

Lin Chao-Feng v Chuang Hsin-Yi
[2010] SGHC 178

Case Number : Suit No 296 of 2008
Decision Date : 17 June 2010
Tribunal/Court : High Court
Coram : Judith Prakash J
Counsel Name(s) : Tan Cheng Han SC (instructed) and Lim Kim Hong (Kim & Co) for the plaintiff; Lok Vi Ming SC, Edric Pan Xingzheng and Vanessa Yong Shuk Lin (Rodyk & Davidson LLP) for the defendant.
Parties : Lin Chao-Feng — Chuang Hsin-Yi

Civil Procedure – Pleadings

Trusts – Resulting trusts – Presumed resulting trusts

17 June 2010

Judgment reserved.

Judith Prakash J:

1 The question to be determined in this action is whether the defendant is the beneficial owner of 480,000 ordinary shares of \$1 each in the capital of Chun Cheng Fishery Enterprise Pte Ltd (“CCFE”) or whether he holds those shares on trust for the plaintiff.

2 The plaintiff, Lin Chao-Feng, who was originally Taiwanese, and his wife, Mdm Tan Guan Ngo (“Mdm Tan”), a Singaporean, are the founders of a group of companies (“the Group”) which is in the business of supplying and trading in fish and fish products. The plaintiff and his wife are the major shareholders of the companies in the Group, most of which are Taiwanese companies, and the plaintiff is the chairman of the Group. CCFE, which was incorporated in Singapore in January 1994, is a member of the Group. At all material times, the directors of CCFE were Mdm Tan (the managing director), the plaintiff and Ms Tan Lay Hoon (“TLH”), the plaintiff’s sister-in-law.

3 CCFE carries on the business of the import/export and processing of marine products and frozen seafood and also cures and preserves fish and seafood. It has a factory in Singapore.

4 In early 1999, one Mr Chuang Hern Hsiung (“CHH”) who is the father of the defendant, was appointed as group president of the Group. His direct employer was a company called Terng Sheng International Co Ltd. From about 2000, CHH concentrated his efforts on CCFE’s business and moved to Singapore. He took on the title of chief executive officer (“CEO”) and president of CCFE. The employment of CHH ended in July 2005.

5 At the beginning of 2002, CCFE had an issued share capital of \$4.8m comprising 4.8m ordinary shares of \$1 each. The plaintiff held 2,160,000 shares in CCFE (45% of the capital), while Mdm Tan had 2,287,799 shares (47.66%). The remaining shares (7.34%) were held by Mdm Tan’s siblings. On 21 May 2002, 480,000 CCFE shares (“the shares”), representing ten percent of the issued capital, were transferred from the plaintiff to the defendant. It is these shares that form the subject matter of this action. It is not disputed that although the transfer form indicated that the consideration for the shares was the payment of \$1 per share and stamp duty was paid on the basis of a consideration

of \$480,000, in fact no money changed hands and the plaintiff did not receive any payment for the shares either from CHH or the defendant. At that time, the defendant was working in the United States and had no connection with CCFE.

6 On 1 April 2008, the plaintiff's solicitors wrote to the defendant demanding that the shares be re-transferred to the plaintiff. The defendant failed to respond and this action was started on 25 April 2008 to enforce recovery of the shares.

Pleadings

7 The statement of claim recited the position of the plaintiff in CCFE and the fact that CHH was employed by CCFE as the group president of the Group including CCFE from 1999 until 11 July 2005. The material paragraphs of the statement of claim are paragraphs 3, 4 and 5 which read as follows:

3. On 21st May 2002, the Plaintiff had transferred 480,000 ordinary shares of \$1.00 per share in CCFE ("the said Shares") registered under his name to the Defendant, who is the son of [CHH]. The Plaintiff shall refer to the Share Transfer documents at the trial of this action for their full terms and effect.

4. The Transfer of the said Shares was made with the concurrence of the parties that the Defendant shall hold the said Shares in trust for the Plaintiff until such time when the Plaintiff makes a demand for the return of the said Shares.

5. The said Shares have belonged, at all times, beneficially to the Plaintiff and no valuable consideration was paid to the Plaintiff for the transfer to the Defendant.

8 The reliefs sought by the plaintiff are, *inter alia*, the following:

(a) a Declaration that 480,000 ordinary shares now standing in the name of the Defendant are held by him on trust for the Plaintiff absolutely;

(b) an Order that the Defendant do deliver up to the Plaintiff a transfer duly executed of the 480,000 ordinary shares to the Plaintiff.

9 In Further and Better Particulars furnished by the plaintiff, the plaintiff specified that the alleged concurrence of the parties that the defendant was to hold the shares on trust for the plaintiff was established by oral communication in or about the months of January/February 2002. It was further pleaded that the plaintiff had conveyed to CHH that the shares were to be held on trust for the plaintiff and CHH had confirmed that the shares would be held accordingly by his son, the defendant.

10 In his defence, the defendant denied that the shares were held on trust. Instead, the defendant averred:

(a) the shares were given by the plaintiff to CHH in recognition of the contributions made by CHH towards CCFE and, *inter alia*, to make good the plaintiff's promise to CHH made at the time he recruited CHH in 1999 that he would treat CHH as a business partner and give him a stake in the business;

(b) in the alternative, the plaintiff transferred the shares to the defendant at the request of CHH in appreciation of CHH's continued efforts in building and developing the business of CCFE;

(c) even after the transfer took place, the plaintiff told CHH on numerous occasions that he would reward CHH with more shares if CHH continued to develop CCFE;

(d) the plaintiff never indicated or conveyed (either orally or otherwise) to CHH or to the defendant that the shares were to be held on trust for the plaintiff;

(e) CHH did not at any time agree or concur that the shares would be held on trust for the plaintiff and the defendant also had not agreed or concurred that he would hold the shares on trust for the plaintiff;

(f) at all times, the defendant was treated as a shareholder of CCFE; and

(g) on 12 December 2006, the defendant wrote to CCFE's special accountant and stated that he was one of the shareholders of CCFE. This letter was forwarded to CCFE and its legal advisers. Thereafter, none of CCFE, the legal advisers or the plaintiff raised any objection or sought in any way to refute the defendant's assertion to be a shareholder of CCFE.

