

Ang Kin Chiew v Ang Boon Chye (trading as All Family Food Court and others)
[2006] SGHC 59

Case Number : Suit 320/2005

Decision Date : 07 April 2006

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : MS Rajendran (Rajen & Co) with K Chandra Sekaran and Arul Suppiah for the plaintiff; Richard Sam (Sam & Wijaya) for the first, second, sixth, seventh, eighth and tenth defendants; Sng Kheng Huat (Sng & Co) for the fourth defendant; Andrew Tan Tiong Gee and Anna Png (Andrew Tan Tiong Gee & Co) for the third and fifth defendants; Tan Bar Tien (BT Tan & Co) with Winston Kwek for the ninth and eleventh defendants

Parties : Ang Kin Chiew — Ang Boon Chye (trading as All Family Food Court and others)

Partnership – Partners inter se – Shares in partnership – Whether plaintiff was partner or only a nominee – Whether plaintiff as joint owner of property meant that he was partner in the business – Sections 2(1) to 2(3) of Partnership Act (Cap 391, 1994 Rev Ed)

7 April 2006

Lai Siu Chiu J:

1 At the conclusion of the trial, I dismissed with costs the claims of the plaintiff, Ang Kin Chiew, against the first to eleventh defendants, namely Ang Boon Chye ("the first defendant"), Wong Kee Yock ("the second defendant"), Ang Tin Yong ("the third defendant"), Ang King Keong ("the fourth defendant"), Ang Tin Chun ("the fifth defendant"), Ang Leng Kuan ("the sixth defendant"), Tiong Choon Hieng Steven ("the seventh defendant"), Lim May Xia Margie ("the eighth defendant"), Kong Kian ("the ninth defendant"), Ang Choon Siang ("the tenth defendant") and Teng Lak Hoon ("the eleventh defendant") respectively. I further awarded judgment to the eleventh defendant on his counterclaim in the sums of \$14,678.88, \$55,459 and \$3,376.87. The plaintiff has appealed against my decision in Civil Appeal No 142 of 2005.

The background

2 The first and second defendants are friends of the eleventh defendant. The third, fourth and fifth defendants are sons of the eleventh defendant and are the older siblings of the plaintiff. The sixth defendant is the nephew of the eleventh defendant while the tenth defendant is the sixth defendant's son. The seventh defendant is the husband of the eighth defendant whose mother, Mdm Ow Pin Chan ("Mdm Ow"), is a friend of the eleventh defendant. The ninth defendant is the wife of the eleventh defendant and the mother of the plaintiff. Hereinafter, the third, fourth, fifth and eleventh defendants will be referred to collectively as "the Ang family".

The facts

3 The eleventh defendant (who came from China when he was 16 years old) started his first business called Ang Hin Coffee Shop ("Ang Hin") in 1964 at 135-52 Sembawang Road, when he was 32 years of age. He then set up a partnership called Hong Seng Eating House in 1983 ("Hong Seng") at Block 262, Jurong East Street 24, #01-48 and closed Ang Hin in 1984. Hong Seng ceased business in 1986 as it was unprofitable.

4 On 31 August 1985, the eleventh defendant registered the partnership of Ang Keong Eating

House in the names of the fourth defendant and the fourth defendant's wife, Tan Lay Kim ("Lay Kim"). Lay Kim's name was included to enable her, then a Malaysian, to obtain government approval to marry the fourth defendant. Ang Keong Eating House operated and still operates at a shop house located at Block 826, Tampines Street 81, #01-86 ("The Tampines premises"). Ang Keong Eating House is now known as Ang Keong Food Court ("Ang Keong"). After Lay Kim became a Singapore citizen, her name was removed from and she was replaced by the eleventh defendant, in the partnership on 1 August 1990.

5 The constitution of the partnership of Ang Keong changed again on 25 February 1994 when the plaintiff and the fifth defendant became partners, each holding 16.67% whilst the interest of the fourth and eleventh defendants was reduced to 33.33% each. On or about 4 April 1994, Ang Keong purchased the Tampines premises from its landlord, the Housing & Development Board ("the HDB"), under the tenanted shops scheme, at a price of \$3.084m. The registered owners (as tenants-in-common) are the plaintiff, the fourth and fifth defendants, the fifth defendant's wife, Lay Kim, and the eleventh defendant's daughter, Ang Yoke Kiew. Save for the fourth defendant whose share was 34%, the other owners of the shop house each had 16.5% interest. The purchase price of the shop house was funded by DBS Bank Ltd ("DBS") to whom the property is mortgaged.

6 The plaintiff worked at Ang Keong as a cashier from December 1989 to July 1990; he left to work at Isetan departmental store ("Isetan") between August 1990 to February 1991 and returned to Ang Keong to work as a cashier between April 1991 to July 1991. He left again to work at Isetan between September 1991 and March 1992 but returned to work in Ang Keong in April 1992. The plaintiff finally stopped working at Ang Keong in January 2000.

7 Although the plaintiff's salary (when he was an employee) was paid by Ang Keong, his Central Provident Fund contributions were paid by Palm View Food Court and by the sixth defendant.

