the Plaintiff over his demands for power and authority in the running of SWS and that he be made a joint signatory for the business account. He also wanted to sell goods to his friends on credit. The Plaintiff refused his demands as the funds in the business account were his hard-earned money and there was no reason why he should need another's approval when he wanted to make a withdrawal. He was also not prepared to take unnecessary risks selling on credit to people he had no previous dealings with. As a result, the First Defendant would absent himself on some days and the Second Defendant had to be called upon to do the deliveries. When he did turn up for work, he would have a very bad attitude and this caused some customers to make complains. In 1984, a violent quarrel erupted between the two Defendants over the burden of deliveries and the First Defendant then left the firm in a fit of anger, staying away for three years. However, the Plaintiff continued to give his family \$500 monthly and to pay for his expenses such as the utility and telephone bills and his income tax.

78. In 1986, the Plaintiff noted that #01-05 Siong Lim Building was being offered for sale at a bargain price of \$520,000. He decided to buy it to be used as another store. However, as he was offered an attractive rent by some businessmen, he decided to rent it to them. Realizing from his quarrels with the First Defendant that he could not assume that ownership over the properties would never be disputed, he decided to register this property in his sole name. He used two cheques from the business account and one cheque from his personal account to pay for this property.

79. He was told that the bookkeeper Gan had charged \$340,016 drawn on the business account to his current account with SWS. He had no knowledge of accounting procedure and did not know why Gan did this or the significance thereof. In respect of property transactions, Gan usually only asked him whether they were for business or for personal use. He was now advised that his current account with SWS actually represented his share of the firm's profits anyway.

80. Upon finding out that he had purchased yet another property, the First Defendant asked to return to SWS in 1986 to help in the delivery of goods again. After much persuasion by their mother, the Plaintiff relented as he continued to feel responsible for his brother's wellbeing. However, once the First Defendant was back in the firm, he made it clear that he was there just for the money. Despite

knowing he was unrepentant, the Plaintiff allowed him to remain in SWS. The First Defendant kept asking their mother why #01-05 Siong Lim Building was registered in the Plaintiff's sole name as he wanted to be included as an owner. Their mother informed him it was the Plaintiff's decision and that he had decided that the Second Defendant be excluded as well.

81. The First Defendant also began grumbling about having to live in rented housing at 56 Veerasamy Road. After taking stock of his finances, the Plaintiff decided he could afford to buy another property for the First Defendant and his family. In 1989, he bought 27 Kang Choo Bin Road for \$400,000 and paid for the extensive renovation. He could not recall whether the purchase price had come out of the business account or his personal account but found out later that it was paid by the firm and was subsequently divided into three equal amounts and charged to the current accounts of the three brothers although he had no idea why this was done. Although this property was bought for the First Defendant, it was registered in the three brothers' names "in accordance with family practice for every piece of property which was intended to be kept in the family".

82. In 1990, he increased his brothers' salaries to \$1,500 per month to match the increased cost of living and because they now had their families to support. They took care of their own household expenses including those for their children's education but the Plaintiff continued to pay the utility and the telephone bills, their income tax and other miscellaneous expenses. In 1996, their salaries were further increased to \$3,000 a month. Nevertheless, the quarrels among the brothers about their shares in and control of SWS went on unabated.

83. He received a warning notice from the authorities stating it was an offence to store goods on residential premises and was told to remove the goods stored in the backyard of 12 Palm Grove Avenue. He therefore had to look for alternative premises and managed to buy the two Mactech properties in 1991.

