

Ong Chai Hong (executrix of the estate of Chiang Chia Liang, deceased) v Chiang Shirley
and others
[2016] SGHC 91

Case Number : Suit No 820 of 2015
Decision Date : 06 May 2016
Tribunal/Court : High Court
Coram : Edmund Leow JC
Counsel Name(s) : Lee Soo Chye and Subir Singh Grewal (Aequitas Law LLP) for the plaintiff; The first defendant in person; Balasubramaniam Ernest Yogarajah (UniLegal LLC) for the second, third and fourth defendants.
Parties : ONG CHAI HONG, AS SOLE EXECUTRIX OF THE ESTATE OF CHIANG CHIA LIANG, DECEASED — 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 – Costs

Civil Procedure – Judgment and Orders

6 May 2016

Edmund Leow JC:

Introduction

1 This case arose out of disputes amongst the siblings of a wealthy family over the estate of their late father, Chiang Chia Liang (“the deceased”). The executrix, who had been appointed under the deceased’s Will (“the Will”), brought an action for various court orders and declarations in respect of the administration of the deceased’s estate (“the Chiang estate”). The defendants were beneficiaries of the Will – the first defendant was the deceased’s younger daughter, the second defendant was his son, the third defendant was his elder daughter, the fourth defendant was the estate of his wife and the fifth defendant was his mistress. The same counsel represented the second to fourth defendants.

2 The trial was eventually discontinued after parties entered, first, into a consent order dated 16 January 2014 [\[note: i\]](#) (“the Consent Order”) which disposed of the claim against the fifth defendant, and then a settlement covering the remaining parties that resulted in a consent judgment dated 2 July 2014 (“the Consent Judgment”). [\[note: ii\]](#) Pursuant to the terms of the Consent Judgment and after hearing parties on costs, I made a costs order on 21 July 2014 (“the Costs Order”). [\[note: iii\]](#) The first defendant sought a stay of taxation proceedings, as well as leave and an extension of time to appeal against the Costs Order. I clarified the terms of the Costs Order on 18 August 2015 and dismissed the first defendant’s applications. The first defendant, being dissatisfied with the Costs Order, applied to the Court of Appeal for leave and extension of time to appeal against my decision. [\[note: iii\]](#) The Court of Appeal allowed the application and the first defendant has lodged a notice of appeal against the Costs Order. I thus set out the reasons for my decision.

Factual and procedural background

1. Factual and procedural background

3 The trial to determine the assets belonging to the Chiang estate was heard in two tranches, the first in January 2014, and the second in July 2014. The action against the fifth defendant, in relation to the validity of a gift of a property to her under Clause 5 of the Will, was discontinued after the parties entered into the Consent Order on 16 January 2014, midway through Day 6 of the proceedings. The relevant portion of the Order is reproduced as follows:

...

7. There be no order as to costs with respect to the issue of Clause 5 of the Will.

("Point 7 of the Consent Order")

4 On 2 July 2014, shortly after the start of the second tranche, the plaintiff and the other four defendants entered into a settlement, which resulted in the Consent Judgment. Pursuant to Point 9 of the Consent Judgment that reserved the issue of costs to be decided by me, and after hearing the parties on costs, I made 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 Subsequently, at the taxation stage, the defendants could not agree as to the relative scope of the Costs Order in relation to Point 7 of the Consent Order. The first defendant sought a stay of the taxation proceedings *via* Summons No 902 of 2015 and an extension of time and leave to appeal against my Costs Order *via* Summons No 937 of 2015. The Senior Assistant Registrar directed parties to see me for a clarification of the Costs Order.

6 I heard parties on 18 August 2015 and clarified the Costs Order, whilst dismissing both the first defendant's summons. The first defendant then applied to the Court of Appeal for leave and an extension of time to appeal against the whole of the Costs Order. On 2 February 2016, the Court of Appeal allowed the first defendant's application on the grounds that there was a *prima facie* case of error in the Costs Order when read with the Consent Order.

7 I had previously issued Grounds of Decision in [2015] SGHC 110 arising out of the same case, but those Grounds of Decision related to the narrow and separate issue of whether my confirmation in February 2015 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.

Issues

8 The two issues arising out of the Costs Order are:

- (a) whether my clarification of the Costs Order on 18 August 2015 amounted to a variation of Point 7 of the Consent Order; and
- (b) whether the substance of my Costs Order was justified.

Clarification of the Costs Order

9 I will first deal with my clarification of the Costs Order. My clarification of the Costs Order in

August 2015, when taken in context, was not a variation of the Consent Order. When the action against the fifth defendant in relation to Clause 5 of the Will was discontinued, she did not ask for costs even though she had in fact succeeded on her position; her counsel indicated that she was not seeking costs orders against the plaintiff or the other defendants. In view of this concession, I did not order costs to be paid to her by the plaintiff or the other defendants.

