

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

[2024] SGHC 151

Originating Claim No 143 of 2022

Between

Lolita Tsang

... Claimant

And

Personal Representatives of James Eng Jr deceased

... Defendant

JUDGMENT

[Gifts — Inter vivos — Whether there was intention to benefit recipient]

[Gifts — Formalities in making — Whether the gift was sealed or delivered]

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Tsang Lolita
v
Personal Representatives of Eng James Jr, deceased

[2024] SGHC 151

General Division of the High Court — Originating Claim No 143 of 2022
Choo Han Teck J
15 – 17 April, 30 May 2024

12 June 2024

Judgment reserved.

Choo Han Teck J:

1 James Eng Jr (“Eng”), an American who lived in Hong Kong, died on 10 September 2018 at the age of 76. His wife, Mrs Eng, died on 11 December 2011. Mrs Eng was named the executor of Eng’s estate and their daughter, Allison Nicole Eng (“Allison”) was one of the alternate executors. Allison is the representative of Eng’s estate in this action brought by Lolita Tsang (“Tsang”). Tsang, aged 64, is 18 years younger than Eng. It is not disputed that although Eng was at all times married to Mrs Eng, and Tsang was herself married, Eng and Tsang carried on a romantic relationship that began in 2005. Allison and her family had also met with Tsang and Eng in Hong Kong in 2015. Eng also bought a flat (“Flat D”) next to the flat where Tsang lived. They would spend time together in Flat D.

2 Tsang is claiming S\$8,500,000 from Eng’s estate (“the Estate”). She claims that that was Eng’s unfulfilled *inter vivos* gift to her. Eng had executed

a deed of gift (“the Deed”) on 7 November 2016 to transfer S\$8,500,000 to Tsang. The Estate challenges the validity and enforceability of the Deed, and counterclaims S\$8,195,757.58 being the balance in Tsang’s Hong Leong bank account (“HL Account”) as of 31 January 2017. That account was opened by Eng, in Tsang’s sole name. The Account Opening Form was signed by Tsang on 25 October 2016 after Eng sent an email to his account manager at HL Bank, Ms Penny Tan (“Ms Tan”) with directions to close his existing HL bank accounts and transfer the balance money into the HL Account. All that were done, and the HL Account was opened on 20 January 2017. As of 25 January 2017, the HL account had S\$8,200,312.78. The HL Account was a Foreign Currency Call Account, which contained monies in various foreign currencies.

3 Tsang had also signed a mandate (“Letter of Mandate”) on 25 October 2016 authorising Eng “[t]o trade in any currency, commodity, financial instrument or such transactions as may be allowed by the [HL Bank] from time to time”. The reason for this, as revealed in Eng’s email correspondence with Ms Tan on 1 December 2016, was that Tsang had no financial knowledge and Eng hoped that he would “operate the account as in the past and try to teach her”. Eng operated the account for investments. It is not disputed that Tsang had since closed the HL Account and retained the monies for her personal use.

4 The process of opening the HL Account was delayed partly because the HL Bank’s compliance team required information about Tsang’s wealth, personal assets, inheritance and financial knowledge or experience, and partly because the HL Bank required Eng to execute a deed of gift before he could transfer a “minimum of S\$8.5 [million]” to Tsang. This is seen from Eng’s email

on 28 October 2016 to one Ms Jennifer Yeo (“Ms Yeo”) of Yeo-Leong Peh LLC, his lawyers in Singapore:

Dear Jennifer,

Rosie Gan of Hong Leong Bank introduced us in 2014. They advised me they require a “Deed of Gift” for me to transfer a minimum of S\$ 8.5 mil. Need ASAP. It is to be given to my wife Lolita Tsang a HK born Chinese citizen ...

Penny Tan is my HLB contact, please feel free to contact her ...

Please advise if you require additional information.

Many thanks,

James Eng Jr.

5 This is also confirmed by Ms Yeo’s email response to Eng on 28 October 2016:

Thanks James

I have spoken to Penny and she has briefed me that the bank requires a deed of gift from you to your wife before you transfer the money to her in her bank account to be opened with HL Bank ...