84. On the day he decided to purchase the Mactech properties, he did not bring his cheque book along and could not pay the deposit of \$146,000 to the developers. He was told the number of available units was limited and, not wanting to miss the chance to buy these two properties, returned to 19 Larut Road with the developers' representative to get his cheque book. However, he could not find the cheque book for his personal account there. He therefore had no choice but to use the cheque book for the business account instead. The next day, he replaced the amount withdrawn by transferring \$150,000 from his personal account to the business account. He was to explain later in cross-examination that that was done as the business account did not have enough money to pay on the cheque and he had told the developers' representative to bank in the cheque for the 10% deposit two days later. Since payment of the deposit was made with the firm's cheque, the option to purchase the properties was issued in the firm's name. He was subsequently advised by his solicitors that SWS was not a company and could not hold property. He then instructed his solicitors to transfer the option to him as the properties were bought by him for his own use anyway. He did not know how the transfer was done but found out only during the course of the present proceedings that a letter of authorization had been signed by the firm on 25 February 1991 authorizing the developers to enter into a sale and purchase agreement with him. He knew nothing about this letter before that time. The two units were registered in his sole name as he knew by then the First Defendant's intention to stake a claim on all properties registered in their joint names even if he did not pay a cent for them. Out of the \$1,485,620 paid for these two properties, more than \$1 million came out of his personal account while the rest was from the business account of SWS. The latter amount, he was to learn later, was charged by Gan to his current account in the firm.

85. #01-04 Mactech was initially used as a warehouse but was subsequently rented out. #01-12 was used as a warehouse from the time of purchase. He had never asked for any rental to be paid by



SWS as he "never made a distinction between what was the firm's and what was mine".

86. Sensing the First Defendant's increasing unhappiness, their mother persuaded the Plaintiff to give up some of the properties registered in his name to the two younger brothers in order to appease them. He finally relented and decided to give #01-04 Mactech to the Second Defendant and #01-05 Siong Lim Building to the First Defendant so that they could start their own businesses. As a trade-off, he wanted his two brothers to leave SWS and his home alone. However, their greed caused them to stake a claim on SWS, on his home and on the other Mactech unit as well. Disgusted with their attitude, he withdrew his offer of the two properties.

87. Things came to a head in December 1999 when the two younger brothers filed their Originating Summons seeking dissolution of SWS. The Plaintiff allowed the accountants instructed by his brothers free access to the firm's books and documents and even volunteered information about the firm's history and his capital contributions. Although that action was subsequently discontinued after the notices of intention to dissolve the partnership had been served, the Plaintiff decided to have a final determination on the question of ownership of the properties and therefore filed the present Originating Summons. The Second Defendant continued to work occasionally for the Plaintiff even after the dissolution of the partnership.

88. The Plaintiff asserted that all amounts paid by SWS towards the purchase of the properties were consistently charged to his current account with the firm anyway and such account represented his entitlement to the profits. Accordingly, such amounts could be regarded as having been offset against his share of the profits and were therefore his own money. In any event, if the firm should be held to have an interest in some of the properties, his overwhelming contributions to SWS ought to be recognized and a division in equal shares would be most unfair to him.

89. In his affidavit of 21 June 2002, the Plaintiff stated he was advised that Choo Han Teck JC acknowledged that the true nature of SWS had not been determined and the issue of whether it was indeed a partnership was still at large. His affidavit of 12 August 2002 was filed to respond to his brothers' joint affidavit and to his mother's affidavit.

90. In cross-examination, the Plaintiff said that after Gan had prepared the tax returns for the partnership, he would ask the Plaintiff to sign at the space marked with an "X". Gan did not explain the numbers to him beyond telling him how much each brother had to pay in taxes but he trusted Gan. Although the returns indicated that the basis of distribution of profits and losses was 33.333% each, the Plaintiff did not pay much attention to that as his brothers had never asked for one third of the profits and had never contributed any money when there were losses. He agreed that the returns prepared in February 1997 also stated his salary was \$3,000 a month and that of his brothers as \$2,500 a month and that they each made a capital contribution of \$200,000 although the Defendants never contributed any capital. He never questioned Gan or the accounts prepared by him.

91. Gan left the Plaintiff's employ after a quarrel among the three brothers. The returns from 1999 were prepared by the Plaintiff's son who had studied accountancy in university. He did not tell his son how to prepare the returns. Although his son did try to explain the accounts to him, he did not understand them. The allocation of profits was now 33.34% for the Plaintiff and 33.33% for the other two brothers. The returns done in 2000 showed that the Plaintiff's salary was \$18,000 while the other two had salaries of \$39,000 each. The Plaintiff claimed he received no salary as SWS was his. The Plaintiff did not keep any copy of the tax returns and the Defendants obtained the copies from the tax authority. He kept only his notice of assessment of tax.

