IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 29

Suit No 769 of 2020
(Summons No 5435 of 2021)

Between

Tan Huah Sun

… *Plaintiff*

And

(1) Tan Huah Tai
(2) Lim Seo Lay

… *Defendants*

GROUNDS OF DECISION

[Partnership — Dissolution — Appointment of receiver]

Tan Huah Sun
v
Tan Huah Tai and another

[2022] SGHC 29

General Division of the High Court — Suit No 769 of 2020 (Summons No 5435 of 2021)
Chua Lee Ming J
13 January 2022

11 February 2022

Chua Lee Ming J:

1 The plaintiff, Mr Tan Huah Sun and the first defendant, Mr Tan Huah Tai, are brothers. The second defendant, Mdm Lim Seo Lay, is the first defendant's wife. Since 13 April 2012, the three of them have been the only partners in a partnership trading as Singapore Engraving and Offset Plate Making Company (the "Partnership").

2 On 29 May 2020, the plaintiff (through his solicitors) gave notice of his intention to dissolve the Partnership with effect from 31 July 2020; the plaintiff also made certain claims against the defendants. The defendants denied the plaintiff's claims but did not act on the notice of dissolution.

3 On 19 August 2020, the plaintiff commenced this action, seeking the following orders (among others):[1]

(a) A declaration that the Partnership has been dissolved with effect from 31 July 2020.

(b) That the second defendant:

(i) provide an account of the financial affairs of the Partnership for the financial periods from 13 April 2012 to the date of dissolution;

(ii) deliver to the plaintiff copies of all partnership books of the Partnership for the same period; and

(iii) pay the plaintiff a sum of $66,723 being the plaintiff's share of excess partners' salaries drawn by the second defendant without the plaintiff's consent.

(c) That the defendants account for the use of the plaintiff's share of partners' salaries amounting to $60,900 (which was allegedly paid by the defendants to the plaintiff's and first defendant's mother, the late Mdm Lim Chan Mooi) and pay the same to the plaintiff together with all profits made by the defendants arising thereof.

4 In their defence, the defendants pleaded the following, among other things:

[1] Statement of Claim (Amendment No 1), at pp 10–12.

(a) The plaintiff was not entitled to dissolve the partnership by notice in the absence of any agreement among the partners.[2]

(b) There was an implied agreement by conduct for the second defendant to be paid a higher salary because she was managing the Partnership's business; thus, the second defendant did not draw any salary in excess of what she was entitled to.[3]

(c) The plaintiff was aware of and did not object to his share of the partners' salaries being paid to the plaintiff's and first defendant's mother as parental maintenance; the first defendant did the same with his share of the partners' salaries.[4]

(d) The plaintiff was liable for breach of duty as a partner in failing, refusing and/or neglecting to co-operate with the defendants in relation to certain of the Partnership's bank accounts.[5]

5 It appeared from 4(a) above that the defendants took the position that under s 32(1)(*c*) of the Partnership Act (Cap 391, 1994 Rev Ed) ("PA"), the plaintiff required the defendants' consent to dissolve the Partnership by notice. However, this was incorrect. Section 32(1)(*c*) of the PA states as follows:

> **Dissolution by expiration or notice**
>
> **32.**—(1) Subject to any agreement between the partners, a partnership is dissolved —
>
> …

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2 1st and 2nd Defendants' Defence and Counterclaim (Amendment No 2) ("Defence and Counterclaim (No 2)"), at paras 14, 16–22, 38–39.

3 Defence and Counterclaim (No 2), at para 28.

4 Defence and Counterclaim (No 2), at para 26.

5 Defence and Counterclaim (No 2), at paras 8 and 41.

> (*c*) if entered into for an undefined time, by any partner giving notice to the other or others of his intention to dissolve the partnership.

