

Hard work pays off for 'vicious' Akai liquidator

Cosimo Borrelli's pursuit of truth unravels corporate collapse

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A tycoon is accused of stealing more than US\$800 million from his international conglomerate and bankrupting the company, while another businessman allegedly conspires to hide the rest of the failed firm's assets from its creditors.

The affair leads to a High Court trial, which collapses. The conglomerate's Big Four auditor is said to have fabricated documents, then gets raided by the anti-fraud police and sees one of its partners arrested.

The events look like scenes from a crime thriller, but the saga of Akai Holdings, the former empire of disgraced entrepreneur James Ting that collapsed in 2000, is very real and has shaken the foundations of corporate Hong Kong, heightening fears about freewheeling tycoons and the auditors and regulators that are meant to protect companies' shareholders and lenders.

The scandal resurfaced in a High Court case against Akai's former auditor, Ernst & Young Hong Kong, last month. The claimants, Akai's liquidators, accused the auditor of tampering with and faking audit files to shield itself from the US\$1 billion negligence claim.

The Commercial Crime Bureau has launched a fraud investigation into Ernst & Young and late last month arrested Edmund Dang, one of its partners, who was freed on bail without being charged.

Yesterday, in a separate trial, Hong Kong tycoon Christopher Ho Wing-on settled a High Court case where Akai's liquidators had accused him of misappropriating the failed electronics firm's assets into his Grande Holdings vehicle in 1999, so Akai's creditors could not retrieve any money.

Like most crime thrillers, this saga has an unlikely, maverick hero - Cosimo Borrelli, Akai's Italian-Australian liquidator.

Borrelli has fought doggedly to get the full horrors of the Akai scandal into the public domain since he was handed the job of cleaning up Ting's mess in 2001. It took him and his staff at the tiny, two-partner liquidation firm, Borrelli Walsh, seven years to get the negligence case against Ernst & Young to a full High Court trial. It took the liquidator four years to get a full set of documents and working papers related to Akai from the global accounting firm.

Along the way, Borrelli almost ran out of cash several times, eventually resorting to taking out high-risk loans from specialist litigation lenders, as the deep-pocketed Ernst & Young tried many tactics to kick the court case into the long grass. Borrelli also suffered numerous setbacks as Ho and Ting launched costly legal side-fights.

The Akai case has come to resemble Charles Dickens' fictional inheritance court case, Jarndyce versus Jarndyce, in the novel *Bleak House*, of which the author wrote: "This scarecrow of a suit has, in course of time, become so complicated that no man alive knows what it means."

There have been more than 60 Hong Kong court rulings on Akai-related litigation since 2001.

When the liquidator's lawyer announced Grande's settlement yesterday, Mr Justice William Stone joked he might have had to "expedite my retirement" if the Akai litigation had gone on for much longer. In 2001, when Borrelli, then working for medium-sized accounting practice Nelson Wheeler, became Akai's liquidator, the chase for creditors' cash looked worse than hopeless.

Ting had disappeared somewhere on the mainland (he was found by Hong Kong police in Macau in 2003, jailed in 2005 but released on appeal a year later after errors in the prosecution's case). What's more, when Borrelli arrived on the scene in 2001, most of Akai was gone, too.

The company had owned leading multinational brands including Singer Sewing Machines and Akai Electric. In the mid-1990s, Akai had more than 100,000 staff and regularly reported annual sales exceeding US\$4 billion.

When Borrelli arrived, Akai had just US\$167,000 worth of cash and assets, no staff, no properties, no trademarks and only a few boxes of books and records.

In November 1999, it was to be revealed later in court, Ting and Ho signed a brief, four-page management agreement stating control of Akai's businesses would pass on to Grande. The two tycoons did not tell the stock exchange or Akai's banks, past court rulings have stated.

By November 2002, Borrelli had been investigating Akai's failure for over a year and chalked up legal fees and other costs of almost HK\$18 million. He had burned through a HK\$10 million loan advanced by Akai creditor Standard Chartered, and Nelson Wheeler had funded the rest. But he still had no answers.

Creditors, mainly banks including HSBC and Standard Chartered, were angry and bitter.

"The creditors' meetings were awful. There were stand-up shouting matches, cups of coffee being banged on desks, people storming out of rooms, everyone blaming each other," says a lawyer who acted for one of Akai's creditor groups in the early years of this decade. "It all felt pretty hopeless."