10 However, Point 7 of the Consent Order merely resolved the costs issue between the fifth defendant and the remaining parties, and did *not* serve to resolve the costs issues among the other remaining parties arising from the dispute *between them* on the same issue. The remaining parties at that point were continuing with the trial, and all costs issues between them were only to be resolved at the end of the trial. In any case, it could not have been and was *not* the plaintiff's position that she was forgoing the costs she incurred in relation to the Clause 5 issue as against the first to fourth defendants. As the plaintiff had taken the same position as the fifth defendant in relation to Clause 5, she had prevailed on this issue against the first to fourth defendants, and it would not have made sense for her to forgo the associated costs incurred when the trial was continuing between her and the first to fourth defendants. Any such concession would have made no sense at that stage of the proceedings, when the merits of the various other claims by the first to fourth defendants had not yet been resolved. My understanding was that at the point when the Consent Order was made, the remaining parties in the suit were not settling their costs relating to the issue of Clause 5 of the Will; the settlement on costs in the Consent Order could only have been in relation to the fifth defendant, who was the only party that was withdrawing from the litigation. Thus, when I made the Costs Order at the end of the entire action, my order included the unresolved costs incurred by the remaining parties in litigating the dispute on Clause 5 of the Will.

11 My clarification of the Costs Order in August 2015 thus did not vary the substance of Point 7 of the Consent Order: the effect was only to clarify the meaning of the Consent Order to the parties as they had failed to proceed with the taxation hearing due to the dispute over its terms.

12 On this issue, my decision is supported by the case of *Godfrey Gerald QC v UBS AG and others* [2004] 4 SLR(R) 411, where the Court of Appeal clarified certain terms of the costs order from an appeal, and the applicant applied, unsuccessfully, to set aside the order on the basis that the Court of Appeal was not in a position to clarify the purport of its costs order because it was already *functus officio* when it gave its clarification. VK Rajah JC (as he then was) held (at [18]–[19]) that the Court of Appeal was not *functus officio* when it clarified its costs order. The High Court and Court of Appeal retained a residual inherent jurisdiction under O 92 r 5 of the Rules of Court (Cap 322, R 5, 2004 Rev Ed) to clarify the terms of the order and/or to give consequential directions even after the order was pronounced. Rajah JC explained that the purpose of this residual inherent jurisdiction was to ensure that “the spirit of court orders are appropriately embodied and correctly reflected to the letter.”

13 My order in August 2015 was merely an exercise of this residual inherent jurisdiction, which remains enshrined in O 92 r 5 of the current Rules of Court (Cap 322, R 5, 2014 Rev Ed) (“the ROC”), to clarify the wording of the Consent Order, and ensure that the intent behind the Consent Order was fulfilled through its wording.

Basis for Costs Order

14 It is necessary to compare the positions of the plaintiff and the five defendants before trial and after settlement in understanding the basis for the Costs Order.

Parties' positions before trial

15 The plaintiff as sole executrix of the Will had brought the action to finalise the Schedule of Assets of the Chiang estate ("the Schedule") by including in the Schedule the following assets: [\[note: iv\]](#)

- (a) 5030 ordinary shares in Standard Chemical Corporation Pte Ltd valued at S\$3,643.87 per share
- (b) 1% shareholding in Suzhou Chiang Real Estate Co Ltd ("the Suzhou Company")
- (c) A deposit of US\$4,730,068.53 in the joint names of the deceased, the fourth defendant, and the second defendant with RHB Bank (L) Ltd (Labuan) ("RHB Bank") ("Deposit A")
- (d) A deposit of US\$5m in the joint names of the deceased, and the first to fourth defendants with RHB Bank ("Deposit B")

16 The first to fourth defendants agreed to the inclusion of the items in para 15(a) and 15(b) [\[note: v\]](#) but disputed whether Deposits A and B ("the Deposits") should be included in the Schedule and, if so, whether they should be included in whole or proportional to the contributions attributable to the Chiang estate. [\[note: vi\]](#) The second to fourth defendants agreed to the inclusion of 15(b) only on condition that the first defendant bore the costs of the administration of that asset. [\[note: vii\]](#)

17 There was also a purported debt of S\$6,940,090 owed to Chiang Properties [\[note: viii\]](#) and the issue of Clause 5 of the Will [\[note: ix\]](#) that were in dispute. The second to fourth defendants took the position that the purported debt was due from the Chiang estate while the first defendant took the position that the second defendant was solely liable for the debt instead. The first to fourth defendants all alleged that Clause 5 of the Will was void and in contravention of s 3(1)(b) of the Residential Property Act (Cap 274, 2009 Rev Ed) whilst the fifth defendant, the beneficiary of the gift in Clause 5, maintained that it was valid. The plaintiff's position regarding the purported debt was that the second to fourth defendants were time-barred from raising any indebtedness of the Chiang estate to Chiang Properties. [\[note: x\]](#) On Clause 5, the plaintiff's position was the same as the fifth defendant's that the clause was clear and valid. [\[note: xi\]](#)