11 Accordingly, at para 6 of the defence, the defendant averred that he was the legal and beneficial owner of the shares and was under no obligation to transfer them to the name of the plaintiff or to deliver up the shares to the plaintiff.

12 Certain obvious factual issues arise out of the pleadings. There is, additionally, a legal issue arising out of the phraseology of the statement of claim that has to be decided before the factual issues can be examined. This is whether the plaintiff is entitled by virtue of his pleading to claim that the trust arrangement that he relies on arose out of a resulting trust created upon the transfer of the shares for a nil consideration or whether his pleading only allows him to prove the existence of an express trust.

Pleading issue

13 The defendant asserted that the plaintiff was not entitled to assert a resulting trust because his pleading was not sufficient to encompass such a claim. The plaintiff had taken the position that he had pleaded an express trust at para 4 of the statement of claim and, in the alternative, a resulting trust at para 5 of the statement of claim. The defendant submitted that this was not so and that it was clear from the said paras that there was no plea in the alternative. It was clear that paras 4 and 5 were always intended to be read conjunctively and that both paragraphs went towards a plea of an express trust. The thrust of these two paragraphs was that the transfer of the shares was made with the concurrence of the parties that the defendant would hold them in trust for the plaintiff and, consequentially, the shares had belonged to the plaintiff at all times.

14 The defendant also reminded me that the plaintiff had, initially, sought and been granted leave of court to amend his statement of claim to include an alternative claim in resulting trust. However, upon sighting the defendant's amendments to his defence in response to the plaintiff's amended pleading, the plaintiff decided to withdraw his amendments and revert to his original statement of claim. Accordingly, the defendant argued, the plaintiff had spurned the opportunity to plead resulting trust and should be held to his original pleading of an express trust. The plaintiff's response to this point was that the original pleading was, in his view, adequate to permit him to raise the issue of a resulting trust but that he had sought, out of an abundance of caution, to state this expressly as the defendant had raised the pleading issue. Subsequently, however, there had been an agreement that the pleading should revert to the original form.

15 Having considered paras 4 and 5 of the statement of claim, I have come to the conclusion that the plaintiff is entitled to put forward an express trust and, in the alternative, a resulting trust. It is a basic principle of pleading that facts not law have to be pleaded and once the material facts have been averred, the legal consequences of the same can be developed in submissions. This means that in order for the plaintiff to argue that there was a resulting trust he must plead the necessary factual ingredients on which a legal submission of resulting trust can be made.

16 The text, *Resulting Trusts* by Robert Chambers (Clarendon Press, Oxford 1997), states at p 32 that the facts which give rise to a resulting trust are:

- (a) a transfer of property to another,
- (b) in circumstances in which the provider does not intend to benefit the recipient.

This statement of the law was accepted by the Court of Appeal in *Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 ("*Lau Siew Kim*") at [35].

17 In para 3 of the statement of claim, the plaintiff pleaded that on 21 May 2002 he transferred the shares to the defendant. This pleading satisfied the first factual requirement. In paras 4 and 5, the plaintiff said that the parties had agreed that the defendant was to hold the shares in trust for the plaintiff, that no consideration was paid for the transfer and that the shares belonged beneficially to the plaintiff at all times. These paragraphs satisfied the requirement of stating factual circumstances showing that the plaintiff did not intend to benefit the defendant by the transfer. The statement of claim thus set out the facts necessary to establish a resulting trust. That they also set out facts which could prove an express trust cannot detract from the ability of the same facts to constitute a resulting trust.

18 The plaintiff cited Form 45 of Vol 41 of *Atkin's Encyclopaedia of Court Forms* (LexisNexis UK, 2nd Ed, 2004 Issue) at para 145 which reads as follows:

45

PARTICULARS OF CLAIM alleging resulting trust: purchase in joint names

...

1. In 20 ... the Claimant purchased 10,000 fully paid ordinary shares of £1 each in the capital of Ltd for the sum of £..... which he paid out of his own money.
2. With the concurrence of the Defendant the shares were placed for convenience in the joint names of the Defendant and the Claimant.
3. The shares have belonged at all times since the purchase and belong beneficially to the Claimant but, notwithstanding repeated requests by the Claimant the Defendant has refused and refuses to transfer the shares into the sole name of the Claimant or as he may direct.

AND the Claimant claims:

- (1) a Declaration that 10,000 fully-paid ordinary shares of £1 each in the capital of Ltd

now standing in the names of the Claimant and the Defendant jointly are held by them on trust for the Claimant absolutely;

(2) an Order that the Defendant do join with the Claimant in transferring the shares to the Claimant or as he shall direct;

...

19 The above form lends support to the conclusion I have reached that the statement of claim contained sufficient averments to allow the plaintiff to argue for the existence of a resulting trust. It makes it clear that it is not necessary for a plaintiff to mention expressly in his pleading that he is relying on the doctrine of resulting trust. As long as the essential facts which must be present to establish such a trust are pleaded, the statement of claim will be adequate.

The law on trusts

20 In *Snell's Equity* (John McGhee QC gen ed)(Sweet & Maxwell, 31st Ed, 2005) at para 23-15, it is stated that on a voluntary transfer of personal property, the transferee is presumed to hold on a resulting trust for the transferor unless the presumption of advancement applies or the transferor is proved to have had an actual intention to make the transferee the beneficial owner of the property. It is also stated therein that there is certainly a presumption of a resulting trust if A transfers stocks and shares voluntarily to himself and B.

