IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 183

Originating Summons No 958 of 2021 (Summons No 1297 of 2022)

In the matter of Order 31 of the Rules of Court (Cap 322, R 5)

And

In the matter of the property at [address redacted]

Between

Tan Mei Sin
(suing as administrator of the Estate of Tan Kee Sion, Deceased)

… *Plaintiff*

And

Tan Ah Lim
(by his litigation representative, Tan Yang Woon)

… *Defendant*

EX TEMPORE JUDGMENT

[Probate and Administration — Administrator — Delegation of functions]
[Probate and Administration — Personal representatives — Powers]
[Land — Sale of land]

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v
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[2022] SGHC 183

General Division of the High Court — Originating Summons No 958 of 2021 and Summons No 1297 of 2022
Goh Yihan JC
19 July 2022

29 July 2022

Goh Yihan JC:

Introduction

1 There were two matters before me. OS 958/2021 is the plaintiff's application for the defendant to deliver vacant possession of the property for her to sell it on the open market, with the proceeds to be divided equally between the plaintiff and defendant. SUM 1297/2022 is the defendant's application to convert OS 958/2021 into a writ action. However, if I were to dismiss OS 958/2021, then SUM 1297/2022 becomes moot, either permanently or for the time being.

2 Upon hearing the parties, I dismissed OS 958/2021, which therefore means I did not need to decide SUM 1297/2022. While I gave brief oral grounds

at the conclusion of the hearing, I have decided to give fuller grounds as the case raised an issue that has not been thoroughly discussed by the existing authorities, that is, whether an administrator of an estate can delegate its powers by a power of attorney.

Background

3 The plaintiff made her application in OS 958/2021 to dispose of the estate's half share in the property, as is required by s 3(4) of the Residential Property Act (Cap 274, 2009 Rev Ed) (the "Residential Property Act"). Further, the plaintiff submitted that this application was needed because the defendant, Mr Tan Ah Lim ("Mr Tan"), had not been responsive to the plaintiff's contact.

4 The defendant raised three points against the plaintiff's application: (a) the plaintiff, not having been granted a letter of administration herself, lacks standing to commence the action; (b) the plaintiff has not obtained the Singapore Land Authority's ("SLA") extension of time; and (c) the plaintiff has not obtained court approval as is needed under the Conveyancing and Law of Property Act (Cap 61, 1994 Rev Ed) ("CLPA"). It is the first point that has given rise to an interesting legal issue.

Whether the plaintiff has *locus standi*

5 The defendant argued that the plaintiff does not have standing to sue because she is not an administrator of the estate. The defendant argued that an administrator is the personal representative appointed by the court to administer the property of the deceased, citing the decision of the High Court in *Syed Ali Redha Alsagoff (administrator of the estate Mohamed bin Ali bin Farj Basalamah, deceased) v Syed Salim Alhadad bin Syed Ahmad Alhadad and others and another matter* [1996] 2 SLR(R) 470 (at [34]). Therefore, the

defendant said that an administrator derives his powers, rights, and duties from the grant of representation by the court. Accordingly, the office of a personal representative (which encompasses an executor or administrator) is not assignable as it is not an office of personal trust, citing the decision of the Court of Appeal in *Tacplas Property Services Pte Ltd v Lee Peter Michael (administrator of the estate of Lee Ching Miow, deceased)* [2000] 1 SLR(R) 159 ("*Tacplas*") at [38], which I reproduce below:

> 38 We think there is considerable force in the argument that an administration is in the nature of an office and where two or more persons are appointed as administrators, they should act jointly in the discharge of that office. Furthermore, in the interest of orderly administration of an estate, there is also much to be said in favour of the proposition that all the administrators of an estate should act jointly. People who deal with an estate must be able to deal with it confidently that the estate would fulfil its bargain. This would not be achieved if each administrator could act individually in his separate ways. We appreciate that this argument would apply just as aptly to executors. But then the common law position of an executor is too well-settled for us to revisit it *de novo*. We would mention in passing that since the decision in *Fountain Forestry* ([21] *supra*) there is a further statutory intervention in England. By s 16 of the English Law of Property (Miscellaneous Provisions) Act 1994, an executor cannot act separately in creating a binding contract for the sale of land. For such a contract the personal representatives must act jointly.

6 The defendant also submitted that paragraph 64(4) of the Family Justice Courts Practice Directions, which provides that an application must be made for revocation of the original grant of letters of administration in the event that a party seeks to substitute an administrator or add in further administrators, shows that the court always retains a supervisory function on the appointment and/or substitution of administrators.

7 I disagreed with the defendant on this issue.

8 First, while it is true that a personal representative derives his power from the court, this by itself tells us nothing about whether he can delegate all or parts of his functions. Paragraph 64(4) does not assist the defendant as well – it speaks about the *substitution* of an administrator, and says nothing, expressly or impliedly, about the ability of a personal representative to *delegate* his functions.