18 The first defendant's position was that the plaintiff should seek independent confirmation from RHB Bank of the source of funds placed in the Deposits to ascertain if they came from Chiang Properties or from the deceased. [\[note: xii\]](#) She took the position that the right of survivorship did not apply, so the Chiang estate should include a share of the Deposits proportional to the deceased's contribution. [\[note: xiii\]](#) Her position was also that the Deposits should not be used as collateral for Stanchem Industries (M) Sdn Bhd, of which the second defendant was the managing director, to set off its outstanding debt to RHB Bank. [\[note: xiv\]](#) The second to fourth defendants took the position at the opening of trial that the sums in Deposit B had been fully set off by RHB Bank on January 2012, while the remaining sum of US\$659,449.29 in Deposit A should be due to the second defendant by virtue of the right of survivorship. [\[note: xv\]](#)

19 In addition, the first defendant alleged that there were unauthorised transfers exceeding S\$1m from the deceased's accounts before his demise, and counterclaimed for an order that the plaintiff seek a reimbursement for these transfers from the second defendant. [\[note: xvi\]](#) The second defendants claimed that the monies were legitimately moved to a joint account held by himself and

the deceased's wife, on her instructions. The plaintiff took the position that the first defendant was barred from raising this transfer as she had acquiesced or consented to the movement of the monies. [\[note: xvii\]](#)

20 The first defendant brought a counterclaim against the plaintiff seeking damages for emotional distress allegedly caused by, *inter alia*, an unnecessary application by the plaintiff for joinder of additional parties in Originating Summons No 1052 of 2011 ("the OS"). [\[note: xviii\]](#) The OS was brought by the first defendant against the plaintiff in relation to the administration of the Chiang estate, but was later withdrawn. The first defendant also counterclaimed that the plaintiff ought to furnish explanations for acts that were alleged to be biased and improper in the administration of the Chiang estate.

21 Given the lack of agreement between the defendants as to the matters above, the plaintiff was compelled to seek the court's directions on the disclosure of contributions into the Deposits, the amounts of Deposits A and B to be included in the Schedule, the purported debt owed to Chiang Properties and the validity of Clause 5 of the Will.

22 There appeared to be a potential overlap of issues between this suit and Suit No 524 of 2011 ("Suit 524 of 2011") before Judith Prakash J involving essentially the same parties. Suit 524 of 2011, commenced earlier, concerned the deceased's wife's estate, and it was not yet resolved when the present suit came before me; Prakash J recently released her decision in *Chiang Shirley v Chiang Dong Pheng* [2015] 3 SLR 770. Before me, the counsel for the plaintiff and the second to fourth defendants appeared to take the position that only the issues of Clause 5 of the Will and the first defendant's counterclaims against the plaintiff were *not* common issues between the present case and Suit 524 of 2011, [\[note: xix\]](#) and that there could potentially be issues of *sub judice* if the present case was used to ventilate the issues considered in that suit. [\[note: xx\]](#) Thus, they sought to have the purportedly common issues such as the unauthorised transfers and the Deposits be heard after Prakash J had rendered her decision. However, it appeared from the transcripts of Suit 524 of 2011 put before me that Prakash J in hearing that suit had expressly directed the evidence specific to disputes arising out of the Chiang estate *not* be adduced in Suit 524 of 2011, but be preserved for the present case. [\[note: xxi\]](#) In the circumstances, I ruled that I would hear all of the issues raised in the statement of claim. [\[note: xxii\]](#)

Parties' positions at settlement

23 As stated earlier, the action against the fifth defendant, in relation to Clause 5 of the Will, was discontinued after the parties entered into the Consent Order. The first to fourth defendants withdrew their objections to the validity of Clause 5 and effectively recognised the fifth defendant's right to the gifted property. The plaintiff and the fifth defendant prevailed in their positions in this respect while the remaining defendants were unsuccessful.

24 The entire action against the remaining defendants in the suit was discontinued after the parties entered into the Consent Judgment. Under the terms of this settlement, the first defendant agreed not to make any claim against the second defendant regarding the purportedly unauthorised transfers from the deceased's accounts before his demise. [\[note: xxiii\]](#) In this aspect, the first defendant was unsuccessful whilst the second defendant prevailed.

25 The first to fourth defendants all agreed that the Chiang estate was not liable to Chiang Properties for the purported debt, [\[note: xxiv\]](#) and that the first defendant would not make any claim

against the second defendant in respect of the purported debt owed to Chiang Properties. [\[note: xxv\]](#)
In this aspect, the first to fourth defendants were all unsuccessful in their claims.