21 As stated by Lai Siu Chiu J in *Yong Ching See v Lee Kah Choo Karen* [2008] 3 SLR(R) 957 at [35], "resulting trusts are founded on the *presumed* intention of the transferor of property." Lai J went on in the same paragraph to add:

Where a transfer of property has occurred with a consequent transfer of legal title, but the transferor has failed to show an intention to divest himself fully of all his interest in that property, the transferee will not be permitted to receive the property absolutely for his own benefit. Instead, he will hold it on trust for the transferor. The equitable interest is, thereafter, said to "result back" to the transferor, thus ensuring that he retains his interest in the property.

22 In *Lau Siew Kim's* case, the Court of Appeal noted (at [35]) that there is a distinction to be drawn between the presumption of resulting trust and the resulting trust itself in that the presumption is an inference of fact drawn from the existence of other facts, whereas the resulting trust is the equitable response to those facts, proved or presumed. The Court went on to add that the facts which give rise to a presumption of resulting trust are (a) a transfer of a property to another and (b) that the recipient does not provide the whole consideration for such transfer. The Court of Appeal also noted at [57] that when the presumption of resulting trust applies, the transferor is presumed to have intended to retain the beneficial ownership and therefore the burden of proving that a *gift* was intended is on the recipient of the transfer.

23 As regards the requirements for an express trust, I turn to *Snell's Equity* again. At para 20-15, it is stated:

- (i) the words must be so used that on the whole they ought to be construed as imperative;
- (ii) the subject-matter of the trust must be certain; and
- (iii) the objects or persons intended to have the benefit of the trust must be certain.

24 Paragraph 20-35 of the same text indicates that there are two main ways in which an express trust may be completely constituted. The first is that the settler conveys the property to the trustee and the second is that the settler declares himself to be the trustee of the property. If the conveyance upon trust for the beneficiary has been actually and effectually made, equity will enforce the trust, even in favour of a volunteer.

25 The plaintiff's case here is that prior to the transfer of the shares to the defendant, it was orally agreed between himself and CHH that the transfer would be in form only and there would be no change of beneficial ownership. The onus of proving the existence of any particular agreement would generally lie on the person who asserts such existence but in the present case, since it is admitted by the defendant and CHH that neither of them made payment for the shares, the presumption of resulting trust arises in favour of the plaintiff. This means that in order to rebut that presumption, the defendant has the onus of showing that the plaintiff's intention in making the transfer was to bestow a gift on CHH. If the defendant is able to discharge that burden, the proof of the plaintiff's real intention would also provide an answer to the plaintiff's claim of an express trust. After all, if the plaintiff's intention was to make a gift to CHH, then there could not have been any oral agreement between him and CHH that the beneficial ownership of the shares would not change notwithstanding the execution of the transfer in favour of the defendant.

26 I should state here that the defendant made a point of emphasising that he had never agreed anything with the plaintiff in relation to the shares. The plaintiff does not dispute that: he has maintained all along that his agreement was only with CHH. I do not consider that this helps the defendant. The defendant was a volunteer. He paid nothing for the shares and even if he received them as a gift from CHH (as he somewhat belatedly asserted in court), as a volunteer this would not prevent him holding the shares as trustee for the plaintiff if indeed CHH had agreed with the plaintiff that the transfer would not effect any change in the beneficial ownership of the shares.

The factual issues

27 The basic factual question raised by the case is whether the plaintiff or CHH is telling the truth about the circumstances in which the shares came to be transferred to the defendant. A decision on this issue depends on an analysis of the credibility of the witnesses and the coherence and logical basis of each party's story.

28 As I have said, the onus of showing that the plaintiff's intention in transferring the shares to the defendant was to make a gift of them lies on the defendant. I will therefore start with the evidence of the defendant and CHH as to the reasons for and circumstances surrounding the transfer.

The evidence for the defendant

29 CHH graduated from Taiwan University with a degree in English literature. He had a varied career as a teacher of English, an instructor in mass fishing training courses, and general manager of a company in the fast food industry in Taiwan. He stated that he was familiar with the fishing industry and had good relations with government officials and leaders of this industry in Taiwan. He also had experience in business management, trade development and marketing.

30 In 1999, the plaintiff was looking for someone to assist him in managing the business of the Group. He interviewed CHH and recruited him as general manager of the Group. From day one, CHH said, the plaintiff stated that he would regard CHH as a partner and that he was a generous boss who would reward CHH well if he performed to the plaintiff's expectations. Shortly after CHH was recruited, CCFE was expanding rapidly and the plaintiff instructed CHH to concentrate on CCFE while he himself

would supervise the running of the other companies in the Group. Accordingly, in 2000, CHH relinquished his other appointments and took on the title of CEO and president of CCFE. At around this time, the plaintiff repeated his promise that he would reward CHH amply for his hard work and would recognise him as a partner who would work together with him to build up CCFE and that, in addition to his salary and other benefits, he would be given a stake in CCFE by way of shares.

31 In the meantime, in April 1999, CHH introduced the defendant to the plaintiff. At that time the defendant was living in Washington DC and working in a listed company. Some time in 2001, the plaintiff brought up the idea of recruiting the defendant to strengthen CCFE's management team. In October 2001, the plaintiff invited the defendant to Singapore and brought up the possibility of the defendant working in CCFE. Eventually, the defendant agreed to take up the plaintiff's job offer and he started to work for CCFE on 16 June 2003 with the title Vice-President of Development.

32 CHH gave details of the work that he did to build up CCFE. Under his supervision the company enjoyed continuous growth in its sales turnover. In 2004 its turnover was over \$67m. During his six years with CCFE, the company's achievements were recognised by third parties. Further, when CHH first joined CCFE it had no trade or credit facilities from any bank in Singapore but by reason of CHH's efforts, by 11 July 2005, when he left the company, CCFE had total credit facilities of about US\$12.05m from various banks. CHH stated that his other achievements included recruiting professional manpower to strengthen CCFE, setting up an able marketing department, diversification of CCFE's products and markets, developing a public relations campaign to market CCFE through a series of corporate presentations, as well as obtaining the necessary approvals and licenses from various authorities worldwide to allow for the expansion of CCFE's business. The plaintiff was very happy with CHH's work and the growth experienced by CCFE. To reward CHH, he increased the former's remuneration annually.

