

Ong Chai Hong (sole executrix of the estate of Chiang Chia Liang, deceased) v Chiang Shirley and others
[2015] SGHC 110

Case Number : Suit No 820 of 2012
Decision Date : 22 April 2015
Tribunal/Court : High Court
Coram : Edmund Leow JC
Counsel Name(s) : Lee Soo Chye and Subir Singh Grewal (Aequitas Law LLP) for the plaintiff; Balasubramaniam Ernest Yogarajah (UniLegal LLC) for the second, third and fourth defendants; The first defendant in person.
Parties : CHIANG SHIRLEY — CHIANG DONG PHENG — CHIANG CURRIE — CHIANG DONG PHENG as Personal Representative of the ESTATE OF MRS CHIANG CHIA LIANG NEE HO FAN CHING FLORENCE — WEN JEN CHIOU

Civil Procedure – judgments and orders

[LawNet Editorial Note: The appeal to this decision in Civil Appeal No 35 of 2015 was allowed by the Court of Appeal on 30 November 2016. See [\[2017\] SGCA 1.](#)]

22 April 2015

Edmund Leow JC:

Introduction

1 Disputes erupted amongst the siblings of a wealthy family over the estates of their late parents. The case before me involved the estate of their late father, Chiang Chia Liang (“the Chiang estate”). It was an action brought by the executrix, who had been appointed under Chiang’s will, for various court orders and declarations in respect of the administration of his estate. All the defendants were beneficiaries of his will. The first three defendants were his children. The fourth defendant was the estate of his wife, who died after her husband. The fifth defendant was his mistress. The main players were the first and second defendants, whose dispute over the administration over their late mother’s estate had also been played out in the courts. That dispute was recently adjudicated in *Chiang Shirley v Chiang Dong Pheng* [2015] SGHC 98, which provides some background to the family history. As there may be more legal proceedings in relation to the case that I heard, I make no further comment except on what is necessary to resolve a narrow issue.

Background

2 The trial to determine the assets belonging to the Chiang estate started in January 2014. The action against the fifth defendant – which was in relation to one clause in the will - was discontinued after the parties entered into a consent order on 16 January 2014. No order was made as to costs. On 2 July 2014, the plaintiff and the other four defendants entered into a settlement, which resulted in a consent judgment (“the Consent Judgment”). The relevant terms in the Consent Judgment are as follows:

3. The 2nd Defendant, being the surviving account holder of RHB Bank (L) Limited Account

Number [xxx], is entitled to the remainder balance of US \$659,449.29 in the said account, and shall divide the said balance between the 1st, 2nd and 3rd Defendants, equally, within 6 months of this order.

...

9. Costs to be reserved to the Trial Judge.

10. Parties be at liberty to apply.

3 As can be seen, the third term of the consent judgment required the second defendant to give to the first defendant a share of the balance in a bank account within six months of the order ("the Distribution Term").

4 Pursuant to the ninth term of the Consent Judgment and after hearing the parties on costs, I made a costs order on 21 July 2014 ("the Costs Order"). As between the plaintiff and the defendants, I ordered the first defendant to pay 90% of the Plaintiff's costs and the second to fourth defendants to pay the remaining 10% of the Plaintiff's costs. As between the defendants, I ordered the first defendant to pay 70% of the costs of the second to fourth defendants. The costs were to be agreed or taxed on a standard basis.

5 The distribution – amounting to US\$219,816.43 – was to have taken place by early January 2015 pursuant to the Distribution Term. By then, it was apparent that the parties were still unable to agree on the costs; they were headed for taxation. On 8 January 2015, the first defendant demanded that the second defendant comply with the Distribution Term by the next day on pain of an application for committal proceedings. This prompted the second defendant's law firm, UniLegal LLC, to write to the courts on 8 January 2015. In view of the "urgency of the matter and for expediency, savings of costs and time", UniLegal LLC asked for "further directions and/or consequential orders" pursuant to the "liberty to apply" provision in the consent judgment, that the distribution be effected after the taxation and payment of costs ordered by the first defendant to the plaintiff and the second to fourth defendants.

