

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

[2024] SGHC(A) 4

Appellate Division / Originating Application No 57 of 2023

Between

Yong Kin Sen (administrator of
the Estate of Loke Siew Kee,
deceased)

... Applicant

And

Gabriel Prieziano Loke Jian Xun

... Respondent

In the matter of District Court Appeal No 9 of 2023

Between

Yong Kin Sen (administrator of
the Estate of Loke Siew Kee,
deceased)

... Appellant

And

Gabriel Prieziano Loke Jian Xun

... Respondent

JUDGMENT

[Probate and Administration — Executors]

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**Yong Kin Sen (administrator of the estate of Loke Siew Kee,
deceased)**

v

Loke Jian Xun Gabriel Prieztiano

[2024] SGHC(A) 4

Appellate Division of the High Court — Originating Application No 57 of
2023

Woo Bih Li JAD and Kannan Ramesh JAD

14 December 2023

31 January 2024

Woo Bih Li JAD (delivering the judgment of the court):

1 AD/OA 57/2023 (“OA 57”) is an application for permission to appeal against the decision of a judge of the General Division of the High Court (the “Judge”) given on 17 November 2023. For the reasons stated below, we dismiss the application.

Background

2 There were eight brothers who held shares in Kian Hoe Loke Kee Pte Ltd (“the Company”). The eight brothers were:

- (a) Loke Soon Han (“LSH” or the “Deceased”);
- (b) Loke Soon Seet (“LSS”);

- (c) Loh Soon Yam (“LSY”);
- (d) Loke Soon Yeow;
- (e) Lok Soon Liong;
- (f) Loke Soon Sim;
- (g) Loke Soon Nam; and
- (h) Loke Soon Chuan.

3 Gabriel Prieztiano Loke Jian Xun (the “Plaintiff”) is the son of LSH.

4 The Plaintiff claimed that in or about 2002, LSS had agreed to transfer 59,523 ordinary shares in the Company to LSH at the price of 10 cents per share.

5 The Plaintiff also claimed that sometime in or about 2002, LSY had agreed to transfer 16,087 shares in the Company to LSH at the price of 10 cents per share.

6 LSH passed away on 21 November 2010. He had made two Wills dated 15 November 2010 and 16 November 2010 respectively.

7 LSH’s sister, Loke Siew Kee (“LSK”) was the executor of LSH’s estate.

8 On 18 May 2011, LSS’s 59,523 shares were transferred to LSH, and LSY’s 16,087 shares were transferred to LSH.

9 On 7 November 2012, LSK was granted probate of LSH’s estate based on the first Will. It is not clear why the grant was based on the first Will, but nothing material turns on this because parties proceeded on the basis that all of

LSH's shares in the Company were given to the Plaintiff under the Wills even though the first Will mentioned 59,523 shares only and it is the second Will which mentioned "all" of LSH's shares. Henceforth, for convenience, we will refer to the Wills simply as the "Will".

10 LSK sold all the shares in the Company which LSH held. She received \$398,715.22. She paid \$189,357.61 to the Plaintiff but retained the balance of \$209,357.61 (the "Balance"). The Balance is the sum attributed to the 59,523 shares transferred by LSS to LSH and 8,044 shares transferred by LSY to LSH. In other words, although LSY had transferred 16,087 shares to LSH, only 8,044 of those shares are in dispute (in addition to the 59,523 shares transferred by LSS to LSH).

11 LSK declined to pay the Balance to the Plaintiff on the basis that the 59,523 shares still belonged beneficially to LSS and the 8,044 shares were held by LSH for LSS. We refer to the total of 67,567 (*ie*, 59,523 + 8,044) shares as the "Disputed Shares".

12 As LSK declined to pay the Balance to the Plaintiff, he commenced action against her as beneficiary of all LSH's shares in the Company. After trial had commenced but before its completion, LSK passed away. The administrator of her estate is her husband, Yong Kin Sen ("Yong"). He was appointed by order of court to represent LSK in the Plaintiff's action. For convenience, we refer to LSK or Yong as the "Defendant" unless it is appropriate to distinguish between the two.

13 On 6 February 2023, a District Judge (the "DJ") granted the Plaintiff judgment for the Balance, interest and costs.

14 On 20 February 2023, the Defendant filed an appeal to the Judge who dismissed the appeal. OA 57 is the Defendant’s application for permission to appeal against that decision.

15 The main reason for the decision of the DJ and of the Judge pertained to the bankruptcy of LSS.

16 On 24 March 2003, LSS was adjudged a bankrupt. On 20 March 2019, LSS was discharged from bankruptcy.

17 As is evident from the above history, when LSS’s 59,523 shares were transferred to LSH on 8 May 2011, LSS was already adjudged a bankrupt. However, this transfer was not disclosed to the Official Assignee (“OA”) at the material time. Neither was the OA informed at the material time that out of the 16,087 shares transferred by LSY to LSH, 8,044 shares were supposed to be held by LSH for LSS.

18 The Plaintiff alleged that the transfers of the Disputed Shares were genuine sales for the stipulated consideration of 10 cents per share. In response to LSK’s contention that the transfers were done pursuant to an agreement with LSH to put the Disputed Shares out of reach of creditors, the Plaintiff argued in the alternative that any such agreement was illegal and hence unenforceable. The loss lies where it falls. The Plaintiff alleged that soon after the 2002 share transfer agreements, LSS was adjudged a bankrupt on the application by a bank creditor.

