Re Estate of Tan Kow Quee (alias Tan Kow Kwee)
[2007] SGHC 19

Case Number : OS 995/2006

Decision Date : 12 February 2007

Tribunal/Court : High Court

Coram : Sundaresh Menon JC

Counsel Name(s) : V Ramakrishnan (V Ramakrishnan & Co) for the plaintiffs; L F Violet Netto (L F Violet Netto) for the defendants

Parties : —

Limitation of Actions – Equity and limitation of actions – Doctrine of laches – Whether claim by beneficiary against personal representative may be barred by doctrine of laches where unconscionability on beneficiary's part existing – Applicable principles

Limitation of Actions – Particular causes of action – Estates of deceased – Whether limitation period under s 23(a) Limitation Act applying to claim concerning real estate – Whether s 22(1)(b) Limitation Act excluding application of limitation period – Sections 2(1), 22(1)(b), 23(a) Limitation Act (Cap 163, 1996 Rev Ed)

Limitation of Actions – When time begins to run – Whether beneficiary may stand by indefinitely and take no steps to assert claim on ground that time bar inapplicable because administration remaining uncompleted even though right to receive share or interest in estate accruing

12 February 2007 Judgment reserved.

Sundaresh Menon JC:

Introduction

1 The facts of this case are somewhat unusual in that they concern the administration of the estate of a gentleman, Mr Tan Kow Quee ("the deceased") who died intestate just over 50 years ago on 10 October 1956. The deceased left five children but three of them, Tan Yee Tam, Tan Liang Quee and Tan Tong Quee, have since passed away. The two children who are still alive today are the plaintiffs in these proceedings, Tan Seet Kwee and Tan Quee Neo. The deceased's wife had pre-deceased him and Letters of Administration for the estate were granted on 14 January 1957 to Tan Yee Tam and Tan Liang Quee. When Tan Liang Quee passed away on 12 July 1988, Tan Yee Tam remained as the sole administrator of the deceased's estate until 1994 when he appointed his wife Tan Whay Eng, who is the 1st defendant before me, as a co-administratrix. On 17 January 2002, Tan Yee Tam passed away and the 1st defendant on 2 June 2003 pursuant to an order of court, appointed their son Tan Khim Heng, who is the 2nd defendant before me, as a co-administrator of the deceased's estate.

The factual background

2 It was not in dispute that:

(a) The deceased's assets at the time of his death consisted of a bank account with a balance of $5,343.61 and a residential property now known as 2 Wiltshire Road, Singapore 466378 ("the property") and valued at that time at $4,000;

(b) The deceased's funeral expenses amounting to $467.18 were settled;

(c) The value of the estate at that time nett of expenses was $8,876.43;

(d) There had been at least a partial distribution, to some of the beneficiaries, of the cash balance at the bank; and

(e) The 1st defendant and her family have occupied the property at all material times.

3 Save as aforesaid, most other factual points were disputed. The plaintiffs (who were supported in this application by the next-of-kin of Tan Liang Quee and Tan Tong Quee) claim that the property and a part of the cash balance in the bank account were not distributed by Tan Yee Tam. By the present proceedings, they seek a declaration that the property forms a part of the deceased's estate and they further seek an order of sale in respect of the property and consequential orders for the proceeds to be distributed.

4 The plaintiffs' principal factual contentions may be summarised thus:

(a) The administration of the deceased's estate had not been completed at the time of Tan Yee Tam's death;

(b) The property had been occupied by the 1st defendant and her family without any payment of rent since 1956;

(c) The deceased's funeral expenses amounting to $467.18 were initially met by the plaintiffs' uncle and were then charged to the estate;

(d) The same uncle instructed Tan Yee Tam to distribute the cash in the bank account but this was only partially carried out;

(e) The property was not taken into account at the time of the distribution;

(f) Tan Yee Tam and his wife were evicted from the property by the deceased during his lifetime but they returned after his death. There was friction among the family members allegedly generated by Tan Yee Tam and the 1st defendant;

(g) The subject of the property was brought up with the 1st defendant after the death of Tan Yee Tam in 2002 but she brushed this aside;

(h) The plaintiffs are unaware of any renovation to the property having been done by Tan Yee Tam or by the defendants during the time they have been in occupation.

