

TANG SENG CHEONG & ANOR v WONG POOI YEN

CaseAnalysis
| [2019] MLJU 2047**Tang Seng Cheong & Anor v Wong Pooi Yen [2019] MLJU 2047**

Malayan Law Journal Unreported

HIGH COURT (KUALA LUMPUR)

MOHD FIRUZ BIN JAFFRIL, J

CIVIL SUIT NO. WA-24NCVC-93-01/2019

31 October 2019

*Mah Weng Kwai & Assoc. for the Plaintiff.
Arden Kuan & Co for Defendants.***Mohd Firuz bin Jaffril J:**

JUDGMENT

[1]The following is this Court's judgment pursuant to the Plaintiffs' application against the Defendant pursuant to Order 80 of the Rules of Court 2012 ("RC") seeking determination on questions arising in relation to the estate of the late Chia Yee Hoong administered by the Defendant.

Summary of the Material Facts

[2]The Plaintiffs are two of the ten (10) lawful children of the late Tang Tuck Ngow and the late Chia Yee Hoong.

[3]The late Tang Tuck Ngow passed away on 31.05.2015 at the age of 91 due to cardiac failure with old age. By way of his Last Will and Testament dated 22.05.2009, Tang Tuck Ngow appointed Chan Lai Mun as the executrix and trustee of his Estate.

[4]Under the terms of the said Will, Tang Tuck Ngow bequeathed his following assets (including residuary assets wheresoever situated) to Chia Yee Hoong:

- (i) Half share of the land held under GeranMukim 110, Lot 18053, Mukim Petaling, Daerah Kuala Lumpur, Negeri Wilayah Persekutuan bearing the postal address of No.25, Jalan Pasir Merah, Batu 6, Jalan Kelang Lama, 58200 Kuala Lumpur;

- (ii) All the monies in joint bank accounts that were held on trust for Tang Tuck Ngow by the following individuals (**“Joint Bank Accounts”**):
 - (a) Public Bank Berhad Account No.4-4827253-26 in Tang Tuck Ngow and one Chan Lai San’s names;
 - (b) Hong Leong Bank Berhad Account No: 157-50-09143-6 in Tang Tuck Ngow and one Tang Sau Mee’s names;
 - (c) Eon Bank Berhad Account No: 0050-20-058193-5 in Tang Tuck Ngow and his Executrix’s names; and
 - (d) Malayan Banking Berhad Account No: 1140300102715 in Tang Tuck Ngow and one Chan Lai San’s names.
- (iii) All stock, shares, warrants transferable subscription rights and other securities in EON Capital Securities Sdn Bhd CDS Account No: 061-001-002490753; and
- (iv) All jewellery kept in the safe deposit box at Hong Leong Bank Berhad in Tang Tuck Ngow and one Tang Sau Mee’s names.

Probate for the late Tang Tuck Ngow’s Estate

[5]On 15.07.2015, Chan Lai Mun filed an application for Probate for Tang Tuck Ngow’s Estate (hereinafter referred to as **“the Estate of TTN”**). Following that, Chan Lai Mun filed an affidavit which contained a copy of Tang Tuck Ngow’s List of Assets and Liabilities that was exhibited as “Exhibit B” to support her application for Probate.

[6]According to the Plaintiffs, Chan Lai Mun failed to include the following of Tang Tuck Ngow’s assets (including assets listed in his Will) in the List of Assets filed :

- (i) The full proceeds obtained from the sale of shares shortly before his death through AmInvestment CDS Account No. 086-001-05518-6704;
- (ii) The monies in Public Bank Account No.: 636-1710-632 that were held on trust for Tang Tuck Ngow by Chan Lai Mun and one Tan Pui Yee;
- (iii) The joint bank accounts stated in paragraph 8.2(b) to (d) above; and
- (iv) All the jewellery kept in the safe deposit box at Hong Leong Bank Berhad.

Probate for the late Chia Yee Hoong’s Estate

[7]The late Chia Yee Hoong passed away on 20.08.2018 at the age of 88.

[8]Circa April 2018, the Plaintiffs instructed Mah Weng Kwai & Associates (**“Plaintiffs’ Solicitors”**) to conduct a probate search at the Probate Registry at the Kuala Lumpur High Court to ascertain whether there was any prior grant issued for Chia Yee Hoong’s Estate.

[9]Subsequently, circa June 2018, the 1st Plaintiff instructed the Plaintiffs’ Solicitors to write to all their siblings to ascertain whether:

- (i) Chia Yee Hoong left a will; and
- (ii) they were interested to join the Plaintiffs as co-administrators for Chia Yee Hoong’s Estate.