The default position under s 32(1)(*c*) is that a partner has the right to dissolve the partnership by notice; he does not need the other partners' agreement to do so. What s 32(1)(*c*) recognises is that such a right may be removed or curtailed by agreement among the partners. In the present case, the defendants did not allege, and there was no evidence of, any such agreement. Clearly, the plaintiff was entitled to dissolve the Partnership by notice, even if the defendants did not agree to it.

6 In any event, the defendants subsequently agreed that the Partnership was dissolved with effect from 31 July 2020. On 9 November 2021, the plaintiff filed Summons No 4913 of 2020 seeking summary judgment (the "O 14 SUM"). On 26 January 2021, I heard the O 14 SUM. I entered the following orders (among others) *by consent* of the parties (the "Consent Orders"):

> (a) The Partnership has been dissolved with effect from 31 July 2020.
>
> (b) The second defendant is:
>
> (i) responsible for taking the necessary steps to wind up the business of the Partnership;
>
> (ii) to render an account of the financial affairs of the Partnership from 13 April 2012 to 31 July 2020; and
>
> (iii) to deliver to the plaintiff copies of all partnership books for the same period.

(c) The property of the Partnership is to be applied in accordance with s 39 of the PA and any surplus assets of the Partnership are to be distributed to the partners.

The plaintiff proceeded with his application for summary judgment on his claims relating to the partners' salaries (see [3(b)(iii)] and [3(c)] above). I granted the defendants unconditional leave to defend those claims.

7 Despite having agreed to the Consent Orders, the second defendant did not render an account or provide the plaintiff with copies of the Partnership's books. Instead, on 24 November 2021, some 11 months after the Consent Orders were made, the defendants filed the present Summons No 5435 of 2021 ("SUM 5435) seeking:

(a) the appointment of M/s JK Medora & Co LLP ("M/s JK Medora") as liquidator; and

(b) a stay of all further proceedings in the present action until the dissolution of the Partnership and distribution of surplus assets has concluded.

The defendants exhibited a copy of the Partnership's accounts for the period from April 2012 to July 2020 in their joint affidavit filed in support of SUM 5435.[6]

8 I heard SUM 5435 on 13 January 2022. The summons sought the appointment of a liquidator. However, in their submissions, the defendants sought the appointment of a liquidator *or a receiver* under O 30 r 1 of the Rules

[6] 1st and 2nd Defendants' Joint Affidavit in SUM 5435, Exhibit TL-3.

of Court (Cap 332, R 5, 2014 Rev Ed). The plaintiff had no objections to the defendants' application proceeding on this basis (although they objected to the application itself) and I did so. After hearing the defendants, I dismissed their application for the reasons set out below.

9 First, I rejected the defendants' submission that the court may appoint a liquidator under s 39 of the PA. Section 39 reads as follows:

> **Rights of partners as to application of partnership property**
>
> **39**. On the dissolution of a partnership, every partner is entitled, as against the other partners in the firm, and all persons claiming through them in respect of their interests as partners, to have the property of the partnership applied in payment of the debts and liabilities of the firm, and to have the surplus assets after such payment applied in payment of what may be due to the partners, respectively, after deducting what may be due from them as partners to the firm; and for that purpose any partner or his representatives may, on the termination of the partnership, apply to the court to wind up the business and affairs of the firm.

It was clear to me that I did not have the power to appoint a liquidator under s 39 of the PA.

10 I noted that a partnership may be wound up by the court on an application under s 124(1) (which is under Part 8) read with s 246(1) of the Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) ("IRDA"). Section 246(1) of the IRDA provides that any "unregistered company" may be wound up under Parts 8 and 9, which apply to an unregistered company with certain adaptations. Section 245(1) defines "unregistered company" to include "any partnership". A liquidator would be appointed upon a winding up order being made (see s 134(*a*) of the IRDA).

11 A partner can apply to wind up a partnership under the IRDA (see s 124(1)(*d*) read with s 247(1)(*a*) of the IRDA). However, an application to wind up a partnership under the IRDA is more likely to be made by a creditor pursuant to s 124(1)(*c*) read with s 246(1) of the IRDA since only partners can apply to dissolve the partnership under s 35 of the PA.