33 In or around February 2002, just as CHH's hard work was beginning to bear fruit and CCFE was at the initial stages of success, the plaintiff informed CHH that he was giving CHH the shares in recognition of the efforts and contributions CHH had made towards CCFE, and to make good his earlier promise made at the time of recruitment. CHH said that he readily accepted the shares as the plaintiff had previously from time to time conveyed his willingness to treat CHH as a business partner and on numerous occasions had also told him that he would reward him with a stake in the business. CHH also stated that as he was advanced in age, he asked the plaintiff to transfer the shares to the defendant.

34 CHH was delighted that the plaintiff had recognised his efforts. He called the defendant in the United States to share the good news with him and also informed him of the intention that the shares be transferred to him. On 10 February 2002, CHH sent the defendant an e-mail. This e-mail is an important piece of evidence supporting the defendant's position. The material part is the second paragraph but I will quote both the first and the second paragraphs:

Dear Ivan,

I was sick after amounting [sic] workload for a whole week. Management Meeting exhausted my total energy. I tried but failed not to dominate the proceeding for the silence kept from my fellow participants. I believe LCF would share with me same strong feeling that the gap between management and operational level was big.

After the Management Meeting TLH and myself were called to LCF's office. LCF simply instructed TLH to transfer 10% of 4.8 m paid up capital from his name to Ivan Chuang. I want you to share the appreciation to [sic] the generosity of what LCF has done to [sic] us. My hard work for last

three years has been compensated into a certain hope of the future. If I double my performance it will hopefully double my prize after 3 years.

35 After the defendant told CHH that he was agreeable to the transfer of the shares, CHH left it to TLH (the vice-president and a director of CCFE) to handle all the necessary documentation. On 9 April 2002, CHH was copied on TLH's e-mails to CCFE's accountant instructing him to transfer the shares to the defendant and on 4 June 2002, TLH informed CHH that the transfer of the shares from the plaintiff to the defendant had been completed. CHH emphasised that whilst the documentation for the transfer was in progress, no mention was made that the shares were to be held on trust for the plaintiff. After the transfer was completed, the plaintiff did not ever bring up the issue of the shares or inform CHH that the shares were to be held on trust for him until he demanded their return. Even after the transfer, the plaintiff continued to tell CHH that he would reward CHH with more shares if CCFE continued to perform well.

36 CHH commented that since the plaintiff denied that the shares were a reward for the hard work put in by CHH, he failed to understand why the plaintiff would all of a sudden transfer the shares to the defendant for the defendant to hold on trust for him. This served no purpose at all. Further, at the trial of a related matter (Suit 763 of 2005) ("Suit 763"), the plaintiff testified that the shares were transferred to the defendant because in 2002, the plaintiff was having problems with a bank guarantee and CHH had suggested to him that if CHH held the shares in CCFE, it would be easier for him to liaise with the bank. In CHH's view, this reasoning made no sense at all because the shares were eventually transferred to the defendant. If CHH had indeed asked the plaintiff for shares in CCFE to make it easier for him to liaise with the bank, he certainly would not have asked for the shares to be registered in the defendant's name as this would defeat his original purpose entirely.

37 It was only when the defendant received a letter from the plaintiff's lawyers almost six years after the transfer of the shares that CHH learnt of the plaintiff's allegations that the shares were held on trust for the plaintiff.

38 CHH was subjected to lengthy cross-examination by the plaintiff's counsel. In his closing submissions, the plaintiff asserted that CHH was not a credible witness and emphasised the following evidence that had emerged from cross-examination:

(a) CHH had said that the shares were a gift in fulfilment of a promise made by the plaintiff to him at the time of recruitment. During cross-examination, however, he admitted that the plaintiff did not say words to that effect but gave him that impression by promising that he would treat CHH well and he was a generous boss;

(b) CHH had stated during cross-examination that certain transfers of shares in Taiwanese companies in the Group made in 1999 were meant to be an incentive to do better. However, he then acknowledged that if they were gifts, there was no motivation for him to do better in the future;

(c) during the trial, for the first time, the allegation was made that CHH had made a gift of the shares to the defendant. This was not credible as it was not pleaded in the defence nor stated anywhere in the affidavits of evidence-in-chief of CHH or the defendant himself; and

(d) the word used in both the defence and the affidavits was "transfer" and not "gift". Upon cross-examination, CHH admitted knowing the difference between these two words and was unable to give a satisfactory explanation why in his affidavit he had not stated directly that he had given the shares to the defendant but instead had used the more general word "transfer".

39 The plaintiff also cast doubt on CHH's credibility because, he submitted:

- (a) CHH is proficient in English as shown by his education and the various e-mails in English that he wrote but yet he chose to give evidence in Mandarin;
- (b) CHH was a difficult witness and would not answer questions directly; and
- (c) when questioned as to why he had not declared the shares as part of his remuneration in his income tax return for 2002, CHH had put the blame for the omission on TLH who had prepared the tax return even though he had seen the return before submission. He also had implied that he did not know that such declaration was required even though he had acknowledged that he was the person in charge of tax matters for CCFE.

40 The defendant's evidence generally corroborated his father's account of how the shares had come to be transferred to him though he stated at the outset that he had no personal knowledge of the discussions between the plaintiff and CHH in relation to the matter. The defendant said that in early February 2002, he received a call from his father informing him that the plaintiff was giving CHH the shares in recognition of CHH's contributions towards CCFE and that his father wanted the shares to be transferred to him as CHH was advanced in age. The e-mail of 10 February 2002 from CHH was received after this conversation.

41 In March 2002, TLH asked for the defendant's personal details to effect the transfer of the shares. Following this, the transfer document was sent to him and the defendant signed and returned the same to TLH on 1 May 2002. At no time during the documentation process did the plaintiff or anyone else indicate that the shares were to be held on behalf of the plaintiff. Further, at no time did the defendant agree with the plaintiff that he would hold the shares on trust for the plaintiff.

