Tacplas Property Services Pte Ltd v Lee Peter Michael (administrator of the estate of Lee Chong Miow, deceased)
[2000] SGCA 5

Case Number : CA 265/1998

Decision Date : 08 February 2000

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Goh Joon Seng J; Tan Lee Meng J

Counsel Name(s) : George Pereira (Pereira & Tan) for the appellants; Lok Vi Ming (Rodyk & Davidson) for the respondent

Parties : Tacplas Property Services Pte Ltd — Lee Peter Michael (administrator of the estate of Lee Chong Miow, deceased)

Probate and Administration – Administrator – Joint administrators – Agreement by only one administrator – Whether administrators act jointly – Whether act of one administrator binds estate and other administrators – Whether act ratified by other administrators

Probate and Administration – Administrator – Authority to deal with assets of estate – Vesting of assets in administrators – Validity of agreement entered into before extraction of grant – Whether doctrine of relation back applicable to cure invalid acts – Whether ratification by all administrators required

Equity – Estoppel – When estoppel applicable – When silence amounts to representation – Detrimental reliance – Whether co-administrator estopped from denying that agreement binds estate

(delivering the judgment of the court): This is an appeal against a decision of the High Court which declared that an agreement for the sale of a certain property belonging to the estate of Lee Chong Miow (the deceased) which was purportedly entered into between one Christina Lee, a co-administratrix of the estate, and the appellants was invalid and was therefore not binding on the estate. [See [1999] 2 SLR 360.]

The facts

The facts of the case are largely undisputed. The deceased passed away intestate on 4 July 1969. On 1 March 1971, one Martin Lee, the son of the deceased, petitioned for letters of administration to be granted jointly to himself and his sister, Christina Lee, as administrators of the estate. The order appointing them as such was made on 12 March 1971. However, nothing more was done by both of them and the grant was never extracted.

In 1989, Martin Lee suffered a severe stroke and became incapable of managing his own affairs by reason of his mental disability. By an order of court dated 10 August 1994, Martin Lee`s son, the respondent in this case, and the wife of the respondent were appointed as the Committee of his Person and Estate (`Committee`).

Sometime on or before 20 July 1995, Christina Lee and the respondent made an application to court to revoke the original grant of letters of administration and to appoint them as administrators of the estate. The application was granted on 28 July 1995. The grant of the letters of administration was only extracted on 14 August 1996.

The deceased was the registered proprietor of a plot of land comprising Lot 91-81 Mukim 28 at Upper

Changi Road (the `property`). In the meantime, on 23 February 1994, Christina Lee purportedly entered into an agreement with the appellants for the sale of property to the appellants (`the agreement`). She entered into the agreement in her capacity as `a personal representative of` the deceased. The dispute before the court below and before us is whether the agreement is valid and binding on the estate since it was executed by only one of two administrators of the estate.

At the time of the agreement, the property was the subject of an adverse possession claim by one Wama bte Buang, who was the daughter of the deceased`s gardener, against Martin Lee and Christina Lee as personal representatives of the estate. Wama bte Buang had successfully claimed ownership over the property in the High Court and was granted a judgment in OS 156/90. A notice of appeal was filed against the decision vide CA 127/93 (`the appeal`) before Christina Lee executed the agreement.

The appellants first became interested in the property as a result of the considerable media coverage of the litigation in OS 156/1990. The managing director of the appellants, one Goh Hoon Leum (Goh), had through the introduction of a broker, sought out and met with the wife of Martin Lee and Christina Lee. Goh was told by Mrs Martin Lee that her husband could not be present because he had suffered a stroke. Goh was under the impression that Martin Lee was wholly incapacitated even though Mrs Martin Lee did not say so explicitly.

During this meeting, it was agreed that the appellants would purchase the property. They also reached an in-principle agreement that the appellants` solicitors M/s Pereira & Tan would take over the conduct of the appeal from M/s Rodyk & Davidson, who were then the solicitors in charge. Following the meeting, further negotiations were conducted through solicitors and the agreement was drawn up and executed by Christina Lee, as a personal representative, and by Goh on behalf of the appellants. The agreement set out in brief the relevant history of the property.

Some of the material terms of the agreement are: (i) the purchase price would be $2m; (ii) a deposit of $50,000 would be paid to Christina Lee who would return the same if the appeal was not successful; (iii) the appellants would bear the costs of the appeal regardless of the outcome; (iv) if the appeal was successful, the sale and purchase would be completed within ten weeks thereafter but such completion was subject to certain conditions, and two of the material conditions are the following:

> *11 Completion of the sale and purchase herein is further subject to the following:*
>
> *...*
>
> *(b) The approval of the court for the sale of the property since more than six years have elapsed since the date of death of the deceased;*
>
> *(c) The vendor [Christina Lee] obtaining the probate/letters of administration in respect of the estate of the deceased which the vendor hereby confirms she is presently in the process of obtaining.*

The sanction of the court is necessary by virtue of s 35(2) of the Conveyancing and Law of Property Act (Cap 63) (`CLPA`) which states that no sale of land belonging to the estate of a deceased person shall be made by the legal personal representative(s) of that person after the expiration of six

years from his death unless with the sanction of the court.

