

Re Singapore Symphonia Co Ltd & others
[2013] SGHC 261

Case Number : Originating Summons No 786 of 2013
Decision Date : 26 November 2013
Tribunal/Court : High Court
Coram : Edmund Leow JC
Counsel Name(s) : Andrew Chan and Goh Zhuo Neng (Allen & Gledhill LLP) for the applicants.
Parties : Re Singapore Symphonia Co Ltd & others

Trusts – Termination

26 November 2013

Edmund Leow JC:

1 The applicants sought declarations in the following terms:

- (a) that the fourth applicant ("the Tote Board"), which is the named settlor under a trust deed dated 28 May 1989 ("the Trust Deed") made between the Tote Board and Goh Keng Swee, Edmund William Barker, Tan Boon Teik and Koh Beng Seng (being the original trustees of the Trust (as defined below)) to constitute the Singapore Totalisator Board Trust ("the Trust"), and which has paid an aggregate sum of \$25m into the Trust, is a beneficiary under the terms of the Trust; and
- (b) that the only beneficiaries of the Trust are the first applicant ("the SSO") and the Tote Board.

2 On 15 November 2013, I heard the matter and granted the declarations sought. For reasons which will be apparent I now issue grounds for my decision.

3 The SSO is a company which at present runs the Singapore Symphony Orchestra. The second and third applicants are the only current trustees of the Trust. The Trust was constituted by way of the Trust Deed on 28 May 1989 and under the terms thereof the Tote Board settled a capital sum of \$25m on the Trust, the income on which was to be distributed from time to time to the SSO, subject only to the proviso that any loss or shortfall to the capital sum had to be made good before income could be paid out. The Trust was stated to be effective from 28 May 1989 to the end of the 21st year from the death of the last surviving of the four original trustees named in the Trust Deed. At the end of this time or in the event that the Trust became incapable of performance, the capital sum was to revert to the settlor, the Tote Board. As one of the original named trustees is alive and well, the Trust remains effective to this day.

4 The reason for this application is thus. During the period of the financial crisis around 2008, the value of the Trust fell below \$25m. The trustees thus could not pay out any income and the SSO, which had budgeted for such income, was therefore put into deficit. In early 2009, it wrote to the Tote Board seeking a top-up of the capital sum. The Tote Board refused but eventually agreed instead to donate all the moneys standing in the Trust to the SSO's own endowment fund. Unfortunately, there were no provisions in the Trust Deed permitting the premature dissolution of the

Trust. The solution hit upon was for the beneficiaries of the Trust to terminate the Trust under the rule in *Saunders v Vautier* (1841) Cr & Ph 240; 41 ER 482, and then to direct the trustees to pay the trust property into the SSO's endowment fund. It is trite that the beneficiaries of the trust, if together entitled to the whole beneficial interest, can if *sui juris* put an end to the trust and direct the trustees to hand over the trust property as they direct: see *Snell's Equity* (John McGhee gen ed) (Sweet & Maxwell, 31st Ed, 2005) at p 652. The applicants thereupon entered into a deed of agreement dated 20 August 2013 to give effect to this purpose; but the parties' agreement was stated as subject to the court declaring that the Tote Board and the SSO were the only beneficiaries of the Trust, which necessitated the present application.

5 On scrutinising the Trust Deed I could not see any other person entitled to claim any interest in the trust property. Furthermore, it was a fixed trust and not one in which there was a possibility that more beneficiaries could be added, or that discretion could be exercised in anyone's favour. I therefore had no trouble with finding that the SSO, which has an interest in the income on the capital sum for the duration of the Trust, and the Tote Board, which has the reversionary interest in the capital sum, were the only two beneficiaries of the Trust and therefore entitled under the rule in *Saunders v Vautier* to call in and dispose of the trust property, and for that reason granted the declarations sought. The SSO, as the recipient of a gift of trust funds, was undoubtedly a beneficiary. It was clear also that the Tote Board was in substance a beneficiary of the Trust notwithstanding that it was not explicitly labelled as such in the Trust Deed.

6 Representatives of the Singapore Dance Theatre ("SDT") and the Singapore Chinese Orchestra ("SCO") also filed affidavits seeking leave for their respective counsel to assist the court as *amici curiae*. It seems that the SDT and SCO have made or are making similar arrangements with the Tote Board in relation to trusts that have been established by the Tote Board for their benefit under much the same terms as the Trust. They were therefore interested in whether their respective trusts could be dissolved in the same way and the funds therein applied to their own endowment funds. I have therefore issued these grounds so that they or any other persons in a similar position may be spared the expense of an application to court.