42 As further corroboration, in his affidavit, the defendant gave details regarding his employment by CCFE. The process had started during his visit to Singapore in October 2001 when the plaintiff had inquired whether he was interested in working in CCFE. After his return to the United States, the plaintiff called him every now and then to give him updates on CCFE and to ask him to consider working in the company. During a telephone conversation some time towards the end of 2002, the parties were discussing his recruitment package upon his joining CCFE and the plaintiff brought up the transfer of the shares as an example of how he perceived the working relationship with CHH and also assured the defendant that he would regard him as a partner in the same manner as he regarded CHH. The plaintiff stressed that he was offering the defendant not just a job but a career with a view towards partnership.

43 The defendant said that at all times he had been treated as a shareholder of CCFE. He was given notice of CCFE's annual general meeting and was also furnished with proxy forms and copies of the directors' report and audited accounts and auditor's report up till 2007. On 12 December 2006, he had written to CCFE's special accountant and stated that he was one of the shareholders of CCFE holding 480,000 shares in the capital of the company. His letter was forwarded to CCFE and its lawyers. Thereafter, no one sought to refute his assertion to be a shareholder of the company. It was only on 29 December 2006 that the defendant received a letter from the plaintiff's lawyers stating that the plaintiff reserved all his rights against the defendant regarding the beneficial ownership of the shares. This was the first time the issue of the ownership of the shares was raised. Then, on 1 April 2008, almost a year and a half later, the defendant received another letter from the plaintiff's lawyers stating that the shares were held on trust for the plaintiff and demanding that he attend at their office to execute a transfer of the shares into the plaintiff's name. The defendant responded on 11 April 2008 to deny the assertion that he held the shares on trust for the plaintiff.

44 In his closing submissions, the plaintiff attacked the defendant's credibility on the following grounds:

(a) the defendant had claimed that during his conversation with the plaintiff at the end of 2002, the plaintiff had brought up the transfer of shares as an example of how he perceived his relationship with CHH. The submission was that it seemed odd and unlikely that the defendant would be offered a partnership at such a preliminary stage and, secondly, if indeed this was the case, that the defendant had not responded by stating that the shares belonged to him and not to CHH;

(b) the defendant never made it a point at the time he joined CCFE that the gift of shares was a reason influencing him to join the company; and

(c) contrary to what he said in court about the shares being a gift to him from his father, in his affidavit, the only reason given for the shares having been put in his name was that CHH was advanced in age.

The evidence for the plaintiff

45 There were two witnesses for the plaintiff: he himself and Mdm Tan. The plaintiff stated that he and his wife established the Group in 1992. At that time he was the owner of several fishing vessels and his wife was a manager in the fishing industry. As co-owner of the Group, the plaintiff became its chairman and was responsible for charting its long term goals and direction.

46 In early 1999, the plaintiff was looking for a candidate to be president/ CEO of the Group. He wanted a person with a strong financial background and management expertise. KPMG Taiwan recommended CHH for the position. The plaintiff was impressed by CHH's experience and track record and employed him. From 2003, CHH positioned himself as CEO and president of CCFE. In this position, CHH was entrusted with the daily management of CCFE. He was also responsible for overseeing its operations and ensuring that it attained its performance target. Apart from his basic salary, CHH received housing benefit and the use of the company car from May 2000. Whilst accepting that CHH had made contributions to CCFE's growth and development over the years, but mainly from 2003 onwards, the plaintiff asserted that he was amply rewarded in terms of salary, bonuses and other benefits.

47 Documents produced by the plaintiff showed that from May 2000 up to June 2002, CHH was given a monthly salary of \$7,000 and provided with a company car and housing. In each of the years 2000 and 2001, he was given an annual bonus of \$7,000. From July 2002, CHH's salary was increased to \$20,000 a month and from July 2003 it was further increased to \$22,000 a month. It remained at this level until his employment was terminated. In December 2002, CHH was paid a bonus of \$100,000. He received bonuses of \$110,000 in December 2003 and 2004.

48 The plaintiff went into detail regarding previous occasions when shares had been transferred by him to CHH/members of CHH's family. He stated that in 1999, his family had wanted to set up two more companies in Taiwan and required seven shareholders to comply with Taiwanese law. As they had six persons (himself, Mdm Tan, his parents and his two siblings) they needed one more individual and approached CHH to be the seventh shareholder. As CHH had some personal issues at that time, he proposed that his wife's name be used instead and Mrs CHH duly became the seventh shareholder of the two companies.

49 The plaintiff also gave details about his financial difficulties in 2001-2002 due to guarantees

that he had issued to secure the indebtedness of his relatives. They were property developers and were affected by the downturn in the Taiwanese property market that took place from 1998 onwards. The guarantees were issued in 2001. Between 8 February 2002 and 5 July 2002, the plaintiff received demands on his guarantees from the relevant banks and the total amount demanded came to in excess of NT\$140m. The plaintiff took action to reduce his indebtedness and by 30 June 2005, these debts were fully discharged.

50 The plaintiff was concerned about his financial position. In order not to lose his entire shareholding in the Group, he discussed the matter with CHH and the latter suggested using the names of members of his family to hold some of the shares in the Taiwan companies in trust for the plaintiff pending the resolution of the issues. It was with that in mind that shares in these companies were transferred to the defendant's relatives on 25 December 2001.

51 With regard to CCFE, at that time CHH was the main person liaising with the bankers. CHH informed the plaintiff that the Taiwanese banks in Singapore were concerned about his personal debts in Taiwan and that he might use the funds of CCFE to repay such debts. CHH suggested that some of the shares in CCFE be transferred to him or his relatives to reflect that CHH had a stake in CCFE which would put him in a more credible position to deal with and convince the banks to continue with the credit facilities to CCFE. He said the idea was to do what had already been done in Taiwan *ie* to "borrow name" only.

52 The plaintiff trusted CHH and agreed to this proposal because it would enable CHH to hold some of the CCFE shares pending the resolution of his financial issues in Taiwan. Accordingly, ten percent of the CCFE shares in the plaintiff's name were transferred to the defendant on CHH's instructions on 21 May 2002.