8 Palm View Food Court ("Palm View") was registered as a partnership on 14 November 1991 in the names of the following defendants and their shares:

- (a) the third defendant – 13.34%
- (b) the sixth defendant – 33.33%
- (c) the eighth defendant – 13.33%
- (d) Mdm Ow – 20%
- (e) the eleventh defendant – 20%

9 Palm View's place of business is at Block 925, Yishun Central, #01-74, Singapore 760925 ("the Yishun premises") which is a shop house purchased from the HDB in 1991 for \$2,982,899. The purchase price was partially funded by a loan from DBS Finance Ltd ("the finance company") in the sum of \$2.3m and is mortgaged to the finance company. The Yishun premises were purchased in the names of the third, fourth, fifth, sixth, seventh defendants and the plaintiff.

10 On 5 October 1991, when the sale and purchase agreement for the Yishun premises was signed with the HDB, the eleventh defendant changed the partnership of his sons in Palm View such that the plaintiff, the third, fourth and fifth defendants all held 8.335% shares. The seventh defendant became a co-owner and partner, replacing his mother-in law, Mdm Ow. The partners of Palm View held the Yishun premises as tenants-in-common, with the sixth and seventh defendants

holding 33.33% interest while the plaintiff and his siblings each held 8.335% interest.

11 On 1 November 1994, the eleventh defendant removed the plaintiff and fourth defendant from the partnership of Palm View, replacing them with the ninth defendant so that she held 16.67% shares. The tenth defendant (the son of the sixth defendant) also joined the partnership. The sixth defendant managed Palm View's operations, assisted by the fifth defendant for two years. As at the date of trial, the Yishun premises were tenanted out.

12 On 1 May 1996, the business of Loyang Food Court ("Loyang") was registered as a partnership in the names of the following persons:

- (a) first defendant – 25%
- (b) second defendant – 25%
- (c) the third defendant – 12.5%
- (d) the fourth defendant – 12.5%
- (e) the fifth defendant – 12.5%
- (f) the plaintiff – 12.5%

13 The capital outlay of the third, fourth, fifth defendants and the plaintiff for Loyang was paid by the eleventh defendant. Loyang was located at Block 258, Pasir Ris Street 21, #02-333B, Loyang Point Shopping Centre and was managed by the third defendant whilst the fifth defendant took charge of daily operations. Loyang ceased operations on 31 December 1997 after incurring substantial losses (\$360,000) which were absorbed by the eleventh defendant. Loyang was deregistered in 1998. After it ceased business the assets and funds of Loyang were transferred to All Family Food Court.

14 All Family Food Court ("All Family") was registered on 19 December 1996. Its premises at Pasir Ris Street 21, #02-333A, Loyang Point Shopping Centre are next to the former premises of Loyang but the rent is lower. The initial partners were the plaintiff and his three siblings, each holding 12.5% of the shares. The balance 50% shares were held equally by the first and second defendants. The third defendant is the managing partner of All Family while the fifth defendant is the operations manager.

15 Palm Valley Food Court ("Palm Valley") was registered as a partnership on 17 January 1997 in the names of the following defendants and their shares:

- (a) the third defendant – 15%
- (b) the fourth defendant – 15%
- (c) the fifth defendant – 15%
- (d) the plaintiff – 15%
- (e) the sixth defendant – 20%
- (f) the seventh defendant – 10%

(g) the eighth defendant -10%

16 Palm Valley's place of business is at Block 111, Woodlands Street 13, #01-74, Singapore 730111 ("Woodlands premises") which is also a HDB shop house purchased for \$4m in June 1996. Palm Valley's operations are managed by the third defendant.

17 The purchase price of the Woodlands premises was partially funded by a loan of \$3.2m from the finance company. The balance of the purchase price came from moneys drawn from Palm View's two overdraft accounts with DBS. The purchase was structured as a joint tenancy in the names of the seven partners in the following proportions:

- (a) the plaintiff - 15%
- (b) the third defendant - 15%
- (c) the fourth defendant -15%
- (d) the fifth defendant -15%
- (e) the sixth defendant - 20%
- (f) the seventh defendant -10%
- (g) the eighth defendant - 10%

18 Fair City Food Court ("Fair City") was registered on 15 October 1996 as a partnership of the first, second and eleventh defendants and one Pang Mian Fah. Its place of business is at premises rented from the HDB located at Block 293, Chai Chee Avenue, #01-60, Singapore. The eleventh defendant holds 30% share. The third defendant manages the business while the other three partners take charge of Fair City's daily operations.

19 Fair View Food Court ("Fair View") was registered on 18 June 1998 as a partnership of the sixth and eleventh defendants with each holding 50% interest. Fair View is situated at Block 371A, Woodlands Avenue 1, #01-01, which premises are leased from the HDB. The business is run by Loh Tuck Meng who is the son-in-law of the eleventh defendant and it is managed by the third defendant.

20 The Meeting Place Food Court ("the Meeting Place") was registered as a partnership on 28 November 1996 and is operated at Block 883, Woodlands Street 82, #02-478, Woodlands North Plaza. The eleventh defendant sold off his 25% interest in the partnership in September 2003. His interest was acquired in the names of the third, fourth and fifth defendants and he paid for his investment (about \$35,000) using the funds from Ang Keong and the mortgage moneys of his residence at 19 Peakville Walk ("the Peakville property"). The third, fourth and fifth defendants left the partnership on 23 September 2003 followed by the first defendant on 26 September 2003.

