IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1995] SGHC 279

Suit 1753/1990

Between

Guoh Sing Leong alias Quek Sing Leong the Administrator of the Estate of Guoh Koh Boey (deceased)

… *Plaintiff*

And

Hock Lee Amalgamated Bus Co (Pte) Ltd

… *Defendant*

GROUNDS OF DECISION

Version No 1: 29 Oct 2026 (23:45 hrs)

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Guoh Sing Leong alias Quek Sing Leong the Administrator of the Estate of Guoh Koh Boey (deceased) v Hock Lee Amalgamated Bus Co (Pte) Ltd

[1995] SGHC 279

Suit 1753/1990
Lai Siu Chiu J
20 November 1995

1 **Judgment:**

2 Coram : Lai Siu Chiu J

3 **GROUNDS OF JUDGMENT**

4 This was a claim by the plaintiff, as the administrator of the estate of Guoh Koh Boey (the deceased), for the sum of $340,376 being the balance of dividends due and payable on the 13 shares held by the deceased in the defendant company (the company). At the conclusion of the trial, I dismissed the claim with costs; the plaintiff has appealed against my decision.

5 The background The company was incorporated on 6 November 1951 to carry on the business of providing bus services to the public. It was formed by the merger of two family concerns, namely, Soon Lee Bus Company (Soon Lee) and Ngo Hock Bus Company (Ngo Hock). Individuals from the Soon Lee group, including the deceased, owned 50% of the shares in the company. On

behalf of the Ngo Hock group, Ngo Hock Nominees (Pte) Ltd held the remaining shares. By virtue of the equal ownership in the company, the board of directors consisted of equal numbers from each group. The key positions involving administration, finance and operation were also jointly filled by representatives from each side. From 1951 to 1971, the deceased was a cashier of the company together with one Quek Sin Bok (Quek) who represented the Ngo Hock group. Both of them were also directors of the company.

6 Sometime in 1971, pursuant to the government's transport policy, the company merged with the Keppel Bus Company and the Kampong Bahru Bus Company to form the Amalgamated Bus Company Limited (ABC). The company ceased operating its bus services and became the major shareholder of ABC. The company's accounts were closed on 31 March 1971. At or around this time, a sum of $340,376 in cash was unaccounted for by the two cashiers. For the financial year ending 31 December 1973, the auditors, A S H Loong & Company (the auditors), made the following qualification to the audited accounts: 1. Cash in hand We are unable to ascertain the Cash in Hand of $340,376 purported to be in the hands of the cashiers.

7 The deceased and one Low Ah Lay signed as directors confirming that the audited accounts of 1973 gave a true and fair view of the state of affairs of the company as at 31st December, 1973 and of the results of the business of the company for the year ended on that date.

8 Similarly, the auditors qualified the audited accounts of the company in the financial years of 1978, 1982 to 1988 (see 2AB5 and 2AB19) thus: 1. Cash in Hand We are unable to verify the existence of the cash in hand amounting to $340,376 and we have not been able to obtain confirmation from the two former

cashiers who have denied responsibility and have not handed the cash over to the company.

9 Finally, in 1990 (2AB136) it was stated by the auditors that: We are unable to ascertain the recoverability of the amount due from other debtors amounting to S$340,376 against which no provision has been made.

10 Meanwhile, the deceased passed away on 30 March 1979. In July 1979, he was adjudged a bankrupt and his estate was vested in the official assignee. Between 1983 to 1990, the company declared dividends, share of profits or advance dividends in favour of the shareholders; the amounts paid before 1990 were negligible. In 1990 the company sold its bus depot land at Alexandra Road with a resulting windfall to its shareholders in the way of dividend payments, including the deceased whose entitlement amounted to $399,717.40. At the material time, the deceased's estate was the legal and beneficial owner of 13 shares in the company; the deceased's dividends were not paid to the official assignee. On 28 September 1990, the official assignee commenced proceedings against the company for the sum of $399,717.40. On 22 May 1991, summary judgment was entered against the company for the sum of $59,341.40 which it paid. The claim proceeded to trial for the balance of $340,376. In July 1992, the receiving and adjudication orders made against the deceased were rescinded and annulled respectively. The plaintiff, a son of the deceased, continued with the action against the company in his capacity as the administrator of the estate. As at the date of trial, the company was dormant but its voluntary liquidation could not be finalised because of the action.

11 The company resisted the claim on the ground that a sum of $340,376 was due and owing by the deceased to the company while the deceased was a

cashier of the company, as reflected in the audited accounts. Pursuant to article 89 of the company's articles of association (the articles), the company sought to deduct from the dividends the sum of $340,376 due from the deceased to the company. In the alternative, the company alleged that the deceased misappropriated the sum of $340,376 in breach of trust as the company's cashier and director and converted the sum of $340,376 for his own use. Thus, the company was entitled to set-off the sum against the claim.