Eventually this court allowed the appeal and dismissed Wama bte Buang`s claim: **Lee Martin & Anor v Wama bte Buang** [1994] 3 SLR 689 .

However, the proceeding in OS156/90 was not the only problem which beset the property. There were also two other adverse possession claims against the property. In Suit 191/92, the claimant was one Amir bin Ahmad. The appellants` solicitors took over the conduct of this suit from M/s Rodyk & Davidson and had the case dismissed by the court on 22 January 1996. In Suit 1182/94 the claimant was a beneficiary of the estate of a deceased brother of Wama bte Buang. Again, the appellants` solicitors succeeded in having this suit dismissed on 14 November 1994.

Even though the agreement did not refer to the other two suits, the appellants, in accordance with the spirit of the agreement that the estate should not be out-of-pocket of any expenses, also bore the costs of having the two suits dismissed. Furthermore, when the beneficiaries of the estate of the deceased brother of Wama bte Buang tried to physically occupy the property, Christina Lee permitted the appellants to take possession of the property in order to prevent any further trespass or unauthorised occupation. According to Goh, on the insistence of Christina Lee, the appellants, after having taken possession, maintained the property at their own expense for almost four years, from 11 June 1994 to 9 June 1998.

In accordance with the agreement, following the successful outcome of the appeal, two matters required attention before the purchase of the property could be completed. The first was the extraction of the grant of letters of administration and the second the obtaining of the court`s sanction for the sale of the property. However, the incapacity of Martin Lee engendered some controversy amongst the deceased`s descendants over who should administer the estate. At first, both the respondent and his sister, Pat Lee, wanted to be appointed as administrators of the estate in place of their father. Christina Lee objected to this. The respondent then changed his mind and wanted to be made a co-administrator together with Christina Lee. Again, Christina Lee refused. When the respondent and his wife were appointed as the Committee, a caveat was lodged by them in the probate application in respect of the estate of the deceased to prevent Christina Lee from extracting the grant of letters of administration. Eventually Christina Lee agreed to the respondent being appointed as a co-administrator together with herself. As mentioned above, on 28 July 1995, the original grant to Christina Lee and Martin Lee was revoked and in substitution thereof Christina Lee and the respondent were duly appointed as co-administrators of the estate of the deceased. The grant was extracted on 14 August 1996.

Following the extraction of the grant, the appellants` solicitors made several requests that an application be made to the court to obtain the requisite sanction under s 35(2) of the CLPA. When no satisfactory response was forthcoming from Christina Lee or the respondent, the appellants took out OS 1174/97 against Christina Lee and the respondent for an order compelling them to file the necessary application for sanction. However, this originating summons was never served because the appellants` solicitors and the estate`s solicitors were trying to seek an amicable solution.

The attempts failed and on 20 May 1998, the respondent commenced OS 611/98 against the appellants for a declaration on the validity or otherwise of the agreement. Two main grounds were relied upon by the respondent to contend that the agreement was not binding on the estate. Firstly, there was a lack of authority on the part of Christina Lee. She could not bind the estate without the consent of the co-administrator, Martin Lee, who at the time was incompetent. Secondly, the sanction of the court for the sale of the property to the appellants pursuant to the agreement was not obtained.

The decision below

The learned judge below had no difficulty in rejecting the respondent`s second contention because the completion of the transaction was clearly made subject to Christina Lee obtaining the requisite court sanction under s 35(2) of the CLPA. However, relying on the case of **Hudson v Hudson** [1737] 1 Atk 460; 26 ER 292 he held that the agreement was not binding on the estate because Christina Lee, a co-administratrix in a joint administration, acting alone did not have the authority to bind the estate. The learned judge also rejected the appellants` contention that the respondent was estopped from asserting that the agreement was not binding on the estate, as he was involved in some of the negotiations leading to the conclusion of the agreement. He felt that either Christina Lee had the power to bind the estate, or she did not. Furthermore, the appellants had not proven any facts to support the submission.

This appeal

Before us the same issues were canvassed as was done in the court below. The following broad issues are raised in this appeal.

(a) whether the agreement is valid and binding on the estate of the deceased;

(b) whether the respondent is estopped from denying that the agreement is valid and binding on the estate.

Whether the agreement is valid and binding on the estate

The bulk of the appellants` submission on this issue concerns the question whether a co-administrator must act jointly with the other administrator(s) in order to bind the estate. The appellants also addressed briefly the question whether the execution by Christina Lee of the agreement, before the letters of administration was extracted, was validated by the doctrine of relation back

The crux of the issue is whether administrators have joint and several authority to deal with the assets of the deceased such that the act of one of them is binding on the other and the estate.

