

HWEI — LEGAL OBLIGATIONS BETWEEN MEMBERS *inter Se*?

Lau Chuo Kiew v. Hii Chee Soon

The issue in *Lau Chuo Kiew v. Hii Chee Soon*¹ is whether legal obligations are created between members *inter se* in a *hwei*.² The appellant and respondent were both members of a *hwei* of which one Nguon Siew Moi was the “head”. The appellant had received a document which purported to be a promissory note from the “head” who was originally one of the defendants but had since become a bankrupt and disappeared. The action then proceeded against the respondent. The trial magistrate dismissing the claim, held that there was no privity of contract between the appellant and respondent. On appeal, Lee Hun Hoe J. in a very brief judgment, dismissed the appeal on the ground that in a *hwei*, the agreement is between each

19. *Ramsden v. Dyson* (1866) L.R. 1 H.L. 129 at pp. 140-141.

20. See Spencer Bower and Turner *Equity by Representation* (2nd Ed. 1966) p. 261 *et seq.*

21. See Snell's *Principles of Equity* (26th Ed. 1966) p. 629 *et seq.*

1. [1966] 1 M.L.J. 126.

2. It is also known as *tontine*. For the nature and operation, see *post*.

member and the "head" and not between the members themselves. He simply relied on the decision of *Lee Pee Eng v. Ho Sia Leow*³ as authority for this proposition.

It is unfortunate that the *Sibu* decision in *Loi Teck Uh v. Chieng Lee Tieh*⁴ (decided two years after *Lee Pee Eng*) which held a diametrically opposite view, was not brought to the attention of the Court. There the appellant, who was a member of a *hwei*, was a successful tenderer for a particular *hwei* collection. He signed an acknowledgment⁵ that he received \$200.00 from the respondent, who was also a member of the said *hwei*. He failed to repay the respondent the said sum in terms of the acknowledgment, whereupon the respondent sued and obtained judgment. On appeal to the High Court in *Sibu*, McGilligan J. rejected the argument by the appellant that no legal obligations were created between members *inter se*. The appellant was accordingly liable.

In examining the relationship between the members in a *hwei*, the learned judge said:⁶

... the members also contracted with each other, through their mutual agent, the leader, to take part in the *hwei*, to tender, and to make such monthly payments or repayments as the circumstances of the *hwei* should require. By becoming members of the *hwei* they made this contract between themselves (as well as with the leader) each with the other.

In order to determine which of the two views is to be preferred, it might perhaps be pertinent to examine the nature and operation of a *hwei*.

Let us take a typical *hwei* which is composed of ten persons, *A, B, C, D, E, F, G, H, I, and J* (*A* is the head or sponsor). For the first month, *A* the head would collect \$900.00. He keeps this sum as a loan to himself, free of interest. In the subsequent months the person who offers the highest interest will get the collection and the successful bidder of each month cannot participate in the bidding again. Suppose in the second month, *B* makes the highest offer of interest of \$20.00. This means he offers to pay back \$100.00 for every \$80.00 lent to him. *B* would receive $8 \times \$80.00 = \640.00 plus \$100.00 from *A* which is his original loan to *A*. *B* then gets \$740.00 for which his eventual outlay would be \$900.00. The other members would contribute \$80.00 toward *B*'s loan. In the third month suppose *C* is successful. He agrees to pay \$10.00 interest. He therefore gets $7 \times \$90.00 = \630.00 plus \$100.00 from *A* and \$100.00 from *B*. *C* then gets \$830.00 for which his eventual total outlay will be \$880.00 (\$80.00 to *B* and \$100.00 to each of the others). This procedure goes on until the eighth month when there will be only two members eligible to bid. *I* bids for \$10.00 for which he receives \$90.00 from *J*. He also receives \$100.00 from the other members. Finally, *J*, who has never bidden will receive \$900.00 for which his outlay would have been less than \$900.00. Each member therefore receives a collection in rotation.

It is clear that if *A* wishes to start a *hwei*, he will have to find persons who are willing to join. Each person who joins therefore contracts with the head:

- (a) to lend him a sum of money at the beginning;
- (b) to take part in the *hwei*, to tender (if he wishes to) each month until successful and to make such monthly payments or repayments as the circumstances of the *hwei* should require. In other words he undertakes to participate in the *hwei* until it is over.

As a *hwei* consists of a series of transactions before completion, it is arguable that although the agreement to participate in the *hwei* until completion is made with the head, nevertheless, each successful tenderer in effect undertakes that he will continue repaying the members (from whom he received contributions) until the *hwei* is completed, i.e. when the last member receives his collection. For, after the

8. [19B8] S.C.R. 18.

4. [1960] S.C.R. 328.

5. The "head" had collected the said amount from the respondent, but gave the appellant a cheque which was dishonoured.

6. [1960] S.C.R. 328.

initial payment of say, \$100.00 to the head as a loan to himself, the subsequent payments represent collections which members are entitled to bid. The function of the head is then to receive tenders and to pay the collection to the successful tenderer. He can therefore be regarded as the mutual agent through which the members contract with each other.

At this point, it is pertinent to consider the House of Lords decision in *Clarke v. Dunraven*,⁷ although the facts there were entirely different. There, the Mudhook Yacht Club announced a regatta to be held on the Clyde. Each competitor entered the race by signing a letter to the secretary of the club undertaking that while sailing under the entry he would abide by the rules and regulations of the club. One of the rules bound competitors to pay for damage caused by fouling. The appellant who was owner of the *Satanita* entered the race, and while sailing under the entry fouled and sank the *Valkyrie* another yacht which was also participating in the race. Lord Herschell in coming to the conclusion that the appellant was liable said:⁸

I cannot entertain any doubt that there was a contractual relation between the parties to this litigation. The effect of their entering for the race, and undertaking to be bound by these rules to the knowledge of each other, is sufficient, I think, where these rules indicate a liability on the part of the one to the other, to create a contractual obligation to discharge that liability. That being so, the parties must be taken to have contracted that a breach of any of these rules would render the party guilty of that breach liable . . .

It is to be noted that in *Clarke's* case, one of the rules which each competitor undertook to be bound expressly indicated a liability on the part of one to the other. In the instant case, there is no evidence of an express undertaking on the part of one member to the others that he would be liable on default. However, it is implied that the successful tenderer who has received the collection would make repayments to the members who have contributed towards his collection. For this is the very nature of a *hwei*. It is therefore submitted that legal obligations are created among members *inter se*.

K. L. KOH.

7. [1897] A.C. 89.

8. *Ibid.*, at p. 63.