5 Further, one Jenny Low, whose deceased husband was the son of Tan Liang Quee, deposed that she had learnt from her late husband that his father had only had a partial cash distribution made to him. It was not stated when this had taken place. She also referred to some correspondence between Tan Liang Quee and the Housing and Development Board ("HDB") where the former had stated that he had a one-fifth interest in the property. The HDB then granted him an exemption from certain provisions of the Housing and Development Act (Cap 271, 1970 Rev Ed) on the basis that he could not "recover [the interest in the property] for [his] own use".

6 It is significant that there is no assertion in any of the affidavits filed on behalf of the plaintiffs that the subject of the property had been raised or discussed with the defendants or with Tan Yee Tam at any time between 1956 and 2002. Further, the evidence before me suggests that the matter was first raised in writing when the plaintiffs' solicitors wrote to the 1st defendant on 17 February 2006. There is no documentary evidence to suggest that any steps had been taken prior to this, by the plaintiffs or any of those claiming to be beneficiaries, to require the defendants or Tan Yee Tam to distribute their claimed share in the property.

7 As against this, the principal factual contentions advanced on behalf of the defendants may be summarised thus:

(a) The 1st defendant married Tan Yee Tam in 1951. They lived at the property with the deceased and with Tan Yee Tam's siblings.

(b) Tan Liang Quee and Tan Quee Neo got married and moved out. Then in 1956, the deceased passed away. Shortly after that Tan Tong Quee collected his share of the deceased's estate and moved out.

(c) The 1st defendant stated that she had been informed by her husband, Tan Yee Tam that each of his siblings had received their share of the estate in cash. She also produced copies of letters addressed to Tan Tong Quee, Tan Liang Quee and Tan Seet Quee which indicated that there had been a distribution of certain sums and in each case stating that the "amount was claimed by me in full, being the share which was divided equally … from the estate of [the deceased]". One of these letters was addressed to Tan Seet Kwee, the 1st plaintiff, who did not deny the authenticity of the letter or that it had been sent but merely made the following observation:

> With regard to the 3 receipts … that (sic) appears to be unsigned unwitnessed and undated and therefore have no evidentiary value but in any event this only has reference to the cash … and nothing to do with the property.

(d) The property continued to be occupied by Tan Yee Tam and his family. Substantial renovations were carried out in 1977 and in 2004 entailing expenditure of $30,000 and $90,000 respectively. Although no invoices were produced, photographs of the premises were included in the evidence before me and it was plain that reasonably substantial expenditure had been incurred at some stage. It may be noted that the property had been described as an "attap house" in earlier documents and the photographs plainly show that it could no longer be described as such.

(e) The estate had been distributed. The defendants contend that it is untenable to suggest that Tan Yee Tam had not distributed the estate given the passage of time prior to the present proceedings without any action being brought to advance a claim for further distribution. Further, until his death in 1988, Tan Liang Quee had been a co-administrator. No suggestion had ever been advanced throughout those years to suggest that the beneficiaries were entitled to anything more than they had been paid.

(f) Instead the issue was raised for the first time after the death of Tan Yee Tam and Tan Liang Quee.

(g) As to the declaration made by Tan Liang Quee to the HDB, this was done to obtain the

relevant exemption given that as a co-administrator his name had been registered against the property.

8 In approaching the factual issues in the case it bears noting that the burden of proof is upon the plaintiffs to make out their case. In particular, the plaintiffs bear the burden of proving that the property remains a part of the estate and is liable to be distributed. Assuming they succeed in this, then the next issue is whether the claim is nonetheless barred by virtue of any applicable provision in the Limitation Act (Cap 163, 1996 Rev Ed) and/or by virtue of the equitable doctrine of *laches*. I turn to consider each of these issues.

Does the property form a part of the estate?

9 The plaintiffs rely upon the fact that at the time of the deceased's passing away, the property clearly formed a part of his estate. That much is beyond dispute. However, beyond that there is no direct evidence squarely on the point and one is then left to consider what proper inferences may be drawn from the objective facts. The relevant facts are these:

(a) The 1st defendant and her family have occupied the property without challenge or interruption for at least 46 years (assuming one accepts the plaintiffs' contention that the matter was raised with her orally after Tan Yee Tam's death) or 50 years if one goes on the basis of the documents;

(b) For much of that time, there was a co-administrator from a different branch of the family i.e. Tan Liang Quee, and there is nothing to suggest that at any time he challenged the claimed interest of Tan Yee Tam and his family in the property. This is especially significant if, as the plaintiffs allege, there were tensions between Tan Yee Tam's family and the others;

(c) Some distributions did take place. However, the evidence did not establish with any precision just what was distributed, when, to whom and on what basis. Yet, no steps appear to have been taken to assert any rights in respect of the property at any time in the context of these distributions, or for that matter, throughout the period I have referred to at (a) above;

(d) The issue was first raised after the death of both the original administrators of the deceased's estate; and

(e) A substantial sum of money has been expended by the 1st defendant's family on the property.