At common law, there are basically two lines of authorities. On the one hand there are the cases of **Hudson v Hudson** [1737] 1 Atk 460; 26 ER 292, **Earl of Warwick v Greville** [1809] 1 Philim 123, **Bell v Timiswood** [1812] 2 Phill Ecc 22; 161 ER 1066 and **Stanley v Bernes** [1828] 1 Hagg Ecc 221; 162 ER 564 which held that administrators must act jointly. However, in the recent case **Fountain Forestry Ltd v Edwards & Anor** [1975] Ch 1, Brightman J, after a review of the cases and following **Smith v Everett** [1859] 29 LJ Ch 236, assumed, without deciding, that an administrator could act without the concurrence of the other administrator(s).

We will now briefly examine these cases, starting with the most ancient of the lot, **Hudson v Hudson** [1737] 1 Atk 460; 26 ER 292 where the joint administrators of the deceased estate appointed two attorneys to get in the effects abroad of the intestate. Eventually one of the administrators, without the consent of the other, settled an account with the agents, received the moneys due from them and gave them a general release. This administrator died and the other administrator subsequently

instituted proceedings to set aside the stated account and the release. Hardwicke LC held that one administrator could not release a debt or convey an interest so as to bind the other and that the position of an administrator was different from that of an executor. He reasoned:

> *But the case of executors differs essentially from that of administrators; executors receive all their power and interest from the testator, and though before they can maintain an action they must prove the will ...*
>
> *... the interest arises not from the probate, but from the testator; therefore an executor may release a debt, or assign a term before probate* ***(Dyer, 367 a, pl 39. Mead v Lord Orrery, post, 3 vol 239)****, and if after probate he sues for the same, the precedent act done by him may be pleaded in bar: if an executor appoints another to be his executor, and dies, he is immediate representative to the first testator, but on the death of an administrator, his whole interest determines, and administration* ***de bonis non, & c,*** *must be granted.*
>
> *So if a creditor makes his debtor his executor, the debt is totally extinguished, and cannot be revived, (1) though the executor should afterwards die intestate, and administration de bonis non, & c, of the first testator should be granted: but if a debtor be appointed administrator, that is no extinguishment of the debt, but a suspension of the action, and his representative on his death would be chargeable at the suit of the administrator* ***de bonis non, & c,*** *of the first intestate* ***Salk 299; 8 Co 135****.*
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> *The right of an administrator is expressed so differently in the books, as if they were at a loss how to describe it. In 8 Co 135b, it is called an authority, because the administrator has nothing to his own use; in* ***Vaughan****, 182, it is with greater propriety called a private office of trust, ...*
>
> *If therefore an administration be in the nature of an office, what will the consequence be in the present case? for if an office is granted to two, they must join in the executing the acts of the office, and one cannot act unless in the name of both, and on this kind of reasoning the present case will depend.* `

In the later case, ***The Earl of Warwick v Greville*** (supra), the court (Sir John Nicholl) in considering competing proposals for appointment as administrators said:

> *It has been correctly stated that the court never forces a joint administration because, if the administrators were at variance, it almost put an end to the administration. Further, the court prefers ceteris paribus a sole to a joint administration, because it is infinitely better for the estate; administrators must join and be joined in every act, which would not only be inconvenient to themselves, but, what is of more consequence, must be inconvenient to those who have demands on the estate either as creditor or as entitled in distribution.*

A couple of years later in ***Bell v Timiswood*** (supra), again a case of competing applications for the grant of letters of administration, Sir John Nicholl repeated his views that co-administrators must act jointly:

> *The court never forces a joint administration and for an obvious reason; because it is necessary for administrators to join in every act, there might be a*

> *complete contrariety of action, and it would be in the power of one of them to defeat the whole administration.*

Finally, in ***Stanley v Bernes*** (supra) the court was asked to allow the joint administrators, instead of entering into a joint administration bond, to enter into separate bonds for half the proposed sum for each administrator. This was refused by Sir John Nicholl who could

> *... see no necessity for it, nor would any advantage result, because administrators must always act jointly; they cannot, like executors, act independently.*

The other line of authority is reflected in the recent case ***Fountain Forestry v Edwards*** (supra). There, the widow and the son of the deceased were jointly granted letters of administration. The son entered into a contract with the plaintiffs which was expressed to be made between himself and the widow of the one part and the plaintiffs of the other. The widow did not sign the contract and refused to execute the conveyance. The plaintiffs sought specific performance against the son and widow. There was evidence that the son never consulted the widow on the contract. The plaintiffs submitted that one administrator had the power to bind the estate. Brightman J first reviewed the position of an executor and held that at common law one of two executors was competent to sell or contract to sell an asset forming part of the personal estate of the deceased. He said that as a result of statutory intervention, between 1898 and 1925, one of two executors could contract to sell and convey leaseholds and pure personalty but could not contract to sell or convey freehold land. Further statutory intervention occurred in 1925 by virtue of the Administration of Estates Act 1925, under which the position would appear to be that one of two executors is now able to enter into a contract binding on a deceased`s estate to sell freehold and leasehold land and pure personalty of the deceased although he cannot implement that contract in relation to freeholds without the concurrence of his co-executor(s) or an order of court.

