# Wong Kok Keong alias Wong Kock Khiang v CBN Holdings Pte Ltd and Others [2001] SGHC 149

| | |
|---|---|
| **Case Number** | : OS 1258/2000 |
| **Decision Date** | : 22 June 2001 |
| **Tribunal/Court** | : High Court |
| **Coram** | : S Rajendran J |
| **Counsel Name(s)** | : Peter Gabriel and Diana The (Gabriel Peter & Pnrs) for the plaintiff; Kenny Chooi and Kelvin Fong (Yeo-Leong & Peh) for the 1st and 2nd defendants |
| **Parties** | : Wong Kok Keong alias Wong Kock Khiang — CBN Holdings Pte Ltd; Lee Sook Chin; Leaw Kok Yin |

## JUDGMENT:

### Grounds of Decision

1. The plaintiff, Wong Kok Keong's ("Wong"), claim in this case, made by way of originating summons against the three defendants - CBN Holdings Pte Ltd ("CBN Holdings"), Lee Sook Chin ("Lee") and Leaw Kok Yin ("Leaw") - was, inter alia, for:

> (a) A declaration that Lee and Leaw have at all material times held the two original subscriber shares in CBN Holdings in trust for Wong as to 95% and in trust for Lee as to the remaining 5%.
>
> (b) A declaration that the transfer dated 5 November 1999 by Leaw of the one subscriber share to Wong was a valid transfer.
>
> (c) A declaration that the issue and allotment by CBN Holdings of 99,998 shares to Lee is invalid.

This was a dispute essentially between Wong and Lee. Leaw, who held one of the two subscriber shares of CBN Holdings, did not participate in the proceedings.

2. CBN Holdings and Lee resisted the orders sought by Wong and raised various consequential counterclaims. As there were substantial factual disputes in this case I granted leave to Wong, CBN Holdings and Lee to cross-examine witnesses. At the conclusion of the hearing I dismissed Wong's claims and gave judgment for Lee on certain of her counterclaims. I also ordered Wong to bear the costs of the claim and counterclaim on an indemnity basis. Wong has now appealed against my decision and I give my grounds.

3. The disputes between Wong and Lee stem from a joint venture - the terms of which were set out in a document headed "Points of Agreement" - that they entered into on 3 March 1999. Lee was at that time an Assistant Executive Director of the Singapore Chinese Chamber of Commerce and Industry ("SCCCI"). SCCCI had in 1995 incorporated a company known as Chinese Business Network Pte Ltd ("Network"). Lee was the officer in SCCCI who, from the beginning, oversaw the development of Network. She was, at the time of the Agreement, the General Manager of Network.

4. One of the applications that Network had helped to conceptualise and develop was a Chinese Webtop. Kent Ridge Digital Lab ("KRDL") and the National Computer Board ("NCB") had collaborated with Network in this development. In September 1998, KRDL/NCB exhibited the Chinese Webtop at the COMDAQ show in Singapore. Wong was attracted by the investment potential of the Chinese Webtop

and asked Dr Low Hwee Boon of KRDL to introduce him to Network. Dr Low referred him to Lee.

5. Wong met Lee sometime in end September/early October 1998. He introduced himself to her as the Senior Vice President of Asia Business Center Co Ltd ("ABC") of Japan and handed to her his business card which gave ABC's address in Japan as well as particulars of its Regional Head Office at 9 Temasek Boulevard, #36-01A, Suntec Tower 2, Singapore. Lee was not been aware of any intention on the part of SCCCI to sell Network and she told Wong so. Wong, however, kept dropping in at her office thereafter to "share his vision" for the Internet.

6. In November 1998, SCCCI decided to sell Network and asked its staff to source for potential investors. Wong, on being informed of this, immediately followed up. On 22 January 1999, a Memorandum of Understanding was signed between ABC of Japan and SCCCI wherein ABC agreed to purchase Network for $888,000. 25% of that price (ie $222,000) was payable as a deposit "latest by 26 January 1999" and the balance ($666,000) "latest by 26 February 1999". The Memorandum of Understanding was signed on behalf of ABC by Wong who described himself as "Senior Vice President".

7. Wong issued a cheque for $222,000 to SCCCI in payment of the 25% deposit. This cheque was, however, dishonoured and the Executive Director of SCCCI asked Lee to enquire from Wong the reasons for the dishonour. Lee did so and was informed by Wong that ABC in Japan had not remitted the required funds and the cheque had therefore been dishonoured. Wong negotiated with SCCCI for an extension of time and he was allowed up to 4 March 1999 to pay the $222,000.

8. Wong claimed in his affidavit that following the signing of the Memorandum of Understanding, ABC of Japan decided not to proceed with the acquisition of Network because ABC learnt that the masthead and technology of Network belonged not to Network but to NCB and KRDL respectively. In view of this, he decided to explore the possibility of forming a group of investors (including himself) to acquire Network. The others he had in mind were Lee, NCB and KRDL. He decided on Lee because Lee had been running the company for several years and knew the business of Network well. He decided on NCB and KRDL because they had the requisite technological and financial resources.

9. Lee testified that from the later part of February 1999, Wong repeatedly coaxed and encouraged her to become a co-investor in this acquisition of Network. Although Lee firmly believed in the potential for Network, she was reluctant to get involved because she had limited financial resources and because she was still an employee of SCCCI. In the end she was persuaded and she agreed to take a 5% share (which would amount to $225,000) in the proposed venture. Wong told her that the balance 95% would be funded by himself and other co-investors. Wong, however, wanted her to pay her $225,000 immediately. He told her that Network, without her, would only be a shell company and he wanted her to pay the $225,000 immediately to show her commitment. Lee agreed. As Lee was at that time an employee of SCCCI it was also agreed that her name would not feature and all documentation would be signed by her husband, Ee Fook Choon ("Ee").

10. At about 8.30pm on 3 March 1999, Ee and Lee went to Wong's office at Suntec City to work out the terms of the investment. On entering his office, they saw the name "Asia Business Center Co Ltd" together with its logo prominently displayed. There were no other signboards in the premises. At the office, Wong, Lee and Ee discussed at length the terms of the venture after which Ee typed out a two-page "Points of Agreement". Ee and Wong signed both pages of the document.