10 In my judgment, the proper inference that is to be drawn from these facts is that the property had been taken into account in a consensual arrangement between all the children of the deceased. The utter lack of any steps having been taken by any of the beneficiaries to assert their claims for such a long period of time renders it highly improbable that these rights had not been settled. It is significant that the issue was first raised after the death of the original administrators. No adequate explanation has been given by the plaintiffs for their failure to act all these years.

11 This inference is consistent also with the copies of the letters I have referred to at [7c] above. I find it significant that the 1st plaintiff did not deny the authenticity of the letter that was allegedly sent to him. His principal demurrer was to state that it had no evidentiary value because it was not signed or dated or witnessed but this I do not accept given that the authenticity of the document was not challenged. He also contended that this referred only to the cash portion of the estate but that is not the plain interpretation of the document.

12 Mr Ramakrishnan, who appeared for the plaintiffs, submitted that the fact that Tan Yee Tam had appointed his wife as a co-administratrix in 1994 and that she in turn had appointed her son as a co-administrator in 2003 suggested that they considered there were still residuary interests to be distributed.

13 I accept that this was odd but not so as to displace the conclusion which I think properly follows from the objective facts. Furthermore, the fact that the defendants did incur substantial expenditure on the property is inconsistent with their harbouring such a belief as contended by Mr Ramakrishnan. It is relevant in this connection, also to consider the level of awareness of legal procedures that the parties in question were likely to have had at the relevant time.

14 I make one further observation in passing. There is a suggestion in the second affidavit filed by the plaintiffs that the 1st defendant had been avoiding the sale of the property for some 12 years. To the extent this was an assertion that the subject had been raised with the 1st defendant as early as 1994 I note this is a bare assertion tied to the time of her appointment as a co-administratrix. In my view, this is plainly untenable and I reject it because the evidence of those giving evidence in support of the plaintiffs' case is that they had been unaware of the 1st defendant's appointment as a co-administratrix until after these proceedings had been commenced. It was also inconsistent with the original averment in the first affidavit of the plaintiffs to the effect that the issue was first raised when Mr Ramakrishnan wrote to the defendants on 17 February 2006. The only other reference to any direct communication on this issue between the parties is found in the second affidavit where it is suggested that it was raised after Tan Yee Tam's death in 2002.

15 For completeness, I mention one final point. I have concluded that the proper inference to be drawn from the facts presented to me is that the property had been taken into account in a consensual arrangement between the children of the deceased, which settled the rights of all the beneficiaries to the estate (see [10] above). This means that some disposition of the equitable interests of the beneficiaries had to have occurred. Any such disposition would have had to be in writing signed by the person disposing of the same for it to be enforceable at law: see s 7(2) of the Civil Law Act (Cap 43, 1999 Rev Ed). There was no such evidence of this before me. However, equity, it is said, will not allow the statute to be used as an instrument of fraud. To mitigate the rigour of the requirement of writing the courts have "invariably taken a pragmatic approach in recognising the applicability of the doctrine of part performance" (*per* V K Rajah JC, as he then was in *Midlink Development Pte Ltd v The Stansfield Group Pte Ltd* [2004] 4 SLR 258 at [66]). This approach aims to thwart unconscionable behaviour. In the present case, the defendants have occupied the property without challenge or interruption for at least 46 years and there has in fact been some distributions of the estate. In my judgment, these two facts would have sufficed to evidence part performance. Neither party in fact raised this point in the course of the proceedings. I therefore say no more about this save to observe that having regard to my ruling on the issue of *laches* below, this point would have made no difference to my conclusions in any event. Accordingly, in my judgment, the plaintiffs' claim fails on the first ground. Nonetheless, in case I am wrong on this, I consider the remaining issues.

