

DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR

(BAHAGIAN DAGANG)

PETISYEN PENGGULUNGAN SYARIKAT NO: 66 TAHUN 1980

(RAYUAN SIVIL NO: W-02-744-2000)

Di dalam Perkara Akta
Syarikat 1965

Dan

Dalam Perkara FOLIN &
BROTHERS SDN BHD

ANTARA

WONG KEE CHONG

... PETITIONER

DAN

FOLIN & BROTHERS SDN BHD

... RESPONDENT

GROUND OF DECISION

APPEAL

This is an appeal by Wong Sin Fan, a contributory of Folin & Brothers Sdn Bhd (“Company”) against the decision of the court on 19.9.2000 dismissing the motion to commit Wong Foh Ling, Geh Cheng Hooi, Lee Tuck Fook and Mok Chew Yin to prison for contempt of court.

BRIEF FACTS

The Applicant Wong Sin Fan is a contributory of the Company. Wong Foh Ling is a director of the Company. Geh Cheng Hooi is a partner in the firm of Chartered Accountants Messrs Peat Marwick Mitchell & Co. (“PMM”) who was appointed a receiver and manager of the Company. Lee Tuck Fook is a partner in PMM and was involved in the conduct of the receivership and management of the Company. Mok Chew Yin is a manager employed by PMM and was involved in the conduct of the receivership and management of the Company.

By an order of court dated 8.3.1986 the said Wong Foh Ling is restrained from managing the business of the Company until judgment is delivered on the petition to wind up the Company or until further order. It is alleged by the Applicant that Wong Foh Ling, Geh Cheng Hooi, Lee Tuck Fook and Mok Chew Yin (“Respondents”) have knowledge and notice of this order.

The Applicant alleges that notwithstanding the knowledge and notice of the injunction on the part of the Respondents, Wong Foh Ling continued to manage the business of the Company.

It was alleged by the Applicant that Geh Cheng Hooi, Lee Tuck Fook and Mok Chew Yin aided and abetted Wong Foh Ling in continuing to

manage the business of the Company by doing certain acts which allow Wong Foh Ling to retain and continue his management of the business of the Company.

Among the acts alleged to be done by Wong Foh Ling are:-

- i) Continuing to control letters and telexes.
- ii) Continuing to make decisions on the financial affairs and payments.
- iii) Continuing to control access to the premises.
- iv) To secure further delay in the collection of debts.
- v) To cause the Company to make payments or give credit.
- vi) Giving instructions to staff.
- vii) Operating the bank account of Folin Food Processing Sdn Bhd.
- viii) Being present in the premises.

ISUE

Whether the acts done by the Respondents amounted to contempt of court.

FINDINGS

By the order of the court on 8.3.1986, Wong Foh Ling is restrained from managing the business of Folin & Brothers and its subsidiary, Folin Food Processing Sdn Bhd.

There is no dispute that from the evidence adduced Wong Foh Ling had done various acts at the request of the receivers and managers. The court has to consider whether these acts done can be considered as managing the business of the Company.

It is the finding of the court that the acts done by Wong Foh Ling did not amount to managing the business of the Company. The words “managing the business of the Company” should be given a restrictive meaning. Otherwise, one can say that an office boy or a dispatch clerk is also managing the business of the Company. This surely cannot be the case.

Since this is a committal proceeding proof beyond reasonable doubt is required to find the Respondents guilty of contempt. The Applicant has failed to prove that Wong Foh Ling was managing the business of the Company. That being the case the 2nd to 4th Respondents cannot be guilty of abetting Wong Foh Ling.

The motion is therefore dismissed with costs. A certificate for two counsel was also granted.

31 December 2002

Sgd
Y A DATO' HAJI YAACOB BIN HAJI ISMAIL
HAKIM
MAHKAMAH TINGGI
KUALA LUMPUR

Solicitors:-

N Chandran with Azhar for Wong Sin Fan, Applicant
(T/n Hisham, Sobri & Kadir)

Jeyanthi Kanaperan for Wong Foh Ling, 1st Respondent
(T/n Shearn Delamore & Co)

Raja Aziz for 2nd, 3rd and 4th Respondents
(T/n Arifin & Partners)