53 The shares in the Taiwanese companies were transferred back to the plaintiff and his family in 2004 and 2005. Subsequently, after the termination of CHH's employment in July 2005, these shares became the subject of a dispute in the Taiwanese court. The first instance court held in October 2007 that the first set of share transfers in 1999 had been gifts and the second set of share transfers in 2001 were merely name borrowing. The plaintiff and his family appealed and on appeal, it was held that the 1999 share transfers were also name borrowing.

54 The plaintiff denied CHH's position that the shares held in the name of the defendant were a gift to CHH in recognition of the contributions that he had made towards CCFE. The plaintiff stated that CCFE did not achieve substantial profits for the years 1999 to 2001. As at 31 December 1999, the company had net losses of \$203,532; as at 31 December 2000, it had net profits of \$2,707; and as at 31 December 2001, it achieved net profits of \$225,746. In any case, CHH was amply rewarded for all the years he was employed by the Group and CCFE and there was absolutely no reason to further reward him by giving him ten percent in the capital of CCFE.

55 The plaintiff also confirmed that the original share certificate for the shares was still being held by him. The share certificate was never released by him to CHH or the defendant as the shares were not meant to be theirs in the first place.

56 The defendant criticised the plaintiff's credibility on the following bases:

- (a) the plaintiff had sought to downplay CHH's achievements by asserting that from 2003 CHH had "positioned himself" as president and CEO of CCFE but this suggestion that his title was self-styled was absurd and made without any proof. The plaintiff had said that he had asked CHH to run CCFE while he would manage the Taiwanese companies and on the stand the plaintiff had

himself described CHH as the "CEO, general manager of the Group, not just CCFE";

(b) CHH's position was an official one recognised by the plaintiff and his family and in his IR8A forms, CHH was described as group president of CCFE. These forms were signed by TLH;

(c) in the Further and Better Particulars, the plaintiff had alleged that there was an oral communication in January or February 2002 during which he conveyed to CHH that the shares were to be held in trust for the plaintiff and CHH had confirmed that the shares would be held by the defendant. On the stand, however, the plaintiff had conceded that he had never notified either the defendant or CHH that the shares were to be held on trust;

(d) the plaintiff had alleged that the 1999 share transfer in the name of Mrs CHH was necessary as he needed a seventh shareholder to comply with Taiwanese regulations. Under cross-examination, however, the plaintiff had agreed that some of Mdm Tan's relatives and a British Virgin Islands company were already registered shareholders in some of the other Taiwanese companies in the Group and that Mrs CHH could have been replaced as a shareholder in at least one of the new Taiwanese companies being set up. In fact the plaintiff had not been able to give convincing reasons why he continued to assert that one of Mdm Tan's sisters or the latter's husband was not willing to be the nominal shareholder for both companies in place of Mrs CHH; and

(e) in Suit 763, the plaintiff had told the court that CHH had proposed that the shares be placed in CHH's own name. This contradicted his version in the present action which was that CHH proposed that the shares be placed in his name or that of a member of his family. When confronted with these conflicting versions during cross-examination, the plaintiff was not able to give a reasonable explanation for the variation.

57 Mdm Tan filed an affidavit to support her husband's testimony. She gave evidence on the development of the Group, the establishment of CCFE and the reasons for the employment of CHH. She also corroborated the reasons given by the plaintiff as to why Taiwanese shares were put in the name of Mrs CHH. Mdm Tan had no personal knowledge of the discussions between CHH and the plaintiff regarding the CCFE share transfer made in favour of the defendant. She was only able to repeat what her husband had allegedly informed her about the transaction. Accordingly, her evidence was not of great weight nor of much help in my task of assessing the truth of the contradictory assertions put forward by the parties.

Analysis

58 The difficulty in this case is that I do not think that any of the main witnesses were completely truthful. Many of the criticisms of their credibility were well taken. I think that CHH exaggerated the promises made by the plaintiff to him at the time of his initial employment. Whilst the plaintiff might have assured CHH that he would be a good employer, it is highly unlikely that he would have held out the offer of a partnership in a group built up by himself and his wife to a man with whom he had no prior relationship and whom he was proposing to take on as an employee. The defendant similarly exaggerated his assertions regarding what the plaintiff told him when asking him to join CCFE. I also consider that the averments made by the defendant and CHH that the shares were a gift from CHH to the defendant were an afterthought. Their affidavits simply stated that the shares were held in the defendant's name because of the age of CHH. No gift was reflected in the affidavits or the pleadings and if a gift had truly been made by CHH to the defendant it would have been natural to have mentioned this point in those documents.

59 Whilst I have concluded that the defendant and CHH did try to bolster their case by exaggeration and unjustified assertions, this does not mean that I reject the evidence that they put forward in its entirety. The evidence has to be considered on an overall basis in the light of its innate coherence and logic. The same analysis has to be applied to the evidence given by the plaintiff. Having applied these analytical tools, I have come to the determination that the story put forward by the plaintiff does not withstand detailed scrutiny and that, on a balance of probabilities, the transfer of the shares by the plaintiff was intended as a gift to CHH.

60 First, I accept that the plaintiff had good reason to give CHH the shares as a reward and to incentivise him. CHH started work with the Group in Taiwan in early 1999 and subsequently began to concentrate his attention on CCFE at the plaintiff's request. From 2000, he moved to Singapore and worked full time on managing CCFE. The plaintiff had asserted that CCFE had not done particularly well between 1999 and 2001. The company's documents, however, show that its fortunes were turned around after CHH took full time charge of it. From a loss of \$203,532 in 1999, CCFE had a small profit in 2000 and a decent sized profit of \$225,746 in 2001. This profit more than quadrupled to \$1,021,519 in 2002. By early 2002, it must have been clear to the plaintiff that CHH was doing an excellent job and CCFE was on course to further improve its business.