21 Fair Link Food Centre ("Fair Link") was registered on 29 November 2002 as a partnership of the third, fourth, fifth and sixth defendants and Loh Tuck Meng. Fair Link's place of business is at 10 Admiralty Street, #01-15, Northlink Industrial Building ("the Northlink premises"). The Northlink premises consist of two units, *viz*, #01-15 and #01-75, in an industrial canteen which came with a 60-year lease. Both units were purchased by Fair Link, unit #01-15 for about \$1m in October 2002 and unit #01-75 for \$2.5m in August 2000, in the names of the third, fourth, fifth and sixth defendants. The eleventh defendant paid for the Ang family's share while the sixth defendant paid for

his own share in the partnership. The Northlink premises were mortgaged to United Overseas Bank and subsequently to DBS. Fair Link's business is operated and managed by the third and sixth defendants. The initial down payment and subsequent mortgage instalments came from Ang Keong and from the mortgage moneys of the Peakville property.

22 The third defendant prepares (with assistance from outside accountants) and files with the tax authorities, the accounts of the various partnerships. He also distributes the profits of Palm View and Palm Valley. For Palm Valley, the third defendant makes the following distribution of profits:

- (a) the Ang family – 33.33%
- (b) sixth and tenth defendants – 33.33%
- (c) the seventh and eighth defendants – 33.33%

For Palm View, the profit distribution is as follows:

- (a) the Ang family – 60%
- (b) the sixth defendant – 20%
- (c) the seventh defendant – 10%
- (d) the eighth defendant – 10%

23 Besides funding the investment of the Ang family in Fair Link and The Meeting Place, Ang Keong's moneys were also used to purchase and pay the premiums of life and investment policies from AXA Life Insurance Singapore Pte Ltd ("AXA") and Prudential Assurance Company Singapore (Pte) Ltd ("Prudential") taken out in the names of the plaintiff, the fourth defendant and Lay Kim.

24 Unbeknownst to the Ang family, between 2000 and 2004, the plaintiff encashed his AXA investment policy and surrendered his life policies with AXA and Prudential obtaining and retaining the sums of \$14,678.88, \$55,459 and \$3,376.87 respectively in the process.

25 Besides the eight food courts enumerated above, the Ang family invested in properties in Singapore, Malaysia and mainland China.

The Malaysian properties

26 In November 1994, Ang Keong's moneys were used to purchase a condominium in Kuala Lumpur situated at A20-8, Kenanga Point No 11, Jalan Gelugor ("the Kenanga Point property") for RM257,800 in the name of the fourth defendant.

27 In August 1997, two units in a condominium located at S1/21/2 Suasana Sentral, Kuala Lumpur ("Suasana Sentral") were purchased at a price of RM702,800 in the joint names of the plaintiff and the fifth defendant. The down payments were made using Ang Keong's funds whilst the balance purchase price was paid by a loan from United Overseas Bank Malaysia ("UOB Malaysia"), secured by a mortgage on the properties. As the plaintiff objected to the use of his name, the units in Suasana Sentral were transferred to the fifth and eleventh defendants. No consideration was paid to the plaintiff for the removal of his name. The eleventh defendant subsequently transferred his interest in Suasana Sentral to the fourth defendant. The mortgage from UOB Malaysia was obtained by the fourth and fifth defendants whilst the mortgage instalments were paid by Ang Keong. The Suasana

Sentral properties were rented out.

28 In January 1998, a condominium unit at Block M2, Mewah Ria, Taman Bukit Mewah, Johor Baru ("Mewah View") was purchased for RM323,190 using the name of the wife (Koh Chiok Tee) of the fifth defendant, who is a Malaysian. Mewah View was vacant as at the date of trial. The purchase price came from Ang Keong's DBS account No 029-009806-9 which is in the names of the plaintiff, the fourth and the fifth defendants.

The Singapore properties

29 In January 1995, 12 Lorong 14, Geylang, #05-06, Wing Fong Mansion ("the Wing Fong flat") was purchased in the name of the fourth defendant. The purchase was funded by a mortgage from DBS while the initial deposit and mortgage instalments were paid by Ang Keong. The Wing Fong flat is tenanted.

30 In December 1995, Ang Keong purchased 17 Kim Keat Road, #03-03, Regal Court ("Regal Court") for \$612,000 in the name of the fourth defendant and his wife, Lay Kim. The purchase was funded by a mortgage from DBS while Ang Keong paid the initial deposit as well as the mortgage instalments.

31 The property tax and all other outgoings of the Wing Fong flat and Regal Court are paid by GIRO deductions from the joint POSB account maintained by Ang Keong in the names of the fourth and eleventh defendants.

The pleadings

32 In his lengthy statement of claim, the plaintiff raised many and diverse allegations. In relation to the purchase of the Tampines premises, the plaintiff claimed he was a party to the following DBS accounts:

- (a) No 01-015088-01 ("the first DBS account");
- (b) No 01-0150-88-02 ("the second DBS account");
- (c) No 029-009806-9 ("the third DBS account").

(Henceforth, the above accounts will be referred to collectively as "the DBS accounts").

33 The plaintiff alleged that the fourth and fifth defendants managed the DBS accounts without his knowledge. He alleged that on 14 October 2004 two "hefty" sums of \$300,000 and \$30,000 were withdrawn by way of cashier's orders from the third DBS account. As the third DBS account was/is an overdraft account, DBS subsequently wrote to the plaintiff to top up the account. The plaintiff further alleged that on 4 August 2000 a sum of \$240,000 followed by \$53,000 on 12 October 2000, was withdrawn from the same account and transferred to DBS account No 029-019429-7 which was the joint account of the third, fourth and fifth defendants. In addition, a total sum of \$293,000 from the third DBS account was used as payment towards the purchase of the Northlink premises without the plaintiff's knowledge or consent. The plaintiff alleged that on his inquiry, he was told by DBS that the sum of \$293,000 was transferred to the account of the eleventh defendant.