12 The evidence (i) the plaintiff's evidence It is appropriate to begin with the evidence of Kwok Sing Ngie (Kwok), one of the deceased's sons and a shareholder of the company since 1974, who sought to refute the allegation that the deceased failed to account for or had otherwise misappropriated the sum of $340,376. In 1975, the deceased gave Kwok copies of certain documents to show how the sum of $340,376 was expended. In 1976, the deceased suffered a stroke. Bedridden, he stayed with Kwok's family until his death in 1979.

13 First, Kwok (PW3) referred to a letter in Chinese purportedly written by Quek's late wife, Lee Yew Yew (Mdm Lee); the copy produced by Kwok was marked "C" for identification only, subject to satisfactory proof of the maker of the document. According to Kwok, at one of the annual general meetings, Mdm Lee circulated copies of document "C" to the shareholders of the company. The purpose was to exonerate Quek from any wrongdoing with respect to the missing sum of $340,376. The translation of document "C", as far as material, is as follows:

14 Dear Shareholders: 3-11-72 sgd Lee Hock Lee Company belongs to us. If the accounts are to be audited, then all the relevant accounts must be worked

out. This is not only reasonable but more complete. Unfortunately, some of the parties concerned are still disagreeable.

15 My accounts are as follows. Should anyone feel that they are incorrect, I shall be most glad to clarify. Finally, I hope all of you wi l co-operate with one another and have all the accounts worked out. Hock Lee balance (Day Book balance) totalling $344,809.06 Balance through Seng Bok 161,002.25 Balance through Koh Poey < the deceased > 183,806.81...

16 Not only does Seng Bok owe no money to the Company, but the company should return him $2,936.752 Signed Lee ? < in blue ink >

17 By document "C" Kwok said it was clear that Quek was personally responsible for the sum of $161,002.25 which formed part of the unaccounted sum of $340,376. To that extent, the deceased was not liable for the missing sum. Kwok explained Quek's role as a cashier thus: Quek had the same responsibilities and powers as the deceased. The daily collections of bus fares were handed to the deceased and Quek on alternate days. As co-cashiers, they took turns to bank in the collections received.

18 Secondly, Kwok referred to another statement of accounts written in Chinese, purportedly drawn up by the defendants' accounts clerk, one Ding Teck Leong (Ding), who passed away in 1978. The original document was marked "A" for identification, again subject to proof of execution. Kwok said that Ding handed "A", which was neither signed nor dated, to the deceased in Kwok's house and in Kwok's presence. Kwok did not have a sample of Ding's handwriting for comparison. The translation of document "A" states:

Hock Lee balance	$	340,376.90
Through Seng Bok		161,002.50

Through Koh Poey		179,372.50
Amount due to Koh Poey after deduction		6,431.21
Seng Swee		42,500.00
Seng Swee Family		32,689.85
Seng Swee		20269.50
		95,459.35
Lim Meng Yi		5,000.00
Guok Hua Ing		15,000.00
Low Lai Boh		9,000.00
Guok Yew Ting		2,300.00
Er Tian Han		1,500.00
Guok Chin Nguong		1,000.00
Low Ah Bak		1,000.00
Teo Yew Siang		500.00
Si How		12,700.00
ABC registration		13,500.00
To ROV		28,844.36
Total		185,803.71

19 Significantly, document "A" confirmed that Quek was responsible for the sum of $161,002.50. Apart from the amount for which Quek was responsible, document "A" also reflected the various payments made by the deceased to the shareholders and directors, on behalf of the company. Kwok claimed that it was Peter Guok Sing Swee (Peter) and his brother, James Guok Sing Ong (James), nephews of the deceased, who controlled and dominated the company. Peter and James, together with some other shareholders and directors, took money from the deceased and Quek. Specifically it was Peter, English educated, a lawyer and chairman of the board of directors, who took most frequently from the company's coffers. Often, payments made by the deceased were described as "loans", "advances", "allowances", "salaries", "management

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fees" and "commissions". In addition, document "A" showed that the company owed the deceased the sum of $6,431.21.