Turning to the position of administrators, Brightman J termed it a `difficult question`. Having considered the facts in ***Hudson v Hudson*** he felt that the views expressed therein on the point were strictly obiter, as Hardwicke LC proceeded to decide (p 284):

> *first, that the attorneys were accountable to the administrators in their personal capacity and not in their representative capacity and that therefore a release by one principal was sufficient, as in the case of joint creditors: secondly, that the release was unfair and collusive and ought to be set aside in equity.*

Brightman J then referred to what was an unreported case, ***Willand v Fenn*** (cited in 2 Ves Sen at 267) where ***Hudson v Hudson*** was not followed and where it was apparently held that no distinction in this regard should be drawn between executors and administrators. But he recognised that there was some doubt as to what was precisely decided in ***Willand v Fenn.***

He also noted the views expressed by Sir John Nicholl in ***Warwick v Greville*** and ***Stanley v Bernes*** as well as the decision in **Smith v Everett** [1859] 29 LJ Ch 236. In this latter case, where the question was whether all the executors of an estate must participate in the settlement of a partnership of which the deceased was a partner, Romilly MR said:

> *It is a settled principle with respect to executors, that any two may settle an account; in fact, one may settle an account, and it binds the other, though it may be a question as between co-executors whether they are liable to each other or whether they are liable to their cestuis que trust for acting improperly ... There was, then, a question whether the same principle extended to administrators, and later authorities have held that it does.*

Brightman J made two observations on the views of Romilly MR which we have just quoted. Firstly, the remarks about the position of administrators were clearly obiter. Secondly, in one report of the case, the words `and later authorities have held that it does` did not appear although they appear in two other reports.

We would add a third observation to that. Though Romilly MR referred to `later authorities`, not a single case was cited. Viewed also in the light of the second observation of Brightman J, one cannot help but entertain much doubt as to what was exactly said by Romilly MR.

Brightman J`s conclusion on the whole question was (at p 285):

> *It appears to me that there is no decisive authority which answers the question whether one administrator, acting without his co-administrator, has the same power of disposition as an executor acting without the concurrence of his co-executor. But having regard to the statement of Romilly MR that the question was settled by 1859 in favour of the administrator who acts alone, I am content to assume for present purposes that the view which he expressed was a correct interpretation of the law.*

In ***Williams on the Law of Executors Administrators*** (13th Ed, 1953) the learned authors, relying on ***Willand v Fenn*** and ***Jacomb v Harwood*** 2 Ves Sen 265, 268; 28 ER 172 stated that `despite earlier views to the contrary, it seems to be now settled that one of two or more administrators stands in the same position as one of two or more executors.` We note that the views of these learned authors were relied upon by Whitton J in **Chia Foon Sian v Lam Chew Fah & Anor** [1955] 1 MLJ 203 where it was held that `the act of one administrator binds the other`. But it seems to us clear that in ***Chia Foon Sian*** this point was not one upon which full arguments had been advanced by counsel for the parties. In fact, the two main issues in ***Chia Foon Sian*** were (i) whether the authority of an administrator takes effect on the date of the grant or the date on which the grant was extracted; and (ii) whether and the extent to which an administrator was bound by his own acts as executor de son tort.

In the latest edition of Williams, Mortimer and Sunnucks: ***Executors Administrators and Probate*** (17th Ed, 1993) the learned authors state that (at p 690), under a joint grant of representation, the act of one representative is regarded as the act of all unless there is statutory provision to the contrary and that the position is the same for executors and administrators. A similar view is also taken in 17 ***Halsbury`s Laws of England*** (4th Ed) at para 1082:

> *A joint representative is regarded as a single person. Accordingly, one of several executors may give a good discharge for a debt due to the estate, and settle an account with a person accountable to the estate, even, it would appear, against the dissent of his co-executor, and* ***it seems*** *that the same principle applies to joint administration. [Emphasis added.]*

In the light of these divergences of views, the position under common law is far from clear. In fact, in none of the authorities were the views expressed therein absolutely necessary to decide the case and even in ***Fountain Forestry*** Brightman J did not decide the point but made an assumption. As far as executors are concerned, it is accepted by a whole line of authorities that an executor (if there are more than one executors for the estate) can bind the estate. So is there anything which differentiates an administrator from an executor so much so that the law should confer upon an administrator competence vis-.-vis the estate which is different from or less than that of an executor?

In ***Hudson v Hudson*** Hardwicke LC had highlighted the differences between an executor and an administrator, both in respect of their sources of power and their competence. It seems to us that the different sources of power of the executors and administrator are an important consideration to the question. This was a point noted by Warren LH Khoo J in **Syed Ali Redha Alsagoff (administrator of the estate of Mohamed bin Ali, deceased) v Syed Salim Alhadad** [1996] 3 SLR 410 , where he said that unlike the position of an administrator, the appointment of an executor was presumed to be founded upon the special confidence which the testator had in him and thus an executor was therefore allowed to transmit his powers to his own executor as a person in whom he has equal confidence. Such confidence on the part of the deceased is not present in so far as administrators are concerned.

