

British and Malayan Trustees Ltd and Another v Chng Heng Tee (alias Cheng Kim Tee) and
Another
[2008] SGHC 2

Case Number : OS 1329/2007
Decision Date : 07 January 2008
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Edwin Tong and Colin Chow (Allen & Gledhill LLP) for the applicants; Kee Lay Lian and Melvin Lum (Rajah & Tann) for the claimants; Chelva Rajah SC and Han Kee Fong (Tan Rajah & Cheah) for 18 beneficiaries; Lai Kwok Seng (Lai Mun Onn & Co) for Koh Tek Heng; Lim Hock Seng in person
Parties : British and Malayan Trustees Ltd; Dr Irene Lim Kay Han — Chng Heng Tee (alias Cheng Kim Tee); Chng Kim Choo alias Chuan Heng Choo

Probate and Administration

7 January 2008

Choo Han Teck J:

1 Before me was an application by the present trustees (“the Applicants”) of the Will of Lim Yew Teok (“the Will”), seeking the Court’s directions as to whether 40 shares of the income of the residuary trust funds under the trust of the Will ought to fall into residue or whether it ought to devolve unto some other beneficiary, and if so, to whom and in what proportions.

Factual Background

2 There were originally 95 shares of the income of the residuary trust funds under the trust of the Will. At present, there are 93 shares remaining, as two shares have already fallen into residue. Through the years, Lim Chui Ngor (“LCN”) had come to hold 40 out of the remaining 93 shares of the income of the residuary trust funds. LCN passed away on 29 June 2006, leaving behind no surviving lineal descendents of the original residuary legatees. LCN was also unmarried and left no issue when she died. So the question arose as to what should happen to LCN’s 40 shares.

3 Madam Chng Heng Choo and Madam Chng Heng Tee (“the Chngs”) have made a claim for a portion of the 40 shares of the income of the residuary trust funds under the trust of the Will. The Chngs are not beneficiaries to any shares of the income of the residuary trust funds. They are the daughters of LCN’s grandfather, Chng Phee Lam and his second wife. As such, they are the half-blood paternal aunts of LCN.

4 The claim made by the Chngs has been opposed by Lim Cheng Chuan, Lim Hood Ewe and 16 others (“the Lims”) and a Mr Lim Hock Seng. The Lims are beneficiaries under the Will to a proportion of the 93 shares of the income of the residuary funds. The Lims are of the view that all 40 shares of the income of the residuary trust funds enjoyed by LCN should now fall into residue. The Applicants’ preferred view is that all 40 shares should also fall into residue but have indicated that should the court find otherwise, only 15 shares should not fall into residue if at all. And even if so, the said 15 shares should not devolve unto the Chngs. Finally, the Chngs on the other hand, take the position that only 25 out of the 40 shares should fall into residue while the remaining 15 shares should pass

directly to them.

5 By way of cl 6 of the Will, the remainder of Lim Yew Teok's estate was to be held by his trustees upon trust. The Will sets out the manner in which the shares of the income of the residuary trust funds should be distributed in the event of the deaths of any of the original residuary legatees. It is the effect and interpretation of cl 6 that was the issue before me.

Parties' Contentions

6 The position at law with regard to how clauses in wills are to be interpreted is clear and the parties were generally in agreement with the relevant principles. The dispute in this present case arises more in relation to the application of the law when looking to interpret cl 6 of the Will in question. As with most legal interpretations of such clauses, the extremes of subjectivity involved in this present case did not disappoint and parties opted for constructions that benefited their own relative positions this was to be expected. It is worthwhile noting that the Will has already been subjected to the interpretation of the courts on at least four separate instances.

7 The parties had come before me to resolve the destination of LCN's 40 shares. However, in essence, the issue was concerned with only 15 of the 40 shares. These 15 shares were passed unto LCN from the original residuary legatees (ie. through a first transfer) Lim Ah Kow passed ten shares and Chan Mek Tuan passed five. The Chngs claim that it is these 15 shares that should devolve unto them. The Chngs do not dispute that the remaining 25 shares, which came to be LCN's through means other than through the original residuary legatees (ie. through a second transfer or more) should fall into residue.

8 While the Lims take the view that all 40 shares should fall into residue, the Applicants have adopted two views. The Applicants' preferred view is that all 40 shares ought to fall into residue. However, the Applicants also accept that a second interpretation was possible. Under this second interpretation, the Applicants accept that the 15 shares which the Chngs are claiming, will not fall into residue even where there has been a complete failure of the stirps of the original residuary legatee so long as the deceased legatee is survived by a next of kin. In any case, the Applicants submit that even if the second interpretation is adopted, the 15 shares will devolve unto Koh Tek Heng, who is the closest surviving full-blood relative of LCN and not unto the Chngs.

9 Based on the above, it was thus only necessary for me to apply my mind to the question of whether the 15 shares which passed to LCN from the original residuary legatees should now fall into residue or devolve unto some other party, and if so, to whom.