20 In support of his allegation against the other directors and shareholders, Kwok referred to yet a third unsigned and undated statement of accounts written in Chinese. The original, written on the back of a card announcing the National Day rally for 1974 was marked "B" for identification only, subject to proof of execution. Kwok recognised the handwriting in document "B" as that of the deceased. A translation of this document reads:

Hock Lee Balance	340,376.00
Due to Seng Bok	161,002.50
Due to Poey	179,372.50
Lai Boh	$ 9,000.00
Si How	12,700.00
ABC Registration	13,500.00
Yew Ting	2,300.00
Tain Han	1,500.00
Yew Siang	500.00
Chin Nguong	1,000.00
Ah Bak	1,000.00
(cancelled)	
ROV	28,844.36
Seng Swee	83459.00
Total 11 items	154343.40
Credit balance	24,739.14

21 Kwok also relied on some cash vouchers, acknowledgements and receipts (see PB1 to PB114) to prove that payments were indeed made to the various directors and shareholders. He added that two large items were not reflected in document "B" -- Peter took a sum of $122,388 from the proceeds of the sale of scrap metal (PB35 to PB40) and James took a sum of $29,500 from the deceased (PB104 to PB107).

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22 Referring to the substantial payment to the Registry of Vehicles (the ROV), Kwok explained that it was for the road tax on the company's fleet of buses. Both the payment to the ROV and the payment for the registration of ABC were urgent. As four signatories were needed to validate the company's cheques, the deceased decided to make these payments in cash. Hence, there were no records of the payments.

23 All the payments made by the deceased together with the sum of $161,002.25 for which Quek was responsible far exceeded the sum of $340,376 mentioned in the audited accounts. Clearly, there was no wrongdoing on the part of the deceased. Otherwise, some form of legal action, be it civil or criminal, would have been taken against the deceased in his lifetime.

24 Turning to explain the signature of the deceased in the audited accounts for 1973, Kwok said that the deceased signed as a director of the company until the bankruptcy proceedings in 1978; he signed as required by Peter, it was a mere administrative formality. The deceased was Chinese educated and did not understand the documents which were all written in English. The deceased did not admit to the contents or to the allegation of misappropriation. Kwok added that it was untrue that the deceased did not bother to explain the matter to the company. For years, Kwok would bring the matter up at the annual general meetings on the deceased's behalf, only to be ignored by Peter. Once, Kwok passed all the relevant documents in his possession to the company secretary, L C Loong, to forward to Peter. In 1987, Kwok passed the documents to Peter through his sister, Gertrude Guok. Peter dominated the company to such an extent that all his attempts to have the matter investigated were blocked. Kwok produced a letter he wrote to L C Loong dated 20 May 1982 (PB124) which reads:

25 Dear Sir

26 RE: CASH IN HAND OF $340,376 WITH TWO FORMER CASHIERS

27 Thank you for your registered letter dated 11th May 1982 on the above subject. Although I have indicated to you last September that I wish to make a report to the Commercial Crime Division on the above subject, I have yet to find time to do so. Further this is not my duty but yours, and the auditor's of the company.You will recall that in 1977/1978, during one of the company's AGM before the death of my father GUOK KOH BOEY, J.P., I handed photo-copies of all relevant documents in connection with the sums of money allegedly held by my late father who was then very ill. I had also requested you to bring up this matter for clarification at the General Meeting. Infact, I had also personally brought the matter up at the AGM, but to no avail. Further, my request was not included in the minutes of the AGM. You yourself told me that you normally don't record verbatim report in AGM for Chinese companies, but I don't understand why a matter of such importance was not included in the minutes. It is now more than 4 years and it appears that nothing has been done. From the documents which I had handed to you, there are sufficient evidence to show that all the sums of money allegedly held under my late father's name were at one time or other taken by the Company's Chairman Peter Guok Sing Swee, a lawyer, his family members, other directors and shareholders etc, for which they had acknowledged.I do not understand why these sums of money taken by them for which they had acknowledged were not posted in the proper accounts of the company, instead of lumping them under the names of my late father and Quek Seng Bok, the other cashier. I am inclined to feel that these sums of money taken by them were not proper and therefore was not posted to the accounts. I am also

of the opinion that inspite of my request at AGM to regularise the accounts, no action was taken, because I think the various persons who took the company's money from my late father did not declare them to the Income Tax Department, hence their reluctance to resolve the matter. I would suggest that you being the paid Secretary of the company take the matter up with the company's accountant and auditor to regularise the matter, failing which I would suggest that you report the matter to the relevant government authorities...

28 sgd

29 S N KWOK

30 In cross-examination, Kwok explained that the deceased might not have known that there was a serious qualification in the audited accounts which implicated him. In the alternative, the deceased signed the accounts because he knew he could account for the missing amount. He agreed that in 1973, the auditors made an honest assessment that the cashiers had failed to account for the sum of $340,376. He clarified that the deceased was required by the company to sign the audited accounts. After Peter had checked the accounts, he would send them to the deceased to be signed.