11. I pause here to reflect on some of the events that had occurred up to that point of time. Wong had presented himself to Lee and to SCCCI as the "Senior Vice President" of ABC. The Memorandum of Understanding reached with SCCCI was signed by him on behalf of ABC. Even in his affidavit filed in court, he described himself as Senior Vice President of ABC. In particular, Wong stated (in paragraph

7) of his affidavit:

> "Sometime in January 1999, I discussed with my business partner, Asia Business Center Co Ltd ('ABC'), a Japanese company, on the possibility of acquiring CBN. I held the position of senior vice president in ABC. Based on my recommendations, ABC agreed to acquire CBN. I was then authorised by ABC to proceed with the acquisition of CBN on ABC's behalf."
>
> But evidence was led that Wong was not with ABC either as its Senior Vice President or in any other capacity. Evidence was also led that ABC in fact had no office at all in Singapore. These facts came to light only in September 2000 when, in answer to queries relating to Wong's role in ABC, Mr Kenji Takimoto, the President of ABC stated:
>
> "We are shocked and furious to learn from you that David Wong has illegally, fraudulently and wrongfully used our name to enter into contracts, to instruct lawyers, to acquire and transfer shares, to purportedly represent us or transact on our behalf, to claim to be our senior employee, to allege that we are his 'business partner', etc. All these acts/conduct of David Wong are done entirely without our authority and/or consent whatsoever. We reserve the right to take the necessary actions against David Wong."
>
> (LSC-2 at 45)

It would appear from Mr Takimoto's letter that ABC had dealt with Wong for a very brief period in late 1996 in connection with a forum that ABC intended to hold in Fukuoka City, Japan. The forum was scheduled for March 1997. ABC had, in September 1996, appointed Oakland Realty Pte Ltd (of which Wong was the Managing Director) as a consultant in respect of invitations to be issued for that forum. For the purposes of enabling Wong to promote the forum (and for that purpose only) ABC had permitted Wong to use the title "Senior Vice President". This relationship with Wong and Oakland Realty Pte Ltd soon came to an end in late 1996 (way before the forum even commenced!). According to Mr Takimoto, the relationship ended because Wong gave no assistance in organising the forum.

12. Wong did not seek to dispute the authenticity of Mr Takimoto's letter but, under cross-examination, had explanations to give as to why he was calling himself the "Senior Vice President" of ABC, why his office at Suntec City carried the ABC name and logo and why he entered into the agreement with SCCCI under the name of ABC. I will not here repeat what he tried to say. His explanations were not even tenuous. I formed the view that Wong was dishonestly and brazenly passing himself off as the Senior Vice President of a reputable Japanese company in order to make access to bodies like SCCCI, NCB and KRDL easier.

13. The terms of the Points of Agreement signed on 3 March 1999 are relevant to these proceedings. I will set them out in full:

> " Points of Agreement
>
> Date : 3rd March 1999 Between : (1) David Wong Kok Keong (2003298/G) (2) Ee Fook Choon (1394185/H) (3) _____ (4) _____ (5) _____
>
> (collectively referred to as the 'Group')

1 The Group intents to acquire 100% of the equity of Chinese Business Network Pte Ltd ('CBN') via a new company to be incorporated or a shelf company to be purchased ('Newco'). The Group will own Newco together with the National Computer Board ('NCB') and KRDL (Kent Ridge Digital Lab). The shareholding structure of Newco will be :-

Group = 65% NCB = 20% KRDL = 15%

The contribution of each party in the Group will be as follows :-

Name Amount ($S) % in CBN Ee Fook Choon S$ 225,000 5 David Wong Kok Keong S$2,700,000 60

2 CBN will be acquired from the Financial Board of the Singapore Chinese Chamber of Commerce (FBSCCC) based on a valuation of $888,000 based substantially on the terms as stated in the attached draft agreement. The FBSCCC has given a deadline of 12pm, 4 March 1999 for the payment of a non-refundable deposit of S$222,000.

3 The Group has agreed that Ee Fook Choon will procure for a S$222,000 bank draft (payable to the FBSCCC) to be obtained and this S$222,000 (together with an additional S$3,000) contribution from Ee Fook Choon will entitle him/her to 5% of 100% of the capital of Newco. 4 The S$222,000 bank draft from Ee Fook Choon will be treated as a loan to Newco and this will then be capitalised accordingly. That S$222,000 will then be used as the deposit mentioned above. In the event that the acquisition does not go through with the (FBSCCC), David Wong Kok Keong (NRIC) 2003298/G shall return the amount of S$225,000 to Ee Fook Choon.

5 The parties intend to execute a formal Joint Venture Agreement with NCB and KRDL to regulate their relationships. In addition, the parties within the Group will, if deemed necessary by any party, enter into a formal separate Joint Venture Agreement with each other to regulate their relationships with each other based primarily on the terms as stated in this agreement.

6 This agreement will be governed by Singapore law.

Sd: xx Name: EE FOOK CHOON 1394185H

Sd: xx Name: WONG KOK KEONG 2003298/G "

It is relevant to note from this "points of understanding" that:

(a) As at 3 March 1999 the name of the new company or even whether the new company was to be freshly incorporated or bought as a shelf company had not been determined.

(b) The shareholding of the new company would be: Wong 60% $2.7 million. Ee 5% $225,000. NCB 20%. KRDL 15%.

It was the evidence of Lee (not challenged by Wong) that it was at that time

envisaged that the 20% and 15% of the share capital intended for NCB and KRDL would not be paid for in cash but would be satisfied in kind (by NCB contributing the masthead technology of the Chinese Webtop and KRDL contributing the Chinese search engine).

(c) The $222,000 payable to SCCCI the next day (ie 4 March 1999) would be procured by Ee and would be treated as a loan to the new company which would subsequently be capitalised (with an additional $3,000) as Ee's 5% contribution to the capital of the new company.

(d) In the event that the acquisition of Network did not go through, Wong would return the $225,000 to Ee.