The position under the Limitation Act

16 The plaintiffs' case is founded upon their rights as alleged beneficiaries to the estate of the deceased under the Intestate Succession Act (Cap 146, 1985 Rev Ed). The circumstances of the present case give rise to an anterior issue, namely, whether such a claim is barred by virtue of the provisions of the Limitation Act. The relevant provisions for this part of the discussion are ss 2(1),

22(1)(b) and 23(a) of the Limitation Act and for convenience, I set these out:

> 2(1) "Personal estate and personal property" do not include land or chattels real;
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> **Limitations of actions in respect of trust property.**
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> 22. (1) No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action-
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> …
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> (b) to recover from the trustee trust property or the proceeds thereof in the possession of the trustee, or previously received by the trustee and converted to his use.
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> …
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> **Limitation of actions claiming personal estate of deceased person.**
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> 23. Subject to section 22(1), no action -
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> (a) in respect of any claim to the personal estate of a deceased person or to any share or interest in the estate, whether under a will or on intestacy, shall be brought after the expiration of 12 years from the date when the right to receive the share or interest accrued; …

17 The scheme of these provisions is that s 23(a) prescribes a limitation period of 12 years in respect of certain claims under a will or on intestacy but that is subject to s 22(1) which excludes the applicability of *any* limitation period in the applicable circumstances.

18 Mr Ramakrishnan, who appeared for the plaintiffs submitted in essence that:

(a) The limitation period under s 23(a) had no application to real property as opposed to other property;

(b) In any event, the relevant period of limitations did not bar the claim because it would only start to run once the estate had purportedly been completely distributed; and

(c) In any event the limitations period did not apply because it was excluded by the operation of s 22(1)(b).

19 Ms Violet Netto who appeared for the defendants took issue with all the three forgoing contentions.

20 I start with Mr Ramakrishnan's first argument. The short point is that this is correct in my view given that s 2(1) of Limitation Act makes it clear that "personal property" as used in that statute does not include land or chattels real. Further, Mr Ramakrishnan cited in support of his contention the recent decision of the English Court of Appeal in *Green v Gaul* [2006] EWCA Civ 1124. That concerned an action seeking, *inter alia*, the removal of an administratrix of an estate on the basis that despite having held that office for about 11 years, she had not provided any accounts, completed the administration or made any distributions. There was a claim for an account of the administration. The defence raised, among other things, a plea of limitations as well as relief under the doctrine of *laches*.

21 Sections 21 and 22 of the English Limitation Act are *in pari materia* with ss 22 and 23 of our statute. Chadwick LJ who delivered the judgment of the court traced the legislative history behind the preservation of language in the English Limitation Act which imposed a limitation only in the case of the personal estate at [23] and [24] before concluding as follows at [24] and [25]:

> 24 … It is impossible to suppose that, when section 20 of the Limitation Act 1939 was enacted – and when that section was re-enacted as section 22(a) of the Limitation Act 1980 – the legislature did not appreciate that the Administration of Estates Act 1925 continued to draw a distinction between real estate and personal estate in the hands of the personal representative of an intestate. And it is impossible to suppose that, with that knowledge, the legislature intended the words "any claim to the personal estate of a deceased" to mean "any claim to the real and personal estate of the deceased": indeed, section 38(1) of the 1980 Act defines "personal estate" in terms which plainly exclude real estate. Those conclusions are unaffected by the amendments to section 33 of the 1925 Act which were introduced by section 5 of the Trusts of Land and Appointment of Trustees Act 1996.
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> 25 The true position, as it seems to me, is that it was not contemplated by the legislature that section 22(a) of the 1980 Act would apply to claims against the personal representative of an intestate in respect of real estate which remained unsold or (as to claims in respect of personal estate) at a time when the estate remained unadministered – in the sense that the costs, funeral and testamentary and administration expenses, debts and other liabilities properly payable thereout had not been paid and any pecuniary legacies provided for.

22 Ms Netto submitted that the portion of Chadwick LJ's judgment at [25] which I have quoted above should be understood as referring only to real property in an estate that remained unadministered. I disagree. In my judgment, it is clear on the face of s 23(a) of the Limitation Act read with the definition of the term "personal estate" in s 2(1) of the same statute that the limitation period in question does not apply to a claim concerning real estate that is part of an estate. This is in fact wholly borne out by the decision of the English Court of Appeal in *Green v Gaul*. Chadwick LJ's reference to an estate that remained unadministered relates to claims in respect of personal estate.

