

Mrs Yang Chun née Sun Hui Min v Yang Chia Yin
[2013] SGHC 204

Case Number : Originating Summons No 205 of 2013
Decision Date : 03 October 2013
Tribunal/Court : High Court
Coram : Lai Siu Chiu J
Counsel Name(s) : Philip Fong and Shazana Anuar (Harry Elias Partnership LLP) for the plaintiff;
Adrian Chong (Low Yeap Toh & Goon) for the defendant.
Parties : Mrs Yang Chun née Sun Hui Min — Yang Chia Yin

Probate and Administration – Distribution of Assets

Land – Interest in Land – Joint Tenancy

3 October 2013

Lai Siu Chiu J:

Introduction

1 Mrs Yang Chun née Sun Hui Min (“the plaintiff”) is the widow of the late Yang Chun @ Yang Jack (“the Deceased”). Yang Chia Yin (“the defendant”) is the sole executor and trustee of the Deceased’s estate. The plaintiff is also the defendant’s aunt. She was married to the younger brother of the defendant’s late father.

2 This Originating Summons No 205 of 2013 (“OS 205/2013”), was an application made by the plaintiff under O 80 r 2(3) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) (“the Rules”), praying for orders to be made against the defendant for the defendant’s alleged failure to administer the Deceased’s estate in accordance with the Deceased’s wishes.

3 OS 205/2013 first came on for hearing on 23 July 2013. Having heard arguments from counsel for both parties, I adjourned the hearing of OS 205/2013 but made the following interim orders:

(a) The defendant was to pay to the plaintiff’s solicitors the sum of \$100,000 to defray the plaintiff’s future medical expenses as well as reimburse Sun Chi Hao @ Yang Howard (“Howard”) the sum of \$52,202.53 incurred by him for the plaintiff’s medical expenses, such payment to be made within 14 days of 23 July 2013.

(b) Within 14 days of 23 July 2013, the defendant was to lodge with the Singapore Land Authority (“SLA”) the Instrument of Transmission upon Death to transfer the share of Yang Chun @ Yang Jack in No. 36 Tomlinson Road #11-38, Singapore 247856 (“the Property”) to himself and to the plaintiff as joint tenants.

(c) Costs of \$3,500 were awarded to the plaintiff plus disbursements on a reimbursement basis (inclusive of the cost of obtaining affidavits and medical reports from the plaintiff’s doctors), to be borne by the defendant personally.

4 The parties appeared before this court again on 20 August 2013 to seek clarification as to the interim orders I had made. At the close of the hearing, I varied my interim orders made on 23 July 2013 to the extent that if the defendant failed or neglected to file the Notice of Death (not the Instrument of Transmission upon Death) for the Deceased within 10 days of a request in writing from the plaintiff's solicitors, the Registrar of the Supreme Court was empowered to do so on his behalf.

5 By way of Civil Appeal No 96 of 2013, the defendant has appealed against the whole of my decision. I now set out the reasons for my decision.

Background

6 The Deceased passed away on 15 May 2012. He left a will dated 29 November 2007 ("the Will"). The Will provided, *inter alia*, that the defendant would hold \$300,000 on trust for the care and maintenance of the plaintiff during her lifetime. Thereafter, the balance of this sum was to be given to the defendant absolutely.

7 Under the Will, the defendant was appointed the sole executor and trustee of the Deceased's estate. On 23 August 2012, the defendant obtained a grant of probate to administer the Deceased's estate.

8 In addition to the Will, the Deceased had also during his lifetime lodged an instrument of transfer with the SLA in respect of the Property. The instrument of transfer was registered with the SLA on 23 May 2004. As a result of the said transfer, the Deceased, the plaintiff and the defendant held the Property as joint tenants.

9 On 11 October 2012, the plaintiff signed a lasting power of attorney ("the LPA") in favour of her nephew, Howard, as the donee. Howard was the son of the plaintiff's younger brother. According to Howard, he had previously lived in Singapore with the Deceased and the plaintiff for eight years. Howard said that he treated the Deceased and the plaintiff as if they were his own parents.

10 In 1982, Howard moved to America for his studies. Thereafter he remained in America and visited the Deceased and the plaintiff once a year or every two years. He said that they remained close and on good terms as relatives. Upon hearing of the Deceased's passing on 15 May 2012, Howard immediately returned to Singapore to assist with the funeral arrangements.