Decision

10 For convenience, I shall set out the relevant portion of cl 6 of the Will that is the subject of contention in this matter:

*...to divide the balance of the income thereof into ninety five equal shares and pay the same to the legatees following (hereinafter called "my residuary legatees") or in the event of the death of any one or more of such legatees to the next of kin of such legatee or legatees so dead in accordance with the statutes of distribution **and** in the event of the death of any one or more of such next of kin as aforesaid then to the next of kin of such next of kin in accordance with the statutes of distribution **and only** in the event of the complete failure of the stirps of any one or more of my residuary legatees shall the shares of such original residuary legatee or legatees fall into residue."*

The portion of cl 6 relevant to the present application was interpreted by Ambrose J in *British and Malayan Trustees Ltd v Chng Kiat Leng & Ors* [1966] 2 MLJ 260 at 261. Ambrose J divided the clause in several sub-provisions as follows:

- The balance of the income of the residuary trust funds be divided into 95 equal shares to be paid to the Original Residuary Legatees;
- Sub-Clause 1: "...or in the event of the death of any one or more of such legatees to the next of kin of such legatee or legatees so dead in accordance with the statutes of distribution...";
- Sub-Clause 2: "...and in the event of the death of any one or more of such next of kin as aforesaid then to the next of kin of such next of kin in accordance with the Statutes of Distribution..."; and
- Sub-Clause 3: "...and only in the event of the complete failure of the stirps of any one or more of my residuary legatees shall the shares of such original residuary legatee or legatees fall into residue."

11 Ambrose J held that, the shares would pass from an original residuary legatee to a next of kin ("Sub-Clause 1") and then from the next of kin of the original residuary legatee to the next of kin of the next of kin of the original residuary legatee ("Sub-Clause 2"). It was only after the Sub-Clause 2 stage that the shares would have to pass unto a person who was not only a next of kin of the next of kin of the next of kin of the original residuary legatee but who was also a stirp: see *British and Malayan Trustees Ltd v Chng Kiat Leng & Ors* [1966] 2 MLJ 260 at 261.

12 In consolidating the points made above, first, it was pertinent that the clause made a distinction between "next of kin" and "stirps". The use of the two separate terms indicated that the testator's intention must be for the two terms to connote different meanings. In the present situation, my view is that the term "next of kin" was used generally here to encompass all blood relatives. However, the term "stirps", was used only in relation to **descendants** by blood. This interpretation is in line with the approach taken by Brown J in *British Malaya Trustee and Executor Co v Chng Phee Lam* [1948] MLJ 188, where it was stated at 189 that "stirps" in cl 6 "referred to is... clearly the **descendants** by blood of...". That is to say that while everyone in the family tree under the said Will can be someone else's next of kin, not everyone will be considered a stirp.

13 The Applicants' case is based broadly on 2 lines of reasoning. The first is that the 15 shares cannot devolve unto the Chngs because they are the daughters of the second wife of LCN's grandfather. As such, the Applicants point out that the Chngs are clearly not LCN's "descendants by blood". **Descendants** should be taken to mean someone directly down the line in the family tree, whom the Chngs are not.

14 The Applicants' second line of reasoning as to why the 15 shares should not devolve unto the Chngs, is that LCN is a "stirp" of one or more of the testator's residuary legatees. Hence, the Applicants submitted that the part of cl 6 that should apply in the present situation is "... **and only in the event of the complete failure of the stirps of any one or more of my residuary legatees shall the shares of such original residuary legatee or legatees fall into residue**". By their reasoning, since LCN was unmarried and had no children, it should follow that the 15 shares should fall into residue due to LCN's "complete failure".

15 Notably, the Chngs themselves have accepted that the above reasoning is correct but only insofar as the 25 shares are concerned. This was because LCN had derived them through a second

transfer (the Sub-Clause 2 stage) and on her death, the said shares should go to someone who was not only a next of kin but also a stirp. And consequent to LCN's complete failure, the 25 shares ought to rightfully fall into residue. However, the Chngs' case is that the other 15 shares which they claim, can devolve unto someone who was simply a next of kin and not necessarily a stirp as the said shares have only been through a first transfer (Sub-Clause 1 stage). The Chngs argue that as her aunts, they qualify as LCN's next of kin.

16 The reading of the cl 6 as submitted by the Chngs appears to be in line with the methodology adopted by Abrose J in *British and Malayan Trustees Ltd v Chng Kiat Leng & Ors* [1966] 2 MLJ 260. After having considered cl 6, I am of the view that it was also the correct approach despite the Applicants' disputation that the Chngs' construction brought about a disjunctive reading of the clause and was hence a wrong interpretation.

17 The clause as broken down by Ambrose J results in such an approach being taken. Further, it would also seem to be an appropriate way of dealing with the clause in a logical step-by-step method. As such, I determined that while 25 of the 40 shares fell into residue, the remaining 15 shares in question would accordingly devolve unto the Chngs – in the absence of any other better claim to the said shares.

18 In the circumstances, the Applicants, Mr Lim Hock Seng and the Lims are to bear the costs of this application.