23 That makes it unnecessary to consider the next two arguments raised by Mr Ramakrishnan. However, as these points were argued in full, I set out my views on them. In my judgment, Mr Ramakrishnan is not correct in his second argument as I have set it out at [18b] above. Mr Ramakrishnan relied in support of his argument on cases that suggested that the limitation period did not begin to run until such time as the beneficiaries had an accrued right to claim any share in the estate. In this regard, he relied in particular on the following passage from *Green v Gaul* at [28]:

> … [The] better view is that the period under section 22(a) of the 1980 Act (in cases to which that section applies) will not begin to run until the administrator has paid the costs, funeral and testamentary and administration expenses, debts and other liabilities properly payable out of the assets in his hands, and provided for the payment of any pecuniary legacies. It is not until then that he is in a position to distribute the residuary estate to those entitled under section 46 of the Administration of Estates Act 1925; because it is not until then that "the residuary estate of the intestate" can be identified – section 33(4) of that Act. That is not, of course, to say that a beneficiary has no remedy against an administrator who delays in getting in the assets and paying the administration expenses and debts: it is only to say that, in such a case, time does not run against the beneficiary under section 22(a) of the Limitation Act 1980.

24 In my judgment, that passage merely reiterates what is already set out in s 23(a) of the Limitation Act, namely that the period of time will only start to run "from the date when the right to

receive the share or interest accrued". No such right accrues until the funeral, testamentary and administration expenses have been paid. However, that does not mean that in a case where such expenses have been paid and the right to receive the share or interest in question has therefore accrued a beneficiary can stand by indefinitely and take no steps to assert his claim and then later maintain that the time bar is inapplicable because the administration allegedly remains uncompleted. Not only is this inconsistent with the terms of s 23(a), it is also untenable because taken to its logical conclusion, it would mean such actions would never be caught by s 23(a). I say this because it is inherent in every such claim that a portion of the estate remains undistributed and hence that the administration remains uncompleted. In my judgment, this would render the provision otiose and I consider such an argument to be without merit.

25 I turn to Mr Ramakrishnan's third argument. In my judgment, this is correct in that the statute expressly provides that the limitation prescribed in s 23(a) is subject to s 22(1). Section 22(1)(b) expressly provides that no period of limitation will apply to an action by a beneficiary of a trust against the trustee seeking to recover trust property in the possession of a trustee. The Limitation Act provides in s 2(1) that "trust" and "trustee" have the same meaning as in the Trustees Act (Cap 337, 2005 Rev Ed) and the latter statute provides that "trustee" includes a personal representative. On the face of the statutory provision, the plaintiffs, in my judgment, would be able to rely on s 22(1) to defeat any reliance by the defendants on the limitation period prescribed by s 23(a). This is also consistent with the decision in *Green v Gaul* at [32].

26 Accordingly, I am satisfied that no defence avails the defendants under the Limitation Act.

Relief under the doctrine of laches

27 That by itself, does not resolve the concerns arising from the delay in bringing this action. It is relevant here to have regard to s 32 of the Limitation Act which provides as follows:

> Nothing in this Act shall affect any equitable jurisdiction to refuse relief on the ground of acquiescence, laches or otherwise.

28 In *British Malayan Trustees Ltd v Sino Realty Pte Ltd* [1988] 2 SLR 495 at [64], Lai Siu Chiu J held that by virtue of s 32 of the Limitation Act, it would be necessary to consider separately whether a claim not caught by a statutory time bar was nonetheless barred by the doctrine of *laches*. In my judgment, this is correct.

29 I note that in *Patel v Shah* [2005] EWCA Civ 157 the English Court of Appeal held at [22] that even if no period of limitation applies to a given claim (as I have found to be the case here) the court retained the equitable jurisdiction to refuse relief on the grounds of *laches*. This was followed in *Green v Gaul*: see at [39] and [40] of that judgment. The point is well made by Chadwick LJ who noted as follows at [33]:

> Section 36(2) of the Limitation Act 1980 provides, in terms, that:
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> > "Nothing in this Act shall affect any equitable jurisdiction to refuse relief on the ground of acquiescence or otherwise."
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> It is not, I think, in doubt that "acquiescence" in that context includes conduct which would lead a court of equity to refuse relief on the grounds of *laches*. At first sight, therefore, it is difficult to see how an express provision in the 1980 Act that no period of limitation prescribed by the Act shall apply to the claim – or, more generally, the absence of any provision in the Act which does,

on a true analysis, prescribe a period of limitation in respect of the claim – can have the effect of excluding a defence of *laches* if, on the facts, such a defence would otherwise be available.