12 In any event, it was clear that it is only in winding up proceedings under the IRDA that the court may appoint a liquidator. However, the defendants had not commenced any such winding up proceedings under the IRDA. There was therefore no basis for their application for a liquidator to be appointed.

13 I would add that, in any event, winding up proceedings under s 246(1) of the IRDA seemed quite unnecessary on the facts of this case. Upon dissolution of the partnership, the right to wind up the firm vests in all of the solvent partners who may agree amongst themselves that one or more of them will act as the liquidating partner or partners: *Halsbury's Laws of Singapore* vol 15 (LexisNexis, 2019 Reissue) at para 180.127. In the present case, by virtue of the Consent Orders, the plaintiff and the defendants had agreed that the second defendant was to take the necessary steps to wind up the business of the Partnership. There was no evidence that she was unable to do so. It was undisputed that the plaintiff was not involved in the running of the Partnership business. The defendants had full control of the business and had in fact prepared the accounts of the Partnership for the period stated in the Consent Orders, although she had not delivered the same to the plaintiff. There was also no allegation that the plaintiff had obstructed or could obstruct the defendants from taking steps to recover debts owing to the Partnership. It was for the second defendant to comply with the Consent Orders and deliver to the plaintiff a copy of the accounts as well as copies of the Partnership's books. Any dispute over the accounts can be determined on the taking of the partnership accounts.

14 Second, in my view, the defendants failed to show sufficient reason for the appointment of a receiver.

15 The defendants relied on the following passage from *Kerr on the Law and Practice as to Receivers and Administrators* (Sweet & Maxwell, 17th Ed, 1989) ("*Kerr*") at pp 61–62, which was quoted with approval by the High Court in *Kishinchand Bhojwani and another v Sunil Bhojwani and another* [1995] 3 SLR(R) 369 ("*Kishinchand Bhojwani*") (at [7]):

> The readiness of the court to appoint a receiver in partnership cases depends upon whether the partnership has been dissolved at the time when the application is made. If a dissolution has clearly been effected by the service of the writ, or if the partnership has expired by effluxion of time, a receiver will readily be appointed, though the appointment is not a matter of course; it will be enough to show that one of the former partners is delaying the winding-up and realisation of the business. Conversely, if all that is shown is that a partner has retired from the partnership, leaving the remaining partners to carry on the former business, he will not be entitled to such an appointment.

16 The defendants also relied on *Hwang Ju-in v Huang Han Chao* [1977-1978] SLR(R) 194 ("*Hwang Ju-in*") in which the Court of Appeal appointed a receiver because there was no co-operation between the parties and it was therefore desirable that an independent third party such as a receiver take over the affairs of the partnership, collect the book debts, prepare final accounts and thus complete the dissolution of the partnership (at [11]).

17 A receiver may be appointed in all cases where it is just and convenient to do so: s 4(10) of the Civil Law Act 1909 (2020 Rev Ed). Section 18(2) of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) read with para 5(*a*) of the First Schedule provides that the High Court has the power to provide for the "interim preservation of property which is the subject matter of the proceedings by … the appointment of receiver …" The court may be more willing to appoint

a receiver where the partnership has been dissolved then if the partnership business was still ongoing. However, in either case, a receiver will not be appointed unless there is some reason why such appointment is necessary. The central purpose of receivership is the interim preservation of disputed property pending its final resolution in the main action: *Kao Chai-Chau Linda v Fong Wai Lyn Carolyn and others* [2016] 1 SLR 21 ("*Kao Chai-Chau Linda*") at [24].

18 The passage from *Kerr* (see [15] above) and the decision in *Hwang Ju-in* are consistent with the principle stated in *Kao Chai-Chau Linda*. There must be some reason why justice requires an independent third party to be appointed to take over the affairs and assets of a partnership. Thus, the passage from *Kerr* referred to former partners delaying the winding up and realisation of the business. In *Hwang Ju-in*, the court found that there was no co-operation between the parties.