Jennifer Yeo

6 The Deed was drafted by Ms Yeo. It was signed by Eng on 7 November 2016 in Hong Kong, at the office of Ng & Shum (“N&S”), Eng’s Hong Kong lawyers. I will elaborate on the involvement of N&S shortly. The execution of the Deed was witnessed by a notary public, one Ng Siu Pang. The Deed conferred an unconditional and irrevocable gift of S\$8,500,000 to Tsang, and clause 5 states that “this Deed and all matters relating to it shall be governed and construed in accordance with the laws of the Republic of Singapore” and that “[t]he parties hereby submit to the exclusive jurisdiction of the Singapore courts”.

7 Ms Yeo returned to Singapore on 9 November 2016. In an email to Eng on 10 November 2016, she wrote:

Hi James

I have arrived in Singapore yesterday.

As instructed I have taken your original deed of gift to Singapore and will hand over to the HL bank banker your irrevocable deed of gift of 8.5 mill HKD in favour of Lolita.

Please note that red wafer seal will be affixed against your signature as the deed needs to be sealed.

Kindly bring your duplicate to Steven Ng for him to affix the red seal for you at your next meeting with him.

Please confirm that I may hand over your original deed of gift to Penny the HL Bank banker in Singapore.

Thanks

Jennifer Yeo

8 In his reply email dated 13 November 2016, Eng confirmed that:

Hi Jennifer,

I confirm you may hand over the deed of gift to Penny Tan ASAP.

BTW I have 2 duplicate copies. One has the red wafer seal the other is a photo copy (i.e. a black copy of the wafer seal). Why do I have to bring the deed of gift to Steven Ng? No Need Right?

Many thanks,

James Eng Jr

[sic]

9 Ms Yeo's reply on 13 November 2016 was:

Thanks James

The red wafer seal needs to be put against your signature

I think you are referring to another sealing wax seal on top corner of page one securing the pages together which is different from the one we need to affix next to your signature

Yes you need to bring it back to Steve to let him fix a red seal
for you

Jennifer Yeo

10 Ms Yeo’s email of 10 November 2016 (at [7]) referred to the Deed as an “irrevocable deed of gift of 8.5 [million] HKD”. This must have been a typographical error, as all the other objective evidence, including the original Deed, shows that the Deed was a gift of the sum of S\$8,500,000.00. I reproduce the clauses of the Deed, where the terms “Donor” and “Donee” therein refers to Eng and Tsang respectively:

WHEREAS:

The Donor is desirous of making an irrevocable financial gift in the amount of S\$8,500,000.00 to the Donee (“the Gift”).

1. The Donor hereby irrevocably declares and confirms his intention and desire to make an unconditional and irrevocable gift in favour of the Donee and hereby gives by way of gift the sum of S\$8,500,000.00 to the Donee for the Donee’s own use and benefit absolutely.

2. The Donor confirms that the Gift is a genuine gift and is made wholly out of the Donor’s acquired funds and that neither the Donor nor any other person has any rights, title or interest in, whether direct or indirect, whatsoever in the same and any part thereof. The Donor also confirms that none of the Donor’s acquired funds being used to make the Gift are proceeds obtained or derived directly or indirectly as a result of illegal or immoral activities.

3. The Donor confirms and acknowledges that he has sought and received independent legal advice from his own solicitor in respect of the gift herein before executing this Deed.

4. This Deed shall be binding upon the Donor’s successors and permitted assigns and personal representatives (as the case may be). None of the rights or obligations of the Donor under this Deed may be assigned or transferred to any other person without the prior written consent of the Donee.

5. This Deed and all matters relating to it shall be governed and construed in accordance with the laws of the Republic of

Singapore. The parties hereby submit to the exclusive jurisdiction of the Singapore courts.

It is clear from these clauses that the Deed makes no reference to the opening of Tsang's HL Account and Eng's intention to transfer his existing funds in his HL Bank accounts.

11 Two other matters of relevance arose from the email correspondence between Eng and Yeo. First, Eng had confirmed his instructions to pass the original Deed to Ms Tan. Second, the red wafer seal was not affixed against his signature on the original Deed on 7 November 2016, but was likely to have been subsequently affixed by Ms Yeo before she passed the Deed to Ms Tan. A photocopy of the original Deed was tendered as evidence before me, and I could see that there is a small circular sticker imprint affixed next to Eng's signature. I am unable to decipher whether it is a red wafer seal because that copy was tendered in black and white. The other document, a photocopy of the duplicate of the Deed, although in colour, did not have a red wafer seal affixed next to Eng's signature. More importantly, neither Ms Tan nor Ms Yeo was called to testify regarding the will and the HL Account.