26 As for the Deposits, the second defendant, being the surviving account holder of Deposit A, was entitled to the remainder balance of US\$659,449.29 and was to divide this balance equally between the first to third defendants. The first to third defendants, being the surviving holders of Deposit B, were entitled to the remaining balance of this deposit equally. In this aspect, the second to fourth defendants prevailed on the issue of the remainder balance in Deposit A, while the first defendant was unsuccessful.

27 The first defendant's counterclaim for emotional distress against the plaintiff was formally withdrawn on 2 July 2014, the eighth and final day of trial. [\[note: xxvi\]](#) This withdrawal came only after substantial time was spent cross-examining the plaintiff on the application for joinder of parties which was brought in the OS. [\[note: xxvii\]](#)

Applicable legal principles

28 In the exercise of its discretion to order costs under O 59 r 3(2) of the ROC, the court is entitled to take into account the following factors listed in O 59 r 5:

- (a) the conduct of all parties, including conduct before and during the proceedings; and
- (b) the parties' conduct in relation to any attempt at resolving the cause or matter by mediation or any other means of dispute resolution.

29 Under O 59 r 6A of the ROC, where a claimant fails to establish any claim or issue which he has raised, and has thereby unnecessarily or unreasonably protracted, or added to the costs or complexity of the proceedings, the court may disallow the claimant's costs in whole or in part, or order that any costs occasioned by that claim or issue to any other party be borne by the claimant regardless of the outcome of the cause or matter.

30 Under O 59 r 7, where a party does or omits to do anything unreasonably or improperly, the court may disallow the costs of that party in respect of the act or omission, and order that any costs occasioned by it to any other party be borne by the party. The court may have regard to factors such as the doing of anything calculated to occasion, or in a manner or at a time calculated to occasion, unnecessary costs or any unnecessary delay in the proceedings.

31 Specifically in the context of withdrawals, Sundaresh Menon JC (as he then was) helpfully summarized the applicable principles on costs in *Karaha Bodas Co LLC v Perusahaan Pertambangan Minyak dan Gas Bumi Negara* [2006] SGHC 195 (at [11]):

...

- (b) In considering the exercise of such discretion, the court may usefully have regard to of the reasons for which a particular matter is withdrawn, discontinued or set aside without a final determination on the merits.
- (c) Where the withdrawal (which term for convenience I use also to refer to discontinuance or setting aside in circumstances such as the present) *takes place in circumstances that are indicative of an acknowledgement of defeat or likely defeat then the withdrawing party should pay the costs.*

(d) Where the withdrawal follows what in effect is a surrender on the part of the party against whom the action has been brought, then that party against whom the action was brought should bear the costs.

(e) Where the withdrawal takes place in circumstances where it is not directly related to the merits of the case and especially where it is a consequence of a neutral event that has made the proceedings academic or unnecessary to prosecute then it would be appropriate to make no order as to costs and let the costs lie where they fall.

(f) All of these principles are to be applied *with due regard to the reasonableness with which the parties have conducted themselves*.

(g) Where the case is not litigated to a conclusion because the parties have come to a settlement save as to costs, the terms of the settlement should be disclosed to the court for any bearing it may have on the court's determination of the appropriate order as to costs.

(h) Where the only issue left in a litigation is one of costs, then as a general rule, *the court will not embark on an in-depth investigation of the merits of the case, though occasionally, where it is possible readily to discern the likely outcome had the matter been litigated to a conclusion, the court may choose to consider this*.

(i) However, the court may have regard to all the circumstances before it, including the conduct of the parties, and may draw the appropriate inferences from this in order to determine what the appropriate order as to costs should be.

[emphasis added]

Costs of the plaintiff as sole executrix

32 I agree with the plaintiff that the crux of the dispute was between the defendants. She as sole executrix had brought the action to allow her to administer the estate properly. She was a trusted ex-employee of the deceased and was an independent party in the family strife. Despite the difficulties in administering the Chiang estate over the years, she stayed on out of gratitude to the deceased. In my view, the plaintiff was forced to bring this action. Given the acrimonious relationship between the beneficiaries, she acted reasonably in seeking court directions in dealing with the assets of the Chiang estate. She did not incur unnecessary costs for the estate or cause unnecessary costs to be incurred by the other parties in the conduct of this action. On the issues in dispute for which she had a position, she essentially prevailed, as is apparent from the terms of the Consent Judgment. The estate, through the plaintiff as executrix, had acted reasonably, so it would not be reasonable to expect the estate to bear its own costs. Instead, the defendants should be made to bear the estate's costs.