61 It is therefore understandable why the plaintiff would feel inclined to reward CHH and to provide an incentive for him to continue to devote his full attention and talents to building the business of CCFE. In cross-examination, the plaintiff agreed that CHH had turned CCFE around. He agreed also that there was every reason for him to value the services and contributions of CHH and to ensure that he remained happy and satisfied with his employment. The gift of the shares would give CHH a stake in the company. As the plaintiff admitted on the stand, as the business grew, the shares of the shareholders would be worth more. Thus, he knew that giving CHH shares would motivate him to work hard to increase their value. It is also important to note that whilst the par value of the shares was \$480,000, no evidence was brought to demonstrate that their actual value was at that point in time anywhere near that figure. Thus, the magnitude of the gift may have been much less in monetary terms than would appear on the face of it.

62 That the shares were intended as a gift was supported by the only document that was produced contemporaneously with the transfer that indicated the intention behind the transfer. I am referring to the e-mail of 10 February 2002 sent by CHH to the defendant. The plaintiff himself did not make any written record whatsoever of his alleged reasons for the transfer or produce any document which indicated that a trust arrangement was contemplated. There is therefore no writing on the plaintiff's side to corroborate his story or to contradict CHH's account.

63 It is clear from the second paragraph of the e-mail that CHH regarded the transfer as a gift and an indication that if he worked hard he would get even more benefit from the company. The e-mail mentioned the impending transfer of the shares from the plaintiff to the defendant and expressed CHH's joy and encouragement arising from the gift. He also praised the plaintiff's generosity:

I want you to share the appreciation to [*sic*] the generosity of what LCF has done to us.

That phraseology is significant. CHH would never have described a trust arrangement as generous nor would he have had reason to ask the defendant to share his appreciation of what had been done.

64 As a contemporaneous document, the e-mail provides a clear insight into CHH's thoughts and frame of mind in February 2002. As the defendant submitted, it is also significant that the relationship between the plaintiff and CHH was excellent at that time and there was absolutely no reason for CHH to concoct the e-mail. At that time he would have had no inkling that he would fall out with the

plaintiff and the plaintiff would sue for the return of the shares and dispute the intent behind the transfer of the shares to the defendant.

65 The plaintiff tried to weaken the impact of the e-mail. He argued that the language of the e-mail was not unequivocal. He said that if CHH had believed that the transfer was a gift, he would have said so expressly instead of informing the defendant that "LCF simply instructed TLH to transfer 10% of 4.8m paid up capital from his name to Ivan Chuang". In the plaintiff's view, the e-mail was nothing more than an indication of CHH's feeling that his prospects of becoming a shareholder had improved substantially. I do not find those arguments convincing.

66 The authenticity of the e-mail as a contemporaneous expression of the feelings of CHH cannot be denied. What is interesting is that the e-mail was not originally in the possession of the defendant or CHH. They only got it after the commencement of Suit 763 because the e-mail was recovered from CHH's desktop computer by CCFE's computer forensic experts in Suit 763. In Suit 763, CCFE had disclosed two DVDs from its computer expert which contained numerous files extracted from CHH's desktop computer and the e-mail was found in one of these DVDs. CHH did not have possession of the e-mail until then. The authenticity of the e-mail was initially objected to by the plaintiff but when the circumstances surrounding the discovery of the e-mail were disclosed by the defendant's solicitors, the plaintiff withdrew his objection to its authenticity.

67 The strength of the defendant's assertion that the shares were a gift to CHH is enhanced by the illogicality of the case put forward by the plaintiff. As the defence submitted, the plaintiff did not offer any logical reason to explain the need for the shares to be held on trust by the defendant. The plaintiff's position is that the circumstances surrounding the transfer of the shares were as follows:

- (a) CHH was the main person who was liaising with CCFE's bankers;
- (b) CHH had informed the plaintiff that the Taiwanese banks in Singapore were concerned about the plaintiff's personal indebtedness in Taiwan and that the plaintiff would use CCFE's funds to repay such indebtedness;
- (c) CHH therefore suggested to the plaintiff that some of the shares in CCFE be transferred to him or his family members to reflect that CHH had a stake in CCFE and therefore had a more credible position to deal with and convince the bankers to continue granting credit facilities to CCFE; and
- (d) CHH said that the idea was to follow what had already been done in Taiwan *ie* name borrowing.

However, the evidence did not support the suggestion that the transfer was used to assure the Singapore bankers that CCFE's funds would not be used to pay the plaintiff's Taiwanese debts or to put CHH in a better position to deal with the banks in Singapore.

68 Firstly, there was no evidence apart from the plaintiff's say so that the Taiwanese banks in Singapore were concerned in 2002 about his indebtedness in Taiwan. Secondly, it is impossible to see how having the shares in the defendant's name would raise the comfort level of the banks as well as boost CHH's standing with them since the defendant was at that time still residing in the United States, was not an employee of CCFE and was completely unknown to the bankers. If CHH had suggested to the plaintiff that it would help him deal with the banks to have shares in CCFE, he would never have asked the plaintiff to put the shares into the defendant's name. Instead, he would have kept the shares in his own name. Also, if the shares were to be transferred on trust to improve CHH's

standing, there was no reason to limit the number of shares transferred to ten percent of the issued capital, leaving the plaintiff with 35% thereof in his hands and allowing him, in conjunction with his wife, to continue to control CCFE to the exclusion of CHH. Instead, all or almost all of the plaintiff's shares could have been transferred to CHH. The shareholding situation after the transfer was effected would not have calmed the alleged fears of the banks as the plaintiff still had sufficient power to dictate how CCFE's funds were to be used.

69 Thirdly, if the plaintiff had wanted to allay the bankers' alleged fears that he would use CCFE's moneys to repay his Taiwanese debts, he could have transferred his shares to Mdm Tan or to her siblings who were already shareholders of CCFE and were Singapore residents. This was in fact what he had done in Taiwan – the plaintiff and Mdm Tan had restructured the shareholding of their Taiwanese companies such that the bulk of the shares originally held by the plaintiff and his family were transferred to Mdm Tan. There was no need to have the defendant who was an outsider come on board as a new shareholder. Bearing in mind that the defendant was in the United States at that time, it was an unnecessary waste of time and money for TLH to courier documents to the defendant for signature and return. Instead the transfer documents could have been conveniently signed here by TLH or other siblings of Mdm Tan.

