

Leong Eva v Loo Yek Hwee Robin and another
[2013] SGHC 241

Case Number : Suit No 545 of 2012
Decision Date : 11 November 2013
Tribunal/Court : High Court
Coram : Lee Seiu Kin J
Counsel Name(s) : Alvin Chang and Kimberly Yang (M & A Law Corporation) for the plaintiff; The first and second defendants in person.
Parties : Leong Eva — Loo Yek Hwee Robin and another

contract – breach

11 November 2013

Lee Seiu Kin J:

- 1 On 26 July 2013, after a two-day trial, I made the following orders in favour of the plaintiff:
- (a) As of 4 May 2012, the beneficial interest in the partnership business, namely Dong Ba LLP (the "Partnership"), had vested in the plaintiff absolutely.
 - (b) The first and/or second defendants are therefore obliged to procure the transfer of the Partnership to the names of the plaintiff and/or her nominee(s) by 26 August 2013.
 - (c) The first defendant shall sign the necessary documents to effect the transfer of the Partnership to the plaintiff and/or her nominee(s) by 26 August 2013.
 - (d) The first defendant shall surrender the Partnership's business premises at 1 Goldhill Plaza, #01-23 Goldhill Plaza, Singapore 308899 (the "Premises") to the plaintiff by 26 August 2013, along with all fixtures, fittings and furniture that were in the Premises on 4 May 2012, with liberty to the first defendant to remove all stocks only.
 - (e) The first defendant shall surrender all documents of the Partnership to the plaintiff by 26 August 2013, with liberty to the first defendant to make copies of such documents.
 - (f) The first defendant shall assign and/or novate, or procure the assignment and/or novation of the lease to the Premises, to the plaintiff and/or her nominee(s) by 26 August 2013, upon payment by the plaintiff of any additional rental deposit and/or advance rent paid by the first defendant.
 - (g) The first defendant shall transfer the liquor license and public entertainment license (collectively the "Licenses") which are registered in his name in connection with the Premises and the Partnership, to the plaintiff and/or her nominee(s) by 27 August 2013.
 - (h) The first defendant shall forthwith render an account of the business of the Partnership from 19 June 2012 to the date of transfer of the Partnership to the plaintiff.

(i) The first and second defendants shall pay the plaintiff damages to be assessed.

(j) The first defendant's counterclaim was dismissed, with costs and disbursements of the counterclaim to be paid by the first defendant to the Plaintiff to be taxed, unless agreed.

(k) The first and second defendants shall pay the plaintiff's costs and disbursements of this suit to be taxed, unless agreed.

(l) The parties shall have liberty to apply.

2 The defendants filed a notice of appeal on 23 August 2013. I now give my grounds of decision.

Plaintiff's case

3 The plaintiff ("Leong") gave the following evidence. In early January 2012, Leong contracted with the second defendant ("Chan") and the second defendant's brother Chan Fook Shin ("Shin") to purchase a pub located at the Premises ("the Business"). The Business was operated by the Partnership which was a partnership between Chan and Shin. The agreement ("the Agreement") was that Leong would pay a total of \$74,100, with \$60,000 as the purchase price of the Partnership (including the Business and the Licenses) and \$14,100 as refund of a rental deposit to the second defendant.

4 Leong's business partner in the venture was one Tan Tow Tan ("Tan") (also the second defendant in the counterclaim) who was experienced in managing pubs. Tan arranged for the first defendant ("Loo"), who was his former employee in a previous pub business, to act as agent and manager for Leong and Tan in the Business. Loo was also to be named partner in the Partnership. The upshot of the arrangement was that Tan would be running the business with Loo's help; however on paper Tan was to be the manager and assistant and Loo the partner.

5 Pursuant to the Agreement, Leong paid Chan \$30,000 on 1 February 2012 and on that day, Loo was registered as a partner of the Partnership in place of Shin who had withdrawn the previous day. On 15 February 2012, the agreed handover date, Leong paid Chan the remaining \$30,000 in cash plus \$3,100 as a refund of half-month's rental for the Business. According to the Agreement, an additional \$14,100 in rental and utility deposits was to be paid on that day, but Leong held it back because Chan had not procured the transfer of the Licenses to Loo by 15 February 2012. On 14 March 2012, Leong made a part payment of \$4,100. The licenses were transferred on 30 April 2012 and on 4 May 2012, Leong paid the remaining sum of \$10,000 to Chan (the net payment was \$8,539.15 after setting off certain other agreed sums). According to Leong and Tan, at this point they were in control of the Business, with Loo as their agent and manager and the named partner in the Partnership.

6 Leong and Tan expended considerable sums in renovating the Premises and in procuring supplies of alcoholic drinks; the contracts for these were stated to be between the relevant vendors and either Leong or Tan. Leong also paid all the operating costs of the Business from 7 March 2012, including \$2,400 a month to Loo as salary; \$700 for holding the Licenses on her behalf; and an incentive payment based on the Business's performance. Leong produced copies of statements of a bank account held jointly with Tan to show payments of these sums.