14. Wong claimed that on the night of 3 March 1999, after having typed the "Points of Agreement", Ee also typed two other documents for his (Wong's) signature and that he signed these two documents that night. One was a "Receipt" for the $222,000 and the other was a "Memorandum" to Ee. These two documents were important to Wong's claim as they were the only documentary evidence that Wong produced to support his claim that it was agreed between him and Lee that should NCB and KRDL decide not to participate in the acquisition, the shares designated for NCB and KRDL would belong to Wong. I will therefore set them out in full. The "Receipt" which was undated read:

" Receipt

I, David Wong KK received from Ee Fook Choon (I/C 1394185/H) the sum of S$222,000 (together with an additional of S$3,000 yet to be paid later) for a 5% investment (225,000 shares of S$1 each at par) based on an issued share capital of 4,501,000 shares of S$1 each in CBN Holdings Pte Ltd. The balance of 95% belongs to David Wong KK if the deal with NCB and KRDL did not materialise. (A company to be incorporated before 31st March 1999).

CBN Holdings Pte Ltd For and on behalf

Sd: xx Authorised Signature "

And the "Memorandum" which was dated 3 March 1999 was as follows:

"To: Ee Fook Choon (I/C 1394185/H)

Further to our Points of Agreement signed on 3rd March 1999, this is to confirm that in the event that the deal with NCB and KRDL did not materialise, the balance of the shares in CBN Holdings Pte Ltd belongs to David Wong KK. (ie. 95%).

I therefore acting upon the advice of the lawyer Mr Edmund Chin from ATMD to transfer the 1 share each from ABC to Caroline Lee Sook Chin and Leaw Kok Yin accordingly upon the legal completion date to hold in trust for David Wong KK.

CBN Holdings Pte Ltd For and on behalf

Sd: xx David Wong KK Authorised Signature "

Lee (and Ee) categorically denied the existence of these two documents. These documents, they told the court, were fabricated by Wong in order to bolster his claim to the shares intended for NCB and KRDL (which NCB and KRDL did not pick up) and thereby justify his claim to 95% of the equity of CBN Holdings.

15. In the context of that denial, the following features in the Receipt and in the Memorandum are worth noting:

> (a) Unlike the "Points of Agreement" which had been signed on each page by both parties, only the signature of Wong appeared on these two documents.
>
> (b) Wong had signed the Memorandum on behalf of CBN Holdings and both the Memorandum and the Receipt make references to CBN Holdings. On 3 March 1999 not only did CBN Holdings not exist, but no decision had even been taken as to whether the company to be used for the acquisition of Network was to be freshly incorporated or bought off the shelf. Even the name "CBN Holdings Pte Ltd" had not been thought of yet as evidenced by the fact that the Points of Agreement only refer to the company to be used as "Newco". From the records of Alban Tay Mahtani & De Silva ("ATMD"), it would appear that the name "CBN Holdings Pte Ltd" was first mooted only on 11 March 1999 and it was approved by the Registry of Companies only on 25 March 1999; CBN Holdings was incorporated only on 3 April 1999.
>
> (c) It could not be known, on 3 March 1999, that ABC would be the registered holder of two shares in CBN Holdings and that ABC would in turn transfer those two shares to Lee and Leaw. It is difficult to envisage Mr Edmund Chin of ATMD having given the advice referred to in the Memorandum prior to 3 March 1999. In any event, ATMD have, in a letter to Lee's solicitors, denied that anyone from their office gave the alleged advice.
>
> (d) No satisfactory explanation was given by Wong as to why Lee and Ee, if they were agreeing to the terms contained in the Receipt and the Memorandum, would not have inserted those terms into the Points of Agreement that was typed and signed on 3 March 1999.
>
> (e) It was not in dispute that Ee's name was used in the Points of Agreement because Lee did not, at that stage, want her name to feature. It is inconsistent, in that scenario, for Lee to have been party to a document, such as the Memorandum, in which her name appears.
>
> (f) The signatures of Ee or Lee do not appear on the said documents even though the terms contained therein are such that his/her signatures would be required if it was intended that the terms were to bind him/her.

The above features indicate that the two documents could not have been prepared on 3 March 1999 as claimed: they were clearly prepared by Wong after the event and backdated in order to bolster his claim to 95% of CBN Holdings. I arrived at that conclusion not only from the factors listed above but also from my assessment of Wong as shifty, evasive and unworthy of belief. In sharp contrast, I found Lee to be a frank and honest witness. I had no difficulty in coming to the conclusion that Lee was telling the truth when she told the court that she was not aware of these two documents until they were produced by Wong after litigation commenced.

16. The total paid-up capital of CBN Holdings, had NCB and KRDL joined in the venture as envisaged in the Points of Agreement, would have been $4.5 million. 95% of that capital would be $4.275 million. Even though I rejected Wong's claim that it had been agreed between the parties that he would take over the shares of NCB and KRDL should they decline to participate, Wong's case would nevertheless have had more substance if he could prove that he had in fact contributed that sum towards the capital of CBN Holdings. The events, as they unfolded in court, showed that Wong had not only not contributed $4.275 million, he did not even contribute the $2.7 million envisaged in the Points of Agreement.

17. As agreed under the Points of Agreement, Lee, on 4 March 1999, handed to Wong a cashier's order for the sum of $222,000 payable to SCCCI. That same day Wong entered into a formal Sale and Purchase Agreement with SCCCI with the $222,000 being paid to SCCCI as 25% deposit. The Sale and Purchase Agreement was between ABC and SCCCI. Lee was aware of that fact as Wong had explained to her that since the new company had not yet been incorporated he would, for the time being, use "his company" ABC to enter into the Agreement. At that stage Lee saw no reason to question this arrangement.

18. As noted above, CBN Holdings was incorporated on 3 April 1999. All matters relating to the incorporation of the company were attended to by Wong. CNB Holdings, when incorporated, had an authorised capital of $100,000 and a paid-up capital of $2. The two subscribing shareholders were Edmund Chin and Susan Mary de Silva of ATMD. The two shares were transferred to ABC on 20 April 1999 and ABC in turn on 12 May 1999 transferred the two shares to Lee and Leaw.

