Chye Seng Kait *v* Chye Seng Fong (executor and trustee of the estate of Chye You, deceased)

[2021] SGCA 86

Case Number	: Civil Appeal No 165 of 2020
Decision Date	: 08 September 2021
Tribunal/Court	: Court of Appeal
Coram	: Andrew Phang Boon Leong JCA; Tay Yong Kwang JCA; Steven Chong JCA
Counsel Name(s)	: Lim Seng Siew, Lip Wei De Eric and Chloe Chua Kay Ee (OTP Law Corporation) for the appellant; Michael Khoo Kah Lip SC and Low Miew Yin Josephine (Michael Khoo & Partners) and Chiok Beng Piow (AM Legal LLC) for the respondent.
Parties	: Chye Seng Kait — Chye Seng Fong (executor and trustee of the estate of Chye You, deceased)

Probate and Administration – Personal representatives

[LawNet Editorial Note: This was an appeal from the decision of the High Court in [2021] SGHC 83.]

8 September 2021

Andrew Phang Boon Leong JCA (delivering the judgment of the court *ex tempore*):

1 This is an appeal against the decision of the High Court judge ("the Judge") in *Chye Seng Kait v Chye Seng Fong (executor and trustee of the estate of Chye You, deceased)* [2021] SGHC 83 ("the GD"). The appellant, Mr Chye Seng Kait, and the respondent, Mr Chye Seng Fong, are brothers. The respondent is the executor of the estate ("the Estate") of their late father ("the Testator"), while the appellant is a beneficiary of the Estate, pursuant to the Testator's will ("the Will").

2 During his lifetime, the Testator had been a property developer. In 2009, he suffered a stroke, and then, sometime before 2010, from an onset of dementia. The Testator passed away in 2015, and was survived by his wife (who has since passed away), the appellant, the respondent, and three daughters, one of whom, Ms Chye Moi June, features prominently in this dispute.

3 A grant of probate dated 30 May 2016 was issued to the respondent on 18 August 2016. The schedule of assets annexed to the Grant of Probate (the "Schedule of Assets") valued the father's assets at $1,741,314.12. Of these assets, two bank accounts feature in this dispute:

(a) a DBS bank account opened on 8 August 2006, in the joint names of the Testator and Ms Chye Moi June (the "DBS Joint Account"); and

(b) an OCBC bank account opened on 20 February 1999, in the joint names of the Testator and Ms Chye Moi June (the "OCBC Joint Account").

We refer to these accounts collectively as the "CMJ Joint Accounts".

4 The appellant was not satisfied with the Schedule of Assets. Correspondence was then exchanged between the respective parties' solicitors at the time. On 7 August 2017, the respondent's then solicitors, CH Partners, sent an email to the appellant attaching a statement of account (the "Statement of Account") which set out the Estate's assets and the proposed distribution of those assets. In that same email, CH Partners invited the appellant to come to their office to countersign the Statement of Account and to collect a cheque for $72,451.34 ("the Cheque"), being the

appellant's share of the residuary estate. However, the appellant did not agree to the Statement of Account and did not collect the Cheque.

5 On 25 April 2018, after discontinuing an initial suit that had been commenced in the Family Justice Courts, the appellant commenced the present proceedings in the High Court. We summarise the appellant's claims against the respondent as they stood at the end of trial and as they were advanced before us, as follows:

(a) First, the respondent had failed to take in the CMJ Joint Accounts which, the appellant argues, was held by Ms Chye Moi June on resulting trust for the Estate. Further, the respondent had failed to make any inquiries at all or failed to make sufficient inquiries into two allegedly wrongful transactions: (i) a withdrawal of $200,000 from the DBS Joint Account in 2007 ("the 2007 Transaction"); and (ii) a withdrawal of $15,300 from the OCBC Joint Account in 2014 ("the 2014 Transaction").

(b) Second, the respondent had failed to inquire into the division of the proceeds from the sale of a property at Killiney Road ("the Killiney Property") which had been held by the Testator and Ms Chye Moi June as tenants in common in equal shares. The appellant takes issue with the equal division of the sale proceeds, claiming that the Testator held a 67% share of the Killiney Property in equity.

(c) Third, the respondent had wrongfully deducted his legal expenses from the Estate.

(d) Fourth, the respondent had failed to distribute the Estate's assets promptly and fairly by imposing a condition on the appellant's collection of the Cheque and stating that he would use the Estate's funds to address any further allegations from the appellant.

We address each of these in turn.

The CMJ Joint Accounts

6 In relation to the CMJ Joint Accounts, we agree with the Judge that the beneficial interest in the CMJ Joint Accounts (strictly speaking, the *choses in action* against the respective banks) was not held by the Estate, but was held by Ms Chye Moi June by virtue of cl 2 of the Will. That provision reads, as relevant:

> … I further declare that any account held by me with any other person(s) jointly in any financial institution shall also belong to such joint account holder(s) absolutely by virtue of the right of survivorship.

