

Tan Liang Chong v Chou Lai Tiang
[2003] SGHC 225

Case Number : RA 600017/2003, Suit 606/1999, 1473/1999

Decision Date : 21 October 2003

Tribunal/Court : High Court

Coram : Tan Lee Meng J

Counsel Name(s) : Zero Nalpon (Nalpon & Co) for the appellant; Sean Tan Kim Kang (Tan Kok Quan Partnership) for the respondent in Suit No 606 of 1999; Lim Tiang Yao (Winston Low & Partners) for the respondent in Suit No 1473 of 1999

Parties : Tan Liang Chong — Chou Lai Tiang

Damages – Assessment – Appeal – Whether court entitled to rely on auditors' evidence in determining partnership assets – Failure to keep proper accounts and to reveal tax returns – Estimation of profits in absence of proper accounts

Partnership – Partners inter se – Accounts – Right to accurate accounts and access to books and accounts – Partnership Act (Cap 391, 1994 Rev Ed) s 24

Partnership – Partners inter se – Sharing of profits and losses – Assessment of partnership profits to be shared

1. This appeal concerns the assessment of damages for breach of a partnership agreement by the assistant registrar. I affirmed a number of the assistant registrar's findings and the parties agreed to a consent order with respect to the remaining findings. As the defendant has appealed against my affirmation of three of the assistant registrar's findings, I set out below the reasons for my decision.

2. The plaintiff in Suit No 606 of 1999, Mr Tan Liang Chong ("TLC"), and the plaintiff in Suit No 1473 of 1999, Mr Tan Liang Teck ("TLT"), are brothers. They and the defendant, Mr Chou Lai Tiang ("Chou"), were partners in Chop Bee Seng, which operated a Shell petrol station in Upper Serangoon Road, Singapore. TLC and TLT each had a 45% stake in the partnership while Chou's stake in the partnership was only 10%. Notwithstanding his much smaller stake in the partnership, Chou took over the management of the partnership in 1996.

3. TLC and TLT contended that Chou breached the partnership agreement in 1999 by preventing them from participating in the business and by denying them access to the partnership's business records and books. They instituted separate actions against Chou for breach of the partnership agreement. The numerous allegations hurled by the parties against one another need not be considered because a consent judgment was recorded by Selvam J with respect to both actions against Chou on 7 September 2000.

4. Under the terms of the consent judgment, Chou accepted that he breached the partnership agreement by "taking over the business of the partnership to the exclusion of the other partners". It was agreed that TLC was excluded from the business with effect from 6 April 1999 while TLT was excluded from the business as from 1 August 1999. Chou was ordered to account for any profit arising from the business of the partnership from 28 August 1996 to 31 July 1999. Furthermore, he was ordered to pay damages to TLC and TLT for breach of the partnership agreement.

5. On 6 September 2001, TLT's solicitors filed a summons under Order 43 of the Rules of Court for directions for the taking of accounts. M/s Ewe Loke & Partners were appointed auditors for the purpose of "fulfilling the consent judgment dated 7.9.2000".

6. That every partner has a right to have accurate accounts of the partnership and access to the partnership's books and accounts has been stressed in many cases (see, for instance, Lord Davey's judgment in *Trego v Hunt* [1896] AC 7, 26). This position is confirmed by section 24 of the Partnership Act (Cap 391). Regrettably, the accounts furnished by Chou left much to be desired. Mr Ewe Pang Kooi ("Ewe"), who was charged with the responsibility of auditing the partnership's accounts, concluded that the said accounts contained many discrepancies and were not prepared in accordance with the usual accounting standards.

7. The assistant registrar who heard the case on 21 April 2003 understandably relied to a great extent on Ewe's findings and oral testimony. As has been mentioned, Chou has appealed against three of her findings that were affirmed by me. These concerned the provision in the accounts for a sundry creditor, the non-disclosure of the partnership's rental income and the estimated profits of the partnership in 1999.