11 Subsequently (on 31 August 2012), Howard returned to Singapore to visit the plaintiff. According to Howard, he found her to be in a very poor physical condition. In those circumstances, he arranged for one Dr Madeleine Chew ("Dr Chew") to attend to the plaintiff at her home.

12 On 17 October 2012, the plaintiff signed a general power of attorney ("the POA") appointing Howard as her attorney with the power to manage her affairs. On the same day, the plaintiff also made a will.

13 Howard wrote to the defendant on 10 December 2012, requesting reimbursement of the medical bills he had incurred for the plaintiff's treatment. A copy of the POA was enclosed with the said letter to show the defendant that Howard had authority to act on the plaintiff's behalf. Despite this, the defendant refused to reimburse Howard for the medical bills Howard had incurred.

The Procedural History

14 On 11 January 2013, the defendant filed an *ex parte* Originating Summons (Family) No 9 of 2013

(OSF 9/2013). In OSF 9/2013, the defendant objected to the registration of the LPA on the ground that the plaintiff lacked capacity when she purportedly executed the LPA.

15 On 4 March 2013, in the exercise of his powers under the POA, Howard filed OS 205/2013 on the plaintiff's behalf. The plaintiff sought, *inter alia*, orders that: (a) the defendant was to furnish and verify accounts to the plaintiff or Howard in respect of the Deceased's estate; (b) the defendant was to administer the assets of the Deceased expeditiously in accordance with the Will, including reimbursing the plaintiff for all medical expenses incurred by her (through Howard); and (c) the defendant was to take all necessary steps to notify the SLA of the Deceased's passing and to effect the transfer of the Deceased's share in the Property to the plaintiff.

16 The defendant opposed the plaintiff's application on the ground that the plaintiff lacked capacity at the time she executed the POA. Accordingly, the defendant said that Howard lacked standing to file OS 205/2013 on the plaintiff's behalf.

17 On 19 April 2013, the defendant filed Summons No 2090 of 2013 ("SUM 2090/2013"), praying for an order that OS 205/2013 be stayed pending the outcome of OSF 9/2013. The application for a stay was made on the ground that the defendant was challenging both the LPA and the POA in OSF 9/2013. Therefore, the defendant said that to allow OS 205/2013 to continue would result in duplicitous proceedings.

18 SUM 2090/2013 was heard by an Assistant Registrar ("the AR") on 10 June 2013. The AR dismissed the application on the ground that there was no multiplicity of proceedings because OSF 9/2013 only dealt with the validity of the LPA and not the POA. The defendant did not appeal against the AR's decision.

OS 205/2013

19 At the hearing of OS 205/2013 on 23 July 2013, counsel for the defendant ("Mr Chong") informed the Court that the defendant had applied, *vide* Summons No 3755 of 2013 ("SUM 3755/2013"), to convert OS 205/2013 into a writ action under O 28 r 8 of the Rules. He said that the medical affidavits filed in OS 205/2013 and OSF 9/2013 raised substantial questions of fact which necessitated cross-examination. Mr Chong requested that the hearing of OS 205/2013 be adjourned to a later date, pending the hearing of SUM 3755/2013.

20 Counsel for the plaintiff ("Mr Fong") informed the Court that SUM 3755/2013 was only served on the plaintiff on the morning of 23 July 2013. Further, Mr Fong objected to the adjournment on the ground that SUM 3755/2013 was a delaying tactic on the defendant's part. If the Court was minded to grant the adjournment requested, Mr Fong asked that interim orders be made.

The decision

21 The following doctors filed affidavits in OS 205/2013 and OSF 9/2013 on the plaintiff's mental capacity at the time she executed the POA:

- (a) Dr Chew (expert for the plaintiff);
- (b) Dr Chan Kin Ming ("Dr Chan") (expert for the plaintiff);
- (c) Dr Francis Ngui Tet Shin ("Dr Ngui") (expert for the defendant);

- (d) Dr Sitoh Yih Yiow ("Dr Sitoh") (expert for the defendant);
- (e) Dr Yeo Kah Loke Brian Andrew ("Dr Yeo") (expert for the defendant); and
- (f) Dr Lee Keng Thon ("Dr Lee") (expert for the defendant).