Costs of the first defendant

33 As for the first defendant, she was mostly unsuccessful in her claims against the second to fourth defendants and against the plaintiff. In my opinion, she only settled the case because she knew that she was headed for defeat on the merits of her various claims. The settlement of the action took place in circumstances that were indicative of likely defeat.

34 The first defendant conducted her case unreasonably and without due regard to the rules and

procedures of court, thereby causing the other parties in the litigation to incur unnecessary costs. She was insistent on cross-examining witnesses in areas that had little relevance to the issues in this action, despite several reminders from me and objections from counsels for the other parties. She spent a lengthy amount of time cross-examining the plaintiff on taxes paid on the estate's properties, which bore little relevance to the present proceedings, despite reminders by me to focus on the relevant issues. [\[note: xxviii\]](#) She also cross-examined the plaintiff regarding the prayers in the OS, [\[note: xxix\]](#) which she had brought against the plaintiff in December 2011 but subsequently withdrew. Her withdrawal there was allowed with no order as to costs as the plaintiff did not pursue costs. [\[note: xxx\]](#) Her conduct of the cross-examination of the plaintiff quite plainly was an attempt to go into issues that were the subject of the OS even though it was withdrawn. This lengthy cross-examination included issues like the production of the legal bills of the Chiang estate [\[note: xxxi\]](#) and certain bank statements, [\[note: xxxii\]](#) which appeared to be more closely related to the prayers of the withdrawn OS, and was done without apparent relevance to the bulk of the disputes between the defendants in the present case. The first defendant eventually asked for those papers outright and admitted that she had asked for them in the withdrawn OS. [\[note: xxxiii\]](#) In fact, counsel for the plaintiff was put in such a position that he offered to give her the requested papers in an attempt to redirect the focus of the trial to the relevant issues. In my view, the first defendant's conduct in this respect quite plainly wasted the court's time. This to me was an example of the first defendant using her status as a litigant in person to gain an unfair advantage – had counsel attempted to conduct cross-examination in such a manner on issues derived from a withdrawn application, he or she would not been given the same leeway.

35 The first defendant's counterclaim for emotional distress also arose out of the same OS, the claim being that the plaintiff caused emotional distress to her by the joinder of the second to fourth defendants in the OS. [\[note: xxxiv\]](#) This was a plainly unmeritorious claim: firstly, it bore no relevance to the issues in dispute before me, and secondly, the plaintiff appeared to have acted reasonably in joining the parties who possessed the information sought for by the first defendant in the OS. Again, the first defendant was making use of the proceedings before me to ventilate issues that should have been heard in other fora. It became very clear as the cross-examination continued that her counterclaim in this aspect would not succeed. True enough, the counterclaim was withdrawn on 2 July 2014. She also spent a substantial amount of time cross-examining the plaintiff on the basis that the plaintiff was biased and negligent in administering the Chiang estate. [\[note: xxxv\]](#) Quite clearly, the first defendant's pursuit of the various counterclaims had led the plaintiff to incur substantial costs in defending these allegations that were irrelevant to the application seeking court directions. This conduct made the proceedings unnecessarily protracted and wasted valuable court time. I sympathised with the plaintiff as she had done nothing to deserve this; she was an unrelated third party who had nothing to gain from siding with any of the defendants. To me it is quite clear that the first defendant should bear the costs incurred by the plaintiff and the other defendants in relation to the first defendant's counterclaims, in line with O 59 r 6A of the ROC.

36 The first defendant also delayed and disrupted proceedings through a mixture of making submissions and giving evidence from the bar whilst cross-examining the other witnesses, [\[note: xxxvi\]](#) despite repeated reminders from me to refrain from doing so. The compound questions [\[note: xxxvii\]](#) that she was prone to asking unfortunately confused the witnesses and were frequent and repeated, prompting interventions from counsels and me which resulted in unnecessary delay. She would ask legal questions of factual witnesses, [\[note: xxxviii\]](#) despite my reminders that these should be left for legal submissions. An excerpt demonstrating these tendencies is reproduced here: [\[note: xxxix\]](#)

Court: But are you---are you trying to ask the witness on Malaysian law?

D1: No, I want to s---er, read to her what her own expert says, you know, like in plain English. I think anyone would understand, ah. No need to be a lawyer.

D2 to D4 Counsel: It's not necessary, Your Honour.

Court: It's---yes. I think---I think you---I mean I think it's better if you address this in your submissions. I mean it's a---it's a question of law. So---

D1: But---

Court: I mean she---

D1: ---can I just read out since we took so long to find the expert opinion?

Court: Okay.

D1: Yes?

