

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2023] SGHCF 37

Suit No 12 of 2021
(Registrar's Appeal No 2 of 2023)

Between

WPA

... Plaintiff

And

1. WPB
2. WPC
3. WPD
4. WPE

... Defendants

JUDGMENT

[Civil Procedure — Discovery of documents — Application]

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WPA
v
WPB and others

[2023] SGHCF 37

General Division of the High Court (Family Division) — Suit No 12 of 2021
(Registrar's Appeal No 2 of 2023)

Choo Han Teck J

15 August 2023

22 August 2023

Judgment reserved.

Choo Han Teck J:

1 This is an appeal against an order dismissing the application in HCF/SUM 143/2023 for a summons for discovery, as part of the main suit HCF/S 12/2021. HCF/S 12/2021 involves a dispute over the last will and testament (the “Will”) of the matriarch (“YLL”) of a family (“Family”). The Family holds business interests and multiple properties in various countries like Singapore, Malaysia, Hong Kong, Australia, and the British Virgin Islands (“BVI”). YLL has eight children — three sons, and five daughters. The plaintiff is WPA, the eldest son. The 1st defendant is WPB, the eldest daughter. The 2nd defendant is WPC, the second son. The 3rd defendant is WPD, the third son. The 4th defendant is WPE, the eldest grandson. The named executors of the Will and trustees of YLL’s estate (the “Estate”) are WPB and WPC (collectively the “Executors”). The four beneficiaries under the Will are YLL’s three sons,

WPA, WPC and WPD, and her eldest grandson WPE (collectively the “Beneficiaries”).

2 The family business was originally built up by the patriarch (“WKM”), who died in 1999, leaving parts of his estate to each of the three sons, with WPA receiving a 2.5% share, WPC receiving a 20% share, and WPD receiving a 20% share. The bulk of his estate was left to his widow, YLL, who received a 57.5% share.

3 YLL died in April 2012, and the order granting probate to WPB and WPC was made on 11 March 2021. The reason for the time discrepancy between YLL’s death and the grant of probate in Singapore is due mainly to contentious probate proceedings in Australia from end 2006 between WPC and his other siblings (the “2006 Australian Proceedings”). The dispute between the siblings concerned YLL signing documents purporting to transfer all of her shares in various Hong Kong and Australian companies to WPC — solely for WPC’s benefit. YLL was eventually found to lack mental capacity and a Committee of Persons was appointed by the court (on 24 October 2007) to manage her affairs. The 2006 Australian Proceedings were eventually settled in full in June 2009 (the “Settlement Agreement”). The Settlement Agreement was approved by Justice Andrew Ang on 13 July 2009. The Settlement Agreement was subsequently approved by the Australian court on 2 April 2012, and the 2006 Australian Proceedings were settled.

4 After YLL died, an Australian Administrator was appointed. The Australian Administrator then applied to court to make various determinations in relation to the implementation of the Settlement Agreement (the “Australian Clarification Proceedings”). In Singapore, the Executors applied to court to admit a copy of the Will (as they were unable to locate the original Will), and

the order was granted on 5 October 2018. The Executors then applied for the grant of probate on 8 August 2019, which was granted on 11 March 2021.

5 According to the plaintiff, he had discovered sometime around May 2021 that his brothers, WPC, and WPD had entered into a “Heads of Agreement” dated 24 October 2019 (“HOA”) in respect of the Settlement Agreement. The plaintiff says that since the HOA purported to be a compromise of parties’ rights and obligations under the Settlement Agreement, and imposed obligations on the Estate — all parties to the Settlement Agreement should be joined as parties in the HOA, and that the Estate be represented in the HOA negotiations. As an illustration of the effect of the HOA, the plaintiff claims that the HOA provisions take precedence over the Settlement Agreement provisions where there are inconsistencies between the two. This was the basis for the remedies sought by the plaintiff against the Executors in the present suit. The plaintiff says that by entering into the HOA, WPC has “misconducted himself” by “placing himself in a position of conflict of interests” with the Estate. Therefore, WPC had acted in breach of his duties as an executor and trustee. The plaintiff complains that the Executors had not performed their duties reasonably. The plaintiff further alleges that the Estate is likely to suffer further prejudice if WPC remains an executor because he is said to have assets jointly held with the Estate. This allegation is found in the affidavit of 24 March 2009 by “A” (YLL’s second daughter), in the 2006 Australian Proceedings. The plaintiff asks for an order revoking the probate granted to the Executors, and for him to be appointed as the administrator of YLL’s estate, in substitution for the Executors.