34 The plaintiff alleged that the eleventh defendant transferred the eleventh defendant's share in Ang Keong to the fourth and fifth defendants without his knowledge and, the latter two ran the

partnership without consulting him. He averred that although he stopped working at Ang Keong in 2000, he was still a partner, a joint owner of the Tampines premises and a joint signatory to the various bank accounts of the Ang Keong. However, the fourth and fifth defendants failed to give him his dues (including rental income) from Ang Keong.

35 In relation to Palm View, the plaintiff alleged that the fourth and fifth defendants fell out in 1994 and it was agreed between them that the third defendant would give up his share in Ang Keong and the Tampines premises and in exchange thereof, the fourth defendant would give up his partnership in Palm View and in the Yishun premises. The plaintiff alleged that both siblings then applied pressure on him to leave Palm View with the result that in June 1994 he transferred his 8.335% share to the ninth defendant, but on the understanding that his mother would hold the shares on trust for him and she would transfer the same to his eldest son in future.

36 The plaintiff alleged that the fourth and fifth defendants did not distribute to him his entitlement from Palm View although he remained liable as a mortgagor of the Yishun premises. He alleged that his two siblings invested the moneys of Palm View as well as used its overdraft facilities, in other investments.

37 Similarly for Palm Valley and All Family, the plaintiff alleged that the third, fourth and fifth defendants ran the partnerships and made decisions without consulting him. They had also failed to give him his dues (including rental) according to his share.

38 As for Loyang, the plaintiff asserted that the partnership made substantial profits as he was paid dividends therefrom in 1997. He believed Loyang was closed down and all its funds and assets transferred to Fair City and All Family. The plaintiff alleged he was not given his partnership share when Loyang closed down.

39 The plaintiff alleged that moneys for the investments in Malaysian and Singapore properties came from the various partnerships as well as from the bank loans taken out by the partners, secured by the mortgages on the Tampines, Yishun and Woodlands properties. He added that some of the partnership moneys were diverted into, the personal accounts of the eleventh defendant, into investments in China, into the purchase of Northlink premises and into the setting up of Fair View, Fair City and The Meeting Place. The plaintiff referred to specific withdrawals from specific bank accounts for his complaint that he was left out of the decision-making and was not paid his dues from the various partnerships.

40 A further accusation was levelled against the fourth defendant. The plaintiff alleged that various insurance policies were purchased by the fourth defendant in the names of the fourth defendant and Lay Kim, which the fourth defendant had failed to account for.

41 The plaintiff complained that from the beginning, he was deliberately excluded from all meetings held by the respective partnerships, the meetings were held without his knowledge and he was not told of what transpired thereat.

42 The plaintiff alleged that between July and November 2000, solicitors Loo & Chong (who represented the fourth, fifth and eleventh defendants) had, on the instructions of the fourth defendant, proposed a buy out of the plaintiff's shares in the various partnerships and properties for the sum of \$120,000. He had declined the offer because the same was not a proper audited value and there was wilful suppression of information concerning the value of the partnerships. Instead, by his solicitors' letter dated 22 July 2004, the plaintiff indicated he wished to sell his shares in the various partnerships as well as properties. He requested that the partners furnish to him the accounts of the

various partnerships as well as details of banking facilities. He alleged that the defendants refused or failed to give him a proper reply.

43 Consequently, amongst the reliefs the plaintiff sought was an order that the defendants furnish accounts of all the food courts in which they, but not he, were partners. As an alternative relief, the plaintiff prayed for the dissolution of (a) Ang Keong; (b) Palm View; (c) Palm Valley and (d) All Family and for the partnerships' accounts to be audited. I should point out however that in the plaintiff's opening statement (para 3), he abandoned this alternative remedy.

44 The defendants filed different defences and were represented by four different firms of solicitors with members of the Ang family choosing to be separately represented. The ninth and eleventh defendants filed a joint defence and counterclaim, the third and fifth defendants filed a separate defence while the fourth defendant filed his own defence. As for the remaining defendants, they filed their defences separately, even the seventh and eighth defendants.

45 Notwithstanding the filing of separate defences, the first, second, sixth, seventh, and eighth defendants maintained a common stand in their pleadings. They asserted that:

- (a) The eleventh defendant used the names of his four sons to register the various partnerships.
- (b) The capital contributions and/or funding for the partnerships (and the purchase of the various premises at which the partnerships operated) came from the eleventh defendant.
- (c) It was the duty of the third defendant to inform the Ang family of meetings (which the plaintiff had never attended) of the various partnerships, to prepare the accounts and to distribute profits to the partners. The profits of the Ang family were paid to the third defendant. Consequently, the plaintiff should look to the third defendant to obtain accounts and other relevant documents.
- (d) Loyang ceased operations in May 1997 due to losses but the partnership was not deregistered until HDB's consent was obtained to change the partnership's name to All Family.
- (e) They had no knowledge that the plaintiff worked in Ang Keong at the material time nor of the allegations that the plaintiff was not given his dues as a partner in the various partnerships.