There is another factor which we think is also germane to the determination of the question in hand. Section 6(1) of the Probate and Administration Act (Cap 251) provides that:

> *Probate or letters of administration shall not be granted to more than 4 persons in respect of the same property, and letters of administration shall, if there is a minority or if a life interest arises under the will, be granted either to a trust corporation, with or without an individual, or to not less than two individuals.*`

It seems to us that implicit in this provision is the premise that administrators must act jointly. If an administrator could act alone then why would the statute provide that if a minority or a life interest is involved there would have to be at least two administrators or the administration would have to be granted to a trust corporation. This requirement for two administrators is obviously intended as a safeguard. That safeguard would be wholly negated if one administrator could act independently and bind the estate.

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*** 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.

Accordingly, we hold that administrators of an estate must act jointly and the act of one

administrator cannot bind the estate, unless that act is ratified by all the administrators.

The doctrine of relation back

Before turning to consider the doctrine of relation back, it is necessary to consider if an administrator has the authority to enter into any contract on behalf of the estate before the extraction of the grant. As stated above, the sources of the powers of an executor and an administrator are clearly different. An executor derives his title from the testator`s will, whereas an administrator derives his title from the grant of the letters of administration. The property of the testator vests in an executor from the time of the testator`s death. In the case of intestacy, the estate of the deceased would, by virtue of s 37 of the Probate and Administration Act (Cap 251) and, until the grant of administration, rest in the Public Trustee (before 1 October 1997 it would have vested in the Chief Justice: see s 4 of the Statutes (Miscellaneous Amendments) Act 1997). On the grant of administration, the property of the estate would vest in the administrator(s). However, such vesting of the property in the administrator(s) does not confer on the latter the authority to deal with those assets until the administrator(s) extract the order of the grant: see **Chay Chong Hwa & Ors v Seah Mary** [1984-1985] SLR 183 [1984] 2 MLJ 251 , a decision of this court which was affirmed by the Privy Council.

There LP Thean J (as he then was), who delivered the judgment of the court, explained the position as follows ([1984-1985] SLR 183, 187; [1984] 2 MLJ 251, 254):

> *... Plainly, this section [s 37] concerns only with the vesting of property, movable and immovable, of a person dying intestate so as to avoid a situation where the property of the deceased is not vested in anyone. The mere vesting of such property by operation of law does not authorise an administrator to deal with the same. He must proceed to extract the grant of letters of administration and only upon such grant being extracted is he clothed with the authority and power to deal with the property of the deceased. Under s 2 of the Probate and Administration Act letters of administration means a grant under the seal of the court issuing the same authorising the person or persons named therein to administer an intestate`s estate in accordance with the law.*
>
> *In our opinion, without extracting the grant of letters of administration of the estate of the deceased, the fourth appellants are unable to complete the sale of the deceased`s undivided one quarter share of the property.*

However, counsel for the appellants sought to limit the scope of the principles enunciated in ***Chay Chong Hwa*** by arguing that what it decided was that an administrator may not complete a sale of property without extracting the grant. It did not mean that an administrator may not enter into an agreement. In ***Chay Chong Hwa*** the first, second and third appellants and one Lee Ee Hoong (the deceased) were registered proprietors as tenants in common over a certain property. The fourth appellants were the administrators of the estate of the deceased. By an agreement, the appellants agreed to sell the property to the respondent. However, at the time the agreement was entered into, the fourth appellants had not extracted the grant of letters of administration of the estate of the deceased. The respondent took up an originating summons seeking, inter alia, a declaration that the fourth appellants produce the grant of the letters of administration before the respondent could be called upon to complete the purchase of the property. The judge granted the declaration.

It is true that in ***Chay Chong Hwa*** the court was not dealing with the specific point whether an

administrator has the authority to enter into an agreement binding on the estate before the grant is extracted. But taking from the reasoning of the court there, that the authority of an administrator to deal with the property of the deceased stems from the extracted grant, entering into an agreement for sale is to deal with the property. Perhaps the point would become clear if we look at the problem from another angle. If, as the appellants contend, that the agreement is valid and enforceable, could the buyer sue for specific performance of the agreement? If he cannot, as we think that is the position, it must mean that the agreement is not enforceable and the reason for that can only be that he has no authority to deal with the property. Accordingly, we hold that Christina Lee had no authority to enter into the agreement before the grant was extracted.

This is where the doctrine of relation back becomes relevant. The administrator`s title to the assets of the estate vests in him from the time the grant of the letters of administration is extracted. The doctrine of relation back is an exception to that rule. The doctrine permits the title of the administrator to relate back to the time of the death of the deceased so as to give validity to certain acts done by an administrator before the letters of administration are extracted. The object and scope of the doctrine is described in 17 ***Halsbury`s Laws of England*** (4th Ed) paras 735 and 736 as follows:

> *In order to prevent injury being done to a deceased persons` estate without remedy, the courts have adopted the doctrine that upon the grant being made the administrator`s title relates back to the time of death. This doctrine has been consistently applied in aid of an administrator seeking to recover against a person who has dealt wrongfully with the deceased`s chattels or chattels real. It is also applicable against a person dealing wrongfully with the deceased`s real estate. It cannot be applied, however, to disturb the interests of other persons validly acquired in the interval, or to give the administrator title to something which has ceased to exist in the interval.*
>
> *The doctrine of relation back is also applied to render valid dispositions of the deceased`s property made before the grant when it is shown that those dispositions are for the benefit of the estate, or have been made in the due course of administration. The disposition need not have been made by the person who ultimately obtains the grant, provided that it is ratified by the administration on obtaining the grant ... Although, after grant, the administrator may enforce a contract entered into before grant, he is not estopped in an action brought after grant from setting up his title of personal representative to defeat his own acts before grant.*

In ***Executors, Administrators & Probate*** by Williams, Mortimer and Sunnucks, the learned authors explained the doctrine in this manner (at p 90):

> *The general proposition that letters of administration do not relate back to the date of death is subject to a number of exceptions or apparent exceptions which apply by statute or at common law where this is for the benefit of the estate. The test is objective, that is to say, the grant will `relate back` only if this actually benefits the estate and not because the expected administrator thinks it will benefit the estate. Although there is no authority on the question it is thought that the test of `benefit` must be as at the date of the act in question regardless of supervening events.`*

The question that arises is whether the fact, that the order appointing Christina Lee to be an

administratrix was extracted on 14 August 1996, validates the agreement executed by her under the doctrine of relation back. We would observe that the respondent has not challenged the bona fides of Christina Lee in entering into the agreement. Neither has he alleged that the property was sold at an undervalue.

In this case it is not contended that the agreement was entered into in due course of administration but rather was entered into by Christina Lee for the benefit of the estate. The concept of `benefit` in this context is not confined to the mere prevention of injury to the estate or preservation of the property belonging to the estate: see ***Foster v Bates*** (1843) 12 M & W 226; 152 ER 1180, **Mills v Anderson** [1984] QB 704 and **Kechik & Ors v Habeeb Mohamed & Anor** [1963] MLJ 127 .

Thus, the pre-condition which must be satisfied is whether the agreement entered into by Christina Lee was for the benefit of the estate. On this point we have no doubt whatsoever. Even the respondent admitted as much: see his solicitors` letter of 12 September 1995. At the time the agreement was negotiated and signed, the estate had lost ownership over the property after the High Court`s ruling in favour of Wama bte Buang, though an appeal had been filed. By entering into the agreement, the estate was assured of being able to pursue the appeal with the ultimate aim of recovering the property without having to bear any costs, whatever the outcome. And, as stated before, it is not alleged that the sale to the appellants was at an undervalue. At the time of the agreement both sides were legally represented. In our judgment the arrangement set out in the agreement was clearly for the benefit of the estate; it was undoubtedly to protect and preserve the assets of the estate.

In passing, we would observe that in the court below it was contended that the sale should not be sanctioned under s 35(2) of the CLPA because the value of the property had gone up substantially since the date of the agreement. But no evidence has been adduced in support of this allegation.

However, there is one other circumstance of the case we ought to mention. The hearing of this appeal was first scheduled for 24 March 1999. It was adjourned with the express object of inviting Christina Lee to participate in the proceedings and indicate her position. Nevertheless, she chose to stay away. She did not object to the adoption of the agreement; but neither did she expressly indicate her ratification of it.

In **Mills v Anderson** [1984] QB 704, the court held that a settlement agreement reached by an administrator before he obtained the grant was not binding on him (see also ***Doe d Hornby v Glenn*** 1 Ad & E 49; 110 ER 1126). In ***Mills*** , the court also held that as the settlement was not beneficial to the estate, the doctrine of relation back did not apply.

While it is open to Christina Lee to disavow the agreement, by choosing not to participate in the proceedings when invited, we hold that she must be taken to have implicitly ratified the agreement.

But there is still one other issue which has to be addressed. If Christina Lee had been the sole administrator, then by the doctrine of relation back the estate would be bound. Here, there is a co-administrator who has refused to ratify the act of Christina Lee. Is the ratification of all the administrators necessary for the application of the doctrine of relation back? The respondent submitted that the doctrine does not automatically apply to validate contracts entered into by a person who subsequently is appointed with another as joint administrator, unless the other person upon the grant being extracted, also ratifies the same. Neither counsel was able to render much assistance to the court in terms of authorities. There does not appear to be any case on point.

In **Re Watson, ex p Phillips** [1886] 18 QBD 116 Watson, a solicitor, was instructed by an

intermeddler, Easton, to perform certain services in relation to the administration of the estate of the deceased. At that time there was no personal representative. Later, one Robert Phillips was granted letters of administration de bonis non and he refused to pay Watson for his services. The Divisional Court held (affirmed by the Court of Appeal) that the administrator was not obliged to pay as it must be shown not only that the services were for the benefit of the estate but that they were rendered under a contract with someone who subsequently by obtaining letters of administration became authorised to bind the estate, and ratified the contract. It seems to us that ***Re Watson*** would appear to suggest that for the doctrine of relation back to apply the administrator who entered into the arrangement (before extraction of the grant) should ratify the arrangement. However, in ***Re Watson*** the question whether all the administrators should ratify, if there be more than one administrator, did not arise.