31 In Kwok's opinion, the chairman of the board or the secretary should have taken some action to ask the cashiers to account for the money; this was never done. He disagreed that no legal action was taken against the deceased because the nephews and nieces had respect for the deceased. On the contrary, the reason was that they knew who were actually responsible for the missing sum. To him, there was no distinction between co-cashiers and joint cashiers.

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32 Kwok agreed that the documents "A" "B" and "C" did not show exactly the same figures. Nevertheless, the documents substantiated the amount that Quek took from the company. He agreed that he had no personal knowledge of the transactions involved as reflected in the various documents handed to him by the deceased, including the receipts, vouchers and acknowledgements. It was the deceased who told him about the transactions.

33 Next, I turn to the evidence of the plaintiff (PW2) who was one of the two joint managing directors of the company from 1954 to 1971. He first saw document "C" when it was circulated by Mdm Lee at a company meeting to clarify the accounts. The shareholders accepted the statement given by Mdm Lee. The plaintiff said he recognised the handwriting in "B" to be that of the deceased. Finally, he identified the handwriting in "A" as that of Ding's. Essentially, the plaintiff reiterated what Kwok said relating to the sum of $340,376.

34 In cross-examination, both Kwok and the plaintiff agreed that "B" was not exhibited in the affidavits for the summary judgment proceedings. The plaintiff alleged that Mdm Lee controlled and dominated Quek and that she had produced document "C" on her husband's behalf. He stated that all the relevant documents were in Kwok's possession and he did not have personal knowledge of any of the transactions.

35 As the joint managing director of the company together with one Tan Seng Kwang, the plaintiff was involved in the running of the company but he complained that Peter interfered heavily in the management -- Peter dictated his wishes to the board of directors and the company was run according to Peter's instructions. As the chairman of the board of directors, Peter should have taken

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action against the deceased if the allegation of misappropriation was true. The plaintiff stopped attending the company's meetings since 1974 because he was no longer a director, he was also overseas. He agreed that the deceased and Quek were joint cashiers. He further agreed that both cashiers failed to account for $340,376 being cash received from the company.

36 Quek (PW1) who was the plaintiff's third witness, said he had been a director of the company since 1951. From 1951 to 1971, he was the joint cashier together with the deceased. Quek had not seen document "C" before the trial and he did not recognise the handwriting as that of his late wife, neither were the signatures hers. He further denied that his wife distributed copies of the document at a meeting of the company. She was a housewife, not a director or shareholder of the company and she did not accompany him to company meetings.

37 Quek said that the deceased made use of the company's funds on three separate occasions. The last occasion involved the sum of $340,376 which was discovered when the accounts were audited. As the chief cashier, the deceased was supposed to deposit the money in the bank but he failed to do so. However, there was no investigation into the matter.

38 In cross-examination, Quek said that the unaccounted sum of $340,376 came from the bus fare collections. The bus conductors would hand in their collections to the counting clerks. The counting clerks would hand the money to Quek who, in turn, passed the money to the deceased. Quek was then in his twenties and the deceased was in his fifties. Quek agreed that all key positions in the company were jointly held. Although the deceased was the chief cashier, they were joint cashiers. When he was recalled to the witness stand to give

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further evidence, he clarified that he did not take turns with the deceased to bank in the collections on alternate days. It was the deceased's duty to do so, even on public holidays. Quek would do so only if the deceased was ill.

39 (ii) the defendants' case I turn now to the evidence of the defendants' two witnesses and to Peter's first. Peter (DW1) has been a director of the company since 1955. Referring to the audited accounts for 1973, he said that the deceased clearly understood the contents when he put his signature to the audited accounts, affirming the accuracy of the contents. In the subsequent years, the audited accounts were also sent to the deceased who was a Justice of the Peace, a director of Far Eastern Bank and the chairman of Rochor Community Centre. Peter did not influence the deceased to sign the annual accounts. The deceased promised he would account for the money just as he had done on two previous occasions. In fact, the money was taken by the plaintiff and Kwok from the company, leaving the deceased to account for the same. However, the deceased did not do so before his death.

40 Peter denied that he controlled or dominated the company. As a practising advocate and solicitor (until his retirement in 1991 after an accident) he was far too busy to take an active part in the business. In fact, he had no wish to be part of it as there were a lot of internal problems including bullying and intimidation, in the company. His own (older) brother Sing Inn who was the first joint managing director was shot dead by hired gunmen on 31 December 1953 while he was studying in London. It was clear from article 83 (1AB27) that the chairman of the board of directors did not have a casting vote at meetings. Peter pointed out that the deceased and Quek were joint cashiers; the company had only one bank account. In and around 1961, the deceased was over 50 years old while Quek was a young man in his twenties. It was the

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deceased and the plaintiff who exercised control over the company by holding the two most important posts, that of financial controller and managing director respectively.