8. Chou's appeal with respect to the amount set aside in the accounts for a sundry creditor will first be considered. He asserted that the assistant registrar erred when she accepted that he had failed to prove that a sum of \$30,000 was owed to a "sundry creditor" and that this sum ought to be handed over to the three partners in proportion to their stake in the partnership. TLC and TLT contended that this was a fictitious sum inserted in the partnership's accounts to reduce their share of the partnership's profits. Chou could not satisfactorily explain this item in the accounts to the auditors and he could not shed any light on the identity of the creditor. Whatever complaints Chou may have had about the manner in which the auditors reviewed the accounts of the partnership, he had the opportunity to explain to the assistant registrar why such a large amount had been set aside for a creditor. However, he failed to provide a satisfactory explanation and his accounts clerk made the startling claim that Chou was in fact the unidentified creditor. Such evidence obviously did not impress the assistant registrar, who noted that the auditors had made it clear that if there were no sundry creditors, the assets of the partnership would be increased by \$30,000. Consequently, she took the view that TLC and TLT were, in line with their stake in the partnership, each entitled to \$13,500. Chou's counsel advanced no serious argument to show that this finding of the assistant registrar was wrong. As such, I dismissed the appeal against this finding.

9. The second finding of the assistant registrar which was not accepted by Chou related to undisclosed rental income. Chou complained that the assistant registrar wrongly concluded that he had understated the rental income due to the partnership. The said rental was payable to the partnership by Soon Tiang Motor, which is wholly owned by Chou. The auditors reported that rental income had not been properly recorded in the partnership's accounts for 1997, 1998 and 1999. The assistant registrar accepted that the rental income that was not disclosed as income in the partnership's accounts totalled \$103,076.34. As such, in line with their stake in the partnership, TLC and TLT were each entitled to \$46,384.35. As no credible evidence was furnished to show why the assistant registrar was not entitled to rely on the auditors' evidence on this matter, I affirmed this finding of the assistant registrar.

10. Chou's third complaint concerned the assistant registrar's estimation of the partnership's profits for 1999. He asserted that the assistant registrar had no basis for holding that TLC and TLT were each entitled to \$3,106.25 as their share of the estimated profits of the partnership for 1999. The profits for that year had to be estimated because the accounts maintained by Chou were incomplete. In view of this, the partnership's income tax returns, as filed by Chou, would have shed some light on the partnership's profits for 1999. However, Chou failed to furnish the relevant tax returns to the auditors. In these circumstances, the following passage from *Lindley & Banks on Partnership* 18 ed, p 636, is instructive:

If a partner has destroyed any books or accounts in his possession or otherwise improperly refuses to produce them, all necessary presumptions will be made against him when the account is taken. This may even involve estimating the profits of the firm.

(emphasis added)

11. As the assistant registrar's difficulty in estimating the partnership's profits for 1999 stemmed solely from Chou's failure to keep proper accounts and to reveal the relevant tax returns, the question of an adverse inference arises. That an adverse inference may be made in such a situation is not in doubt (see, for instance, *Grays v Haig* 20 Beav 219). It was noted that in 1996, TLC and TLT were each paid \$828.92 as their share of the partnership's profits. In 1997, they each received \$3,106.25 and in 1998, they were each paid \$485.22. After taking all the circumstances of the case into account, the assistant registrar estimated the partnership's profits in 1999 as that made by the partnership in 1997. As such, TLC and TLT were entitled to the same amount paid to each of them in 1997, namely \$3,106.25, as their share of the partnership's estimated profits in 1999.

12. Chou complained that the assistant registrar's estimation of the partnership's profits in 1999 was unrealistic as the partnership could not have made enough profits in that year to pay TLC and TLT \$3,106.25 each. On the other hand, TLC and TLT, who pointed out that it cannot be ruled out that the actual profits in 1999 could have exceeded the profits in 1997, found her estimation acceptable. They added that if the profits for 1999 had not been good or if the partnership had incurred a loss in that year, Chou would have produced the relevant tax returns submitted by him to the Inland Revenue Department. Evidently, Chou should not be allowed to benefit from his own failure to keep proper accounts and furnish relevant tax documents in his possession for inspection by the auditors and the assistant registrar. I thus held that the assistant registrar's estimation of the partnership's profits in 1999 should not be disturbed.

13. For the sake of completeness, it ought to be mentioned that Chou had initially appealed against the assistant registrar's order that he pay interest on the amounts due to TLC and TLT as well as the order on costs made at the end of the hearing of the appeal. However, Chou's solicitors have written to the Registry to confirm that he does not intend to proceed with his appeal with respect to these matters. As such, these matters have not been considered in this judgment.

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