92. Although the accounts showed payments to a certain "Three Companies" (written in

Chinese as "San Kong Ser"), the Plaintiff could not elaborate on what they were about. Asked whether he had since spoken to Gan about this, he replied that he had but Gan merely asked him to look up the account books himself as he claimed it was reflected in the account books. The Plaintiff never dealt with any entity known by this name.

93. After the construction of another house on the Palm Grove Avenue property, there were now two house numbers – 12 and 12A. To build the new house, he used his lottery winnings which came up to more than \$450,000. He produced copies of the cheques paid to him by the operators of the lottery. He also used his tontine proceeds although he could not tell how much he made from tontines on average. He treated tontines as a form of savings but never made any calculations.

94. #01-05 Siong Lim Building was purchased in his own name as he was afraid at that time he might not have sufficient resources and might have to sell the property. In that eventuality, if there were other registered owners and they refused to sell, he would be in trouble. In any event, the funds from SWS's business account were his. 27 Kang Choo Bin Road was mortgaged to MBB for \$150,000 as he was in need of money to buy goods for SWS at that time.

95. Asked about the letter of authorization for the two Mactech units, the Plaintiff now agreed the signature on the right side of the letter was his. However, he said he was not aware that the Second Defendant had signed as a witness as he did not ask him to do that.

96. The Plaintiff claimed he knew nothing about his father's will until after his death. His father had gone to a law firm on his own to make the will. He was also not involved in the probate application and did not know why his father's estate included a one-third share in 12 Palm Grove Avenue and in 82/82A Jalan Senang. He also did not know why it was stated that an amount of \$28,868.72 was due to the estate from SWS. He denied that his father had cancer. He claimed it was diabetes and a heart condition. The death certificate listed "congestive cardiac failure, ischaemic heart disease, hypertension" under "cause of death".

97. His mother was not involved in the running of SWS. She merely helped the Plaintiff look after the stall when he went for lunch.

98. The Plaintiff maintained he was registered as Koh Wah Seng in Kai Kok School, now defunct, although his name appeared as Koh Ewe Chee in his birth certificate and in his identity card.

99. Questioned whether the Bank of Tokyo would have allowed him to open an account in 1958 when he was only 15 years old, the Plaintiff insisted that the bank did. He could still recall the account number was 1152. It was never closed although he had stopped using it after the bank relocated from Arab Street. It had only a few dollars in it at that time.

## **The Decision Of The Court**

100. At the conclusion of the Plaintiff's testimony, upon confirmation that the Defendants were not calling Gan Beng Tuck as their witness, counsel for the Plaintiff applied orally for leave to call Gan as a witness, stating they did not know the accounts were in issue until the Defendants filed their Opening Statement. I was told Gan had indicated he was willing to come to Court if asked to do so. I dismissed the application as it came so late in the proceedings when it should have been obvious to the Plaintiff, who claimed to have been solely in charge of the administration and finance of SWS and who yet professed to know absolutely nothing about the firm's accounts or tax returns, that he should have called as his witness the person who could testify about the financial statements. That person used to be in his employ and he was the only person who had dealt with the bookkeeper. It

should also have been obvious to the Plaintiff that there were many unanswered questions regarding the firm's finances despite the Chio Lim Report and the PWC Report.

101. I should state first of all that the Plaintiff's conduct in commencing this action under the auspices of the Partnership Act and then seeking to undermine the very substratum of the action by his subsequent application before Choo Han Teck JC did not speak well of him at all. It seemed to me he was so determined to claim the disputed properties as his own it did not matter that what he was saying was a self-contradiction. Choo JC saw the "fundamental" contradiction and I also saw the same. I was not at all impressed with the argument that the status of the firm had not been conclusively determined by the Court. There was no need to make any such determination because it was the very foundation on which the Plaintiff had proceeded in the first place.