22 Having read those affidavits and considered the arguments of counsel for both parties, I was of the view that the hearing of OS 205/2013 ought to be adjourned to a later date, pending the hearing of the defendant's application in SUM 3755/2013. For the avoidance of doubt, I would add that I made no finding as to the plaintiff's capacity at the time she executed the POA.

23 However, as counsel for the plaintiff had rightly pointed out, the defendant's application to convert OS 205/2013 into a writ action under O 28 r 8 of the Rules did not preclude the Court from making interim orders pending its hearing. In this regard, O 80 r 4 of the Rules provides:

In an administration action or such an action as is referred to in Rule 2, the Court may make any certificate or order and grant any relief to which the plaintiff may be entitled by reason of any breach of trust, wilful default or other misconduct of the defendant *notwithstanding that the action was begun by originating summons, but the foregoing provision is without prejudice to the power of the Court to make an order under Order 28, Rule 8, in relation to the action.*

[emphasis added]

The payment of the plaintiff's medical expenses

24 Howard alleged that the defendant had failed to ensure that the plaintiff received the proper medical care that she required. Therefore, he arranged for Dr Chew to attend to the plaintiff at her home. Howard also claimed that the plaintiff's physical and mental condition had shown a marked improvement since Dr Chew began treating her in September 2012. In those circumstances, he asked that the cost of the plaintiff's treatment by Dr Chew be paid out of the Deceased's estate.

25 Dr Chew said that when she first saw the plaintiff, the plaintiff was unfocused and unresponsive. Dr Chew also found swelling in the plaintiff's lower limbs and lungs. Dr Chew was of the view that the swelling in the plaintiff's lungs was caused by the plaintiff's inability to swallow properly at times (due to a previous stroke), causing food and liquid to go into her lungs. This caused the plaintiff to suffer from episodes of coughing. Dr Chew's subsequent investigations revealed that the plaintiff was suffering from renal impairment, low sodium levels, low albumin levels and a urinary tract infection. The plaintiff was also found to be taking a drug known as Risperdal, which was prescribed by Dr Lee, to help with her poor sleep.

26 The treatment administered by Dr Chew to the plaintiff included: (a) administering intravenous sodium and albumin drips; (b) administering antibiotics to treat the plaintiff's urinary tract infection; (c) inserting a urinary catheter to deal with the plaintiff's incontinence; (d) taking the plaintiff off Risperdal; (e) administering intravenous anti-inflammatory drips to reduce swelling in the plaintiff's lungs; (f) arranging for the plaintiff to see a speech and swallow therapist; (g) arranging for the plaintiff to see a physical therapist; and (h) examining the plaintiff once or twice a month.

27 Dr Chew's diagnosis and treatment of the plaintiff was supported by Dr Chan in his report dated 2 March 2013. Dr Chan was of the opinion that Dr Chew's treatment of the plaintiff was appropriate in the circumstances. He also expressed the opinion that Dr Lee's prescription of Risperdal for the plaintiff (which had a sedative effect) was inappropriate, given the plaintiff's age and her history of

Parkinson's disease. Dr Chan was also of the opinion that while a 1mg dose of Risperdal (as Dr Lee had prescribed) was low for a young and physically healthy patient, this was not the case for a patient of the plaintiff's age and with her medical history.

28 Against this, the defendant made four main allegations. First, the defendant said that he had provided the plaintiff with a comfortable life. In this regard, adequate medical care was already being provided for the plaintiff by Dr Lee and Dr Sitoh. Secondly, the defendant said that the treatment administered by Dr Chew was unnecessary and excessive. Thirdly, the defendant said that it was the Deceased's intention that he be the plaintiff's caregiver. Therefore, Howard should not have engaged Dr Chew to treat the plaintiff without first having consulted him or Dr Lee, who had been seeing the plaintiff since 1995. Finally, the defendant said that Howard's involvement in the matter was motivated by self-interest and aimed at obtaining a share of the Deceased's assets.

29 The defendant's position with regard to the medical care required by the plaintiff was supported by Dr Lee in his affidavit dated 8 May 2013 filed in OSF 9/2013. Dr Lee said that he was aware of the plaintiff's renal impairment, low sodium levels and low albumin levels since September 2011. However, he did not suggest active treatment as the plaintiff's condition was stable. As regards the treatment of the plaintiff's incontinence, Dr Lee was of the view that a diaper-dependent approach was preferable as the use of a catheter would lead to more aggressive urinary tract infections in due course. Further, the frequent insertion of catheters and intravenous drips would have caused the plaintiff pain and discomfort. In the light of the above, Dr Lee elected to take a "less interventionist approach" to the plaintiff's treatment and would only treat her illnesses where there were symptoms affecting the plaintiff's comfort and quality of life.