[10] In July 2018, the Plaintiff's solicitors received a letter dated 09.07.2018, from Messrs David Gurupatham and Koay ("**DGK**") informing that they are acting for the Plaintiffs' siblings, one Tang Sow Fun and one Tang Sau Mee. The Plaintiffs' Solicitors were further informed that an application for grant of representation for the Estate had been made.

[11] On 12.07.2018, the Plaintiffs' Solicitors wrote to DGK requesting for a copy of Chia Yee Hoong's Will. As DGK did not provide the Plaintiffs and/ or the Plaintiffs' Solicitors any further information, the Plaintiffs had to instruct the Plaintiffs' Solicitors to conduct another probate search in order to ascertain whether the grant of representation for Chia Yee Hoong's Estate had indeed been applied for.

[12] Via a letter dated 16.07.2018, the Probate Registry of Kuala Lumpur High Court informed the Plaintiffs' Solicitors that the Defendant had applied for the Probate of the late Chia Yee Hoong's Estate *vide* Kuala Lumpur High Court Originating Summons No.: WA-32NCVC-835-05/2018.

[13] Based on a search conducted by the Plaintiff's solicitors on 17.10.2018, the Plaintiffs discovered, amongst others, that Chia Yee Hoong left a Last Will and Testament dated 05.11.2015 ("**CYH's Will**") and appointed the Defendant as the executrix of her Estate. It was also discovered that the Defendant had on 18.05.2018 applied for the Grant of Probate for the late Chia Yee Hoong's Estate ("**CYH's Estate**") on 18.05.2018. The List of Beneficiaries and List of Assets for CYH's estate were exhibited in the Affidavit in Support of the Defendant.

Grounds for the Plaintiff's Application

[14] The Plaintiffs application is based on the following grounds:

- (i) That the List of Beneficiaries filed by the Defendant in relation to the above application for Grant of Probate is inaccurate as it stated the 1st Plaintiff as already having passed away. The fact that the Defendant failed to ascertain whether the 1st Plaintiff is dead or alive prior to filing in the said List of Beneficiaries shows that Defendant had refused, failed and/or neglected her fiduciary duty as the Executrix of CHY's Estate;
- (ii) The List of Assets filed by the Defendant in relation to the above application for Grant of Probate is inaccurate as the Defendant did not include all of CYH's assets. The List of Assets also did not contain any of the assets inherited by the late CYH from the estate of TTN;
- (iii) Despite the Plaintiff's request for information relating to CYH's Public Bank and AmlInvestment Bank Accounts and CYH's jewelry, the Defendant took the position that she is not able to consider the request and denies having any knowledge about the jewellery.

List of Question posed by the Plaintiffs for this Court's determination

[15] The following are the questions listed by the Plaintiffs:

- (i) Whether the Defendant has breached her fiduciary duties owed by filing an inaccurate and misleading List of Beneficiaries?

- (ii) Whether the Defendant had breached her fiduciary duties owed by filing an inaccurate and incomplete List of Assets and Liabilities?
- (iii) Whether the Defendant has a duty to furnish the Plaintiffs with verified accounts and inventory of all the assets of the late Chia Yee Hoong?
- (iv) Whether the Defendant has a duty to provide the Plaintiffs with all the bank and share account statements of the late Chia Yee Hoong?
- (v) Whether the Defendant has a duty to obtain from one **Chan Lai Mun (NRIC No .: 760307-04-5142) (“Chan Lai Mun”)**, the Executrix of the Estate of the late **Tang Tuck Ngow (NRIC No.: 240307-71-5303) (“Tang Tuck Ngow”)**, all the bank and share account statements that were bequeathed to the late Chia Yee Hoong as stipulated in the Last Will and Testament of Tang Tuck Ngow dated 22.05.2009 (**“Tang Tuck Ngow’s Will”**)?
- (vi) Whether the Defendant has a duty to obtain from Chan Lai Mun, the Executrix of the Estate of the late Tang Tuck Ngow, an inventory of all the assets that were bequeathed to the late Chia Yee Hoong as stipulated in Tang Tuck Ngow’s Will?