7 On 29 May 2012, Loo walked out of the Premises after an argument with Tan and did not return to work until 19 June 2012. During this period Tan continued to manage the Business. As Chan had not removed his name from the relevant registry as a partner, Leong's solicitors issued a letter of demand to Chan on 11 June 2012 to, *inter alia*, cause his name to be removed as a partner. Leong's

solicitors also wrote to Loo on 13 June 2012 to, *inter alia*, remove his name as partner. There were a number of meetings during this period in which there were some attempts at reconciliation as well as attempts by Loo to demand money from Leong in return for his cooperation.

8 On 19 June 2012, Loo returned to the Premises and attempted to have the locks changed. The police were called and it was finally agreed that Leong and Tan could remove, in their presence, any items for which they could provide evidence of payment. This was done that night and subsequently on 6 July 2012. After 6 July 2012 Loo took over the running of the Business.

9 The thrust of Leong's claim was that the defendants had failed to comply with their obligations under the Agreement and have instead locked her out of the Business.

10 As against Chan, Leong's claim was that he had failed to transfer the Licenses (or had failed to procure their transfer) by the stated date of 15 February 2012 and did so only on or around 30 April 2012. Thereafter he had failed to register Tan as a partner in the Partnership and he had remained as a partner himself; he only withdrew as a registered partner on 15 June 2012 and it was on that day that one Chew Kai Piau ("Chew") was registered as a partner of the Partnership. Leong alleged that she was later told by Chew that Loo had offered to sell to him (Chew) half the Business at below market price on the condition that it was a quick sale and that was the reason that Chew had been registered as a partner. The failure to register Tan as a partner in the Partnership meant that Leong was unable thereafter to exert any control over the Business. Further, she claimed that the defendants had prevented her from inspecting the Partnership's bank accounts and had failed to furnish statements. Loo, it was alleged, even changed his specimen signature so that Leong could not access the bank accounts and could not also make use of pre-signed blank cheques. On this basis she had been effectively locked out of control of the Business.

11 As against Loo, Leong said that he had threatened to terminate the Licenses in order to force Leong to sell the Business to him at a knockdown price of \$60,000 and that he had tried and in fact succeeded in taking over her Business; her claim was that these actions were in breach of his fiduciary duties owed to her as her agent and nominee.

Defendants' case

12 Loo's case was that he was not the nominee or agent of Tan or Leong, but in fact he was the principal and Tan was actually his employee. Loo did not dispute the payments that Leong claimed she had made to acquire, stock and operate the Business, but asserted instead that these were loans to him. Loo said that in or about January 2012, Tan, whom he described as a friend and drinking buddy, asked if he, Loo, was interested in taking over the Business. The proposal was that Tan would lend Loo the money to do so and teach him the ropes and would be repaid out of the profits of the Business. Loo denied that he ever had any dealings with Leong, whom he knew only as Tan's girlfriend and proxy. It must be noted that there was no documentary evidence of this agreement, which will be referred to hereinafter as the "Loan Agreement".

13 The Agreement was not denied and in fact it was evidenced in the affidavits of evidence-in-chief of all the parties in the suit. Loo did not dispute that Leong made the payments pursuant to the Agreement, and claimed only that these sums were in fact paid on his behalf under the Loan Agreement. Upon completion of the purchase, Loo became the manager of the Business; Tan became the assistant manager and it was alleged for Loo that Tan thereby owed him and/or the Partnership fiduciary duties.

14 Loo said that there was a major disagreement between himself and Tan at the end of May

2012. The reason for this was that "Tan had shown little respect to me and shouted vulgarities at me". [\[note: 1\]](#) There were meetings with Leong and other persons on 30 May 2012, 2, 7 and 12 June 2012 in order to resolve the matter. At the meeting on 12 June 2012, Loo suggested that he could pay off the loan from Tan; Tan countered saying the Business was worth \$200,000. Loo offered to sell at that price and Tan then walked away.

15 Subsequently there was a showdown at the Premises of the Business on 19 June 2012 where the police were called. Later that evening Tan and others returned to the Premises and removed a number of items. Loo said that, as a result, the Business could not function until many of the items, such as the cash register, were replaced. This was done only by 6 July 2012; as at 29 April 2013, Loo was operating the Business, and it seemed he was still doing so at the time of the trial.

16 Loo claimed that Tan had diverted monies belonging to the Partnership to his own use and that this and other actions by Tan were in breach of his fiduciary duties as a manager or employee.

17 Chan's case was simply that he had dealt all along with Loo and thus thought he had contracted with Loo instead of Leong. He claimed he did not receive the entire sum due and therefore effected the registration of Chew on receiving the balance due from him. After this was done on 15 June 2012, he ceased to have any involvement with the Business.

Findings of fact

18 The main issue in this claim was whether Leong was the true owner of the Business or whether it was Loo, as reflected on the partnership documents and documents evidencing the Agreement. For the reasons that follow, I found that the evidence was overwhelmingly in favour of Leong.