7 It is common ground that during the Testator's lifetime, the beneficial interest in the CMJ Joint Accounts was held entirely by the Testator, on the basis of a resulting trust arising over the accounts. It is also common ground that after the Testator's death, Ms Chye Moi June held the legal right to the CMJ Joint Accounts by virtue of the right of survivorship. In this context, we find that cl 2 of the Will expresses the clear intention that the right of survivorship arising from the legal position of joint tenancy was to operate *instead of* any equitable intervention upon the Testator's death. In other words, whatever the situation was during his lifetime, it was the Testator's intention that the right of survivorship *should* apply to all the bank accounts held in joint names, and that the surviving joint tenant should have absolute ownership of those accounts.

8 We do not find the appellant's counterarguments convincing. The appellant argues that if a gift

was intended, the phrase "the right of survivorship" should not have been included. However, the above analysis shows why the inclusion of that phrase was entirely sensible and reasonable – the purpose of cl 2 was not to make a bequest of the beneficial interest, but was to give full effect to the right of survivorship. Further, the appellant's proposed interpretation – that cl 2 of the Will only applied *if* the right of survivorship applied – would render cl 2 superfluous, which contradicts the principle that the court should seek to give effect to every word in the will (see the decision of the High Court in *Goh Nellie v Goh Lian Teck and others* [2007] 1 SLR(R) 453 at [62]). As for cl 4 of the Will, which explained that the Testator's wife and daughters were excluded from the Will as the Testator had made sufficient provision for them during his lifetime, we find the existence of this clause consistent with our view of cl 2. The moneys were deposited into the CMJ Joint Accounts during the Testator's lifetime. It is not a stretch to say that cl 2 simply completed what had already been started in the course of the Testator's life to provide for Ms Chye Moi June. Furthermore, this is consistent with the appellant's own position that his mother, the Testator's wife, did in fact become the sole owner of a property and a joint bank account by virtue of the right of survivorship referred to in cl 2, despite being described in cl 4 as having been excluded from the Will. Hence, cl 4 did not detract from our view that Ms Chye Moi June was the absolute owner of the CMJ Joint Accounts upon the Testator's death.

9 The other issue in relation to the CMJ Joint Accounts concerns the 2007 and 2014 Transactions. We find no reason to depart from the Judge's findings in relation to these withdrawals. We accept that an executor has the duty to determine "the extent of the assets and liabilities of the deceased, and then act diligently and reasonably in realising the assets" (see the decision of the High Court in *Foo Jee Boo and another v Foo Jhee Tuang and others* [2016] SGHC 260 ("*Foo Jee Boo*") at [75]), and that this may extend to inquiring into the existence and value of any potential claims that the estate may have for matters occurring prior to the deceased's death, which would be held as *choses in action* by the estate (see s 10(1) of the Civil Law Act (Cap 43, 1999 Rev Ed)). However, as the appellant accepts, an executor's duty is only to do what is *reasonable*, which will depend on all the circumstances of each case. One relevant factor will certainly be whether there was in fact a cause of action, while another factor would be the potential value of such a cause of action to the estate, given the costs that the estate would be put to in pursuing that claim. In this case, the facts show that there was either no cause of action to speak of, or that the value of any such cause of action to the Estate would be minimal or non-existent.

10 In relation to the 2007 Transaction, we see no reason to depart from the Judge's findings at [27] of the GD that the $200,000 withdrawal was not done by or for the benefit of Ms Chye Moi June. Hence, having asked Ms Chye Moi June what happened with this sum of money and having received her answer which was consistent with the facts, the respondent was entitled to accept that response and not pursue the matter further.

11 We turn to the 2014 Transaction, which was a withdrawal of $15,300 by Ms Chye Moi June from the OCBC Joint Account for the purpose of subscribing to a rights issue of OCBC shares on the Testator's behalf without the Testator's consent. Here, we also find that the respondent had not breached his duty as executor. Even if we assume that Ms Chye Moi June had breached her duty as resulting trustee in withdrawing the said funds, and even if there was a cause of action arising from that breach, we find that the cause of action would be of no value to the Estate. No loss was actually caused to the Estate, as the shares subscribed for were in fact included in the Schedule of Assets and the Statement of Accounts, and the shares had appreciated in value. The assets, far from being reduced by Ms Chye Moi June's actions, were in fact *increased* by that act, a fact accepted by the appellant in cross-examination. As these facts were provided by Ms Chye Moi June to the respondent upon his inquiry, it was reasonable for him not to pursue the matter further.

The Killiney Property

12 In relation to the Killiney Property, we find that the respondent had no reason to inquire further into the division of the sale proceeds as, in truth, the equal division of those proceeds accurately reflected the Testator's and Ms Chye Moi June's respective shares in the property. The parties' dispute turns on how a loan for 34% of the purchase price of the Killiney Property should be treated – the appellant argues that half of it should be attributed to the Testator, while the respondent argues that all of it was Ms Chye Moi June's contribution to the purchase price.