19. It would be relevant, in passing, to note the role of Leaw in this venture. Leaw was brought in by Wong who described Leaw as "a qualified accountant and an old friend of mine". Leaw served as a sort of financial consultant and advisor to Wong and would therefore have some knowledge of arrangements between Wong and Lee and details about the capital contributions (if any) made by Wong to CBN Holdings. Testimony from Leaw might therefore have been helpful in sorting out this case. Unfortunately, Leaw chose to keep silent and, although Wong said that Leaw was "an old friend" of his, Wong did not file any affidavit from Leaw to explain what happened.

20. It would appear from the affidavit of Wong that NCB and KRDL decided not to participate in the venture from around April 1999. It was Wong's case that when NCB and KRDL pulled out, it was decided amongst the parties that the two shares in CBN Holdings would be held by the nominees (Leaw and Lee) on trust as to 95% for Wong and 5% for Lee. Save for the Receipt and Memorandum (which I rejected as being fabrication) no documentary evidence was produced to substantiate this claim and Leaw (who could have confirmed this claim) did not testify.

21. Lee completely denied Wong's assertion that it was agreed that if NCB and KRDL pulled out, she and Leaw would hold the subscriber shares on the trust alleged by Wong. Lee also testified that the collapse of the negotiations with NCB and KRDL (which were handled by her) did not occur in April 1999 but very much later. In support, she produced the correspondence she had had with NCB and KRDL. It was clear from the correspondence that NCB pulled out on 16 September 1999 and KRDL pulled out in January 2000. Confronted with this evidence Wong resiled from his earlier position.

22. SCCCI had been paid a deposit of $222,000 on 4 March 1999. There was a balance of $577,294 still payable to SCCCI to complete the purchase. Inspite of SCCCI granting extensions of time Wong was still unable to pay this balance. SCCCI then gave ABC a final deadline of 16 April 1999 for completion to take place.

23. It had clearly been intended that Lee would provide only $225,000 towards the purchase of

Network and that the balance (of $577,294) would be sourced by Wong. But, even by 15 April 1999 - the day before the completion deadline - Wong had not raised the funds. He explained to Lee at a meeting held on the evening of the 15th that he had been expecting to pay the balance from the proceeds (amounting to US$8 million) of sale of a property of his in the United States of America but, unfortunately, because of a delay, he had not received the funds. Wong requested Lee to temporarily provide the money. Lee was in a dilemma. She did not have the required funds. On the other hand, she had already contributed $222,000 and she did not want to see the deal fail. Wong assured her that the sale proceeds of his US property would arrive in about one week's time, that he would immediately inject into CBN Holdings his capital contribution of $2.7 million and that CBN Holdings would then immediately repay the loan to Lee. On that assurance Lee decided that she, on Wong's guarantee that he would ensure the money is repaid, would try and save the situation by raising loans from her colleagues and family members. She had less than a day to do so as completion was fixed for 16 April 1999. This was the second occasion in which Lee had, at the last minute, been asked to produce funds.

24. That night she began ringing up colleagues and family members for help. The next day Lee and Ee spent their time running from bank to bank gathering what money they could in cash (as there was no time for cheques to clear) and depositing the cash into Lee's POSB account. By that afternoon she had managed to raise a total of $545,000 from the following persons:

> (a) Tan Wea Aik (colleague) $ 20,000 (b) Lee Sor Kuan (sister) $ 50,000 (c) Lee Han Tiong (brother) $ 80,000 (d) Tan Poh Suan (mother) $ 50,000 (e) Ee (who borrowed part of it from his mother) $175,000
>
> (f) Lee Beng Teck (father) $ 20,000 Total:- $545,000

Out of the total of $545,000, $480,000 was in cash and the remaining $65,000 was by way of a cashier's order. It would take two days for that cashier's order to clear. So, inspite of having raised $545,000, she was able to purchase a POSB cashier's order in favour of SCCCI for the sum of only $480,000. She handed that cashier's order to Wong that afternoon. Wong then handed the cashier's order to SCCCI. With that payment there still remained a balance of $97,294 to be paid to SCCCI to conclude the transaction.

25. On 19 April 1999, Lee and Wong met at the Suntec City Branch of the POSB. Lee told Wong that she could furnish only another $65,000 and told Wong that he would have to find the shortfall of $32,249. Wong agreed and asked her to let him have the $65,000 cash so that he could top it up and purchase a cashier's order for the required $97,294. Lee then withdrew $65,000 in cash and (without obtaining a receipt) handed it to Wong. With that cash (and an additional $32,249) Wong purchased a cashier's order for $97,294 which he forwarded to SCCCI. With that payment the Sale and Purchase was completed. On 20 April 1999, 40,002 shares in Network were transferred from SCCCI directly to CBN Holdings.

26. The narration above of how Lee raised $545,000 when, at the last minute, Wong failed to come up with the funds was Lee's version of events about the circumstances that forced her, at such short notice, to raise money from her family and friends. The cashier's order for $480,000 had been purchased by Lee and so, even if Wong wanted to, he could not really dispute that that money had come from Lee but that was not the case in respect of the cashier's order for $97,294. That cashier's order was obtained by Wong from his own bankers. He had not given a receipt to Lee for the cash of $65,000 which she gave him. It would therefore be easy to claim that the payment of $97,294 was entirely his payment. And that was exactly what Wong did! In his affidavit, Wong claimed that it was he who provided this $97,294. Under cross-examination, however, Wong admitted that $65,000 out of

the $97,294 required to purchase the cashier's order came from Lee.

27. Wong had assured Lee that he would be receiving US$8 million in a week's time. But that did not happen. Thereafter Wong kept re-assuring Lee that the money would soon arrive. Lee waited in vain for that to happen. As the weeks passed Lee became progressively more anxious and agitated about the situation. She had assured the family members and friends from whom she had borrowed money that they would be repaid soon but with Wong not keeping his promise Lee was finding it more and more difficult to face her family and friends.