41 Turning to the documents produced by Kwok, Peter said that Kwok had never brought along any of the documents to company meetings to enable Peter to clarify the matter. It was not true that Mdm Lee produced "C" at an annual general meeting, he had not seen the document before. Mdm Lee was a Chinese educated housewife who in his opinion, could not have dominated or controlled Quek. In any case when he chaired the company's meetings, only shareholders and those holding proxies were allowed to attend. The cash vouchers, receipts and acknowledgments related to payments well before 1970. There was no truth in the claim that these various payments were connected with the missing sum. The deceased did not have a stroke in 1976, he suffered from a stroke much later -- either in late 1977 or in 1978.

42 Peter confirmed that there were three occasions when the deceased made use of company funds. When Kwok threatened to make a police report, the company secretary on Peter's instructions wrote back (see 1AB44) to say:

43 11 May 1982

44 RE: CASH IN HAND OF $340,376 WITH TWO FORMER CASHIERS

45 In response to your telephone call last September in which you personally informed me that you were proceeding to make a report to the Commercial Crime Division on the above subject, I have now been instructed by both the Board of Directors and the shareholders to ascertain from you the

outcome of your alleged report.I shall be pleased to know if you have made any progress.

46 However, Kwok did not make a police report. He did not know if the company replied to Kwok's letter dated 20 May 1982 (PB124), the company could have treated the letter as pure nonsense. In fact, no police report was ever made by Peter or the company against the deceased on account of the close relationship between Peter's father (who was the older brother) and the deceased (who was the younger brother). Before Peter's father passed away in 1963, he reminded Peter that whatever the differences Peter may have with his cousins, to remember that the two brothers were very close. The deceased had made good the shortfall on the two previous occasions when there was a shortage of funds and the company hoped he would do the same on the third occasion.

47 Peter testified that all payments to government departments were made by cheques, not cash, even if the amounts involved were only a few hundred dollars. The sums involved in the alleged payments to the ROV and for the registration of ABC were considerable; they could not have been paid in cash. Even though there were four signatories to the company's cheques, the other three directors would have signed the cheques first while Peter would sign when he arrived at the company's premises after finishing work at his law firm. He dismissed as untrue the explanation that the payments were made in cash because of the urgency in the matters.

48 In cross-examination, Peter explained that at company meetings, dialect (Fotsing/Hock Chia) was spoken to ensure that the deceased would understand the proceedings. He denied that at a meeting, Kwok passed the relevant documents to him through the secretary who was sitting next to Peter. There

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was no reason why the documents could not have been handed directly to him. Quek was not a person to be easily intimidated and he did not think Mdm Lee dominated him. In Peter's opinion, the liability of the cashiers was joint.

49 The only other witness for the defendants was Anthony S H Loong (Loong), the accountant. He testified that the qualification contained in the audited accounts of the defendants was a serious one. The accounts were sent to the directors of the company to be approved by them. After that, they would be signed by the directors.

50 In cross-examination, Loong (DW2) said that the auditors' appointment was on 20 September 1974. When the auditors took over from the previous auditors, the figure of $340,376 was said to be missing in the books. There was no reason to doubt the accuracy of the figure and it was carried forward. In the course of audit, the auditors had taken steps to verify that the asset was in existence. They were unable to verify that such a sum of cash existed or that the cashiers held this amount of cash. Confirmation letters were sent to the former cashiers to get them to verify or certify that they were holding this amount of money. From his recollection, the auditors did not receive any reply. Furthermore, the auditors were unable to get any satisfactory or suitable explanation from the directors. Therefore, the item was simply carried forward year after year.

51 The findings The only issue was whether the plaintiff could prove how the sum of $340,376 was expended. In this connection, the plaintiff relied on three main documents "A" "B" and "C". Counsel for the defendants objected strenuously to the admissibility of these documents into evidence. For a document to be admitted into evidence, proof of due execution is a clear

prerequisite. Section 69 of the Evidence Act Cap 97 provides: If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

52 Secondly, where the maker of a written statement is not a witness, the written statement is hearsay evidence and inadmissible to prove the truth of its contents unless an exception within the Evidence Act is applicable. With these considerations in mind, I turn first to "C".