19 Firstly, it was not disputed that Leong had made all payments to acquire, stock and operate the business, including a salary to Loo.

20 Secondly, Leong's position was supported by Ho Zhongxiong Jared ("Ho"), the property agent who had brokered the sale of the Business. Ho had advertised the sale of the Business on behalf of Chan. Leong was the person who contacted Ho. She made initial inquiries and appeared satisfied and she then made a firm offer in mid-January. There was a meeting between Ho, Chan and Loo at the Premises, during which Ho got the clear impression that Leong was the principal and Loo was merely her agent and the putative manager of the Business. Ho's evidence was that he had dealt exclusively with Leong in the course of the negotiations until a deal was reached. Ho was also present at a meeting at the auditor's office during which he witnessed Leong paying \$30,000 in cash to Chan. He was also present at the subsequent handover meeting on 15 February 2012 during which Leong made the second payment of \$30,000 to Chan. Ho said that Leong had appeared to him all along as the real owner as she had made the payments and Loo had appeared to act on her instructions.

21 Chan's evidence was that it was Loo who was in fact the one who was taking over the Business and that it was Ho instead of Leong who had handed to him the initial payment of \$30,000 and then on 15 February 2012 the remaining \$30,000 outstanding. In both cases, Chan said, he presumed that Ho had collected the money from Loo to transfer to him (Chan). However and crucially, Loo did not give evidence in either of his affidavits of what happened at these meetings even though on the evidence of Leong, Ho and Chan, he was present. Chan further averred that the subsequent payment of \$4,100 was paid by Loo and that the final sum of \$10,000 was paid not by Leong on 4 May 2012 as she alleged, but by Chew on 15 June 2012; Chan evidenced this by way of a signed receipt. However Chew did not give evidence in court.

22 Leong evidenced her payment of \$8,539.15 by way of bank statements and copies of the utility bills that had led to the set-offs; the documents back up her claims. There was further contemporaneous evidence in the form of a series of short messaging services ("SMS") communications between Tan and Loo and which made reference to the utility bills.

23 Loo's evidence differed from that of his fellow defendant and suggestively so. Loo in fact admitted that that sum of \$8,500 was paid by Leong or Tan to Chan; it was only that Chan was unhappy with the set-offs against the utility bills and wanted a further sum of \$10,000 before he would transfer the Business fully, although Chan denied receiving \$8,500 or any sum in satisfaction of that final payment of \$10,000 until he was paid by Chew. Loo stated that he therefore "had no choice but to procure the payment of the sum of \$10,000 to [Chan] and the deal was finally completed." [\[note: 2\]](#) Presumably this was a reference to the payment from Chew. I found therefore that it was Leong and not Loo who had entered into the Agreement and that Chan had, in fact, received the sums paid under the Agreement. Chan was therefore obliged to transfer the Partnership and the Licenses.

24 It was not disputed that Leong and Tan had paid for the renovations and the operating costs. Loo's case was that these payments were made pursuant to the Loan Agreement. There was no document evidencing the Loan Agreement and given the sums involved and the nature of the commitment, this was unusual. There also does not seem any commercially sound reason why Tan would enter into the Loan Agreement.

25 Thirdly, the evidence was that Leong was in fact the one in control of the Business. Evidence of the real relationship between the parties was found from the written communications between the parties. Leong exhibited several emails/SMSes between her and Loo in which Loo appeared to be in the position of a subordinate and employee: his concern was for his salary; he stated that he was quitting; that Leong was in charge of working out incentive payments and salary matters. Tan also exhibited a series of SMS communications with Loo that showed that Loo was at those times taking instructions from him. Finally Leong exhibited pre-signed cheques with what looked like Loo's signature and this was further evidence showing that she was in fact in control.

26 By contrast, on his part, Loo had exhibited only a series of police reports and emails to Ministry of Manpower containing various allegations regarding Filipino workers and that his Singpass ID had been changed by Tan. He also exhibited letters from his solicitors which repeated his claims made in his pleadings and in his affidavits as well as statements showing that monies had been paid into Leong and Tan's joint account and that a rebate meant for the Partnership had been paid to Tan instead. These did not give much support for Loo's claim that he was in fact the owner of the Business.

27 I also found the quality of the evidence given by Leong in the witness box to be very consistent. She backed this up with documentary evidence of payments. Loo's evidence, on the other hand, was not as consistent and differed on material points with that of Chan, his fellow defendant. But the evidence of Leong, as well as Tan, were consistent and corroborated by the contemporary documents. All payments were made by Leong and nothing was paid by Loo. Indeed all the evidence pointed to Loo being engaged as an employee. His claim that the monies were advanced to him as a loan was inconsistent with the facts.

28 For these reasons I found for Leong in the claim and dismissed Loo's counterclaim.

[\[note: 1\]](#) bundle of affidavits evidence-in-chief vol iii ("3BA") p 557

[\[note: 2\]](#) 3BA p 554

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