30 The Court took issue with Dr Lee's "less interventionist approach". Neither he nor the defendant denied Howard's allegation that Dr Lee prescribed antibiotic medicine for the plaintiff on the defendant's instructions in July 2012 without examining the plaintiff. Indeed in his affidavit at [29] above, Dr Lee (at para 5) deposed that the plaintiff's maid Ah Mooi came to his clinic to collect the plaintiff's medication on 10 August 2012. Dr Lee in effect abrogated his duties as a medical doctor by taking instructions from the defendant on the plaintiff's care.

31 In response to Dr Chan's allegation that Risperdal was an inappropriate medication to treat the plaintiff's inability to sleep, Dr Lee denied that he had prescribed Risperdal for poor sleep. Instead, he had prescribed Risperdal in March 2007 when the plaintiff had displayed symptoms of behavioural problems. This was stopped sometime in September 2008 when the plaintiff was given Zopiclone and Zolpidem for poor sleep. Risperdal was re-started in January 2009 at the request of the Deceased as the plaintiff could not sleep well with Zopiclone.

32 Having read all the affidavits filed in the proceedings, I accepted that the plaintiff's condition had shown a marked improvement as a result of the treatment Howard had arranged for her. The treatment prescribed by Dr Chew was not excessive or unreasonable. It was in the plaintiff's interest for such treatment to continue. Further, I was satisfied that Howard was not motivated by self-interest when he arranged for the plaintiff to be seen by Dr Chew.

33 I found that the defendant had clearly not discharged his duties as executor of the Deceased's estate as regards caring for the plaintiff. Although the Will provided for the sum of \$300,000 to be held on trust by the defendant for the plaintiff's care and maintenance, this did not confer on the defendant a *carte blanche* to care for the plaintiff as he deemed fit. Rather, the fact that the Deceased had bequeathed the considerable sum of \$300,000 for the plaintiff's care and maintenance suggested that the Deceased had intended for her to live out her remaining days in as much comfort as possible.

34 In this regard, I did not accept the defendant's contention that the plaintiff was well cared for him. Although he did not neglect caring for the plaintiff entirely, it was clear that more pro-active and appropriate steps could have and should have been taken by him to improve the plaintiff's physical and mental well-being. This was especially so given the substantial funds which the defendant had at his disposal but which he was obviously reluctant to spend on the plaintiff.

35 Accordingly, I was of the view that it was appropriate to order that the defendant pay the plaintiff the interim sum of \$100,000 to defray the cost of her treatment by Dr Chew, pending the hearing of SUM 3755/2013 and OS 205/2013. At the time OS 205/2013 came to be heard by me, Howard had already spent \$52,202.53 (supported by documentary evidence) on the plaintiff's medical treatment and supplies. Therefore, I ordered that this sum should be reimbursed to him from the \$100,000.

The transfer of the Property to the plaintiff

36 At the time OS 205/2013 was heard, the defendant had not taken any steps whatsoever to notify the SLA of the Deceased's death so as to ensure that the land register was updated to reflect the plaintiff's and the defendant's entitlement to the whole of the Property as the surviving joint-tenants.

37 In his affidavits filed on 16 May 2013 and 9 July 2013, the defendant said that he had not filed the Notice of Death because he had been advised by his solicitors that it was legally impossible to transfer the property as the plaintiff was mentally incapacitated and unable to sign the Notice of Death. At the hearing, Mr Chong confirmed that the defendant had been so advised by his firm.

38 It was my view that the defendant's excuses were untenable. As surviving joint tenants, the plaintiff and the defendant would automatically be entitled to the whole of the Property upon the Deceased's demise by virtue of the right of survivorship. There was no need for the beneficial title in the Property to be separately transferred to the defendant.

39 As regards the passing of legal title, it was apposite to refer to s 114 of the Land Titles Act (Cap 157, 2004 Rev Ed) ("the LTA") which provides as follows:

114.—(1) Upon the death of a joint tenant or of a life tenant of registered land, the proprietor who has become entitled to that land consequent upon that death may apply in the approved form to have the death notified on the land-register.