Borrelli kept going, although he had no idea where the money for his research would come from. "Because he felt it was the right thing to do," says a close friend from Australia.

Borrelli was born in Adelaide to a family of Italian immigrants. His parents were farmers from a tiny Neapolitan village who moved to Australia in the 1960s.

To say Borrelli is different from the expensively educated, clubbable, expatriate accountants, bankers and lawyers in Hong Kong is an understatement. He did not even speak English until he was five years old. And not only was he the first family member to go to university, his school's careers counsellor had to visit his house to persuade his parents higher education would be worthwhile, after which Borrelli's father forced his son to fill in the application forms, his Australian friend says.

"He is certainly anti-establishment, and I think that's why he's got so far with Akai," a former colleague says of Borrelli. "He's turned being an outsider into an art form. There's no one who can convince him to stop pursuing them by buying him a drink in the Hong Kong Club and playing the old-school-tie routine."

"He is also very frightening," a British, Hong Kong-based lawyer says of Borrelli. "I refer liquidation jobs to him when I need a vicious b*****d. People often start waving chequebooks when they hear he's about to turn up."

It is not only pugilistic Italian machismo and Catholic morals that got Borrelli so far with Akai. It is diligence.

"The effect of what Cos can do is vicious," the former colleague adds. "It is often said in Hong Kong that if you want a dodgy tycoon or a big institution ground into tiny pieces, you instruct Cos.

"But the result comes from extreme hard work, not raw aggression. He never stops working. He is obsessive. He never leaves any stone unturned."

Another Hong Kong-based lawyer adds: "He is also extremely suspicious. That's a very good quality for a liquidator. And he never lets anyone think they have one over on him.

"I've been in lots of meetings with Cos when the Chinese guys on the other side of the case, or our own clients, will start talking in [Putonghua] or Cantonese. When this happens, Cos often turns to me and starts babbling in Italian.

"I never have any idea what he's saying, but it always makes everyone start talking in English again, so Cos can be on top of everything that's going on."

Sitting hunched forward in court behind his lawyers during the Ernst & Young and Ho trials, Borrelli, with his broad shoulders, shaven head, designer eyeglasses and stern expression, looked nothing like the usual shy accountant.

He could pass for a retired Italian footballer. An angry one. Although, according to several friends, Borrelli has a big heart and is intensely loyal, he just looks a bit scary.

The liquidator clenched his fists and shifted in his seat during the Ernst & Young trial. When his lawyer, Leslie Kosmin, announced Ernst & Young's settlement, he smiled briefly, then went straight back into terse mode. After the settlement was announced, Borrelli's one comment to reporters was: "Note this down: the liquidator declined to comment." He also declined to be interviewed for this article.

"Actually, there was no champagne in the Borrelli Walsh office after the [Ernst & Young] settlement," yet another lawyer who knows Borrelli well says. "Cos did not take the afternoon off. It was just 'let's get on with suing Grande'."

It is probably this reluctance to relax or slap himself on the back that helped Borrelli to win his fights against Ernst & Young, Ho and Grande, while no one in the city's insolvency world had ever expected him to gain the upper hand.

No one - not a missing Ting, or Grande, or Ernst & Young - was going to willingly provide Borrelli with any answers. He did get them eventually. After retrieving more than 200 boxes of papers from Ernst & Young in 2005, Borrelli's team built a case alleging Ting had plundered more than US\$800 million from Akai, then used fake bank accounts and fabricated investments to cover the money trail that led to his own pocket.

Borrelli's lawyers claimed Ernst & Young had done hardly any work auditing Akai, even though the electronics giant was the Hong Kong office's largest client for most of the 1990s.

They claimed that David Sun Tak-kei, the independent review partner on the audit from 1991 to 19999, did a mere seven hours of work on Akai's audit in the three years leading up to the company's collapse.

Sun is now Ernst & Young's co-managing partner for the Far East, although he relinquished his other role as chairman for China and Hong Kong on September 30, the day after Ernst & Young's premises were raided by the Commercial Crime Bureau.

In a statement, Ernst & Young said: "We are dismayed that these circumstances have arisen as they are fundamentally at odds with our values and our reputation for integrity and quality. However, we are treating this with the utmost seriousness and are co-operating fully with all further investigations by the appropriate authorities into the circumstances surrounding Akai."