102. It was common ground that no express agreement existed insofar as the sharing of the profits of SWS was concerned. The only way the presumption of equality among partners contained in section 24 of the Partnership Act could be displaced would therefore be an implied agreement among the partners.

103. To believe the Plaintiff's evidence, one would have to conclude that he was an extremely precocious teenager, imbued with business savvy at the age of 13 and the only responsible male in the Koh family. While this was not impossible, his testimony was contradicted by his brothers and, more importantly, by his own mother. I accepted the evidence for the Defendants which showed that the father was not the irresponsible opium addict he had been made out to be by the Plaintiff. On the contrary, the father was clearly concerned about his sons and wanted each of them to share the fruits of his humble labour. I found it hard to believe that the Plaintiff would discuss the proposal to set up a firm with a father who had totally lost interest in and ceased involvement in the family business and then entrust the task of registering it to his vagabond father who was hooked on narcotics for years. I found it even more incredible that he would leave the matter of choosing a name for his first business firm to such a parent. As he said, it was his father who gave the name SWS on his own accord. It was absurd that his father would then include his own name and that of the Second Defendant as partners without the knowledge and consent of the Plaintiff. I also accepted the evidence of the mother that the Plaintiff was never known as Wah Seng in his younger days. She would have known of this name if her husband had chosen it for the name of the business on the basis that it was the name of his son.

104. The truth was that SWS was his father's initiative and he wanted his three sons to work together for the good of their family and share equally in the rewards. The First Defendant was too young then to be involved in the business. That was probably why, when the First Defendant had completed national service and started to work formally in the firm, the father made his will in December 1972 to give all his earthly possessions to the youngest brother. After the death of the father, the estate duty certificate indicated he had a one-third share in SWS, evidencing the true state of ownership of SWS. The amount due from SWS to the estate could only have come from the Plaintiff in the circumstances.

105. Even if the Plaintiff really had no hand in the preparation of the said certificate since it was the First Defendant who was appointed the sole executor of the father's estate, it could not have been a coincidence that the tax returns and accounts all pointed towards a partnership of three equals. These documents were always within the control and direction of the Plaintiff. Gan Beng Tuck, an outsider who went to the firm once or twice a year to do bookkeeping, could not have taken it upon himself to declare a partnership of equals if the documents provided by the Plaintiff did not indicate as much or if the Plaintiff had not given him such instructions. Even the Plaintiff's son, trained in accountancy, treated the firm as comprising three equal partners in the preparation of the

tax returns in recent years. Would he have done that if his father had informed him that the firm and he were one and the same? Even though the Defendants did not contribute the capital indicated, the implication was clear – the Plaintiff knew it was a partnership of equals. Why the accounts were rendered in that manner was something only he or the persons working under his instructions or directions could answer.

106. The Plaintiff's assertion that he who contributes the most must be compensated the most in a partnership has no place in the law governing partnerships unless the partners agree that is to be the case. I accepted that the Plaintiff was probably the one among the three who had the best business acumen. However, the said section 24 establishes equality as the foundation in the absence of agreement. There is sound reason for this. People go into partnerships by consensus and not by coercion. They are at liberty to choose the people they want to work together with and it is assumed that they have a good reason for wanting others as partners. The abler or wealthier may wish to assert himself by demanding a higher reward than the rest. If the other proposed partners agree, they go into partnership. If they do not, they part ways. Therefore, if they do get together and say nothing about the division of rewards, it is only natural and fair that equality is assumed.