We have held above that upon the extraction of the grant, joint administrators are required to act jointly to bind the estate. If we were to hold that an act of one administrator done before he was duly appointed binds the estate under the doctrine of relation back, notwithstanding the objection of his co-administrator, then it would mean that such a person has greater competence before his appointment than after. We are not able to see any logic in this. In our view, consistency would demand that both administrators must ratify the act of one before the doctrine of relation back can apply. As the concurrence of the respondent is not forthcoming, the agreement cannot bind the estate under the doctrine of relation back.

Estoppel

We now turn to the second main argument of this appeal. The appellants contended that the respondent is estopped from asserting that the agreement was not binding on the estate. The gist of the appellants` argument is that the respondent knowing that the appellants had entered into the agreement with Christina Lee, as a personal representative of the estate, stood idly by for some four years while the appellants were fulfilling the terms thereof, in the belief that there was a binding contract with the estate.

The appellants alleged that the respondent knew about the agreement and the sale of the property as his mother had instructed M/s Rodyk & Davidson to negotiate the terms of the agreement. In this regard, Goh asserted in his affidavit that he was `reasonably confident that the plaintiff [respondent] was aware of the agreement long before the commencement of these proceedings.` There is no denial of this from the respondent.

The appellants further relied on the following exchange of correspondence to show that the respondent had reinforced their belief that the agreement was binding on the estate. After M/s Drew & Napier was appointed as the solicitors representing the Committee, M/s Pereira & Tan wrote to them on 9 June 1995 (CB p 113) enquiring about the position in respect of the obtaining of the grant of letters of administration in respect of the estate of the deceased and stating that the appellants had already incurred substantial costs and expenses pursuant to the agreement. Not only had they borne the costs of the appeal as well as the costs in Suit 1192/94, they would be bearing the costs of defending another adverse possessor`s claim in Suit 192/92 which was still pending before the High Court at that time. In addition, they had been incurring costs in maintaining and protecting the property against any further attempts at trespassing by any other party. By a letter dated 12 September 1995, M/s Drew & Napier stated that the appellants` claim on the property was disputed by the respondent because the grant of administration was not extracted at the time of the purported agreement and therefore no one was authorised to deal with the estate of the deceased. They also requested for more information on how the appellants became involved in the appeal and

Suit 1192/94. M/s Pereira & Tan replied in a letter dated 29 September 1995 setting out the circumstances in which the agreement was entered into. There was no subsequent reply refuting the contents of that letter.

Thereafter, M/s Drew & Napier kept the appellants` solicitors informed of the progress of the application and the extraction of the grant of letters of administration. On 16 August 1996, M/s Drew & Napier informed them that the grant was extracted on 14 August 1996. The appellants alleged that there was no reason for the solicitors to do that if the respondent did not intend to be bound by the agreement. Following that, M/s Pereira & Tan sent several letters to the solicitors for the respondent and Christina Lee requesting that their clients proceed with the necessary application under s 35(2) of the CLPA. The respondent did not indicate that the agreement was not binding on the estate and that therefore he would not be making the application for sanction. In the meantime the appellants continued to maintain the property and took steps to prevent trespassers.

In the light of all the above circumstances, the appellants alleged that it was unconscionable for the respondent to now challenge the binding effect of the agreement some four years after its execution and when the appellants had performed their side of the bargain and had continuously maintained the property.

Counsel for the respondent contended that there was no evidence, apart from Goh`s bald assertion, to suggest that the respondent knew of the agreement when it was made. M/s Rodyk & Davidson did not represent the respondent during the negotiation of the terms of the agreement. At all material times, the respondent was represented by M/s Drew & Napier. Since the respondent was not involved in the negotiations at all and he had not made any representation to the appellants, no estoppel could arise against him. Even if a representation was made, counsel for the respondents submitted that the appellants had not relied on the representation to their detriment because as far as they were concerned, the agreement was a potentially profitable venture. If they win the appeal, they would get the property and if they lose the appeal, they need not proceed with the purchase and would lose nothing other than the legal costs.

In order for the appellants to succeed in their claim in estoppel, there must be a clear and unequivocal representation on the part of the respondent that he did not dispute the binding effect of the agreement which was purportedly entered into by Christina Lee and that he treated the agreement as being valid. Although a representation giving rise to such an estoppel need not be express and may be implied, it must, nonetheless, be clear and unequivocal. Mere silence and inactivity will not normally suffice, and in the words of Robert Goff LJ in **The Leonidas D; Allied Marine Transport Ltd v Vale do Rio Doce Navegacao SA** [1985] 1 WLR 925 at p 937 `it is difficult to imagine how silence and inaction can be anything but equivocal` (endorsed by this court in **Fook Gee Finance Co Ltd v Liu Cho Chit and another action** [1998] 2 SLR 121).