28. Meanwhile Wong, who had obtained from CBN Holdings an authorisation to act as its corporate representative, busied himself looking for investors to whom to sell the Network shares that CBN Holdings had acquired. On 20 May 1999, Wong, on behalf of CBN Holdings and (for some reason that is not entirely clear) on behalf of himself, signed a Sale and Purchase Agreement with a British Virgin Islands company operating in Hong Kong called "Wellrich Holdings Ltd ("Wellrich") for the sale of 50% of those shares to Wellrich. This Agreement (which is somewhat difficult to understand) recorded the purchase consideration as $450,000. Lee testified that all details in connection with this sale had been left to Wong to handle. Wong did not dispute this although he claimed that he kept Lee and Leaw informed.

29. When Wellrich became a shareholder, it nominated two persons to sit on the Board of Network. The other directors of Network at that time were Lee and Leaw. Wellrich, when it came into Network, wanted to effect a substantial increase in the capital of Network. If this were to happen, CBN Holdings would have to have funds to pick up the additional capital or risk losing its 50% control of Network. This was another reason why Lee pressed Wong to honour his agreement to invest $2.7 million into CBN Holdings.

30. Wong, in the course of his assurances that his money was coming, had mentioned to Lee that the solicitor acting for him in the sale of the US property was one "Matthew Fong" of M/s Sheppard Mullin Richter and Hampton of Los Angeles. On 27 August 1999 Lee made a call to Matthew Fong to find out what was happening. She learnt from Matthew Fong that there had been no sale of any property by Wong. The purported sale was therefore a lie. Lee, in her affidavit, describes her reaction to this realisation as "the straw that broke the camel's back". She went on to say:

> "I then knew for certain that (Wong) had been lying to me all along and that he had no intention whatsoever since the beginning to honour/perform the Points of Agreement or to inject funds into the 1st Defendant."

Lee then confronted Wong and warned him that unless he injected his $2.7 million into CBN Holdings within the next few days, the Points of Agreement would be treated as having been repudiated by him.

31. Wong, in the affidavit he filed in response to Lee's affidavit and in his testimony in court, did not challenge Lee's assertions regarding the falsity of his claim that US$8 million was coming to him from the United States. Neither did he challenge Lee's evidence that she gave him notice that if he failed to inject $2.7 million into CBN Holdings within the next few days, she would treat the Points of Agreement as having been repudiated by him.

32. On 1 September 1999, the Board of Directors of Network passed a resolution authorising the issue (by 8 September 1999) of up to 100,000 new shares in the company at US$18 per share. Wellrich and CBN Holdings, being equal shareholders of Network, were each entitled to subscribe for or source investors for up to 50,000 of those new shares. 50,000 new shares at US$18 per share would amount

to S$1.53 million. If CBN Holdings did not pick up the additional shares, control of Network could pass completely to Wellrich. Immediately after the meeting, Lee gave Wong an ultimatum to inject his $2.7 million into CBN Holdings by 8 September 1999, failing which she would treat the Points of Agreement as having been repudiated/rescinded by him. Wong failed to make the payment. It was Lee's case that by failing to comply with the provision in the Points of Agreement that he contribute $2.7 million towards the capital of CBN Holdings Wong had repudiated the agreement and no longer had any rights thereunder.

33. The Network shares had, on the documentation produced by Wong, been sold to Wellrich for $450,000. The proceeds of sale, however, had not been received by CBN Holdings. From the representatives of Wellrich who were on the Board of Network, Lee learnt that Wellrich had purchased the shares, not for $450,000 but for some $2.28 million. When queried on this, Wong refused to pay up or account for this amount. CBN Holdings therefore instituted proceedings in Suit No. 600141/2000 for the recovery of this sum.

34. In the Defence filed by Wong in that suit, Wong admitted that the sale proceeds was in fact $2.28 million and not $450,000. To quote from the Defence that Wong filed in the suit:

> "6. In or about late April/early May 1999, the Defendant found a party who was interested in acquiring 50% of the issued share capital of Network from the Plaintiffs for S$2.28 million. The prospective purchaser was WRH, a British Virgin Islands company owned by Paul Y Construction Company Ltd, Hong Kong. In early May, the Defendant negotiated with WRH on behalf of the Plaintiffs and the Defendant himself was a party to the proposed sale and purchase agreement and the proposed shareholders agreement in order to give certain warranties. The consideration for the purchase was agreed at S$2.28 million, although the final agreement records the consideration as S$450,000. The recording of only S$450,000 as the consideration was done at the suggestion of Tom Lau Ko Yuen, the deputy chairman of Paul Y Properties Group Limited/WRH."
>
> (LSC-1 at 24.)

Wong also admitted that he retained the sale proceeds. To again quote from his Defence:

> "6B. On completion:
>
> (i) HK$2,034,000 (representing S$450,000) of the purchase consideration was paid by WRH's affiliate company, Regent Gold International Limited to Law Hin Wah Stephen, a relative of the Defendant in Hong Kong, to hold to the Defendant's instruction;
>
> (ii) HK$3,751,600 (representing S$830,000) of the purchase consideration was paid by WRH's affiliate company, Channel Win Limited to the aforesaid Law Hin Wah Stephen on the same basis;
>
> (iii) the consideration by way of shares (namely 760,000 fully paid shares of HK$0.10 each in one of Paul Y Properties Group Limited, valued at HK$4,560,000) (representing S$1,000,000) were transferred by Tong Chin Shing William, the chief accountant of Paul Y Properties Group Limited, to the Defendants."
>
> (LSC-1 at 24/25)

The reason given by Wong in the Defence as to why he retained the money in Hong Kong was as follows:

> "6C. The aforesaid payments and/or transfers were made and/or the consideration was kept in Hong Kong to be used for future acquisition of businesses on the Plaintiffs' behalf. At no time was there any intention on the part of the Defendant to wrongfully deprive the Plaintiffs of any part of the consideration. Further, at all material times, both Caroline Lee and Leaw were aware of and agreed to
>
> (i) the structuring of the payment of the consideration in this way and the recording of only S$450,000 as the consideration in the sale agreement with WRH;
>
> (ii) the payment to Law Hin Wah Stephen of the aforesaid amounts on the aforesaid basis;
>
> (iii) the leaving of the sale consideration in the custody as aforesaid in Hong Kong on the Defendant's instructions to be used in the future acquisition of businesses on behalf of the Plaintiffs.
>
> In the light of Caroline Lee's actions aforesaid, namely the wrongful allotment and subscription of shares and her refusal to recognise the Defendant's rightful ownership of 95% of the Plaintiffs, the consideration has not to date been transferred to the Plaintiffs. The Defendant has in fact offered to remit the same to the Plaintiffs on terms that Caroline Lee procure the registration of the Defendant's shareholding in the Plaintiffs, the appointment of the Defendant as a director of the Plaintiffs and the resignation of Dr Chia Woon Kim as a director. Caroline Lee has refused to agree to the same and the consideration remains held as aforesaid."
>
> (LSC-2 at 25/26)

Lee denied Wong's claim that she had agreed to the way in which the payment for the shares had been structured. Whether Leaw, the other director, knew of and had approved these arrangements was a matter on which there was no direct evidence from Leaw himself. But, according to Lee, when she informed Leaw of what she had learnt, Leaw was so unhappy and disgusted with Wong that he decided not to be involved and indicated his wish to resign his directorship in CBN Holdings and Network. (Wong attributed to the withdrawal of Leaw to other reasons.)

35. CBN Holdings had on 15 August 1999 employed one Dr Chia Woon Kim ("Chia"), a specialist in cell and developmental biology, as its Chief Project Officer. It was in fact Wong who had befriended Chia and introduced him to Lee with a view to employing him in the venture. Chia's account of the happenings in CBN Holdings and Network, after he joined, was consistent with Lee's account. Chia's evidence was that from the time he joined he noticed that Lee was continually pressing Wong to inject funds into CBN Holdings. Chia also said that it was shortly after he joined the venture that Lee discovered that Wong had in fact sold the Network shares to Wellrich for much more than $450,000 and had diverted the entire sum to himself. Chia himself spoke to Tom Lau (of Wellrich) at about that time and obtained confirmation of what Lee had found out. Chia told the court that he was present when Lee reported what she had discovered to Leaw.

36. On 16 September 1999, Chia was appointed director of CBN Holdings and Network and Leaw resigned. That same day Wong's appointment as Corporate Representative of CBN Holdings and his appointment as President of Network were withdrawn. Wong disputed the reason given by Lee as to why Leaw resigned. He also disputed the reasons given by her as to the circumstances that led to his ceasing to be President of Network.

37. On 5 November 1999, a share transfer form, signed by Leaw, transferring the one subscriber share of CBN Holdings in his name to Wong was handed to CBN Holdings by Wong. CBN Holdings, exercising its powers under Article 26 of the Articles of Association, rejected this application on the ground that Wong was not an appropriate transferee since the company was contemplating legal action against him. This was notified to Leaw and Wong on 1 December 1999 (LSC-20).

38. Lee had contributed a total of $767,000 to CBN Holdings ($222,000 + $480,000 + $65,000). She had therefore more than performed her obligations under the Points of Agreement. The Points of Agreement expressly envisaged that her contribution of $222,000 (with an additional $3,000) was to be converted into equity. Wong, on his part had failed to inject into CBN Holdings the $2.7 million agreed to under the Points of Agreement. Subject to what Wong had to say on that (which I will deal with hereafter) Wong had only contributed the small sum of $32,249 to CBN Holdings. Inspite of repeated requests by Lee and inspite of the ultimatum she gave to him to pay the $2.7 million by 8 September 1999, Wong failed to pay the $2.7 million. In the circumstances, Lee was entitled to treat the Points of Agreement as having been repudiated by Wong and her acceptance of that repudiation in September 1999 brought an end to the agreement between them as contained in the Points of Agreement.

39. It was after the acceptance of the repudiation that Lee, on 28 February 2000, procured the issue by CBN Holdings to her of 99,998 shares in CBN Holdings. At that stage, the authorised capital of CBN Holdings was only $100,000. It was therefore not possible - without amending that authorised capital - to issue further shares to Lee. In the issue of those shares to her, Lee had the full support of Chia.

40. Wong did not accept Lee's evidence that he had contributed a sum of only $32,249 to CBN Holdings. Wong claimed that he had contributed the aggregate sum of $941,294 to CBN Holdings. This amount comprised the following:

> (a) $97,294 : By way of cashier's order dated 9 April 1999 in favour of SCCCI for the completion of the sale and purchase (of this sum Wong admitted in court that $65,000 came from Lee).
>
> (b) $450,000 : Remittance from Hong Kong on 26 May 1999.
>
> (c) $150,000 : Remittance from Hong Kong on 7 September 1999.
>
> (d) $100,000 : Paid into Network on 24 May 1999.
>
> (e) $144,000 : Allegedly paid in cash to Lee to meet the shortfall still payable to the seven persons from whom Lee had borrowed money.

Wong also claimed that the $545,000 raised by Lee from her family members and friends was (together with interest thereon) a loan to him and that the $450,000 that was remitted by him from Hong Kong [item (b)] to CBN Holdings and a cash payment of $144,000 [item (e)] which he alleged he made direct to Lee were for the settlement of that loan.

41. I will first deal with Wong's claim that the money raised by Lee from friends and family was a loan made by Lee to Wong (and not to CBN Holdings). In support of this claim, Wong produced an "Acknowledgment of Debt" (exhibit 'B') dated 16 April 1999 addressed to Ee. Exhibit 'B' was signed by both Wong and Ee and stated:

> "I, Mr David Wong Kok Keong, NRIC No: 2003298G, hereby acknowledge that I have received the sum of Singapore Dollars Five Hundred Forty-Five Thousand (S$545,000) from Mr Ee Fook Choon. I shall undertake the above sum to repay by 21 April 1999 with S$54,500 Interest. Failing which, S$27,250 weekly will be added on top of the loan sum as of 21 April 1999."

Wong also produced a note (WKK-11) in the handwriting of Lee on a note paper of "The Marco Polo" in Hong Kong in which she had jotted the names of the seven lenders and amount owed to each. On the note Wong had added the following endorsement:

> "Personal loan to Wong Kok Keong to be repaid with interest 10%."
>
> and appended his signature thereto.