19 The Defendant pleaded that the share transfer agreements were entered into in or around 2002 in anticipation of LSS’s bankruptcy (which eventually occurred in 2003). However, in the Defendant’s closing submissions, the

Defendant argued that the share transfer agreement for LSS’s shares was proposed “sometime in 1990-1995” and for LSY’s shares “was probably done in 1995”.

20 The DJ was of the view that the Defendant’s central position was that there was a collateral oral agreement (between LSS and LSH) that LSS owned the beneficial interest in the Disputed Shares because the share transfer agreements were to put the Disputed Shares out of reach of LSS’s creditors. The DJ was of the view that the Defendant’s pleadings precluded the Defendant from arguing that the share transfer agreements were entered into in or around 1995 instead of in or around 2002 just before LSS was adjudicated a bankrupt. The DJ concluded that the purported collateral oral agreement would be a fraud on LSS’s creditors and therefore illegal. The DJ cited the factors mentioned in the Court of Appeal decision in *Ting Siew May v Boon Lay Choo and another* [2014] 3 SLR 609 (“*Ting*”) and decided that the Defendant should not be allowed to rely on the purported collateral oral agreement in the circumstances.

21 There were other arguments which we need not address for reasons stated below.

22 In summary, the Judge agreed with the DJ and dismissed the appeal.

23 In seeking permission to appeal, the applicant argues that the Judge made errors of law. At this stage, we focus first on one of the alleged errors which is couched as follows:

(d) Can an Executor in a Probate make a decision and act on the same in light of competing claims to an asset of the Estate, especially if the Executor has enough information to make a decision, or in the alternative, in what circumstances can an executor make a decision.

24 As can be seen, this alleged error is framed as a question.

25 In summary, the Defendant contends that even though the Disputed Shares were listed as part of the assets of LSH in the application for grant of probate, the Defendant was not obliged to blindly follow the probate as the Judge thought. Since the Defendant became aware that the Disputed Shares belonged to LSS, she was entitled to withhold the Balance from the Plaintiff. This was not a rash decision and the Defendant was doing the fair and right thing for which the Defendant had nothing to gain.

26 In our view, this is the crux of the matter that the parties and the courts below should have addressed specifically right from the beginning of the dispute.

27 First, it is important to note that while an executor may have a view on a claim by a beneficiary, the Defendant did not dispute that under the Will, the Plaintiff was the sole beneficiary of all the shares of LSH in the Company. Also, the Will does not say that some of the shares belong to another person.

28 Hence, if the Defendant had valid reason to believe that some of the shares belonged to LSS, it was not for the Defendant to act on her own and resist the Plaintiff's claim for the Balance in respect of the Disputed Shares. To do so would be to act contrary to the Will. Instead, the Defendant should have sought clarification and directions.

29 Thus, the Defendant should have asked LSS formally if he was claiming ownership of the Disputed Shares. If so, then the Defendant should have taken out an interpleader application or an administration action or an application to seek directions from the court.

30 Instead of doing so, the Defendant stuck to her position that LSS is the rightful owner of the Disputed Shares as though she were the competing claimant. The Defendant stresses that she had nothing to gain in doing so but that is precisely the point. It was not for the Defendant to argue LSS's claim for him.

31 Hence, regardless of whether the oral collateral agreement was a fraud on LSS's creditors or any other argument raised by the Plaintiff or the Defendant, the Defendant should have simply avoided contentious litigation by seeking directions from the court, as mentioned. It is surprising to us that this was not done by her or pursued by the Plaintiff at the earliest opportunity. Directions could have been given by the court to ascertain from LSS formally whether he was making a claim to the Balance and, if so, to give directions, for example, for the Plaintiff to file an action naming LSS as the defendant or for LSS to be substituted as the defendant in the existing action, and, in either case, with the Defendant to confirm that she would abide by the court's decision thereafter.

32 As it is, there is no valid basis for the Defendant to continue to resist the Plaintiff's claim. For this reason alone, OA 57 is futile and should not have been pursued at all.

33 In the circumstances, it is therefore unnecessary to address the other errors of law alleged by the Defendant.

34 However, we mention that *Ting* was a case in which the plaintiff was seeking to resile from an allegedly illegal agreement that had not yet been performed, whereas in the present case, the share transfer agreements have been carried out. What the Defendant is alleging is that LSH held the Disputed Shares

on trust for LSS thereafter. It is therefore not clear to us that this is a case of contractual illegality. Be that as it may, as between LSS and LSH and his representatives, the views expressed in *Ting* are still relevant but they should be considered in the light of the elaboration in *Ochroid Trading Ltd and another v Chua Siok Lui (trading as VIE Import & Export) and another* [2018] 1 SLR 363 and the views expressed in *Lau Sheng Jan Alistair v Lau Cheok Joo Richard and another* [2023] SGHC 196.

35 In the circumstances, we dismiss the application for permission to appeal. The Defendant is to pay the Plaintiff costs fixed at \$5,000 inclusive of disbursements. The usual consequential orders apply.

36 In the light of the allegations that the Defendant made, we direct the Registrar of the Supreme Court to inform the Official Assignee of the allegations and leave it to the Official Assignee to take such steps, if any, as the Official Assignee thinks fit.

Woo Bih Li
Judge of the Appellate Division

Kannan Ramesh
Judge of the Appellate Division

Jasjeet Singh s/o Harjindar Singh (Dhillon & Panoo LLC) for the
applicant;
Foo Soon Yien and See Zhi Yan (BR Law Corporation) for the
respondent.