19 In the present case, the defendants gave two reasons in support of their application for a receiver to be appointed. The defendants' first reason was that the plaintiff was delaying the winding up of the affairs of the partnership. According to the defendants, the plaintiff had been uncooperative (a) *in 2012* with respect to the Partnership's bank accounts as a result of which the second defendant had to open a separate account under her name for the Partnership's operations, and (b) *in 2013* when he was unwilling to sign the renewal agreement for the premises leased by the Partnership. In my view, the defendants' submission had no merit. The defendants could not explain how the plaintiff's alleged conduct in 2012 and 2013 delayed the completion of the dissolution of the Partnership.

20 There was no evidence that the plaintiff was delaying or obstructing the defendants from completing the dissolution of the partnership. As stated earlier

(see [13] above), the plaintiff was not involved in the running of the Partnership business and the defendants had full control of the business. There was also no allegation that the plaintiff had obstructed or could obstruct the defendants from taking steps to recover debts owing to the Partnership. What the defendants had to do was to comply with the Consent Orders; disputes over the partnership accounts would be determined on a taking of the partnership accounts.

21 The defendants' second reason was that the receiver could assist them in winding up the affairs of the Partnership, including investigating the Partnership's accounts. More specifically, the defendants submitted that the receiver would be expected to investigate the plaintiff's claims in this action.

22 In my view, the defendants' second reason was not a good reason for a receiver to be appointed. The receiver's function is not to wind up a partnership but merely to preserve the assets and pay partnership debts while the court takes the usual partnership accounts and supervises the dissolution: *Singapore Civil Procedure 2021* vol 1 (Cavinder Bull SC gen ed) (Sweet & Maxwell, 2021) at para 30/1/14.

23 Further, as stated earlier, there was no reason why an independent third party had to be appointed to take over the affairs of the Partnership; the defendants had full control of the Partnership's business and books and records. As for the plaintiff's claims in this action, they relate to the payment of his share of partners' salaries to his mother (see [3(c)] above) and the amount of excess partners' salaries drawn by the second defendant (see [3(b)(iii)] above). These claims depend on whether the plaintiff had consented to the former and whether the second defendant was entitled to the latter. These issues are between the plaintiff and the defendants personally and will be determined by the court. It is

unnecessary for a receiver, taking over the affairs and assets of the Partnership, to investigate these claims.

24 The reasons given by the defendants merely showed that they wished to have M/s JK Medora assist *them*. There was nothing to prevent the defendants from engaging M/s JK Medora *to assist them* in preparing the accounts or even to defend the claims by the plaintiff. However, this was insufficient reason to appoint M/s JK Medora as a receiver.

25 I noted that the defendants were seeking a stay of all further proceedings in the present action pending the dissolution of the Partnership and distribution of surplus assets. In my view, that was a key reason for the defendants' application to appoint a liquidator/receiver. It seemed to me that the defendants wanted to avoid having the plaintiff's claims relating to the partners' salaries (see [3(b)(iii)] and [3(c)] above) being determined in a trial. This view was supported by the defendants' submission (erroneous though it may be) that the appointment of a receiver would result in the plaintiff no longer having the necessary standing to continue with his claims. In my view, it was an abuse of process for the defendants to apply for the appointment of a liquidator/receiver for this reason.

Conclusion

26 For the above reasons, I dismissed the defendants' application and ordered the defendants to pay the plaintiff costs fixed at $2,500 inclusive of disbursements.

Chua Lee Ming
Judge of the High Court

Chong Chee Keong Chris and Low Wai Cheong (Chris Chong & C T Ho LLP) for the plaintiff;
Au Thye Chuen, Carolyn Tan Beng Hui, Karuppiah Chandra Sekaran and Kuoh Hao Teng (Tan & Au LLP) for the defendants.