46 As for the plaintiff's siblings, it was pleaded in the defences of the third, fourth and fifth defendants that:

- (a) The eleventh defendant started the food court businesses of the various partnerships.
- (b) For tax considerations and administrative convenience (in view of his age), the eleventh defendant used his sons' names as nominees to register his interest in the various partnerships formed with third parties, as well as in the properties purchased by the various partnerships.
- (c) The initial financing for acquisition of the premises for the partnerships as well as the businesses came from the eleventh defendant who at all material times remained the beneficial owner.
- (d) Where mortgages were obtained for the acquisition of the premises where the

partnership businesses were carried out, the eleventh defendant's interest would be represented by the sons he nominated as partners but the eleventh defendant retained the responsibility for payment of their share of the mortgage instalments.

(e) The eleventh defendant used his own moneys to fund the tender for the premises of the partnerships as well as the cost of renovations and operations for those premises.

(f) The profits derived from the partnerships belonged to the eleventh defendant and were paid over to him when received by his nominees.

(g) The nominee partners of the eleventh defendant were paid salaries (depending on the profitability of the partnerships) while their taxes attributable to their partnership shares were borne by the eleventh defendant.

(h) The eleventh defendant appointed managers to the partnerships from his nominees and major decisions pertaining to each partnership (such as new investments and the manner in which partnership funds were used) were taken in consultation with the eleventh defendant.

47 In the joint defence and counterclaim filed by the ninth and eleventh defendants, the salient facts in [46] above were repeated. The eleventh defendant pleaded that in truth and in fact the plaintiff, the third, fourth and fifth defendants were his nominees and or trustees in the food courts operated under the various partnerships named in these proceedings. He averred that the plaintiff did not and was not required to pay for the capital outlay and funding for the operation of the food courts and/or for the purchase of the premises for the partnerships. In addition, the eleventh defendant paid the income tax and all other liabilities of the plaintiff arising from use of the plaintiff's name as aforesaid.

48 In relation to the withdrawal of \$300,000 from the third DBS account (see [33]), the eleventh defendant averred that it was done with his consent and authorisation as the money was meant for an investment in China. When the investment did not materialise, the sum was returned to the third DBS account.

49 As for the alleged withdrawal of \$30,000 from the same account, it was an error on the part of DBS which was subsequently rectified and the sum credited back. The eleventh defendant averred that other withdrawals referred to in the plaintiff's statement of claim were also authorised by him. He added that although the plaintiff was an authorised signatory of bank accounts for the various partnerships, the plaintiff was never requested nor required to sign cheques.

50 The eleventh defendant pleaded that there was also no necessity to consult the plaintiff on the operation of the bank accounts since he was only a nominee for the eleventh defendant. For the same reason, the plaintiff was not consulted on investments made over the years by the third, fourth and fifth defendants on the instructions of the eleventh defendant.

51 The eleventh defendant admitted that the fourth defendant and the fourth defendant's wife had purchased insurance policies with his consent and authorisation. He alleged that the plaintiff had wrongfully cashed out and or surrendered two AXA policies and one Prudential policy (see [24]) which proceeds the plaintiff misappropriated. The eleventh defendant counterclaimed against the plaintiff the insurance proceeds in the sums of \$14,678.88, \$55,459 and \$3,376.87.

52 On her part, the defence of the ninth defendant essentially professed ignorance of the plaintiff's many allegations. One aspect of her defence, however, was significant. She (and the

eleventh defendant) denied the plaintiff's claim that his shares in Palm View were transferred to her to hold on trust for his eldest son. She pointed out that in June 1994 (when the plaintiff alleged the trust was created), the plaintiff was not even married.

53 In his reply and defence to the defence and counterclaim of the ninth and eleventh defendants, the plaintiff put them to strict proof of their defences including, the eleventh defendant's contention that Loyang was closed down due to substantial losses from its operations and that the withdrawals of \$300,000 and \$30,000 from the third DBS account were subsequently credited back.

The evidence

The plaintiff's case

54 The plaintiff was the only witness for his case. His written testimony was an elaboration of his already lengthy statement of claim. The plaintiff peppered his affidavit with such expressions as "I believed" or "I verily believed". Apart from search results in the Registry of Businesses on the partnerships, bank statements of the partnerships, exchange of letters between his counsel and the solicitors acting for the defendants, conveyancing documents and the like, the plaintiff did not have any independent evidence that corroborated his numerous claims of wrongdoing on the part of his siblings. The exhibits to his affidavit were not documents which were in issue and did nothing to advance his case. The plaintiff relied on what bank officers purportedly told him about the movements in the DBS and other bank accounts but failed to call any of them as witnesses to corroborate his testimony. Such hearsay evidence was of no probative value.

55 The plaintiff also relied heavily on the divorce proceedings instituted against the third defendant by the latter's wife (Choy May Poh) in Divorce Petition No 6000851 of 2001 ("the divorce proceedings"). The plaintiff referred to affidavits filed by the third defendant in the divorce proceedings wherein the third defendant had deposed that he and his siblings (including the plaintiff) were partners in All Family, Loyang, Ang Keong, Palm Valley, Palm View and that they were family-run businesses. The third defendant had gone further in his affidavit to identify the percentages he and his defendant brothers held in the partnerships. The family court eventually awarded the third defendant's wife 25% of the value of the third defendant's interest in the Yishun and Woodlands premises as well as in a property in Xiamen, China.