13 As this court held in *Su Emmanuel v Emmanuel Priya Ethel Anne and another* [2016] 3 SLR 122 ("*Su Emmanuel*") at [89], the central issue when such arguments are raised is the responsibility that was undertaken by each party for the loan repayments at the time the property was acquired, with the crucial consideration being the parties' intentions as to the ultimate source of funds. We find, on the evidence, that it was intended by the Testator and Ms Chye Moi June that the latter would be solely responsible for repayment of the loan as her contribution to the purchase price.

(a) The nature of the loan shows that the liability to repay was taken on by Ms Chye Moi June alone as the sole borrower. The Testator was involved only as a co-mortgagor and had only a secondary liability. The mere fact that the Testator, as co-owner of the property, was a co-mortgagor is not significant given that the bank would naturally wish to have a claim over the whole property rather than just a half-share, a point similar to that made by this court at [90] of *Su Emmanuel*.

(b) The appellant's own testimony supports this finding, when he claimed that the Testator was dissatisfied with the arrangement with his daughter because they had contemplated equal contributions in *cash*, and he was not happy with the fact that Ms Chye Moi June had financed her contribution partly with a *loan*. Assuming that the appellant's testimony on this is true, this is evidence in favour of the respondent's position that the Testator and Ms Chye Moi June had intended to make equal contributions to the purchase price as any dissatisfaction was only with the manner in which Ms Chye Moi June financed her contribution to half of the purchase price.

(c) The parties' conduct during their co-ownership of the Killiney Property is consistent with this understanding. At no time did the Testator contribute to repayment of the loan. Under cross-examination, the appellant also conceded that he had no quarrel with fact that only half of the rental income was given to the Testator.

(d) Upon the sale of the Killiney Property, the sale proceeds were divided in half, and the amount repaid to the Central Provident Fund ("CPF") Board for withdrawals from Ms Chye Moi June's CPF account (part of which was used to service the loan) as well as the redemption amount paid to the bank were deducted entirely from Ms Chye Moi June's share.

14 Hence, it follows that (a) there is no reason for equity to depart from the position in law that the Testator and Ms Chye Moi June were tenants in common in equal shares; (b) the sale proceeds were properly distributed in 2007; and (c) there was nothing for the respondent to inquire into when he became executor of the Estate.

Deduction of legal expenses

15 The appellant also submits that the respondent had wrongfully deducted certain legal expenses from the Estate. He claimed that the respondent had incurred those expenses unreasonably as part of his refusal to make the proper inquiries. Given the conclusions above, there is no case to be made on

this point as we have found that the respondent had acted properly. We therefore conclude that these legal expenses were properly deducted as testamentary and administrative expenses (see *Foo Jee Boo* at [77]).

Distribution of the Estate

16 Finally, the appellant claims that the respondent had breached his duty by attaching a condition that the appellant countersign and accept the Statement of Account before the Cheque for his share of the residuary estate would be released to the appellant. We find no merit in this argument. "An assent … may be given upon a condition precedent" (see Alexander Learmonth et al, *Williams, Mortimer and Sunnucks on Executors, Administrators and Probate* (Sweet & Maxwell, 21st Ed, 2018) at para 76–19). The condition imposed in this case was entirely proper. The appellant's potential interest was only in the residuary estate, as cl 3 of the Will makes clear. Hence, his share was "[s]ubject to the payment of [the Testator's] debts, funeral and testamentary expenses and all estate duty payable", including legal expenses, as discussed above. If the appellant continued to press his objections (as he did), that would result in further legal expenses being incurred. Ultimately, if the objections were unmeritorious, then the Estate would have been put to expense without a corresponding increase in the assets of the Estate. Given the nature of the residuary estate, it was entirely appropriate for the respondent to withhold distribution until it was clear that no further expenses would be incurred in the administration of the Estate.

Conclusion

17 We are therefore of the view that the appellant's claims are without merit. As a further point, we note that the appellant had also sought an account on a common basis, which is not contingent on a finding of misconduct (see the decision of the High Court in *Lalwani Shalini Gobind and another v Lalwani Ashok Bherumal* [2017] SGHC 90 ("*Lalwani*") at [20] and [25]). However, in the present case, the account on a common basis has been sought only as a *remedy* in the alternative to the removal of the respondent as sole executor and, for the reasons set out above, we do not see any basis for granting the appellant any remedy for alleged wrongdoing by the respondent. We also note that an account on a common basis would not extend to what the appellant actually seeks, as the taking of a common account only extends to "what was actually received and [the executor's] disbursement and distribution of it", and not what "he might have received had it not been for the default" (see the decision of this court in *Ong Jane Rebecca v Lim Lie Hoa and others* [2005] SGCA 4 at [55], cited in *Lalwani* at [25]). In reality, therefore, the taking of an account on a common basis is not the real remedy sought by the appellant in this case, and in any event, it is not clear what else needs to be done given that the Statement of Account has already been provided.

18 For the foregoing reasons, we dismiss the appeal. The appellant is to pay $31,500 (all-in) to the respondent as costs of the appeal. The usual consequential orders will apply.