12 The first issue before me is whether the Deed is valid and enforceable. Counsel for the Claimant, Mr Alwyn Kok, submits that the Deed is valid and enforceable as it was signed, sealed and delivered. Counsel for the Defendant, Ms Hu Huimin, submits that the Deed is invalid because Eng had no intention for the Deed to be binding and enforceable. She submits that the only reason why Eng signed the Deed was that HL Bank had required it, and it was signed only to comply with HL Bank's requirement so that his funds could be transferred to the newly opened HL Account that is in Tsang's sole name.

13 Ms Hu submits that the true intention behind Eng’s transfer of his funds, was not that he intended to benefit Tsang fully and absolutely, but rather, that he intended to avoid the prohibitive estate duties and probate processes for an easy distribution of his liquid assets. Ms Hu further submits that Eng also intended Tsang to have access to the monies in the HL Account to pay for their joint living expenses, and for Tsang to distribute the monies to Allison after his death. Therefore, counsel submits, Eng intended to retain beneficial interest in the monies and had no intention to make an absolute gift to the Claimant.

14 Ms Hu relies on the email correspondence between Eng and Allison. That email, dated 25 November 2016, with the subject title “URGENT: my HK Will” reads:

Dear Allison,

Please don’t be alarmed. I am fine. Lita takes very good care of me. She is a God sent. However, it occurred to me that the HK probate is quite onerous and I want to be sure that whatever estate I finally leave, that probate will be minimized. Therefore, I have retained a HK law firm to advise the drafting of my HK will.

You of course know that I have already left all my US assets to you. Therefore we live off the income derived by my overseas assets only. We try not to diminish the principal. I have decided to split my liquid assets 50/50 between you and Lita. Frankly she will need her share for her support. She is 18 years younger than me and is most likely to out live me.

The question now is how do you want your share, Singapore dollar S\$4,250,000, to be conveyed to you after HK probate is cleared?

...

I will be meeting with my lawyers next week. Please advise soonest.

All my love,

Dad

[sic]

15 Allison never did reply to that email, despite a reminder from Eng on 13 February 2018. In a separate email dated 29 November 2016, Eng similarly told his lawyers from N&S that he was awaiting Allison’s response on who she wanted to be the recipient of her share and how she wanted the payment to be made. I accept that these emails indicate that Eng was concerned about Hong Kong’s prohibitive estate duties and was instructing his lawyers from N&S to draft a will that would minimise his estate’s exposure to that duty, but Eng died before the legal matters could be finalised. Based on the evidence available before me, the will that Eng was referring to in these emails is likely to be the draft will exhibited in court that was drawn up on 7 November 2016 — no other will was produced or referred to at trial. I will refer to this draft will shortly.

16 Ms Hu argues that the basis of Eng’s concerns stemmed from his difficulty in gaining access to the equity funds in his joint account with Mrs Eng. It required a copy of the grant of probate for Mrs Eng’s estate, which Eng was unable to obtain from the Hong Kong Probate Registry. The latter had made various enquiries on the contents of Mrs Eng’s will, which Eng was deemed not to have addressed adequately. Although Eng had made an application for grant of probate as early as 2014, he was not able to obtain the grant successfully even in June 2016. The following email from Eng to his solicitors, dated 17 June 2016, regarding the status of his probate application, is further evidence of his growing frustrations:

This is disgraceful. How can they possibly take this long to resolve my case? Please follow up. I will be gone till the 27th of June. Expect to hear some news on return. This has cost me a fortune as the markets collapsed during this ridiculous delay.

James Eng

17 Thus, Ms Hu says that Eng's difficulties in obtaining the grant of probate of Mrs Eng's estate in Hong Kong, and his ensuing frustration led him to look for an alternative way to ensure that his assets can be distributed with ease after his demise. As such, Eng decided to open the HL Account in Tsang's sole name and to transfer his liquid assets to this account. The reference of S\$4,250,000 as half of his liquid assets that he said was meant for Allison (at [14]), is also consistent with the objective evidence that he thought he had, and indeed he may have had at the material time, S\$8,500,000 to transfer to Tsang's HL Account.