[16]In posing the above questions for the determination of this Court, the Plaintiffs purpose is to obtain the following orders against the Defendant:

- 16.1 That the Defendant shall amend the List of Beneficiaries filed for the Estate of **Chia Yee Hoong (NRIC No : 290427-71-5290/ 7688818)** to reflect (i) that the 1st Plaintiff has not passed away; and (ii) that the 1st Plaintiff’s passport number is Austrian Passport No : U0251803 within thirty (30) days from the date of service of the order herein;
- 16.2 That the Defendant shall furnish the Plaintiffs with the verified accounts for the Estate of **Chia Yee Hoong (NRIC No : 290427-71-5290 / 7688818)** from January 2015 to date within fourteen (14) days from the date of the order herein;
- 16.3 That the Defendant shall provide the Plaintiffs with an inventory of all the moveable and immovable properties including but not limited to the jewellery previously owned by the late **Chia Yee Hoong (NRIC No : 290427-71-5290 / 7688818)** within fourteen (14) days from the date of the order herein;
- 16.4 That the Defendant shall provide the Plaintiffs with all bank account statements from January 2015 until to date including but not limited to Public Bank Account No. 6-3660818-21 held by the late **Chia Yee Hoong (NRIC No: 290427-71-5290 / 76688818)** within fourteen (14) days from the date of the order herein;
- 16.5 That the Defendant to provide the Plaintiffs with all the share account statements from January 2015 until to date including but not limited to AmInvestment Bank Account No : 086-001-059141655 held by the late **Chia Yee Hoong (NRIC No: 290427-71-5270 / 7688818)** within fourteen (14) days from the date of the order herein;
- 16.6 That the Defendant shall obtain from the **Chan Lai Mun (NRIC No : 760307-04-5142)**, the Executrix of the Estate of Tang Tuck Ngow and thereafter shall provide to the Plaintiffs all the bank account statements of the late **Tang Tuck Ngow (NRIC No : 240307-71-5303 / 3670717)** from January 2015 until to date including but not limited to the statements for the bank accounts that were held on trust for the late Tang Tuck Ngow as stipulated in the Last Will and Testament of Tang Tuck Ngow dated 22.05.2009 within fourteen (14) days from the date of the order herein;

- 16.7 That the Defendant shall obtain from **Chan Lai Mun (NRIC No: 760307-04-5142)**, the Executric of the Estate of Tang Tuck Ngow and thereafter shall provide to the Plaintiffs all the share statements of the late **Tang Tuck Ngow (NRIC No: 240307-71-5307 / 3670717)** from January 2015 until to date as stipulated in the Last Will and Testament of Tang Tuck Ngow dated 22.05.2009 within fourteen (14) days from the date of the order herein;
- 16.8 That the Defendant shall obtain from **Chan Lai Mun (NRIC No : 760307-04-5142)**. The Executrix of the Estate of Tang Tuck Ngow and thereafter shall provide to the Plaintiffs an inventory of all the moveable and immovable properties including but not limited to the jewellery devised and bequeathed to the late **Chia Yee Hoong (NRIC No : 290427-71-5290 / 7688818)** by the late **Tang Tuck Ngow (NRIC No : 240307-71-5303 / 3670717)** within fourteen (14) days from the date of the order herein;
- 16.9 That the Defendant bears the costs of this application;
- 16.10 That the service of this order is to be effected on the Defendant by sending a copy of the order by A.R. Registered Post to the Defendant's address as registered with the Malaysian National Registration Department and if represented by solicitors at the Defendant solicitors' address of service;
- 16.11 That the Plaintiffs be at liberty to apply for further and necessary directions and consequential orders ; and
- 16.12 Such further and other relief that this Honourable Court deems fit and proper.

Cross Examination of the Defendant

[17]Having seen the allegations made by the Plaintiffs against the matters averred by the Defendant in her affidavits and the submissions by both parties, this Court took the view that this matter cannot be determined by way of affidavit evidence. This led to this Court directing the matter to proceed by way of cross examination of the Defendant under the provisions of Order 38 rule 2 of the RC 2012 which took place on 6.8.2019.

Note: In directing so, this Court took the view that the procedure provided for under Order 38 rule 2 will allow for final determination of the Plaintiffs' application.

[18]Prior to the cross examination proceedings, the Plaintiff was directed to file a list of interrogatories to which the Defendant was directed to reply. Cross examination was limited to the Defendant's answers to the then filed in further written submissions for this Court's consideration.