42. Lee disputed Wong's claim that the $545,000 was a loan to Wong. I have outlined in paragraphs 23 and 24 about how it came about that Lee raised the $545,000. Lee did not dispute that Ee had signed exhibit 'B'. It was, however, her evidence that, as was the case in respect of the $222,000 she had paid earlier, the $545,000 was also handed to Wong for the use of CBN Holdings. The purpose of exhibit 'B', she said, was to obtain Wong's personal guarantee for the repayment of those monies advanced to CBN Holdings.

43. As for the note (WKK-11), Lee did not dispute that she had written the names and amounts jotted thereon. Lee explained that on 20 May 1999 when Wong was in Hong Kong in connection with the sale of the Network shares to Wellrich, she herself was in transit in Hong Kong on her way back to Singapore from Beijing. She was preparing to catch the flight back to Singapore on the morning of 20 May 1999 when Wong visited her in her hotel room at the Marco Polo. Wong told her that his negotiations with Wellrich for the sale of the Network shares were more or less finalised and, knowing how anxious she was that her friends and relatives should be repaid, told her that with those sale proceeds CBN Holdings would be able to repay those monies. He then asked her to jot down the amounts owing to these persons. Lee, using the note pad of Marco Polo, did so. Shortly thereafter, she realised that she did not have much time to catch her plane back to Singapore and so she rushed off to the airport. Lee told the court that she had forgotten all about that note until she read Wong's affidavit. She was surprised to see that Wong had retained that innocuous note and, after unilaterally adding the endorsement thereon, was now using that note as evidence that those monies were loans to him.

44. If indeed those monies were loans to Wong, then the $450,000 remitted from Hong Kong (that was partially used to repay the loan) would have been remitted to Lee and not to CBN Holdings. In the event, it was CBN Holdings that repaid the amount to Lee. Also, if that remittance of $450,000 was a remittance by Wong in repayment of monies due from him to Lee, then that remittance cannot at the same time be a capital contribution by Wong to CBN Holdings. But, in paragraph 24 of his affidavit, Wong claimed that the remittance of $450,000 was also part of his capital contribution. Wong's evidence relating to whether the $545,000 was a loan to him personally or to CBN Holdings was therefore somewhat ambivalent.

45. I accepted the evidence of Lee that the $545,000 was a loan to CBN Holdings and not to Wong.

It was a loan to CBN Holdings to enable CBN Holdings to complete the purchase of the shares in Network. Exhibit 'B' was executed in order to make Wong personally liable for that loan. As for the note (WKK-11), there was, on the morning of 20 September 1999, no pressing reason for Lee to get such a note from Wong. If she did, she (and not Wong) would be the party retaining that note. I accepted the evidence of Lee in this regard. I found that Wong had dishonestly added the endorsement bearing his signature to that note in order to bolster his claim. As for Wong's alleged cash payment of $144,000 to Lee, Wong was not able to produce any evidence to support that bare claim. I had no hesitation in rejecting his claim that he made such a cash payment.

46. I will now deal with Wong's claim that the remittances of $450,000 and $150,000 to CBN Holdings on 26 May 1999 and 7 September 1999 and the payment into Network of $100,000 were capital contributions by him. It must first be noted that all these payments were after 20 May 1999, ie after Wong had received from Wellrich some $2.28 million in payment of the Network shares belonging to CBN Holdings and which sum Wong was withholding from CBN Holdings.

47. An examination of the remittance advice in respect of the $450,000 showed that it was remitted by Stephen Law Hin Wah ("Law") from Hong Kong on 26 May 1999. Law was the person named by Wong in his Defence in Suit No. 600141/2000 as the person in whose name Wong was holding the proceeds of sale of the Network shares sold to Wellrich It appeared from the evidence that on 20 May 1999, on the instructions of Wong, Wellrich had issued two cheques - one for S$450,000 and the other for S$830,000 - to Law. It was therefore entirely possible that the remittance of $450,000 on 26 May 1999 as well as the other payments made by Wong to CBN Holdings (after that date) were all sourced from monies that in fact belonged to CBN Holdings. If that were so, these payments would not be capital payments by Wong pursuant to the Points of Agreement but would be remittances to CBN Holdings of monies belonging to CBN Holdings.

48. Wong denied the suggestion that those remittances were from the funds of CBN Holdings that Wong was holding (through Law). When pressed to identify the source from which he obtained the $450,000, he told the court that he had borrowed it in cash from his 70-year-old mother-in-law. I found this explanation difficult to believe. I will not here recount Wong's attempts to explain the source of the other monies that he claimed had been paid into CBN Holdings and Network as his capital contribution, save to say that they were as spurious as his explanation in respect of the $450,000.

49. Wong had admitted that the proceeds of sale of the Network shares to Wellrich was money belonging to CBN Holdings and had admitted that he was holding those proceeds (through Law) for CBN Holdings. To rebut the allegation that the monies he had remitted to CBN Holdings were from these proceeds, all that Wong needed to do was to produce the accounts or bank statements in respect of those proceeds and demonstrate therefrom that those payments were not from those proceeds. Wong, however, refused to produce this evidence. He even refused to produce it after being warned that he risked an adverse inference being drawn by his refusal.

50. The examination-in-chief of Wong in these proceedings was concluded on 9 February 2001. The court resumed hearing on 27 February 2001 when the cross-examination of Lee commenced. At the commencement of the resumed hearing I indicated to Mr Peter Gabriel, who appeared for Wong, my concern about his client's refusal to produce the accounts relating to the proceeds of sale received from Wellrich. Mr Gabriel, after taking instructions, informed the court that Wong had left for Hong Kong to procure the necessary documents. On 2 March 2001 Wong returned from Hong Kong and leave was granted to Mr Gabriel to re-call Wong to the witness stand to produce the three documents that Wong had obtained in Hong Kong.