107. The Plaintiff could have terminated the partnership or insisted on an agreement that he be given the largest share of the profits if he felt he was the indispensable driving force of SWS, but he did not. Of course it could also be argued that the Defendants could have done likewise if they felt so strongly about the matter and that their inaction all those years amounted to an implied agreement that the Plaintiff was the one entitled to the most. However, it must be noted that there was never any formal distribution of profits. The Defendants did not even know how much money SWS was making each year. They had no access to the bank accounts. More importantly, this was both a partnership as well as a family matter. The Defendants were the younger siblings of the Plaintiff. It was natural that they would accord him some respect, at least in the beginning, by not insisting on their rights because their relationship was not a purely commercial one. As they grew older, they were more insistent on their rights as partners, as they were entitled to. The never-ending quarrels and the attempts by the Plaintiff to appease them by increasing their income periodically showed that there was never any implied agreement as to their status or their share of the firm's takings nor any acquiescence on the Defendants' part.

108. The Plaintiff had no other significant source of income besides that from SWS. I disbelieved his evidence that the tontine proceeds, if indeed he participated in such all those years, were so lucrative that they formed a significant portion of his income. He could not even estimate how much returns he made from tontines. He did not have to formally draw on any profits of the firm simply because he regarded the firm's income as his own. All the money used for the purchase and the renovations and upgrading of the various properties was actually the firm's. Similarly, the rentals collected on the properties belonged to SWS. The father's wishes were manifested in the joint ownership of the properties bought. It did not matter who was actually occupying which property because it was all in the family. They were meant to be shared equally. The Plaintiff was no fool. He would not have registered the relevant properties in joint names if he did not have to. Surely his conveyancing solicitors did explain to him the significance of joint ownership. I doubt very much from the way he denigrated his father and his contributions to the business that he had such great filial piety for his father that he would comply with his instructions in that way. It was even harder to believe he continued in the "family practice" of registering in joint names properties bought with his hard-earned money, a practice initiated by his opium-smoking father, even after his father's demise.

109. The Plaintiff claimed the money paid from the business account for the properties was charged to his current account with the firm and that the amounts used represented his entitlement to the profits anyway. This did not make sense because there was never any declaration as to profits. How

could he be so sure that his entitlement would amount to precisely what he had used? More fundamentally, the business account was never kept separate from his personal account in the first place.

110. It was of no consequence whether the relevant persons held the properties in question as joint tenants or as tenants-in-common because they held them on trust for the partnership which could not hold properties in its own name. There was therefore no question of any right of survivorship where 82/82A Jalan Senang, held in joint tenancy (with the father), was concerned.

111. In summary, this was a case of a domineering brother in a family wanting to become the dominant partner in the family business. The Plaintiff, by making no distinction between his personal account and the business account of SWS, had mistakenly treated himself and the firm as one. The equation was never meant to be Partnership equals Plaintiff. Instead, the intended equation all along was Firm equals Family.

## **Conclusion**

112. My conclusion was therefore that SWS was started as a partnership with three equal partners and remained so until its dissolution on 11 February 2000. I found that 27 Kang Choo Bin Road should be shared equally by the three parties whether outside the partnership or as a partnership asset. I held that the other six properties were all assets of SWS and should be shared equally by the three partners except that a sum of \$369,900 should be given as a credit to the Plaintiff in respect of 12 Palm Grove Avenue. The Defendants accepted that part of the costs of financing the construction of the new house on that property was not from partnership funds but was from lottery winnings. As the Plaintiff was able to furnish evidence of his lottery winnings by producing cheques issued by Singapore Pools (Private) Limited, I gave the Plaintiff the following credit:

- (1) cheque dated 26 May 1993 for \$25,000;
- (2) cheque dated 16 September 1994 for \$19,000;
- (3) cheque dated 22 November 1994 for \$7,000; and
- (4) cheque dated 31 December 1994 for \$318,900.

The above amounts (totalling \$369,900) were won before the construction of the new house in 1995 and could have been used to pay for the costs thereof. I did not give any credit to the Plaintiff for the other cheques produced as two were payable to his son, Koh Wee Meng, in 1999 and in 2000 and the other two were payable to the Plaintiff on 30 January 1996 (\$15,000) and on 15 July 1996 (\$25,000).

113. I ordered the Plaintiff to pay the Defendants the costs of the hearing before me. I also gave the parties liberty to apply insofar as the liquidation of the seven properties was concerned.

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