56 The plaintiff contended that the third defendant's affidavits in the divorce proceedings were admissions that none of the registered partners in the partnership businesses were nominees or trustees of the eleventh defendant. Therefore, the defences filed in these proceedings were false and the defendants lied in their affidavits when they deposed that he and his brothers were nominees of the eleventh defendant. Further, the eleventh defendant did not file any affidavit in the divorce proceedings to assert that the sons were all his nominees in the partnerships. The plaintiff referred to a draft deed of family arrangement prepared by Loo & Chong in February 2000 on the fourth defendant's instruction which document confirmed his status as a partner and which made no reference to nominees or trustees.

57 The plaintiff questioned the claims of his siblings and the eleventh defendant, that the latter provided all the moneys to set up the various partnerships and to acquire the partnership premises for the operation of the food courts. The plaintiff claimed they had not produced a single shred of evidence (para 14 of his affidavit) as to how the eleventh defendant had provided the funds. He queried where his father's funds came from.

58 Under cross-examination by counsel for the various defendants, the following admissions were

elicited from the plaintiff:

- (a) He made no capital contribution for his shares in Ang Keong, All Family, Loyang, Palm Valley and Palm View.
- (b) His capital contribution for Palm View was paid by the eleventh defendant.
- (c) He did not involve himself in nor did he meet with the other partners to discuss the running of the food courts of the partnerships.
- (d) He did not have discussions with bank officers to arrange loans for the purchase of the Tampines, Yishun or Woodlands premises.
- (e) He did not make any monetary contribution towards the purchase of any of the premises.
- (f) He did not pay his own income tax.
- (g) His off-days were spent in playing video and pinball games.
- (h) Although he was a signatory of the third DBS account, he never signed cheques for Ang Keong, Loyang or All Family.
- (i) He worked briefly at Fair View in July 1998 (but denied he was removed after two weeks because the sixth defendant complained to the eleventh defendant that he was either drunk or absent).
- (j) He was not aware that the eighth and eleventh defendants with Mdm Ow had paid \$500,000 towards the purchase price of the Yishun premises.
- (k) He was not asked to nor did he pay the losses of Loyang.
- (l) When Khattar Wong & Partners sued for their outstanding legal fees (in acting for the finance company in the purchase of the Yishun premises), he did not have to pay his share although he was named a defendant in the Magistrate's Court suit.
- (m) He did not have a cause of action against the ninth defendant (although he insisted that she held his shares in Palm View on trust for his son).
- (n) It was the fourth defendant not the eleventh defendant who instructed Loo & Chong to draft a deed of arrangement.
- (o) Prior to his surrendering and/or cashing the AXA and Prudential policies, the premiums were paid by the fourth defendant or Ang Keong.
- (p) The insurance proceeds belonged to Ang Keong.
- (q) He had the profit and loss accounts, balance sheets, computation of income/losses from 1997 to 2004 for Palm Valley.
- (r) He had DBS statements for Ang Keong (1 April 1994 to 31 Sep 2005), All Family (1 Jan 1999 to 31 July 2005), Palm View (1 Jan 1999 to 31 July 2005) and Loyang (26 April 1996 to

31 Jan 1998), which were all the documents he required.

- (s) His allegations of wrongdoing were directed at the third and fifth defendants.
- (t) The two sums of \$300,000 and \$30,000 withdrawn from the third DBS account had been returned to the account.

The defendants' case

59 The first, second, sixth, seventh and eighth defendants made a common observation in their written testimony: that this suit was a dispute of the Ang family and had nothing to do with them. As for the accounts requested by the plaintiff, they said he should get them from the third defendant who always prepared and filed the accounts with the tax authorities. Similarly, they said, the plaintiff should look to the third defendant in relation to distribution of profits for the partnerships and the calling of meetings.

60 I noted from the affidavit evidence of the eighth defendant that she was puzzled by the plaintiff's complaint – that he was left out of the decision-making and knew nothing of what transpired in Palm View and Palm Valley. In relation to those two partnerships, the eighth defendant pointed out that the plaintiff had visited the solicitors' office representing the two partnerships on a number of occasions to execute loan documentation for the Yishun and Woodlands premises. The solicitors had explained the contents of the documents before the partners signed them. It was obvious that all partners must give their consent before credit facilities were approved by the bank. Consequently, the plaintiff must have had knowledge of the banking documents. Similarly, the plaintiff must have had the accounts of the partnerships as otherwise he would not have been able to file his income tax returns.

The issue

61 The only issue which I needed to determine in this case was whether the plaintiff was a partner of the four partnerships in which his name was registered with the Registry of Businesses or, as the Ang family asserted, he was only a nominee for the eleventh defendant.

The decision

62 I dismissed the plaintiff's case as I found that in truth and in fact, he was a nominee of his father. Like the third to fifth defendants, the plaintiff had no real interest in any of the partnerships. My finding was based not so much on the evidence adduced from the defendants as on the plaintiff's own testimony, especially his admissions set out earlier in [58]. In addition, his allegations of misuse of partnership funds by his siblings were not proven.

63 To elaborate, the plaintiff had alleged that there were unaccounted large withdrawals from the third DBS account. It was obvious that either he did not understand the statements of the partnerships' various accounts with DBS or, his allegations were untrue. Those bank statements, by his own admission, were already in his possession. Hence the relief claimed in para (c) of his statement of claim for an account of all banking facilities was unnecessary.