51. Wong told the court that he did not know the address or telephone number of Law in Hong Kong and had to contact a relative to take him to Law's residence but he found, upon arrival at the residence, that Law was not in Hong Kong. Wong claimed that as Law was not in Hong Kong he could not obtain the full documentation. I found it very difficult to believe that Wong did not know how to get in touch with a person in whose hands he had entrusted millions of dollars belonging to CBN Holdings. Wong was also not able to give details of the name, address or telephone number of the relative who took him to see Law.

52. Wong had been asked to:

> (a) Produce all bank statements relating to that part of the sale proceeds of shares to Wellrich that are being held by his nominee in Hong Kong showing the movement (if any) of those monies from the time of sale (May 1999) to-date.
>
> (b) To produce all documents and accounts as well as share certificates of Paul Y Properties Group Ltd referred to in paragraph 6B of the Re-Amended Defence filed by him in Suit No. 600141/2000 and evidence that all these sums and share certificates are still held by him or his nominee on behalf of CBN Holdings.

Wong had told the court that the sale proceeds were being held by Law but the three documents he produced did not reflect this. The three documents he produced (which were marked P.3A to P.3C) were on the letterhead of a company called "Southchester Ltd" of Trident Chambers, PO Box 146, Road Town, Tortola, British Virgin Islands, and read as follows:

> P.3A: 12th June 1999
>
> Received from Mr Wong Kok Keong a sum of HK$5,785,600.00 in cash.
>
> For and on behalf of Southchester Limited.
>
> Sd: (indecipherable)
>
> P.3B: Received from Wong Kok Keong a sum of HK$4,560,000.00 in cash.
>
> For and on behalf of Southchester Limited.
>
> Sd: (indecipherable) 19/6/99
>
> P.3C: 1/3/01
>
> To : Mr Wong Kok Keong
>
> This is to confirm that we hold cash in the total sum of HK$10,345,600.00 upon trust for the benefit of CBN Holdings Pte Ltd.
>
> For and on behalf of Southchester Limited
>
> Sd: (indecipherable)

Wong told the court that he had deposited the monies with Southchester at their secretarial offices in Hong Kong. He could not, however, recall where that office was. Apart from saying that

Southchester was a company belonging to a group of investors, Wong could give no details about Southchester or the investors. He confirmed that Law was not one of the investors and could not explain why he had told the court that Law was holding the proceeds of sale of the Network shares when the documentation he produced purported to show that monies were being held by Southchester. When questioned on this, Wong's response was that Law, after initially receiving the monies, had handed the monies back to Wong and that Wong had thereafter paid the monies into Southchester. This was the first time that Wong was disclosing that Law was no longer the custodian of the $2.28 million belonging to CBN Holdings.

53. Wong told the court that he had obtained the three documents from Southchester in June 1999 at the time he deposited the monies. He also told the court that he had kept the documents with his belongings in Hong Kong. When it was pointed out to him that that evidence would not be consistent with the date on P.3C, namely, 1 March 2001, all Wong could say was that he was more concerned with P.3A and P.3B than with P.3C.

54. I found Wong's evidence to be far from satisfactory. It seemed to me that much of what he was saying was nothing but lies. The three documents he produced appeared to me to be just further examples of Wong's propensity to fabricate documents to support his testimony.

55. Wong, whilst under cross-examination, applied for more time to go to Hong Kong and get more documents relating to the $2.28 million. This would require that the hearing be adjourned to give Wong the time to go to Hong Kong. Mr Chooi supported the application. Mr Chooi's support was understandable because his clients were desperately trying to identify where the proceeds of sale of the Network shares were being held and the more documents that Wong produced, the greater would be their chances of tracing the $2.28 million. Whilst my sympathies in this regard were with Mr Chooi's clients, I refused that application as I felt that it would, for the purposes of this originating summons, serve no purpose to grant more time to Wong. Wong had, in my view, been given more than ample opportunity to produce whatever documents he wanted to. I was of the view that his failure to produce all the relevant documents relating to the movements of the sale proceeds received from Wellrich was not because he was not able to but because he did not want to. In this context, Mr Chooi pressed that I consider contempt proceedings against Wong for failing to obey a court order for him to produce the banking documents relating to the $2.28 million. I declined as, for the purposes of these proceedings, it would be sufficient for me to draw an inference from his failure to produce the documents that those documents would support Lee's contention that the remittances into CBN Holdings were from the $2.28 million.

56. In his originating summons, Wong had prayed for a declaration that Lee and Leaw had at all material times held the two original subscriber shares on trust for the plaintiff (Wong) as to 95% and for Lee as to 5%. There was, as I have noted earlier, insufficient evidence to support this prayer.

57. The Points of Agreement envisaged that Wong would provide capital of $2.7 million to CBN Holdings. Clearly, it was intended that this capital would be provided by Wong in sufficient time for CBN Holdings to acquire the Network shares and provide funds for Network's operations. Wong failed to carry out this obligation despite repeated requests from Lee. The only sum of money that Wong advanced to CBN Holdings was the meagre sum of $32,249. Even that sum was provided by him only because Lee told him that she just could not raise any more money. I accepted the submission by Mr Chooi that Wong, in failing to pay the $2.7 million, was in repudiatory breach of contract and that this breach was accepted by Lee in September 1999. Wong therefore no longer had any rights under the Points of Agreement for shares to be allotted to him. The $32,249 that he had contributed was, at best, a loan by him to CBN Holdings.

58. The two subscriber shares had been issued pursuant to the understanding in the Points of Agreement that Lee and Wong would make capital contributions to the company in the amounts agreed. Lee had fulfilled her part of the bargain. Wong had not and as a result the agreement between Lee and Wong as contained in the Points of Agreement had been rescinded. In the circumstances, Wong had no claim to any share in the equity structure of CBN Holdings and this would include the subscriber shares. With Wong no longer in the picture, CBN Holdings was entitled to allot shares to Lee without consultation with Wong. There was therefore no merit in Wong's criticism of the issue and allotment of the 99,998 shares to Lee.

59. I therefore dismissed Wong's prayers in regard to all the matters raised in the originating summons. I ordered Wong to pay Lee's costs on an indemnity basis because I felt that his claims against Lee and CBN Holdings in this originating summons were completely unmeritorious.

S. RAJENDRAN
Judge

Copyright © Government of Singapore.