18 I accept Ms Hu's arguments that Eng was hoping that his assets would be distributed without fuss, and he did not want his estate to experience the kind of difficulties he had with respect to Mrs Eng's estate. But that alone does not mean that he did not have the intention to benefit Tsang of S\$8.5m. That probably seemed to him as part of the solution. I now consider the contents of his draft will from 7 November 2016, to assess Eng's intentions in transferring his funds to Tsang's HL Account.

19 The draft will was drawn up by Mr Steve Ng, a Hong Kong lawyer from N&S, on 7 November 2016, the same day the Deed was drafted by Ms Yeo (see [6] above). Eng had initiated the meeting at the office of N&S and got both the documents drafted. Again, the lawyers from N&S were not called as witnesses to this action. The will itself is undated but it is clear that the will was drafted on 7 November 2016 because it was indicated on N&S's letter of engagement. Eng did not sign the draft will. He was probably awaiting Allison's response to his emails dated 25 November 2016 and 13 February 2018. Nonetheless, given that Eng intentionally had the Deed and the will drafted at

the same time, the contents of the draft will are relevant in assessing Eng's intentions at the material time.

20 The draft will is accompanied by an instruction sheet which contains Eng's instructions regarding the distribution of his assets, and the instruction sheet is titled "Background for James Eng Jr. Will". I reproduce the relevant clauses below:

1. Possible recipients:

1.1 Lolita Tsang: Common Law Wife since August 2005

...

1.2 Allison Nicole Perez & husband: Married 2 Children

2. My remaining HK Estate

2.2. [Flat D]: HK\$ 24 Million

...

3. Considerations:

3.2. I gifted my daughter US\$ 10 mill. when my wife died 12/11/11

3.3. I gifted Lolita SG\$8.5 in Nov. 2016

3.4. MY daughter and her husband can now provide for their family

3.5. Lita and I will not withdraw the principal of the SG\$8.5 I gifted her

3.6. Lita and I can live comfortably on its income plus my pension

3.7. I want to assure Lita is provided for if I predecease her as I am 18 yrs older

...

3.10. My property and the SG\$8.5 mil. are about 1/3 2/3's

3.11. We have agree that Lita should receive 2/3's and Allison 1/3 to eliminate any contestation at my death and Lita can elect to have all the S\$ account or ½ of it.

3.12. Lita must send ½ of the SD amount to Allison with in120 days to Allison and also receive confirmation of the wire transfer or other arrangement they may agree from Allison.

3.13. I will advise and copy Allison regarding this will.

[sic]

21 The will drafted on 7 November 2016 has a total of five clauses. I reproduce them below:

1. I HEREBY REVOKE all former wills and testamentary dispositions made by me relating to my properties in Hong Kong and declare this to be my last will relating only to my properties in Hong Kong.

2. I DECLARE that I am domiciled in Hong Kong Special Administrative Region of The People's Republic of China ("Hong Kong") and that this my will shall be governed by the laws of Hong Kong.

3. I HEREBY APPOINT LEUNG WAI FONG, holder of Hong Kong Identity Card ... to be the sole executor and trustee of my will ("my Trustee").

4. I DIRECT THAT my trustee shall upon trust hold my property situate at [Flat D] ("the said Property"). Within one month of the grant of probate of my estate, my Trustee shall offer to TSANG, LOLITA sale of the said Property at a fixed price of Singapore Dollars Four Million Two Hundred and Fifty Thousand (SG\$4,250,000.00) inclusive of all stamp duties, taxies, levies and legal fees payable by purchaser regardless of the market price and they will be paid out from my estate. The offer should state to be valid and effective for three months from the date of the offer.

5. Subject to payment of my just debts, funeral, testamentary and administration expenses other duties payable on or by the reason of my death, I GIVE, DEVISE AND BEQUEATH all my real and personal estate and effects whatsoever situate in Hong Kong not hereinbefore or by any codicil hereto specifically given devised and bequeathed (including any property over which I

may have a general power of appointment or deposition by will) to my daughter ALLISON NICOLE PEREZ absolutely.