64 The plaintiff had, *inter alia*, alleged (in para 69 of his affidavit) that sums of \$238,631 and \$2,313.22 were paid to the HDB and to Rodyk & Davidson respectively for "unknown purposes". In court, evidence was adduced from his siblings (and it was also drawn to the plaintiff's attention during cross-examination) that the payment to the HDB was the completion sum for the purchase of the

Yishun premises while the payment to Rodyk & Davidson was for the law firm's fees in acting in the purchase.

65 Yet another instance where the plaintiff's allegation proved to be baseless related to the closing down of Loyang's business. In his affidavit, he asserted that the business was profitable based purely on his belief, even though the accounts filed with and accepted by the tax authorities showed otherwise. The Ang family had testified that the rental at unit No 333B where Loyang operated was higher than that at No 333A where All Family operated. Frequent breakdowns of the air-conditioning system at No 333B prompted the tenant stallholders to refuse to pay rental; stallholders also left. Consequently, Loyang's business was poor, so much so that it could not pay the rent and had to negotiate with the HDB, the landlord, to pay the arrears of rent by instalments.

66 The profit and loss accounts of Loyang for 1996 (1 May 1996 to 31 December) showed a loss of \$80,282.46 whilst the accounts for the first five months of 1997 (1 January to 31 May) showed a net loss of \$278,706.95. It was only when he was confronted with these figures, that the plaintiff conceded he was completely wrong in his surmise that the business was profitable.

67 The plaintiff had further alleged that in 1994, two sums of \$2,787,280 and \$246,720 were deposited into the first DBS account and the second DBS account respectively but on 30 September 2005, there only remained \$1,970,633.41 and \$187,674.31 respectively in those two accounts. He questioned the whereabouts of the difference in the two sums and suspected that the fourth defendant had transferred the amounts to the latter's account. In reality, the fourth defendant had reduced the two term loans (for Ang Keong) on the Tampines premises by faithfully servicing the monthly instalments.

68 Another grievance of the plaintiff was that he had been disadvantaged by having to assign (along with the other co-owners) to DBS the rental proceeds of the Yishun premises, in his honest belief that the ninth defendant held his share in Palm View on trust for him. However, assignment of rent is a standard security requirement of lending institutions and in this case, it was a specific requirement set out in the letter of offer under (para 2 of) facilities from DBS dated 7 August 2003 to Palm View's partners.

69 The plaintiff's reliance on the affidavits filed by the third defendant in the divorce proceedings (see [55]) to say his shares in the four partnerships were gifts from the eleventh defendant was misplaced. First, this assertion was not in his pleadings. It is trite law that a party is bound by its pleadings. Secondly, whatever the third defendant may have deposed to in his affidavits in the divorce proceedings cannot bind the eleventh defendant (who was apparently unaware of his son's marital problems at the material time). No affidavits were filed by the fourth, fifth or eleventh defendants in the divorce proceedings. Finally, there were no findings made by the Family Court on the affidavits as the ancillary matters between the third defendant and his former wife were resolved amicably resulting in a consent order being recorded for them.

70 The plaintiff's allegations concerning the Malaysian properties were again a non-starter. He could not prove his allegation that unit S-23 of Suasana Sentral was transferred to the third defendant after it was purchased in the joint names of the third and eleventh defendants. As for the other unit (S-21), the plaintiff's name as purchaser was withdrawn and replaced by that of the eleventh defendant without any consideration being paid to him. This only served to show that the eleventh defendant, the patriarch of the family, could do as he pleased with properties or investments which he acquired in the names of his sons.

71 My comment on unit S-23 would apply equally to the property in Xiamen Metropolis, China,

acquired in the names of the third and eleventh defendants. The plaintiff could not make good his allegation that the property was sold and 25% of the sale proceeds were given to the third defendant's ex-wife.

72 I would add that the plaintiff's handwritten "note" in Exh P1 is nothing more than a self-serving document. The plaintiff had alleged that the contents therein were the terms whereby he would withdraw as a partner, after he had quarrelled with the fourth and fifth defendants over the Suasana Sentral properties. He had discovered that after his transfer of unit S-21 to the eleventh defendant, the latter had transferred the property to the fourth defendant. As a result, there was a quarrel. The plaintiff admitted in his affidavit (para 143) that the fifth and eleventh defendants who were present did not sign Exh P1. When she testified, the ninth defendant denied the Chinese character appearing thereon was her handwriting. As such, Exh P1 had no evidential value whatsoever.

73 I turn now to the draft deed of family arrangement ("the deed") that the fourth defendant instructed Loo & Chong to prepare (see [57]). The plaintiff had relied on the document to corroborate the terms in Exh P1. The background to the deed is set out in the subsequent paragraphs.

74 The fourth defendant testified that in July 1999, the plaintiff approached him for a loan of \$100,000 to cover losses the plaintiff had sustained in the stock market. As the fourth defendant did not have the money, the fourth defendant told the plaintiff he would ask the eleventh defendant for the loan requested. On hearing that, the plaintiff said he did not require the loan.