53 According to Kwok and the plaintiff, "C" was written by Quek's wife, Mdm Lee. However, Mrs Ng Gek Kwee, the handwriting expert whose aid was enlisted by the plaintiff (see her reports at P2 and P3) could not confirm that the signatures in "C" were Mdm Lee's. Quek had also denied that the handwriting or the signatures were his wife's. It was further denied by both Quek and Peter that the document was circulated to the shareholders by Mdm Lee at an annual general meeting. Evidently, Quek was the best person to recognise his wife's handwriting and signature. I accepted his evidence that the document was not written by his wife or circulated by her at a meeting. The plaintiff did not prove due execution of "C" by Mdm Lee and I therefore did not admit the document into evidence.

54 As for document "A", Kwok and the plaintiff alleged that it was prepared by Ding. To support his claim that the document was made by Ding, Kwok said that Ding passed the document to the deceased in Kwok's presence at Kwok's house. Such evidence emerged for the first time at trial. Moreover, there was no signature on the undated document. Neither the plaintiff nor Kwok supplied a sample of Ding's handwriting for comparison. In the premises, it was clear that

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due execution by Ding had not been proved. Again, document 'A" could not be admitted into evidence.

55 Finally, Kwok and the plaintiff identified the handwriting in "B" as that of the deceased although there was no signature on "B". This vital document was not produced at the proceedings for summary judgment. Since Kwok and the plaintiff must be familiar with the deceased's handwriting, I was prepared to accept that their late father made the document. Nevertheless, there was the second hurdle in the way of admitting the contents. The only likely exception within the Evidence Act to admit an otherwise hearsay statement of this nature is s 32(b) which states: Statements, written or verbal, of relevant facts made by a person who is dead...are themselves relevant facts....when the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business or in the discharge of professional duty, or of an acknowledgment written or signed by him of the receipt of money, goods, securities or property of any kind, or of a document used in commerce, written or signed by him, or of the date of a letter or other document usually dated, written or signed by him;

56 However, "B" did not fall within the exception. It was neither a statement made in the ordinary course of business, nor an entry in books nor a signed document. Its contents were inadmissible even if the maker was the deceased

57 As for the evidence of the witnesses, it was patently obvious that the deceased was the only person with full knowledge of the missing sum of $340,376. His conduct in relation to the matter was most significant. In the

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audited accounts of the company for the year 1973, the deceased signed as a director affirming the accuracy of the accounts. I did not accept the explanations of his son (Kwok) that the deceased did not know the contents of the audited accounts and merely signed as a matter of formality or that he was in any way coerced by Peter or the company to append his signature to the accounts. In my opinion, as an experienced businessman and a person of considerable social standing, the deceased must have understood the accounts and the gravity of the qualification before he signed them.

58 In the face of such a serious allegation, there must have been a strong and natural desire to set matters right. Yet, the deceased did not make any personal effort to account for the missing sum of $340,376. Supposedly, the deceased had in his possession all the relevant documents which would account for the missing sum. These were the documents handed to Kwok in 1975. To my mind, between 1974 to 1978, it would have been very simple for the deceased to forward the documents to the auditors. There was the evidence of Loong that confirmation slips were sent to the deceased in the course of audit every year, for the purpose of verifying the missing sum of money. The auditors did not receive any reply. I could not believe that the deceased had a ready explanation available if he did not take any step at all to settle the problem.

59 Of course, Kwok suggested that it fell upon him to uphold the good name of the deceased. The question then arises -- why did the two sons leave it so late in the day to do so? Could it be, as Peter surmised, that they were not bothered so long as the company did not take steps to recover the sum but they became very interested only because of the substantial dividend payment declared in 1990? I noted also that Kwok went about his task in a most convoluted manner. At one of the meetings, Kwok said he passed the documents

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to L C Loong just because L C Loong was sitting next to Peter. The second time round, he chose to entrust the documents to another third party, Gertrude, Peter's sister. It was inexplicable why Kwok did not hand the documents directly to Peter. Also, Kwok's threats to report the matter to the police in order to have it investigated were never carried out. I cannot accept the explanation in his letter PB124 that he had yet to find the time to do so. Kwok by his own evidence retired from the police force in 1972 and PB124 was written ten (10) years later. Instead, Kwok blamed the secretary and the company for their failure to inquire into the matter as reflected in PB124. Further, Kwok alleged that Peter dominated the company and thwarted all the attempts to have the matter investigated, without producing any evidence to support the allegation. On the contrary, it appeared from Peter's testimony (in refuting this charge) that it was the plaintiff who abused his position as well as the deceased's position as managing director and cashier respectively in taking whatever monies he wanted from the company as and when he chose. It speaks volumes that the plaintiff, although a joint managing director, was not one of the authorised signatories for the company's cheques.