Summary of the Defendant's opposing submission to the Plaintiff's application

[19]In response to the allegations raised by the Plaintiffs, the Defendant responded as follows:

- (i) That the name of the Plaintiff was wrongly inserted as "deceased" in the List of Beneficiaries. This mistake was inadvertently caused and unintentional as the 1st Plaintiff's name: "Tang Seng Cheong" was very similar to one of the Defendant's deceased uncle: "Tang Soon Cheong";
- (ii) The mistake on the 1st Plaintiff's passport number was due to the fact that the Defendant had not been informed of the 1st Plaintiff's new passport number. In fact, the Plaintiff had

already made the necessary amendments to rectify item (i) above and also the passport number of the 1st Plaintiff;

- (iii) The allegations that the Defendant and her family had not been taking care of CYH is unfounded. All the while, the Defendant was the one taking care of CYH by sending her to hospital and paying for her medical bills as and when required. The Plaintiffs who resides overseas rarely look into the wellbeing of the family in Malaysia and only came back upon receiving news that CYH was in critical condition;
- (iv) The Defendant acknowledges that as Executor to the Estate of CYH, she has the duty to prepare and submit the accounts of the estate to the beneficiaries thereof including the Plaintiffs. The Defendant intends to do so before the carrying the distribution of the assets under the Estate. However, as she was only appointed as Executor on 04.06.2018, she is only responsible to prepare the accounts from the date CYH passed on which is 28.01.2018. The Plaintiffs' request for accounts from 2015 is unreasonable and troublesome;
- (v) With reference to the list jewellery issued via the Plaintiffs' solicitors letter dated 09.08.2018 to the Defendant, the Defendant has made attempts to locate them but of no avail. In fact, despite the will of the late TTN stating that "*all jewellery which are owned by CYH and which are kept in the safe deposit box at Hong Leong Bank Berhad held in the name of both TTN and CYH are to be handed over to CYH*". Despite TTN passing away in 2015, there was no such list of jewellery in TTN's List of Assets. The Defendant therefore concludes that CYH no longer had the jewellery at the time of her death;
- (vi) The Plaintiffs' request for all bank statements and share account statements from January 2015 up to the date the deceased passed in January 2018 away is unreasonable and troublesome. All that the Defendant needs to do for purposes of the List of Assets to CYH's estate is to list down all her assets at the time of CHY's death. In between January 2015 up to Jan 2018, CYH can do as she pleases with her bank account and the shares in her share account;
- (vii) The Plaintiff's request to obtain all bank statements and share account statements of the late TTN from January 2015 up to date is unreasonable as the Defendant's administration of the CYH Estate has no connection with the TTN Estate. The fact that the Plaintiffs never asked about the affairs of the TTN Estate from CYH between the time TTN passed away in 2015 until the time of CYH's passing shows that the Plaintiffs' request is indeed unreasonable. This is more so when in light of the fact that CYH was the sole beneficiary to the TTN Estate;
- (viii) Whilst the Defendant does acknowledge that she has the right to exercise her discretion to request the documents that the Plaintiffs are seeking from the Estate of TTN, she does not owe an obligation to do so. To procure these documents will require additional effort and expenses, on top of what is required of her in the exercise of her duties as executor. Furthermore, the Defendant was present during the entire process of the distribution of the TTN Estate in favour of CYH. As such, she witnessed firsthand the CYH was satisfied with the distribution and finds no reason to accede to the Plaintiffs' request for her to look into the affairs of the TTN Estate.
- (ix) The Plaintiffs reasons for filing Enc. 1 is based on the possibility that the Executor of the TTN Estate may have acted dishonestly. This is not sufficient to justify the Plaintiff's application an is nothing more than a fishing expedition;

- (x) The Plaintiffs' prayer seeking the List of Assets from the TTN Estate is no longer necessary as the Plaintiffs have already been given access to the said list;
- (xi) The Plaintiffs' application is based on suspicion purely due to the fact that they have been residing overseas all this while and the fact that CYH had 7 other children in Malaysia who has a very close relationship with CYH; and
- (xii) The Plaintiffs' actions in lodging a private caveat over the property under the Estate has hindered the Defendant from performing her duties efficiently and delayed the distribution of the assets under the CYH Estate.

Court's Decision and Rationale

[20] After having reviewed both the written and oral submission by both parties, this Court in essence allows the Plaintiffs' application premised under Order 80 rule 20 of RC for purposes of a just and proper administration of the estate of CYH.

[21] Despite the rather dramatic factual background alleging biasness, neglect of fiduciary duty by the Defendant Executrix, the application herein is not premised for orders for the removal of the Executor but for the orders to obtain documents by way of statement of accounts and inventory. In this regard, I agree with the Defendant's submission that the question of whether the Defendant had breached her fiduciary duties has no relevance whatsoever on whether she should be ordered to procure and produce the said documents.

[22] As the reliefs sought by the Plaintiffs does not in any way concerns the removal of the Defendant as Executor to the Estate of CYH nor does it require this Court to make a finding that the Defendant is biased in the manner as to how she treats the beneficiaries to the Estate or a finding that the Defendant is in breach of her fiduciary duties; and in view of the fact that the Defendant had already rectified the list of Beneficiaries to the Estate, questions (i) and (ii) as listed down by the Plaintiffs need not be answered by this Court.

