

Re Yeh Ee Swan
[2003] SGHC 257

Case Number : OS 426/2003, SIC 5549/2003
Decision Date : 23 October 2003
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Roy Yeo (Chia Yeo Partnership) for applicant
Parties : —

Mental Disorders and Treatment – Mental disorders and treatment act – Order of Court appointing husband as Committee of the Person and Estate of his wife – Whether order covers the opening and closing of bank accounts in his wife's name

1 This is an ex-parte application by way of a summons-in-chambers by Tan Poh Sua for an order authorising him to manage and operate three POSB bank accounts that are in the name of his wife Yeh Ee Swan, and also to open a new account in the name of 'Committee of the Person and Estate of Yeh Ee Swan'. Tan Poh Sua had applied by Originating Summons 426 of 2003 under the Mental Disorders and Treatment Act (Ch 178) to declare his wife a person of unsound mind under the Act, and for him to be appointed the 'Committee of the Person and Estate' of his wife. The wife is 34 years old and is in a persistent vegetative state, a condition that renders her incompetent and incapable of managing herself and her estate.

2 Originating Summons 426 of 2003 was heard in the High Court on 4 April 2003. An order in terms of the application was granted by the judge. On the basis of that order, extracted by the solicitors for the applicant on 14 April 2003, Tan Poh Sua requested the POSB bank to close the three accounts in the name of his wife, and to open a new account in his name, as Committee of the Person and Estate of Yeh Ee Swan. The bank refused his request unless he obtains a court order specifically to that effect, that is, in terms of the summons-in-chambers now before me. The bank is not a party and its reasons for refusal can only be gleaned from a letter from its solicitors Khattar Wong & Partners dated 25 September 2003 to the solicitors of Tan Poh Sua. The relevant passages are found in paragraphs 5 to 6 of the letter which I now reproduce in full:

1. As you are aware, we act for DBS Bank Limited, and we refer to your letter to our clients dated 12 September 2003.

2. We regret to inform you that our clients are unable to bear your client's costs for making the application entered Summons-in-Chambers No. 5549/2003/C pursuant to Originating Summons No. 426/2003/M.

3. We would also like to add that our clients cannot be made a party to the application as there are no provisions in the Rules of Court to allow them to be made a party. In particular, Order 15 of the Rules of Court is inapplicable.

4. We have on 19 September 2003 attended with your Mr Roy Yeo at the adjourned hearing before the Honourable Justice Choo Han Teck to ascertain the status of the matter and the learned judge has adjourned the matter to a date to be fixed before him. As there is no necessity for our clients to be present at the next hearing, we will not be attending the same.

5. If it is of any help at all, we have on previous occasions made applications under the Mental Disorders and Treatment Act (Cap 178) for clients of ours (not DBS Bank Limited) to appoint a committee of person and estate and we had expressly

asked the court for specific powers which the committee could exercise. One such power which we have applied for and obtained is the power to operate CDP accounts and bank accounts.

6. We are of the view that there cannot be any objection to the court granting you an order in terms of your application. Such an order can be made without the need for our clients or any other party to be joined in the application.

7. Our clients are a reputable bank which is subject to, amongst other things, the supervision of the Monetary Authority of Singapore. Accordingly, they cannot act in respect of a customer's account other than in strict accordance with that customer's instructions or mandate, or otherwise in accordance with an order of court.'

3 That letter carried the names of two solicitors. A bank will not, in the normal course of business allow a man to operate his wife's accounts with the bank unless a court order permits him to do so, but in this case it need only read the Order of Court dated 4 April 2003 to see that Tan Poh Sua was ordered to be made 'Committee of the Person and Estate of Yeh Ee Swan'. If the bank does not understand the meaning and effect of that order, and it seems that it does not, then it must seek the advice of its solicitors, which it did. Unfortunately, the solicitors appeared merely to have taken instructions instead of rendering advice. I am therefore obliged to explain the effect of the order of 4 April 2003. That order means that Tan Poh Sua had been appointed the Committee of the Person and Estate of Yeh Ee Swan and may henceforth act on her behalf and in her stead in all her matters and affairs, and that included the right to manage and operate all her bank accounts including her accounts with the POSB bank. For the avoidance of doubt, it means that the application by way of this summons-in-chambers is unnecessary and wrong. From the letter of 12 September 2003 to the solicitors of the POSB bank, the solicitor for Tan Poh Sua, Mr Roy Yeo, informed them that I was of the view that the present application was unnecessary. Their response (from their letter of 25 September) was to disregard Mr Yeo entirely.

4 Reverting to the application, although the reasons why the general order of 4 April 2003 is adequate are obvious, I cannot, in present circumstances, take for granted that they will be readily understood. Hence, I should now go further and explain that a 'generally worded' order such as 'Tan Poh Sua is appointed the Committee of the Person and Estate of the said Yeh Ee Swan' under the Act is adequate, and that a specific order is not necessary, because –

1. The general words are intended to cover, and are clear enough to cover specific purposes such as the present. The court should not be asked to approve each and every transaction the Committee intends to carry out in discharge of its duties and functions; and

2. If a customised court order is required for every specific purpose, the committee of the person will be put to unnecessary work, and the estate to unnecessary expense. Some such persons and estates are financially poor. The poorer the estate the greater the need to spare it of such unnecessary expenditure.

5 Yeh Ee Swan, the person on whose account the application was made is caught in an utterly unfortunate position. The POSB bank refuses to let her committee discharge its function unless I grant an order specifically to that effect. But for the reasons I have given above, it would be wrong in principle to grant the application. I therefore dismiss this application with written grounds in the hope that the solicitors for the bank will get it right this time. If not, I can be more explicit, though not necessarily more polite.

6 Finally, I ought to address one more issue in regard to this application, and that concerned

Mr Yeo. In the originating summons he prayed for, *inter alia*, 'an inquiry to be held as to whether the abovenamed Yeh Ee Swan is or is not of unsound mind and incapable of managing herself and her affairs'. He then prayed for an order that service on Yeh be dispensed with, and that she need not appear to attend the inquiry. His third and last substantive prayer was for an order that Tan Poh Sua be appointed the Committee of the Person and Estate of the said Yeh Ee Swan. When the judge who heard the originating summons granted an 'order in terms' she clearly did not intend that the order of court be extracted verbatim because prayer one would be granted only for the inquiry to proceed. The court's third order implicitly meant that the subject Yeh Ee Swan had been found to be mentally incompetent and incapable of managing her affairs - otherwise the third order would not have been made. Thus, Mr Yeo ought to have added a prayer after prayer 1 to the effect that the court do find the said Yeh Ee Swan to be of unsound mind and incapable of managing herself and her affairs.

The application is, accordingly, dismissed.