9 Second, the case of *Tacplas* and the exact paragraph cited by the defendant is not relevant to the issue the defendant claims it assists in. A plain reading of the paragraphs says nothing about whether the office of an administrator can be delegated.

10 Instead, I agreed with the plaintiff that she has standing in the present application. In England, the definition of a trustee in the Trustee Act 1925 (c 19) (UK) (the "UK Trustee Act") includes a personal representative where the context so admits, applying to both executorships and administratorships. A personal representative is under fiduciary duties which are very similar to those of the trustee and must exercise the same degree of care, although there are some ways in which the two may differ (for a fuller discussion, see Jamie Glister & James Lee, *Hanbury & Martin: Modern Equity* (Sweet & Maxwell, 22nd Ed, 2021) at paras 2-014 to 2-019; see also, *Snell's Equity* (John McGhee gen ed) (Sweet & Maxwell, 34th Ed, 2019) at paras 21-047 to 21-054). Many of the duties of personal representatives can be described as trusts and most of the provisions of the UK Trustee Act apply to personal representatives (see Lynton Tucker, Nicholas Le Poidevin & James Brightwell, *Lewin on Trusts* (Sweet & Maxwell, 20th Ed, 2020) at para 1-012).

11 On the issue of delegation of powers, the general rule at common law is that a personal representative is not entitled to delegate his powers. The reason

for this is because when giving a person a power, a "personal trust or confidence is thereby reposed in the donee to exercise his own judgment and discretion" and "he cannot refer the power to the execution of another" (see Alexander Learmnth Gen Ed, *Williams, Mortimer & Sunnucks - Executors, Administrators and Probate* (Sweet & Maxwell, 21st Ed, 2018) ("*Williams Probate*") at para 50-86). Thus, under the general rule, where a power of sale was given to executors, they could not contract to sell by attorney (see *Combe's Case* (1604) 9 Co 75; *Green v Whitehead* [1930] 1 Ch 38)). However, the general rule has been qualified by statute.

12 Under s 25 of the UK Trustee Act, an individual representative can delegate the execution of exercise of "all or any of the trusts, powers and discretions vested in him" (see *Williams Probate* at para 50-87). Such delegation has to be by way of power of attorney. The donor of a power of attorney under s 25 is then liable for the acts and defaults of the donee in the same manner as if they were his own conduct (at s 25(7) of the UK Trustee Act).

13 The position in Singapore is similar. Section 3 of the Trustees Act (Cap 337, 2005 Rev Ed) (the "Trustees Act") provides that a trustee, where the context admits, includes a personal representative. Where the assets have been called in and they have all been vested in the personal representative, trusteeship beings (see G Raman, *Probate and Administration Law in Singapore and Malaysia* (LexisNexis, 4th Ed, 2018) ("*Probate and Administration*") at para 12.19 citing *Wanchee Incheh Thyboo v Golam Kader* (1883) 1 Ky 611). The provisions of the Trustees Act apply to personal representatives, which includes executors and administrators, as they expressly fall within the scope of application as set out under s 2(1) of the Trustees Act (see *Halsbury's Laws of Singapore* vol 15 (LexisNexis, 2019) ("*Halsbury's Laws*") at para 190.037).

14 On the question of whether an administrator of the estate may delegate some of his functions as a trustee, the power to do so is specifically provided for in s 27 of the Trustees Act (see *Probate and Administration* at para 12.25). It is also relevant to note that the power of delegation via a power of attorney is parked under Part III of the Trustees Act titled "General powers of trustees and personal representatives" (and "personal representative" is defined to include an "administrator" in s 3). However, there are some non-delegable functions as set out in s 41(B)(2) of the Trustees Act – these relate to the distribution of trust assets, power to appoint a person to be trustee, *etc*. Thus, apart from those which are non-delegable, an administrator may by power of attorney delegate the execution or exercise of powers and discretions vested in him as trustee (see *Halsbury's Laws* at para 190.051), but the donor continues to be liable for all the acts and defaults of the donee as if they were his own conduct (at s 27(6) of the Trustees Act).

15 As such, I am of the view that s 27(1), read with s 27(7) and s 27(9), of the Trustees Act allow the original personal representatives to delegate their powers (short of those being non-delegable) to the plaintiff. The relevant powers in this case, namely, the power to sell the estate's share in the property and to commence any proceedings in connection with the sale of the property, are not those which cannot be delegated. The court still retains a supervisory role over the administrator as the delegator remains ultimately liable in respect of the responsibilities it had in the first place.

16 Accordingly, I held that the plaintiff has standing in this case.

Whether the plaintiff has obtained the SLA's extension of time

17 However, notwithstanding that the plaintiff has standing, I found that she has not obtained the required extension of time from the SLA. The Plaintiff admitted to this at the hearing before me, notwithstanding that she has done all she can to have SLA grant the extension of time.