60 It must be emphasised that the company was owned equally by two distinct factions. While Peter might have controlled the Soon Lee group, it was unlikely that he could have exercised the same overwhelming influence over the Ngo Hock group. Moreover, the plaintiff was the managing director for a long while. I did not believe his claim that he did not have a say in the affairs of the company and was completely controlled by Peter. In view of the seriousness of the allegation against his father, Kwok should have insisted upon some form of inquiry. In all the circumstances, the simplest and most effective option available was to bring documents "A" "B" and "C" to the attention of the auditors during his father's and Mdm Lee's lifetime and when Ding was still

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with the company. Surely, the auditors were the most appropriate persons to approach yet Kwok failed to do so. I could not therefore place any weight on the self-serving letter PB124 of which no admission was made by the company either to the authenticity or to the contents. I also rejected Kwok's evidence that he attempted in vain to clarify the matter with the company.

61 As for the other documents produced by the plaintiff and Kwok to support their contention that various payments were made to the shareholders and directors, my observation is that most of these documents did not contain clear descriptions of the transactions. Only the deceased could explain what the transactions related to, not the plaintiff or Kwok. Quite apart from the question of the authenticity of some of the documents, I could not place any reliance on their contents to prove that the payments, if made, formed part of $340,376.

62 I also found it doubtful that payments were made in cash to the ROV ($28,844.36) and for the registration of ABC ($13,500). As Peter said, these sums were substantial, especially in the late 1960s or early 1970s. In any case, there should have been some form of record be it payment vouchers (ROV) or receipts (in the case of the registration fees paid to the registry of companies) with respect to these payments; none were produced.

63 In this connection, I should add that I found that the cashiers were joint cashiers who operated in the fashion as described by Quek. Quek would hand the collections of bus fares to the deceased who would be responsible for banking in the money, except for the days when the deceased was sick. This was in accordance with the age and the experience of the two cashiers at that time. I did not accept the version given by Kwok that they took turns to deposit

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the collections of bus fares. He was not a cashier and could not have known better than Quek the arrangement which existed then.

64 In support of the defendants' case, the incontrovertible evidence of the accounts themselves showed an admission of liability on the part of the deceased. There was also the clear evidence of Quek that the deceased had on two previous occasions misused the company's funds. Peter also said that the deceased had promised to account for the sums, a promise he failed to keep, unlike the two previous occasions. In fact, the plaintiff himself admitted that the cashiers had failed to account for the missing sum. Moreover, Kwok said that the auditors had made an honest assessment on the accounts. Considering the nature and set-up of the company, I also accepted that no proceedings were taken against the deceased only because of his standing in the Soon Lee group as an elder of the Kwok/Guok family. In the light of the foregoing, I concluded that the deceased could not account for any part of the sum of $340,376. I would add that my findings were also based on my assessment of the credibility of the four main witnesses, Kwok, the plaintiff, Quek and Peter -- I preferred the evidence of the defendants' witnesses as being more reliable and consistent with the undisputed documents before the court.

65 The decision It is appropriate to begin with the nature of the liability on the part of the deceased. At the material time, not only was the deceased a cashier of the company, he was also a member and a director. When the deceased came into possession of the sum of $340,376 in the course of his work as a cashier, he was more than a mere employee, he was impressed with a fiduciary character by virtue of the fact that he was also a director. In my opinion, he was a trustee holding money belonging to the company when he was handed the cash collections of bus fares. It must have been clear to the

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deceased that the sum of $340,376 belonged strictly to the company, a legal entity separate from its members and directors. He must have known that it was to be used, only as authorised, on behalf of the company. By using it for some other unauthorised purposes, he was acting in breach of trust. In fact, it was a fraudulent breach of trust. Although there was no evidence to suggest that the deceased personally benefitted from the misappropriation that fact would not absolve him of the liability to account for the loss to the company.

66 Having established that the deceased was liable by virtue of a fraudulent breach of trust to the company for the sum of $340,376, I turn to the question of set-off. For the right of set-off, the company relied on its article 89 (see 1AB29) which provides: The Directors may deduct from any dividend payable to any member all such sums of money (if any) as may be due and payable by him to the Company on any account. < emphasis added >

67 Counsel for the plaintiff contended that the provision was applicable only as against a member of the company in his capacity as a member. He submitted that the company could not invoke the right against the deceased in his capacity as a cashier citing Beattie v E & F Beattie Ltd < 1938 > 3 All ER 214 in support. Counsel for the company argued that the article merely affected the deceased in his capacity as a shareholder with respect to the dividends payable. It did not matter how the shareholder owed the money to the company, the words any account are without limitation (Clarke-Jervoise v Scutt < 1920 > 1 Ch 382). As such, it was applicable in the present situation.