30 In my judgment, this is correct and to the extent it may be suggested that authorities such as *Ahminah v Meh and Pakir* [1892] SSLR 1 and *In re Pauling's Settlement Trusts* [1963] 1 Ch 303 at 353 point the other way, I choose not to follow those cases. In my judgment, not only is the point not adequately reasoned in those cases, but the logic underlying the decision in *Green v Gaul* on this issue and what I have said at [28] to [30] provide a sufficient basis for the view I have taken.

31 I should note in fairness to Mr Ramakrishnan that he did not appear to dispute that the doctrine of *laches* was applicable in principle. Rather, his submissions were directed at the contention that the defendants ought not to be accorded any relief under the doctrine in the circumstances of the present case and it is to this I now turn.

32 It is helpful to begin with a brief survey of the ambit of the doctrine. The learned editors of *Snell's Equity* (John McGhee Gen Ed) (Sweet & Maxwell, 31st Ed, 2005) note as follows at 101-102 (omitting the footnotes for convenience):

> (c) *Claims outside the Statute.* The principle which equity applies to cases not covered by a statutory period have been stated thus:
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> > "Now the doctrine of laches in courts of equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases lapse of time and delay are most material."
>
> Laches essentially consists of a substantial lapse of time coupled with the existence of circumstances which make it inequitable to enforce the claim. Delay will accordingly be fatal to a claim for equitable relief if it is evidence of an agreement by the claimant to abandon or release his right, or if it has resulted in the destruction or loss of evidence by which the claim might have been rebutted, or if the claim is to a business (for the claimant should not be allowed to wait and see if it prospers), or if the claimant has so acted as to induce the defendant to alter his position on the reasonable faith that the claim has been released or abandoned. But apart from such circumstances delay will be immaterial. There can be no abandonment of a right without full knowledge, legal capacity and free will, so that ignorance or disability or undue influence will be a satisfactory explanation of delay.

33 This passage suggests a confluence of two factors: delay and the existence of circumstances that make it inequitable to enforce the claim. A claimant in equity is bound to pursue his claim without undue delay. Equity, it is said, aids the vigilant and not the indolent. This stems from the fact that as much as equity is found in flexible applications of the law designed to secure a just result, it is apt to seek recourse in equity when the conscience is pricked and where no other innocent interest is affected. The longer the delay, the less likely are these considerations to be valid. The basis for the equitable intervention of the court is ultimately found in unconscionability. The following passage from the judgment in *Green v Gaul* at [42] is instructive:

> The modern approach to the defences of laches, acquiescence and estoppel was considered by this Court in *Frawley v Neill* ([2002] CP Reports 20, but otherwise unreported, 1 March 1999) to

which reference was made in the judgement of Lord Justice Mummery in *Patel v Shah* [2005] EWCA Civ 157, [32]). After reviewing the earlier authorities – and, in particular, observations in *Lindsay Petroleum v Hurd* (1874) LR 5 Privy Council 221, 229 and *Erlanger v New Sombrero Phosphate Co* (1878) 3 App Cas 1218, 1279 – Lord Justice Aldous (with whom the other members of the Court agreed) said this:

> "In my view the more modern approach should not require an inquiry as to whether the circumstances can be fitted within the confines of a preconceived formula derived from earlier cases. The inquiry should require a broad approach, directed to ascertaining whether it would in all the circumstances be unconscionable for a party to be permitted to assert his beneficial right. No doubt the circumstances which gave rise to a particular result in the decided cases are relevant to the question whether or not it would be conscionable or unconscionable for the relief to be asserted, but each case has to be decided on its facts applying the broad approach."

34 In addition, I would refer to the following extracts from the judgment of Mummery LJ in *Patel v Shah* at [30], [31], [33] and [34].