70 As pointed out earlier, the plaintiff also had taken a slightly different position in Suit 763 in relation to the reason for the transfer. There he had stated that CHH had proposed that the shares be placed in CHH's own name whereas before me, his version was that CHH proposed that the shares be placed in his name or the name of one of the members of his family. During cross-examination, it was put to the plaintiff that he had not told the judge hearing Suit 763 that CHH had said that the shares should be transferred either to him or a family member. The plaintiff conceded that if there was no record of such a statement, then he had not said so. The following exchange then took place:

Q: Yes. And in fact, Mr Lin, after it was highlighted to you that that wouldn't have made sense because the shares were never registered in [CHH's] name, but they were registered in [the defendant's] name, even when that was brought up to your attention, you still did not bring this piece of the evidence in paragraph 26 to the attention of the Court.

A: Well, at that time, [CHH] was not a suitable person to have the share registered in his name. So who can best represent him? Naturally it was his son. I actually am not very particular about whether the shares were registered in his name or share's name --- or his son's name because in all, his shares could not be registered in his name because he himself had some problems, he had some debts, I do not know what he told the bank. So I worked for this company, if I have --- if the shares were registered in my son's name, it will also represent who holds the shares.

As the defendant pointed out, the above testimony was the first time that the plaintiff had told the court that CHH had problems and debts and that was why the shares had to be placed in the defendant's name. This was not pleaded nor raised in the plaintiff's affidavit of evidence-in-chief. The plaintiff also made the allegation that CHH was not a suitable person to have the shares registered in his name but gave no explanation for the alleged unsuitability. It is difficult for me to accept the plaintiff's evidence on this point as being truthful.

71 The plaintiff spent some time in his closing submissions dealing with the two sets of share transfers in Taiwan. Apart from the transfers in 1999, there were transfers in 2001/2002 to Mrs CHH and another son of CHH. In respect of the 2001 transfers, CHH admitted that these were only "name borrowing" and that there was no change of beneficial ownership. The plaintiff's case was that the same thing had happened in Singapore.

72 There were two main share arrangements in Taiwan concerning the plaintiff's family and the Chuangs:

(a) in 1999 (when the plaintiff was not in any financial difficulty), three percent of the shares in Chun Success International Co, Ltd and five percent of the shares in Chun Success Investment Co, Ltd were registered in the name of Mrs CHH; and

(b) in 2001, 25% to 30% of the shares in Chun Cheng Marine Products Enterprise Co, Ltd; Chun Cheng Fishery Co, Ltd; Chun Mao Fishery Co, Ltd; and Chun Yu Fishery Co, Ltd were registered in the names of Mrs CHH and another son, Chuang Hsun-Yang.

As far as the 2001 share registration was concerned, CHH never denied that this was made in name only and that the plaintiff and Mdm Tan were the real owners of those relevant shares which formed a significant percentage of the issued share capital of the companies involved. During cross-examination, the plaintiff himself agreed that the Chuangs had never claimed to be the owners of these shares. CHH and Mrs CHH only disputed the 1999 share registration which, in terms of shares involved, related to a very small minority of the issued shares. They took the position that these shares were given by the plaintiff to CHH in 1999 as a reward for the latter's hard work. The Taiwanese court of first instance found that there had been a gift. This decision was reversed on appeal and there is a further appeal by the Chuangs which is pending the decision of the Supreme Court of Taiwan.

73 I do not think it is necessary for me to go further into the details of the 1999 Taiwanese share transfer. That matter is not before me. Whether a gift was made by the plaintiff to CHH in 1999 as CHH alleges is not directly relevant to my decision here. Even if the 1999 share transfer was not a gift, that does not preclude a gift having been made of the CCFE shares in 2002. My decision has to be based on the evidence before me.

74 The plaintiff made the point that it was not likely that he would want to motivate CHH by a gift of shares since CHH was very well paid for his contributions to CCFE. Further, CHH was given a bonus of \$100,000 in 2002 and the size of the bonus indicated that the way in which the plaintiff rewarded CHH was monetarily and not by way of shares. The plaintiff submitted that if indeed a gift of shares had been made, he would not have needed to give CHH such a substantial bonus. The plaintiff's point is superficially attractive. However, it does not stand up to examination. The transfer of shares took place at the beginning of 2002 when the company's results for that year were not known. The bonus of \$100,000 was paid at the end of the year by which time the plaintiff would have been aware that by reason of CHH's continuing efforts, the company was well on its way to earning a profit of over \$1m which was more than four times the 2001 profit. In these circumstances, the plaintiff might very well have considered a further and immediate reward was in order since the shares could not be easily realised for cash and, in any case, he would not have wanted CHH to sell the shares since the intention behind the gift was to keep CHH as a shareholder who worked hard to increase the company's value.

75 As for the plaintiff's arguments that the defendant's dilatoriness in signing the share transfer forms and failure to ask for a new share certificate showed he knew the transfer was only name borrowing, I find the same to be insubstantial. There was no hurry to get the shares transferred or to obtain a certificate: these shares were not listed and could not be easily encashed. Further, CHH was taking a long term view and hoping for further rewards if CCFE did well. He wanted to be a shareholder/partner of the plaintiff and not just an ordinary employee. So a sale of the shares was not in the cards.

Conclusion

76 On the evidence I am satisfied that the shares came to be registered in the defendant's name as a result of a gift made by the plaintiff to CHH to reward him for his hard work and to give him a suitable incentive to work even harder in the future to improve the business of CCFE. There was no express trust imposed on the shares by the plaintiff at the time of the transfer. The presumption of resulting trust has been rebutted by the evidence of the plaintiff's intention. I therefore dismiss the plaintiff's claim with costs.

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