22 In my view, the contents of the draft will and the instruction sheet are consistent. Reading these documents together with Eng’s emails to Allison, it appears that the Deed was drafted in accordance with Eng’s intention to arrange his affairs as follows:

(a) Eng’s total assets, including his liquid assets (S\$8.5 million) and Flat D after conversion to SGD (S\$4.25 million, or HK\$24 million), would amount to about S\$12.75 million.

(b) Eng intended for Allison to receive one-third of S\$12.75 million, which amounts to \$4.25 million, and Tsang to receive two-thirds, which amounts to S\$8.5 million.

(c) Tsang could either elect to purchase Flat D from Allison with the monies in the HL Account, which would allow Allison to receive S\$4.25 million in liquid assets, or Tsang could retain the full S\$8.5 million in the HL Account and Allison retains ownership of Flat D. Either way would have achieved Eng’s intended distribution of his assets between Tsang and Allison as in (b).

23 Eng’s instructions for Tsang to be given the choice to purchase the flat with the monies in the HL Account, or to retain the full amount in the HL Account (see clause 3.11 at [20] above) are important. Read in the context that Eng himself set out, in clause 3.3 of the instruction sheet, that he “gifted Lolita SG\$8.5 in Nov. 2016”, they sufficiently show that Eng not only intended for Tsang to be a beneficiary of his estate, but more specifically for her to retain full beneficial interest of the S\$8.5m referred to in the Deed.

24 Of course, one’s intentions in making a deed of gift, which is a gift in his lifetime, and one’s intentions in making a will, which concerns gifts after his death, can be different. On this note, I agree with Ms Hu’s arguments that Eng intended for the funds in the HL Account to be used for his and Tsang’s joint living expenses would constitute Eng’s intentions in making a gift in his lifetime. Tsang herself had also admitted on the stand that the funds in the HL Account were meant for their joint living expenses.

25 However, in my judgment, Eng’s intentions in making the Deed are connected to his intentions in making the draft will. As I found above, Eng wanted to minimise his estate’s exposure to the prohibitive estate duties when he decided to transfer S\$8.5 million to Tsang. All the objective evidence reproduced above similarly points to the conclusion that the S\$8.5 million was to ensure that Tsang would be provided if he were to predecease her. Hence, both the Deed and the draft will were meant to give effect to the same purpose — for easy distribution of his assets after his demise. They were drafted on the same day as part of Eng’s intentions.

26 I shall now deal with Ms Hu’s arguments that the Deed was not sealed nor delivered, thereby rendering the Deed unenforceable. She argues that the Deed was not sealed on 7 November 2016, and that it was not delivered to Tsang. In this regard, I refer to the email correspondence between Eng and Ms Yeo (see [7] to [9]). It appears that the original Deed had not been sealed on the day Eng signed the Deed, but it was likely to have been sealed after Ms Yeo confirmed Eng’s instructions to hand the Deed over to Ms Tan.

27 It is well-established that the physical manifestation of a seal is not required for the document to be considered sealed. The key enquiry is whether

Eng recognised and accepted the document as his deed and had the requisite intention to execute the deed. In my view, the email correspondence between Eng and Ms Yeo sufficiently indicates Eng’s intention to execute the deed. This is evident from Eng’s confirmation for Ms Yeo to “hand over the deed of gift to Penny Tan”.

28 Similarly, I reject Ms Hu’s arguments that the Deed was not delivered. The act of delivery does not refer to an actual transfer of possession to the other party, but rather refers to any act that shows that a party intended to deliver the deed as an instrument binding on him. There is delivery even though the grantor retains the deed in his own possession. What is essential here is that Eng has by words or conduct expressly or impliedly acknowledged his intention to be immediately and unconditionally bound by the provisions contained in the Deed. In my view, the email correspondence at [7] to [9] expresses sufficiently Eng’s intentions to be bound by the Deed. The fact that it was also delivered to Ms Tan for the transfer of his funds to the HL Account would also constitute delivery. Accordingly, I find that the Deed is a valid and enforceable gift.