68 The general law is that the articles constitute a contract between a company and a member in respect of his rights and liabilities as a shareholder Therefore, a company may sue any member and a member may sue a company

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to enforce and restrain breaches of the regulations contained in the articles dealing with such matters. However, the articles do not constitute a contract between the company and a member in respect of rights and liabilities which he has in a capacity other than that of member. Therefore, in Hickman v Kent or Romney Marsh Sheep Breeders' Association < 1915 > 1 Ch 881 (which decision was approved by the Court of Appeal in Beattie v E & F Beattie Ltd) it was held that a dispute between a member of the company and the company was governed by the articles and accordingly, a dispute was to be resolved by arbitration. In contrast, the dispute between a director qua director and a company did not fall within the articles, although the director was also a shareholder (Beattie v E & F Beattie Ltd).

69 Pursuant to article 89, there is a contractual right of set-off between the company and its members, primarily affecting the entitlement of members to dividends. In seeking to enforce the provision, the company is acting against any of its members qua member. In my judgment, the provision was binding and enforceable by the company against the deceased regardless of how the sum was due and owing to the company and was available to the company in the instant case.

70 Even if there was a right to set-off, counsel for the plaintiff argued that the company's claim of $340,376 was time-barred by virtue of the Limitation Act Cap 163. According to him, liability for the sum of $340,376 accrued more than six years before the first dividend was declared in 1983. I found the argument to be without merit. It is clear law that a limitation period is not prescriptive: it b rs the remedy rather than extinguishing the right itself. In order to take advantage of the expiry of any limitation period, the plaintiff must plead it specifically. By the Rules of the Supreme Court O 18 r 8(1)(a), a party must

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plead in any pleading subsequent to a statement of claim any matter including any relevant statute of limitation which he alleges makes any defence of the opposite party not maintainable. The plaintiff did not file a reply to the defence. Since it was not pleaded, I was not inclined to give any effect to this argument. Further I would refer to s 22(1)(a) of the same Act which provides that in an action by the beneficiary based on a fraudulent breach of trust, no period of limitation is applicable in any event.

71 A further point raised by counsel for the plaintiff was that in 1990 when the action was brought, the deceased's estate vested in the official assignee. The company was not entitled to exercise any remedy against the property of the deceased's estate when the liability was provable in bankruptcy. Instead, the provable debt should have been proved in bankruptcy. He relied on s 8(1) of the Bankruptcy Act Cap 20.

72 Be that as it may, in 1992, there was a significant change to the action. The receiving and adjudication orders against the deceased were rescinded and annulled. In those circumstances, the current claim was simply one by an administrator of an estate against the company. Unlike an order of discharge, an order of annulment does not release the bankrupt from all but a few types of debts provable in bankruptcy (see s 35 of the Bankruptcy Act). Even an order of discharge would not have assisted the deceased as s 35(3) of the Bankruptcy Act states that An order of discharge shall not release the bankrupt from any debt or liability incurred by means of fraud or fraudulent breach of trust to which he was a party....

73 The effect of an annulment does not bar a creditor who has merely abstained from proving the debt in bankruptcy, from suing the debtor after the

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annulment, his right to sue no longer being suspended by the bankruptcy. This is so even where the annulment was ordered on the basis that all the proved debts have been paid in full (More v More < 1962 > 1 All ER 125). Similarly, while the contractual right to set-off might have been in suspension during the bankruptcy, it was revived in 1992. When the administrator chose to take over the action, he acted in a different capacity from the official assignee. As against the administrator, the company was entitled to rely on its contractual right.

74 For the foregoing reasons, I dismissed the claim with costs.

75 Lai Siu Chiu Judge

76 20 November 1995

77 Authorities and legislation referred to

78 1. Beattie v E & F Beattie Ltd < 1938 > 3All ER 214.

79 2. Clarke-Jervoise v Scutt < 1920 > 1 Ch 382.

80 3. Hickman v Kent or Romney Marsh Sheep Breeders' Association < 1915 > 1 Ch 881.

81 4. More v More < 1962 > 1 All ER 125.

82 5. The Evidence Act Cap 97.

83 6. The Limitation Act Cap 163.

84 7. The Bankruptcy Act Cap 20.

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Guoh Sing Leong alias Quek Sing Leong the Administrator of the Estate of Guoh Koh Boey (deceased) v Hock Lee Amalgamated Bus Co (Pte) Ltd [1995] SGHC 279

Lai Siu Chiu J

S Gunaseelan (S Gunaseelan) for the plaintiff
Alan Wong and Francis Guok (William Lai & Alan Wong) for the defendants

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