6 I confirmed via a letter from the Registry to the parties that the distribution to the first defendant would be made *after* the costs were determined.

7 However, the first defendant disagreed with this, as evident from the series of letters that she sent from January to February 2015. To summarise, she was of the view that she was entitled to the distribution by 3 January 2015; this entitlement was independent of the amounts due from her in terms of costs. She also thought that there should be no "offsetting" as the costs due from her would be in Singapore dollars while the proceeds from the distribution was in United States dollars. To her, the second defendant was "seeking to deny me, within a mutually agreed time, what is rightfully mine". [\[note: 1\]](#) In her letter on 9 February 2015 asking me to reconsider my "decision", she contended that the second defendant should have applied "by way of summons" to "vary the terms of the consent judgment order and there is no exceptional circumstances that warrant variation of the terms of the consent judgement order ..." On 10 February 2015, the Registry informed her that my previous direction remained and it would not entertain further correspondence on the same issue. On 17 February 2015, the first defendant then filed a notice of appeal against "the whole of the decision ... on 10 February 2015" in relation to the "variation of consent order ... dated 2 July 2014".

Issue

8 In view of the aforesaid, the narrow issue was whether my confirmation to the parties – that the distribution to the first defendant be made after the costs were determined – amounted to a variation of the consent judgment.

My decision

9 First, I had made my confirmation to the parties with the view that it was administrative in nature. I was not of the view that I was making a consequential order or a direction pursuant to the “liberty to apply” provision. Had I been minded to make such an order or direction, I would have wanted to hear from both parties. When I received the letter from UniLegal LLC in January 2015, I was responding to confirm that in making the Costs Order in July 2014, I had intended for payment under the Distribution Term to be effected after the costs were agreed or taxed.

10 I had in mind as to the practical course of things as applied to the context of the Consent Judgment and the Costs Order. The Consent Judgment provided for a fixed sum to be paid to the first defendant within six months. It also reserved costs to the trial judge. In my subsequent Costs Order, I required the first defendant to pay most of the costs of both the Plaintiff and the other defendants. Therefore, it made practical sense that the payment sequence was for payment to the first defendant to be made *after* the costs were determined. This would facilitate “netting off”, which is appropriate in a situation where there are multiple payments moving in different directions between acrimonious parties. Netting off also minimises the risk of dissipation, thus ensuring that the costs orders will not be rendered nugatory.

11 When I received UniLegal LLC’s letter on 8 January 2015, it was apparent that the costs had yet to be resolved. I did not think that the time period was of the essence in construing the terms of the Consent Judgment. Most importantly, I took the view that the first defendant was not prejudiced as her entitlement to the proceeds of distribution, which was to me, the crux of the Distribution Term, would always remain.

12 Even if my confirmation had the effect of being a consequential order or further direction pursuant to the “liberty to apply” proviso in the Consent Judgment, I would not have responded differently on hearing the parties. Even if specifying the payment sequence was construed as a further direction (and I realise that the letter from the Registry on 10 February 2015 did use the term “previous direction”), I did not think that that affected the substance of the Consent Judgment. As Choo JC (as he then was) said in *Koh Ewe Chee v Koh Hua Leong* [2002] 1 SLR(R) 943 at [5], the “liberty to apply” order “is intended to supplement the main orders in form and convenience only so that the main orders may be carried out” (see also *Tan Yeow Khoo & Anor v Tan Yeow Tat & Anor (No 2)* [1999] 3 SLR(R) 717 at [10] and *Anwar Siraj and another v Teo Hee Lai Building Construction Pte Ltd* [2014] 1 SLR 52 at [47]).

13 To conclude, I was of the view that my confirmation was purely administrative in nature. I did not think that I had varied the Consent Judgment in my letter to the parties.

[\[note: 1\]](#) Shirley Chiang’s letter dated 10 January 2015.