However, it would be different where there is a duty to speak. In such a situation the silence could amount to a representation. One example would be in a situation like that in **Greenwood v Martins Bank Ltd** [1933] AC 51 where an account holder, knowing that his wife had been forging his signature, failed to inform the bank of the same until the wife had died. He was estopped from recovering from the bank the money paid out under the forged cheques. The court was of the view that his silence had been deliberate and was intended to produce the effect which it in fact produced, namely, leaving the bank in ignorance of the true facts so that no action might be taken by it against his wife.

In **Spiro v Lintern** [1973] 1 WLR 1002, the defendant`s wife purported to sell his property to the plaintiff. When the plaintiff sued the defendant for specific performance of the contract, he

contended that his wife had acted without his authority. The court held that he was estopped from proving that the contract had been made without his authority because he had known that the plaintiff was acting in a mistaken belief that there was a legal obligation on the defendant to sell the house to the plaintiff. In those circumstances, the defendant had been under a duty to disclose to the plaintiff that his wife had acted without his authority and his failure to do so amounted to a representation by conduct that she had his authority. Buckley LJ opined at p 1011:

> *... in our judgment, if A sees B acting in the mistaken belief that A is under some binding obligation to him and in a manner consistent only with the existence of such an obligation, which would be to B`s disadvantage if A were thereafter to deny the obligation, A is under a duty to disclose the non-existence of the supposed obligation.*

Reverting to the facts before us, the appellants claimed that the respondent knew about the agreement at the time his mother was negotiating the terms through her solicitors, M/s Rodyk & Davidson. In this regard, we note that this assertion of Goh was not denied by the respondent on affidavit even though his counsel purported to give evidence from the bar by alleging otherwise in his written submissions. Although we are unable to attach much legal significance to this because until the respondent was appointed the administrator for the estate, his inactivity or silence could not reasonably be interpreted by the appellants as any form of representation in respect of the dealings with the estate property, we would say this much. By the time the respondent and his wife were appointed to be the Committee of his father, the respondent would have known the state of affairs regarding the property and the agreement. It is inconceivable that his mother did not tell him since he would be managing his father`s affairs. The fact that he entered a caveat against Christina Lee extracting the order soon after his appointment to the Committee clearly indicated that he was appraised of the affairs of the estate.

We are of the view that the respondent`s conduct subsequent to his appointment amounted to a representation that he was not disputing the validity of the agreement. He was appointed a joint administrator with Christina Lee on 28 July 1995, though the order was not extracted until 13 September 1996. By 29 September 1995, the respondent was fully appraised of the fact that the appellants had incurred substantial expenditure in the appeal and in Suit 1182/94. They continued to incur additional expenditure in defending Suit 191/92 and in maintaining the property to prevent further trespassing until June 1998. The respondent undoubtedly knew that all these acts were done on the faith of the validity of the agreement. The respondent did nothing to dispel that notion. Instead, he stood by while the appellants continued to incur expenditure thinking that they would eventually obtain title to the property. In fact, the impression created by his conduct was that the agreement was binding as his solicitors continued to update M/s Pereira & Tan on the progress of the application for the extraction of the grant of administration, which was a necessary condition to be fulfilled under the agreement. Bearing in mind that the respondent was represented by solicitors throughout this period, it is not unreasonable to assume that he had been advised as to the legality of Christina Lee`s acts. In such circumstances, the respondent was under a duty to inform the appellants that he did not intend to ratify the agreement. It is significant that soon after the respondent and his wife were appointed to be the Committee for his father on 10 August 1994 they lodged a caveat in the probate application to prevent Christina Lee from extracting the grant. Yet the respondent took no steps even after the order was granted on 28 July 1995 appointing him and Christina Lee as joint administrators, to inform the appellants that he would not accept the agreement and that the appellants should not continue to incur further expenses in safeguarding the property. His failure to do so is a clear representation that everything was in order.

We are unable to comprehend the respondent`s argument that the appellants had suffered no detriment as a result of such representation. We are not concerned at all with the question of whether the appellants had struck a commercially viable deal by entering into the agreement. In our judgment, the appellants had relied on the respondent`s silence and had continued to incur expenditure towards the preservation of the property which they would not otherwise have done. That was the detriment they suffered. In this regard, we found the following passage from Spencer Bower and Turner: ***The Law Relating to Estoppel by Representation*** (3rd Ed, 1977) at p 111 instructive:

> *It is further to be noted that a representee is deemed to have altered his position, not only when he has adopted a positive course of action which he would not have adopted but for his belief in the truth of the representation, but also when he has abstained from taking measures for his protection, security or advantage which he had in contemplation, and which, but for the representation, he would have taken; or* ***when he has persisted in a line of conduct which he would have abandoned or was on the point of abandoning****. [Emphasis added.]*

Having carefully considered all the circumstances, we are satisfied that in this case the elements needed to be fulfilled to raise estoppel have been satisfied and accordingly we find that the respondent is estopped from asserting that the agreement does not bind the estate.

Judgment

Accordingly, we would allow the appeal with costs here and below. As the appellants have succeeded on only one out of two main issues canvassed, we order that they be entitled to half costs. There shall be the usual consequential orders.

Outcome:

Appeal allowed.