18 Indeed, it is not clear if the SLA will grant the extension of time needed for the plaintiff to sell the property. I see nothing from the documents that show the SLA has granted the extension. For the previous extension of time, the SLA had in fact responded in a letter dated 17 June 2020 to specifically extend time.[1] At para 1 of said letter, the SLA expressly said "[y]our application for an extension of time to dispose … has been approved". There has not been any similar letter to the plaintiff's application to extend time filed on 2 June 2021.

19 Without such an extension of time, the plaintiff cannot fulfil the key requirement under s 3(4) of the Residential Property Act:

> (4) Where a foreign person would, but for subsection (3), be beneficially entitled to an estate or interest in residential property, the legal personal representatives to whom probate or letters of administration are granted in respect of such residential property shall, subject to subsection (5), be bound to sell such estate or interest in the residential property to a citizen or an approved purchaser within a period of 5 years from the date of the death of the deceased person, or within any extension thereof allowed under subsection (12), and upon such sale to pay, subject to the law of wills and intestate succession, the proceeds thereof, less any expenses necessarily incurred on such sale or by reason of the administration of a deceased's estate, to or for or on behalf of the foreign person so beneficially entitled.

[1] Affidavit of Tan Mei Sin filed on 22 September 2021 ("TMS-1") at Tab 9.

20 Given that the plaintiff is already out of time, it is incumbent on her to seek the SLA's approval to extend time. Without this approval – of which I see no evidence of – the plaintiff cannot satisfy the legal requirements for sale. It is immaterial whether the delay was due to the plaintiff's actions or not. Her application therefore failed on this basis.

Whether the plaintiff has obtained court approval under CLPA

21 The plaintiff admitted of the requirement under s 35(2) of the CLPA and that she has not sought the requisite sanction. I disagreed with the plaintiff that an application under s 35(2) will be redundant because the only two beneficiaries of the estate are the plaintiff and her mother. Section 35(2) is a statutory requirement that must be complied with. It may be that a court may grant the required sanction more readily given certain facts (such as the present, as the plaintiff appears to be arguing), but that itself does not dispense with the filing of such an application. Whether or not the sanction is "redundant" is not something for the plaintiff to decide; that is for the court to so decide. Accordingly, the plaintiff's application also failed for want of court sanction under s 35(2) of the CLPA.

22 The plaintiff sought leave to amend HC/OS 958/2021 to include an application under s 35(2) of the CLPA. In my view, this is much too late. The plaintiff should have ascertained the legal requirements before making this application. In any event, the plaintiff did not tender any argument in support of any application under s 35(2) even if I were minded to grant leave to amend.

Conclusion

23 For all these reasons, I dismissed the plaintiff's application in HC/OS 958/2021 but with liberty for the plaintiff to reapply if the SLA approval and the court sanction under s 35(2) of the CLPA are forthcoming.

24 In the end, it strikes me that the plaintiff's present application is premature. Therefore, I have given the plaintiff the liberty to reapply given that the SLA's response is forthcoming.

25 Also, it is not clear to me whether the plaintiff has engaged the defendant or his litigation representation sufficiently on how best to resolve this matter. I note that the plaintiff first wrote to the defendant, Mr Tan, on 25 June 2020, informing him that the plaintiff was going to appoint a realtor to investigate the sale of the property.[2] That letter was addressed primarily to Mr Tan and secondarily to the occupiers of the property. However, the follow-up correspondence on 3 July 2020,[3] was only addressed to Mr Tan. When there was still no reply, the plaintiff then sent a third letter on 17 May 2021 to Mr Tan and the Occupier(s) of the property.[4] It was to this letter that Mr Tan Kee Peng responded. Taking Mr Tan Kee Peng's affidavit on its face, I also note that the administrators had not contacted the defendant for a period of 13 years between 25 Jan 2007 to 25 June 2020. It is not clear to me whether the parties have engaged in any serious discussions about the transfer of the property. Across all of this, it is important to bear in mind that, according to Mr Tan Tang Woon's affidavit, that Mr Tan has a history of mental retardation (which, to be fair to the plaintiff, she might not have known about earlier). But with this now known,

[2] TMS-1 at Tab 10.

[3] TMS-1 at Tab 11.

[4] TMS-1 at Tab 14.

it may therefore not be fair to expect Mr Tan to respond to the letters. It may also not be fair to expect the "occupiers of the property" to respond to a letter that was ostensibly addressed to Mr Tan.

26 However, I acknowledge that the plaintiff has expended some effort in trying to dispose of the estate's half share in the property. This present application has no doubt accelerated that process.

27 In the circumstances, notwithstanding the liberty to reapply, I would strongly urge the plaintiff to discuss matters with the defendant's litigation representative how to resolve this situation amicably.

Goh Yihan
Judicial Commissioner

Tan Chong Peng Kenneth, Ling Vey Hong and Krinesh B Rengarajoo (LYTAG Law LLP) for the plaintiff;
Ang Wee Tiong and Katie Lee Shih Ying (Lumiere Law LLP) (instructed) and Uttra Shamini Sheena (Uttra) for the defendant.