The liquidators also alleged Ernst & Young did not use proper audit procedures on the Akai account. In the High Court trial, Kosmin told Mr Justice Stone the auditors did not have most of the files and records that would usually be expected of a company auditor, such as audit planning documents or a detailed audit plan, and no documented procedures for examining Akai's cash balances or reviewing its general ledger.

Kosmin also alleged Ernst & Young did not seek any independent evidence that Akai's bank accounts and investments were real. The accounting firm did not admit any liability when it settled the case.

Ernst & Young and Grande did their best to stop Borrelli from constructing these allegations.

Grande's initial tactic was to ask the High Court to remove Borrelli and his Nelson Wheeler partners from working on Akai's liquidation case. In May 2001, a company linked to Grande, Crescent Court, which had lent money to Akai, alleged Nelson Wheeler was not independent enough because Standard Chartered, another creditor, was funding its work on the liquidation.

The High Court dismissed the application. In June that year, Grande finally gave Borrelli 259 boxes of Akai's papers. But they were all useless, consisting mainly of historic shipping records and import and export receipts.

November 2002 was a key month for Borrelli. Earlier that year, he had found a buyer for Akai's one traceable asset, its Hong Kong listing, and was on the brink of selling it to local clothing company Hang Ten. But on November 27, trouble emerged.

Ting, Akai's disgraced founder who had fled Hong Kong when the company collapsed, resurfaced. Through his lawyers, Ting, who still had a small but decisive stake in the listed company, voted against the sale in a move designed to keep cash out of Borrelli's hands.

The liquidator was forced to do something pragmatic. Borrelli agreed not to make any future legal claims against Ting. In return, the listing was sold and Borrelli raised HK\$40 million to continue fighting the case.

Since 2001, the liquidator had been asking Ernst & Young for documents relating to the accounting firm's audits of Akai but his requests were continually brushed aside.

In 2003, the liquidator secured a court order forcing Ernst & Young to hand over its internal working papers from its Akai audits. The auditors had previously claimed there was nothing in the papers that the liquidators could need.

Madam Justice Susan Kwan Shuk-hing wrote: "I have reservations about the accuracy of that assertion."

By July 2004, Ernst & Young had still not handed all the papers over to Borrelli, saying some were missing. So the liquidator went back to court to get them, and this time Judge Kwan did not hold back in rapping the Big Four accountant for being unhelpful.

In an August 2005 judgment, Judge Kwan said Ernst & Young "greatly exaggerated the time and efforts that would be required to locate the missing documents in its own files".

She added that Ernst & Young "should have greater knowledge of its own files than anyone else. It is quite inconceivable that an established organisation like the first respondent would not have maintained a proper filing system that would facilitate the retrieval of documents".

Last year, Ernst & Young started a side-case against Borrelli Walsh, demanding access to the liquidators' transcripts of witness interviews. That case ran all the way to the Court of Final Appeal, which ruled against the auditors.

"Ernst & Young was trying to outspend Cos, figuring he would go bust," says a legal source.

Instead, Ernst & Young's global network had to dig deep into its insurance coffers to fund the settlement, thought to be worth US\$400 million. And now, at least one of Ernst & Young's local partners is being scrutinised by the police.

The full High Court trial against Ho and Grande did not even start. But it was still an immense piece of litigation, with pre-trial hearings on side issues on most days since the first writ was served in late 2007, resulting in 15 judgments.

During this lengthy pre-litigation period, Borrelli scored quite a few points against Ho.

The Grande boss, who the liquidators alleged owns 50 companies and is worth more than US\$500 million, had his personal assets including his Rolls-Royces, Porsches and HK\$60 million house on the Peak placed under the control of a court-appointed receiver. This was to make sure that Ho, who denied all the

allegations against him, could not move money or cash that might rightly belong to Akai's creditors out of the liquidator's reach.

In a pre-trial judgment last month, Mr Justice Stone slammed Ho as "deftly pulling the strings of his corporate empire with the aim of safeguarding assets which otherwise would be available to satisfy any judgment against him".

With both Akai cases closed, Borrelli is said to be delighted.

"At his heart, he's got a really defined sense of what is right and wrong and what is a just outcome, and if he thinks something is unjust, he will pursue it," Borrelli's close friend concludes.

That is certainly the kind of moral crusader Hong Kong's corporate world needs to keep members of its lightly regulated, *guanxi*-driven status quo looking over their shoulders.