Court: You can read it out but---

D1: *Yes. First of all, on page 3, under Malaysian law and supported by the case of Latifah Bte Mat, the Court of Appeal three judges held that the right of survivorship in the joint account does not exist in written law in Malaysia law. It helped the o---that opening a joint account is a matter of contract purely and it does not go so far as to confer the survivor, the beneficial ownership of money in joint account. So this is something new to a lot of us in Singapore, ah. Yes. So---*

Court: Yes. But---

D1: Yes.

Court: But, you know, this is something that you can---

D1: I know.

Court: ---address in submissions. And---

...

Court: Because, you know, how you interpret a case, you know, obviously is subject to debate among lawyers.

D1: Yes. Okay. Anyway, er, since we had took so long to find, there's another interesting thing that's on top, ah, bef---before the supporting authority, ah. It says---

Q: Do you see or not what your law---what your expert opinion says so that we might be, you know, more knowledgeable of Malaysia law? *If evidence show that the deceased did not fully fund the deposits---let's say in the one from CPLR---CPPL, that's what we're talking about. But that the deposit had been funded by the various account holders including the deceased and it is not intended that the surviving joint account holders will automatically be entitled to the monies in the des---deposits.* Then again, the presumption that the rule of survivorship will apply---will likewise be rebutted. That means no rule of survivorship. And the question as to how much monies each account holder of the joint account will be entitled will be subject of an inquiry if the evidence suggests that each party is entitled to the amounts that he or she has contributed in our opinion. *In such circumstances, each account holder will be entitled to such monies in deposits in the proportion that they have contributed to the same. That's very interesting.*

Court: Yes.

D1: Yes.

Court: But do you have anything to ask the witness?

D1: Yes.

[emphasis added]

37 As seen from above, despite intervention from me, she would continue with lines of questioning based on legal issues and made submissions simultaneously even though she had already been told not to do so. She would also ask questions unrelated to the pleadings. [\[note: xli\]](#) Further, she got into arguments with the third defendant whilst cross-examining her. [\[note: xlii\]](#) This disruptive behaviour, without regard for the rules and procedures of court, was repeated throughout the course of the proceedings. In my view her conduct was needlessly combative and disruptive, and caused unnecessary costs to be incurred by the other parties. She would also interrupt counsel [\[note: xliii\]](#) and witnesses [\[note: xliv\]](#) when they were speaking or attempting to give evidence. [\[note: xlv\]](#) An excerpt where she interrupted the questioning of the second to fourth defendants' counsel is reproduced here: [\[note: xlv\]](#)

Q: Now just fast forward, because of all these, you took out OS612 for various queries to be answered by the Court. Is that right?

A: Yes.

D1: Your Honour, we object to that, ah. The Suit 5820 was converted on the direction of A---er, Cornie Ng.

Court: Sorry?

D1: Six, er---*the suit did not result from me but from the directions of Justice Pillai, ah, and also from the direction of Cornie Ng to change it to a suit. If not, it would have stayed in originating summons.*

D2 to D4 Counsel: Your Honour---

D1: *Now he's saying that the (indistinct) 3:12:28 PM was because of me which is not true. Er, Justice Pillai say he has to take care of certain applications to determine what assets are in the estate within 1 month.*

Court: I think---I think---

D1: Yes.

Court: Ms Chiang, I think why don't you make your submissions on this---

D1: Yes.

Court: ---later because---

D1: Yes, but she's saying something that's not true. Yah, thank you.

Court: Yes, yes. But you can reply in your submissions.

[emphasis added]

38 As a witness, she was also difficult. She attempted to use her own documents for reference during testimony despite reminders that this was not in line with court procedure, [\[note: xlvi\]](#) and made comments on matters that were either irrelevant and not the subject of questions, [\[note: xlvi\]](#) or which had not been covered in her evidence in chief or pleadings. [\[note: xlvi\]](#) Again, she interrupted counsel [\[note: xlix\]](#) and attempted to make submissions repeatedly whilst being cross-examined [\[note: li\]](#) despite several reminders not to do so, whilst throwing counsel's question back at them. [\[note: li\]](#) She also attempted to bring up issues that were more appropriate for Suit 524 of 2011. [\[note: lii\]](#) In gist, it was difficult to obtain answers unadulterated by submissions, pleadings or fresh evidence from her. Her uncooperativeness [\[note: liii\]](#) made the process of cross-examination much more drawn out than it had to be.

39 On top of being a difficult witness, the first defendant, at one point while being cross-examined, suggested that the plaintiff's counsel had forged a document the day before the trial; she quickly withdrew this allegation on my caution. [\[note: liv\]](#) Had counsel been instructed, he or she is unlikely to have thought fit to make such allegations during cross-examination. This was another example of the first defendant acting without due regard for the rules and procedures of court, and using her status as a litigant person unfairly to the prejudice of the others parties.