> 30 I do not doubt that, in the general run of claims by a beneficiary against a trustee for the recovery of a beneficial interest in trust property, Mr Hodge's analysis is apposite. The key question is whether it applies to the trusts affecting the properties in this case, bearing in mind that these trusts arose, and are sought to be enforced, in a commercial context, not in the donative context of orthodox *inter vivos* and testamentary trusts, in which a beneficiary is not expected by anyone to do anything other than to receive the gift.
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> 31 As I have indicated, the deputy judge applied the principle stated by Lord Lindley in paragraph 23-20 in Lindley and Banks on Partnership, 18th ed. That principle is stated in a commercial setting: that of a partnership, the carrying on of a business with a view to profit. The deputy judge said it was applicable with equal force to the series of joint ventures of the kind undertaken between Greetflow and the defendants.
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> …
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> 33 … In the case of an ordinary trust by way of gift to trustees for the benefit of the beneficiaries, where the beneficiary is not required or expected to do more than receive what has been given for his benefit, it will obviously be extremely rare for laches and delay on the part of the beneficiary to make it unconscionable for that beneficiary to assert his claim to the beneficiary interest, or for the trustee to claim that he has been released from the equitable obligations that bind his conscience.
>
> 34 The general commercial setting of the particular facts of this case make it, in my view, a different kind of case from that of a beneficiary under a gift trust. …

35 Mr Ramakrishnan made two submissions on the strength of these authorities:

(a) That no defence of *laches* would lie in this case because it falls within the general run of claims by a beneficiary against a trustee for the recovery of a beneficial interest in trust property, and more particularly within the donative context of gifts where the beneficiary was expected to do nothing but receive the gift, which Mummery LJ appeared to suggest would not attract relief under the doctrine; and

(b) That in any case, applying the principle of unconscionability, nothing had been done by the plaintiffs to render it unconscionable to permit them to enforce their present claim.

36 While I understand the basis for Mr Ramakrishnan's arguments, in my judgment, they fail in the present case.

37 As to Mr Ramakrishnan's first contention, I do not regard as correct, the proposition that as a matter of principle a claim by a beneficiary against a personal representative could not be barred by the doctrine of *laches*. I note that in the passages from *Patel v Shah* that I have referred to, Mummery LJ while articulating some general principles did recognise at [33] that even in the case of a testamentary beneficiary the doctrine of *laches* could arise, albeit that it would be rare for it to make it unconscionable for that beneficiary to assert his claim. I further note that in *Green v Gaul* a different panel of the same court specifically considered and accepted the applicability of the doctrine in the context of a claim against an administratrix.

38 As to the second contention, I would observe that as noted in *Green v Gaul*, the inquiry into unconscionability is a broad-based one directed *at all the circumstances*. It will thus be relevant to examine the length of delay, the nature of the prejudice said to be suffered by the defendant, as well as any element of unconscionability in allowing the claim to be enforced. It is not an inquiry that is limited to ascertaining whether the claimant has done something that would render it unconscionable to permit the claim to proceed.

39 In that light, I turn to the facts before me and they are the following in particular:

(a) The action concerns the administration of the estate of a person who passed away some 50 years ago. The delay is a considerable one by any yardstick;

(b) At least partial distributions were made years ago. Those distributions may seem paltry today in the context of the huge appreciation in the value of the property over the last 50 years, but this must be viewed in the context of the time when the distributions were made;

(d) The subject of the property was not brought up by the plaintiffs until after Tan Yee Tam's death. It also does not appear to have been raised during the lifetime of Tan Liang Quee. This is unfair to the defendants who were reduced to relying upon what Tan Yee Tam had allegedly told the 1st defendant about the settlement of the estate. Further, the 1st defendant was unable to give direct evidence concerning the unsigned and undated copies of the letters allegedly recording the settlement of the shares of at least some of the beneficiaries; and

(e) The defendants had incurred substantial expenditure in renovating the property in the context of the plaintiffs having given no indication of any intention to claim anything more than they had already received.

40 In my judgment, this confluence of factors is sufficient to take this case outside the general run of claims by a beneficiary against a trustee for recovery of trust property. Further, I am satisfied that having regard to the fact the plaintiffs took no steps at all to assert any interest to the property or to bring any claim during the lifetime of Tan Yee Tam or Tan Liang Quee, it would be unconscionable to allow the claim to proceed since the defendants are hampered in their efforts to rebut the claim.

41 According, I am satisfied that the defendants are entitled to relief under the doctrine of *laches*.

42 In all the circumstances, I dismiss the action with costs to be taxed if not agreed.

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