75 However, the relationship between the brothers then became strained. In January 2000, the plaintiff's work attitude at Ang Keong worsened. The plaintiff then asked the fourth defendant for \$500,000 to leave the partnership altogether which resulted in the brothers quarrelling. The fourth defendant explained that that incident prompted him to approach Loo & Chong. He hoped to resolve amicably the disputes the plaintiff had with the Ang family. Moreover, the ninth defendant was then having serious health problems and he did not want to add to his mother's worries. Hence, the fourth defendant approached Loo & Chong, giving the law firm a list of the plaintiff's demands and instructed the latter to prepare an agreement for his consideration. The fourth defendant instructed Loo & Chong to act for the fifth and eleventh defendants without their authority or knowledge. This evidence was not challenged by counsel for the plaintiff. It was also supported by the letter dated 5 January 2005 (at AB531-532) from Loo & Chong to BT Tan & Co (solicitors for the ninth and eleventh defendants), stating the law firm liaised with only the fourth defendant, who gave them the impression that he was the decision maker for Ang Keong.

76 Although the preamble in the draft stated that the plaintiff would be paid \$120,000 for his 12% interest in the partnership, the fourth defendant explained that that was a mistake. He had not informed the law firm that the plaintiff was a partner holding 12% interest but had handed to the lawyer, Gregory Chong, the Registry of Companies and Businesses ("RCB") search on Ang Keong along with the partnership's balance sheet and the insurance premium notices from AXA and Prudential.

77 Since the offer of \$120,000 stated in Loo & Chong's letters dated 24 July, 18 August and 20 November 2000 was never accepted by the plaintiff in any event, I did not consider it relevant to my determination of the issue of whether the plaintiff was a partner in Ang Keong and All Family, these being the partnerships referred to in the deed. I did not accept the plaintiff's argument that the deed was an acknowledgement by the Ang family of his status as a partner.

The law

78 In his closing submissions, counsel for the plaintiff made no reference to the Partnership Act (Cap 391, 1994 Rev Ed) ("the Act") which law governs the rights of the parties *inter se* in this case. Sections 2(1) to 2(3) of the Act sets out the criteria for determining whether a partnership does or does not exist, in the absence of a partnership agreement. It is noteworthy that sub-para (1) therein states:

Joint tenancy, tenancy in common, joint property, common property, or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof.

79 Consequently, the fact that the plaintiff was a joint owner of the Yishun, Tampines and Woodlands premises did not *ipso facto* mean he was a partner in the businesses operated at those premises. Counsel for the ninth and eleventh defendants relied on *Chua Ka Seng v Boonchai Sompolpong* [1993] 1 SLR 482 in his submissions. In that case, the Court of Appeal applied the test in *Davis v Davis* [1894] 1 Ch 393 at 399 of "taking all the circumstances together, not attaching undue weight to any one of them, but drawing an inference from the whole" to determine whether the plaintiff and the defendant were partners in the defendant's architectural firm. Earlier at [58], I had set out numerous admissions made by the plaintiff in the course of his testimony, which disproved the plaintiff's status as a partner.

80 Further, under s 12 of the Act:

Every partner is liable jointly with his co-partners and also severally for everything for which the firm while he is a partner therein becomes liable under section 10 or 11.

It was the common evidence of the plaintiff and his siblings, that the plaintiff was never asked to bear liability for any of the partnerships in which he held an interest.

81 Under s 28 of the Act:

Partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives.

Although it was not necessary to make this finding in view of my dismissal of the plaintiff's claim, I should for completeness, add that the evidence adduced from the defendants showed that the third defendant provided true accounts of the various partnership to the plaintiff and members of the Ang family as well as to the "outsider" partners. The only person who complained otherwise was the plaintiff.

The credibility of the witnesses

82 Contrary to the submissions tendered on the plaintiff's behalf, the plaintiff was neither a reliable nor a truthful witness. I did not form the impression given in his affidavits, that the plaintiff worked hard and long hours from young, in the various food courts and or partnerships established by the eleventh defendant. The plaintiff's alleged diligence was inconsistent with someone who played video and pinball games as a leisure activity. I was not impressed by the fact he held a licence for a drink stall or that he had attended and obtained a certificate for a food hygiene course from the Ministry of the Environment. The plaintiff came across as lazy and had a poor work attitude. This was evidenced in the sixth defendant's request of the eleventh defendant for his removal from Fair View, barely two weeks after the plaintiff was set there to work and his short stints working at Isetan.

83 The plaintiff was a sharp contrast to the eleventh defendant, who has my respect and admiration for building up his food court "empire" since he started working at the tender age of 16. Although he was 72 years old at the time of the trial, the eleventh defendant was remarkable in his recollection of facts and which sons' names he had used in the various partnerships. Unlike the ninth defendant (who berated the plaintiff in open court, demanding why he had sued her), the eleventh defendant did not take issue with the plaintiff's unfilial conduct in making this unfounded claim.

84 Although he acknowledged that his dispute was only with his brothers, the plaintiff sued all the partners of the Ang family indiscriminately, even in partnerships in which he had no interest or share. Hence, I ordered that the plaintiff pay three sets of taxed costs for his unsuccessful claim, *viz*, one set to the Ang family (including the ninth defendant), one set to the sixth and tenth defendants and one set to the first, second, seventh and eighth defendants. Consequent on the dismissal of his claim, I ordered the plaintiff to transfer to the eleventh defendant his shareholding, interest and rights in Ang Keong, Palm Valley, Palm View and All Family as well in the Tampines, Yishun and Woodlands premises.

Copyright © Government of Singapore.