40 It is every layperson's right to represent himself or herself without the aid of counsel. Justice requires that courts do not apply professional standards to litigants in person, who may be involved in a court proceeding for the only time in their lives. However, litigants in person are still subject to the same rules and procedure of court. Whilst the courts are cognisant of the fact that litigants in person are not legally trained, and are thus more indulgent of their mistakes, this does not mean that they can act without regard to these rules and procedures. In this respect, I am of the view that the first defendant's conduct of the case left much to be desired. Ample leeway was given to her to conduct her case in the light of her status as a litigant in person; I also reminded her time and again, throughout the proceedings, to confine her case to the pleadings and to refrain from giving evidence and making submissions whilst cross-examining witnesses. However, these reminders clearly landed on

deaf ears, as her behaviour did not improve and remained substantially the same throughout the proceedings. Had the first defendant engaged counsel, he or she would have been bound by rules of professional conduct and would not have been able to pursue the first defendant's claims in the same manner. It was quite apparent that the first defendant had no issues affording legal representation, and I suggested to her several times to consider engaging counsel, but she refused. This refusal, coupled with the manner in which she conducted the trial, led me to infer that her choice to appear as a litigant in person was calculated to avail herself of a degree of leniency that the court would not give to counsel – he or she would have been unable to give evidence from the bar and continually disrupt other counsel or witnesses. So I find that the first defendant had behaved unreasonably, even when allowance is made for her inexperience and lack of objectivity; her actions caused the other parties in the litigation to incur unnecessary costs to respond to her allegations and in managing her disruptions. In my view, the first defendant had taken unfair advantage of the leeway given to her as a litigant in person and pursued her claims in a manner that was prejudicial to the other parties in the case.

41 I pause to clarify that I did not draw an adverse inference against the first defendant for not engaging counsel for the trial when she could afford to do so: her right to appear in person is quite absolute. However, her status as a litigant in person alone does not and cannot mean that she can conduct her case in an unreasonable manner that causes the other parties to incur unnecessary costs, and remain immune from adverse cost orders. I also note that the first defendant had taken a plainly unreasonable position with regard to certain interlocutory applications, for which she had already been ordered to pay costs to the other parties.

42 Taking into account the first defendant's conduct of the proceedings, the terms of the Consent Judgment reflecting that she had failed on the merits of her various claims, and the relevant legal principles, I was of the view that she should bear 90% of the plaintiff's costs and 70% of the second to fourth defendants' costs. The issue of the order against her in relation to the second to fourth defendants' costs will be explained further below.

Costs of the second to fourth defendants

43 The second to fourth defendants submitted that they were entitled to costs from the first defendant on an indemnity basis under O 22A of the ROC as they had made a proposal to settle the trial to all parties, dated 23 August 2013, prior to the commencement of the trial. [\[note: lv\]](#) I was unable to apply O 22A in this case. First, O 22A is intended to apply as between plaintiffs and defendants, not among defendants. Second, the offer to settle did not follow the mandatory format of Form 33 of the ROC, so the first defendant as a litigant in person may not have been alerted to the cost consequences of not accepting the offer. Thus, I decided not to apply O 22A. However, in the exercise of my general discretion, I still took this offer into account as evidence of an attempt at resolving the dispute before it reached trial.

44 It appeared to me from the terms of the Consent Judgment that the second to fourth defendants prevailed to some extent on their positions, but were also unsuccessful in other aspects. They took the position that the Chiang estate was indebted to Chiang properties, which failed, judging by the terms of the settlement. They also took the position that Clause 5 of the Will was invalid, which was the one issue on which they were in agreement with the first defendant, but they failed. In these aspects, since the second to fourth defendants failed to prove their claims, they should be made to pay costs to the plaintiff, just like the first defendant. Given that a more substantial period of time was devoted to the ventilation of the first defendant's counterclaims against the plaintiff, and that the second to fourth defendants did not bring counterclaims against the plaintiff, I was of the view that the second to fourth defendants should bear only 10% of the

plaintiff's costs.

45 A substantial part of the proceedings was focused on the issue of the purported unauthorised transfers. This issue was raised by the first defendant, and the second to fourth defendants appeared to have prevailed thereon, judging by the terms of the Consent Judgment. On the issue of survivorship governing the Deposits, the second to fourth defendants also prevailed over the first defendant. I was thus of the view that the second to fourth defendants had largely prevailed over the first defendant on the issues, and should thus be awarded 70% of their costs.

Conclusion

46 For the reasons set out above, my clarification on 18 August 2015 was not a variation of the Consent Order, and the first defendant's unreasonable conduct of the trial justified the Costs Order despite her status as a litigant in person.