(2) Upon proof to his satisfaction of such a death, the Registrar shall make such entries in the land-register as may be necessary to indicate that the interest of the deceased proprietor has determined, and that the land has become vested in the survivor or other person entitled in the reversion or remainder, as the case may be.

...

40 In my view, s 114 of the LTA did not require all the surviving joint tenants to file a Notice of Death. The filing of the Notice of Death did not serve the function of effecting a transfer of the property to the surviving joint-tenants. Rather, it served the administrative function of giving notice of the death of a joint tenant to the Registrar of Land Titles who was then obliged to update the land-register upon being satisfied of such a death. Further, there was nothing in s 114 that detracted from the right of survivorship of the remaining joint tenants.

41 I therefore did not accept the defendant's contention that he had not filed the Notice of Death because it was legally impossible for the Property to be transferred to the plaintiff. Quite clearly, the defendant could have taken steps to file the Notice of Death with the SLA but had made no attempt to do so for his own selfish reasons. The plaintiff's lack of capacity, as alleged by the defendant, was irrelevant to this issue.

42 Mr Fong also submitted that if the defendant genuinely believed that the plaintiff's alleged lack of capacity prevented him from filing of the Notice of Death, he could have taken steps to: (a) engage a doctor to assess whether the plaintiff indeed lacked capacity; or (b) apply for a court order for the Notice of Death to be lodged on the plaintiff's behalf in the event that the plaintiff was in fact found to have lacked capacity. Mr Fong said that the defendant had conveniently omitted to take either course of action. Instead, he chose to make a bare assertion that the plaintiff lacked capacity. I agreed with Mr Fong's submissions in this regard.

43 Consequently, I ordered that within 14 days of 23 July 2013, the defendant was to notify the SLA of the Deceased death so as to transfer the Deceased's share in the Property to the defendant and the plaintiff as joint tenants.

44 On 20 August 2013, the parties appeared the court again to seek clarification of the earlier orders made on 23 July 2013. Mr Chong informed the Court that he had written to the SLA and had received a reply from SLA to the effect that both the plaintiff and the defendant were required to execute the Notice of Death.

45 For the reasons I had set out at [39] above, I did not agree with the stance adopted by the SLA. In this regard, Mr Fong informed the Court that if the Registrar for Titles took the view that both the plaintiff and the defendant had to sign the Notice of Death, the plaintiff's solicitors would arrange for the plaintiff to do so.

46 Mr Fong also submitted that pursuant to s 14(1) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed), the Court had the power to and should order the Registrar of the Supreme Court to execute the Notice of the Death on the defendant's behalf if he failed to do so. I accepted Mr Fong's submissions. Accordingly, I amended the orders I had made on 27 July 2013 to that extent. All other orders made on that date were to remain.

The defendant's delay in filing SUM 3755/2013

47 In making the interim orders, I was also mindful of the defendant's delay in filing SUM 3755/2013. On 20 July 2013, Mr Chong had written to the Court to ask for the hearing of OS 205/2013 to be adjourned to a later date. Mr Chong gave two reasons for his request. First, Mr Chong said that the defendant needed more time to file its submissions as the plaintiff had filed two voluminous medical affidavits. Mr Chong's second reason was that in light of a letter the defendant had obtained from Dr Lee on 20 July 2013, the defendant saw it fit to apply to convert OS 205/2013 into a writ action.

48 Having read Dr Lee's letter, I was of the view that the defendant ought to have filed SUM 3755/2013 earlier. In these proceedings, it was always the defendant's position that the plaintiff lacked capacity to execute the POA. Most of the doctor's affidavits were filed by May 2013. Dr Lee's letter, in which he stated his opinion that the plaintiff lacked mental capacity when he visited her on 10 July 2013, did little to affect the defendant's position. The alleged questions of fact which the defendant said warranted a conversion of OS 205/2013 into a writ action were in existence from the time these proceedings were commenced. The application by SUM 3755/2013 was not made *bona fide*

but was yet another delaying tactic on the part of the defendant which no court should condone.

Conclusion

49 For the above reasons, I made the orders set out at [3] above. I also ordered the defendant to pay the plaintiff's costs, fixed at \$3,500 excluding disbursements on a reimbursement basis. Such disbursements were to include the cost of obtaining medical reports and affidavits from the plaintiff's doctors. Because of his conduct, costs were also ordered to be borne by the defendant personally and not to be paid out of the Deceased's estate.

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