[23] With reference to question (iii) which requires the Defendant to furnish the Plaintiff with verified accounts and inventory of all the assets of the late Chia Yee Hoong is concerned, the Defendant herself acknowledges that Section 62 of the Probate and Administration Act 1959, does impose such a duty on her to provide a true and perfect inventory and account of the movable and immovable property of the deceased (see also the Court of Appeal decision in *Damayanti Kantila IDoshi & Ors v Jigarlal Kantilal Doshi & Ors* [1998] 4 MLJ 268). Hence, there is no necessity for this Court to answer question (iii).

[24] With reference question (iv) which requires the Defendant to furnish the bank statements and all the bank share account statements of the late Chia Yee Hoong from January 2015 till to date, this Court agrees with the Defendant's submission that her duties as Executor only covers monies and shares belonging to the CYH as at the date of her demise (see the Judicial Committee of Privy Council decision in *SMKR Meyappa Chetty v Supramaniam Chetty* [1916] 1 AC 263). Nevertheless, for purposes of transparency, impartiality and gesture of goodwill, bearing in mind that the task of obtaining the statements and the bank share account statements from January 2015 till to date from the various third parties is not too onerous, this Court takes the view that it is incumbent on the Defendant to provide the documents requested to all beneficiaries of the Estate.

[25] With reference to questions (v) and (vi) which requires the Defendant to obtain from one

Chan Lai Mun, the Executrix of the Estate of the late **Tang Tuck Ngow** all the bank and share account statements that were bequeathed to the late Chia Yee Hoong as stipulated in the Last Will and Testament of Tang Tuck Ngow dated 22.05.2009 and an inventory of all the assets that were bequeathed to the late Chia Yee Hoong as stipulated in Tang Tuck Ngow's Will, both parties herein agrees that only the Defendant is vested with the right to obtain such documents see Section 59 of the Probate and Administration Act 1959). Without having these documents, and comparing them to what assets the Estate of CYH has at the time of CYH's demised, there exists a strong degree of probability that the accounts of the CYH Estate prepared by the Defendant not being accurate.

The duty to keep clear and accurate accounts and to be ready to at all times to render such accounts when called upon to do so is emphasised in *Halsbury's Laws of England (4th Ed) at para 1551* and referred to with approval by the Court of Appeal in *Damayanti Kantilal Doshi & Ors v Jigarlal Kantilal Doshi & Ors (supra)*.

Under this circumstances, this Court is constraint to answer question (vi) in the affirmative holding that the Defendant has a duty to obtain these documents from the Executrix of the Estate of TTN.

Concluding Orders

[26]In the above premise, this Court hereby makes the following orders:

- (i) Prayer 1 dismissed as the List of Assets have been duly rectified to reflect the status of the 1st Plaintiff;
- (ii) Prayer 2 is allowed. The Defendant is required to furnish the verified accounts for the Estate of CYH from January 2015 to date within 45 days from the date of this Order;
- (iii) Prayer 3 is allowed. The Defendant shall provide the Plaintiffs with an inventory of all the movable and immovable properties including but not limited to jewellery previously owned by CYH in so far as the Defendant has knowledge within 14 days from the date of this Order;
- (iv) Prayer 4 allowed. The Defendant shall provide the Plaintiffs with all bank account statements from January 2015 until to date but not limited to CYH's Public Bank Account no. 6-3660818-21 within 45 days from the date of this Order;
- (v) Prayer 5 allowed. The Defendant shall provide the Plaintiffs with all share account statements from January 2015 until to date but not limited to CYH's AmInvest Bank Account No. 086-001-059141655 within 45 days from the date of this Order;
- (vi) Prayer 6-8 as prayed for by the Plaintiffs is allowed subject to caveat that if the executor of the TTN Estate refuses to cooperate, the Defendant must inform the beneficiaries of the CYH estate and to discuss what steps are to be taken. This is to be done within 30 days. In this regard all correspondences to the Executor of TTN's is to be copied to Plaintiff's solicitors.
- (vii) The costs of the Plaintiff's application is determined at RM5,000.00 and is to be borne by the Estate of CYH;
- (viii) Prayer 11 allowed whereby both parties are at liberty to apply for further and necessary directions and consequential orders; and

(ix) the Defendant is also to be reimbursed for reasonable expenses incurred in the course of her acting as Executor for the Estate of CYH.

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