[\[note: i\]](#) ORC 558/2014

[\[note: ii\]](#) JUD 405/2014

[\[note: iii\]](#) JUD 452/2014

[\[note: iv\]](#) CA/SUM 215/2015

[\[note: v\]](#) Para 11 of the Statement of Claim (Amendment No. 1)

[\[note: vi\]](#) Para 12 of the Statement of Claim (Amendment No. 1)

[\[note: vii\]](#) Para 13 of the Statement of Claim (Amendment No. 1)

[\[note: viii\]](#) Para 8 of the second to fourth defendants' Defence

[\[note: ix\]](#) Para 14 of the Statement of Claim (Amendment No. 1)

[\[note: x\]](#) Para 21 of the Statement of Claim (Amendment No. 1)

[\[note: xi\]](#) Para 26 of the Statement of Claim (Amendment No. 1)

[\[note: xii\]](#) Para 23 of the Statement of Claim (Amendment No. 1)

[\[note: xiii\]](#) Section D of the first defendant's Opening Statement

[\[note: xiiii\]](#) Section E of the first defendant's Opening Statement

[\[note: xv\]](#) Para 7 of the first defendant's Defence and Counterclaim

[\[note: xvi\]](#) Paras 11 and 12 of the second to fourth defendants' Opening Statement

[\[note: xvi\]](#) Page 14 of the first defendant's Defence and Counterclaim; para 24 of the Statement of Claim (Amendment No. 1)

[\[note: xvii\]](#) Para 26 of the Statement of Claim (Amendment No. 1)

[\[note: xviii\]](#) SUM 1526/2012 in the OS

[\[note: xix\]](#) Notes of Evidence ("NEs") Day 2, p 14

[\[note: xx\]](#) NEs Day 2, p 14–16

[\[note: xxi\]](#) NEs Day 2, pp 22–30

[\[note: xxii\]](#) NEs Day 2, pp 68–69

[\[note: xxiii\]](#) Para 6 of the Consent Judgment

[\[note: xxiv\]](#) Para 5 of the Consent Judgment

[\[note: xxv\]](#) Para 6 of the Consent Judgment

[\[note: xxvi\]](#) NEs Day 8, pp 4–7

[\[note: xxvii\]](#) NEs Day 1, pp 69–93

[\[note: xxviii\]](#) NEs Day 1, pp 93-104

[\[note: xxix\]](#) Plaintiff's Bundle of Documents ("PBOD") 251

[\[note: xxx\]](#) PBOD 279; NEs Day 7, p 187

[\[note: xxxi\]](#) NEs Day 1, p 60

[\[note: xxxii\]](#) NEs Day 1, p 49

[\[note: xxxiii\]](#) NEs Day 1, p 65

[\[note: xxxiv\]](#) Para 34 and p 14 of the first defendant's Defence and Counterclaim

[\[note: xxxv\]](#) NEs Day 1, p 77; Day 3, pp 40–41

[\[note: xxxvi\]](#) NEs Day 1, pp 32, 35–38, 85; Day 2, pp 102–104, 110–112, 116; Day 3, pp 63; Day 7, p 123

[\[note: xxxvii\]](#) NEs Day 2, pp 118–120; Day 3, pp 58–60, 73, 75; Day 7, pp 92, 97–98, 119

[\[note: xxxviii\]](#) NEs Day 2, pp 112–114; Day 3, pp 20–24, 29–30, 75–76

[\[note: xxxix\]](#) NEs Day 3, pp 23:16–25:6

[\[note: xl\]](#) NEs Day 1, p 93

[\[note: xli\]](#) NEs Day 7, pp 119, 126

[\[note: xlii\]](#) NEs Day 2, p 103; Day 4, pp 52, 55–56, 86–87, 91–95; Day 7, p 139

[\[note: xliii\]](#) NEs Day 3, pp 51, 54–55; Day 7, p 120

[\[note: xliv\]](#) NEs Day 4, p 11; Day 5, pp 76, 87, 94–95, 121

[\[note: xlv\]](#) NEs Day 4, pp 74:21–75:13

[\[note: xlvi\]](#) NEs Day 7, pp 21–22

[\[note: xlvii\]](#) NEs Day 7, pp 29, 145, 163–164

[\[note: xlviii\]](#) NEs Day 7, pp 38, 60

[\[note: xlix\]](#) NEs Day 7, pp 31–32, 63, 189; Day 8, pp 32–33

[\[note: l\]](#) NEs Day 7, pp 52, 55–56, 64–65, 67–68, 72–73, 153–154, 178, 181

[\[note: li\]](#) NEs Day 7, pp 141–143, 202

[\[note: lii\]](#) NEs Day 7, pp 170–171

[\[note: liii\]](#) NEs Day 7, pp 174–176

[\[note: liv\]](#) NEs Day 7, p 206

[\[note: lv\]](#) Letter from counsel for the second to fourth defendants to the first defendant, the plaintiff's counsel and the fifth defendant's counsel dated 23 August 2013