6 HCF/SUM 143/2023 was an application for specific discovery of those assets that WPC jointly holds with the Estate. In particular, the plaintiff asks for any and all documents related to the following extract of WPC’s pleading:

...The 2nd Defendant avers that the parties' father had gifted shares in a Hong Kong company which had invested in properties in China to the 2nd Defendant when he was still alive, and as such these shares do not fall under the Estate...

7 The plaintiff says that it was common ground that the patriarch had invested in commercial and retail properties in China prior to his death (the "China Property Interests") and that YLL had inherited a share of those interests upon WKM's death. Hence, the requested documents have direct relevance to WPA's claims concerning the China Property Interests — in the sense that:

- (a) the Estate will be prejudiced by WPC continuing as executor while holding joint property with the Estate, and
- (b) that the Executors have been tardy in the conduct of their duties, insofar as WPC already having knowledge of the Estate's assets.

8 WPC disagrees and says that the documents sought are not relevant to the present action. According to WPC, since the shares in the Hong Kong company were given by WKM to him in or around 1993, before his death in 1999, the shares belong to WPC solely, and did not form part of WKM's estate — and therefore did not pass on to YLL and her Estate.

9 It is trite that the two elements of specific discovery are that of relevance and necessity (*EQ Capital Investments Ltd v Sunbreeze Group Investments Ltd and others* [2017] SGHCR 15 at [46(c)]; *UMCI Ltd v Tokio Marine & Fire Insurance Co (Singapore) Pte Ltd and others* [2006] 4 SLR(R) 95 at [79]). In the present case, I am not persuaded by the plaintiff that the requested documents are relevant. I accept WPC's affidavit of 6 June 2023, that the plaintiff had not raised any issue regarding the China Property Interests at the time of WKM's death — nor during the administration of WKM's estate, when

he had the knowledge of said China Property Interests at that material time. It was also material that the matriarch, YLL, did not dispute the ownership of these shares, and did not include them in WKM's Schedule of Assets — there is no evidence that YLL claimed any portion of the China Property Interests as hers. If YLL had “inherited a share in the China Property Interests, being a beneficiary of 57.5% of his estate”, one would expect her to have taken steps to transfer the assets to herself — given YLL's status as the sole executor and trustee of WKM's estate, as well as her being a beneficiary of the alleged China Property Interests. YLL's inaction in this regard supports WPC's position that the China Property Interests did not form part of WKM's estate.

10 Given the passage of time and the fact that a Committee of Persons had been appointed to manage YLL's affairs sometime in 2007, it seems to me that if YLL had owned assets jointly with WPC, such as the China Property Interests, the Committee of Persons would have taken the necessary action. This would be in line with their challenge to WPC in the 2006 Australian Proceedings, or when they applied for the Committee of Persons for YLL. In connection with the China Property Interests, this would be especially so as the plaintiff himself had pointed out — that A appears to think that WPC held a number of joint assets with YLL, and A was at the material time a member of the Committee of Persons.

11 In any event, having been a member of the Committee of Persons himself in 2007, and having had access to A's affidavit at the material time it was filed — it is too late to complain that there may have been issues with YLL's inheritance from WKM's estate without sound reasons — and there are none. If the plaintiff was unhappy with how YLL's inheritance from WKM's estate was handled, he ought to have acted much earlier, as part of the Committee of Persons.

12 The basis of the plaintiff's request for specific discovery was the allegation that WPC and YLL's estate jointly owned the China Property Interests — so that the documents pertaining to the China Property Interests may become relevant to the present action. Given that I see no proper basis for the plaintiff to make such an allegation — and in fact, the situation appears to be quite different from the plaintiff's version of events, the documents requested by the plaintiff would not be relevant for the purposes of the present suit. Accordingly, I dismiss the appeal and uphold the AR's orders below.

13 Costs are to be paid by the plaintiff to the 2nd Defendant, and will be fixed at a later date if parties are unable to agree.

- Sgd -
Choo Han Teck
Judge of the High Court

Noel John Geno-Oehlers (Characterist LLC) for the plaintiff;
James Ch'ng Chin Leong (A.Ang, Seah & Hoe) for the second
defendant;
Marcus Chia Hao Jun (Wee Swee Teow LLP) for the first defendant
(watching brief);
Connie Kuan (Unilegal LLC) for the third and fourth defendants
(watching brief).