29 Ms Hu also raises the argument that the Deed is a sham document given the true purpose of the Deed was to satisfy the HL Bank’s requirement, rather than to benefit Tsang. I find no merit in this argument not only because of my findings above regarding Eng’s true intentions, but also because there is simply no evidence of a common subjective intention between Eng and Tsang to create a document that is in fact not intended to create the legal rights and obligations which it gives the appearance of creating.

30 This brings me to the issue of whether the HL Account monies formed part of the gift of S\$8.5 million. The findings above have sufficiently disposed

of this issue. The monies in the HL Account were, for all intents and purposes, part of the gift of S\$8.5m from Eng to Tsang. It is likely to be the case that Eng, at the material time in October 2016, had a total of S\$8.5 million from all his HL Bank accounts that were operated in different foreign currencies. It was his intention to close all of his accounts, transfer the funds therein to Tsang's newly opened HL Account. However, given that the HL Account was only opened in January 2017, it was likely that the exchange rates for those currencies had dropped in the following months, such that the total monies in the HL Account only amounted to about S\$8.2 million as of 25 January 2017.

31 My findings that the Deed is valid and the HL Account monies formed part of the gift also disposes of the Defendant's counterclaim. The monies in the HL Account were gifted from Eng to Tsang, and are not held on trust by Tsang on behalf of Eng and his estate. The remaining question for me to address is whether Tsang is entitled to claim for the shortfall between S\$8.5 million and the balance in the HL Account.

32 The sum of S\$584,721.79, or alternatively S\$304,242.42, that Tsang is claiming for are calculated from the HL Account's balances as at 30 September 2018 and 31 January 2017. Mr Kok argues that Eng's use of the funds in the HL Account, in the months before he died, constituted a breach of clause 1 of the Deed. That, he submits, led to a drop in the funds available in the HL Account to S\$7,915,278.21 as of 30 September 2018. However, there is no evidence of the HL Account balances after Eng's passing, and it is unclear when and why Tsang had decided to close the account. Such evidence could have been readily provided by Tsang. The fact that Tsang had closed the account was also not revealed until the first day of trial. Mr Kok's response to my query as

to what monies remained in the HL Account was that he had “no instructions on what happened to the money” and that the last balance in the account before it was closed was S\$7,915,278.21, which was the balance as of 30 September 2018. However, in his written submissions, Mr Kok submitted that 30 September 2018 was “the date of the consolidated statements of the HL Bank Account closest to Mr Eng’s passing”. It therefore remains unclear when Tsang closed the account, and what the account balance was when she did.

33 Given the lack of sufficient evidence as to the actual closure of the HL Account, I am unable to determine the shortfall between S\$8.5 million and the remaining balance in the HL Account before it was closed. In my view, given the fluctuating nature of the exchange rates, the monies in the HL Account could very well have increased after Eng’s passing. The lack of evidence from Tsang makes it difficult for me to find in her favour, and I accordingly find that Tsang is not entitled to claim the shortfall between S\$8.5 million and the remaining balance in the HL Account, if any.

34 Finally, I address Mr Kok’s arguments that Eng had exerted undue influence over Tsang in procuring her signatures to the documents relating to the opening of the HL Account and the Letter of Mandate. It is however unclear what the arguments seek to achieve. If the argument is that Eng’s undue influence is a vitiating factor that invalidates the opening of the HL Account and the Letter of Mandate, then it must follow that the monies transferred from Eng to Tsang ought to be returned to Eng’s estate. It cannot be the case that Tsang is entitled to retain the HL Account monies, having closed it herself, and an additional S\$8.5 million as stated in the Deed. In any event, I have made the

finding above that the monies in the HL Account constituted part of the gift, and that no shortfall amount is to be awarded given the lack of evidence.

35 Accordingly, I dismiss Tsang's claim against the Estate for S\$8,500,000, and I also dismiss the Estate's counterclaim against Tsang for the monies in the HL Account. Tsang is entitled to retain the monies that were remaining in the HL Account before she closed it. I will hear arguments on costs at a later date if parties are unable to agree on costs.

- Sgd -
Choo Han Teck
Judge of the High Court

Alwyn Kok Jia An (Robert Wang & Woo LLP) for the claimant;
Hu Huimin and Edwin Chia Shengyou (CNPLAW LLP) for the
defendant.
