IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2023] SGHC 347

Originating Application No 956 of 2023

Between

Donald Tan Boon Teck

… *Claimant*

And

Lum Shih Kai

… *Defendant*

GROUNDS OF DECISION

[Succession and Wills — Construction]
[Trusts — Trustees — Powers]
[Trusts — Variation — Inherent jurisdiction of court]

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v
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Christopher Tan JC:

1 This was an application by the Claimant ("**the Application**") for an order to complete the sale of a condominium apartment at 79 Farrer Drive ("**the Property**").[1] The Property was the main asset in the estate of the Claimant's late sister ("**the Testatrix**"), of which the Claimant was the sole executor and trustee. The Application was made to surmount an express restriction in the Testatrix's will ("**the Will**") prohibiting the sale of the Property within three years of her death.

2 I dismissed the Application and now provide the grounds of my decision.

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[1] Originating Application (HC/OA 956/2023) dated 18 September 2023 at para 2(1).

Background facts

3 The Testatrix passed away on 22 January 2023. The Will, which was dated 21 July 2000, named the Claimant and one other person as the executors and trustees of the Testatrix's estate. As that other person predeceased the Testatrix, the Claimant was left as the sole executor and trustee. According to the schedule of assets annexed to the grant of probate (issued to the Claimant on 29 May 2023), the Testatrix owned only two assets: (a) the Property, which was valued at $3.2m at the time of her death; and (b) a DBS account containing $3,712.73.

4 The Property was subject to a mortgage securing an overdraft loan owing from the Testatrix to United Overseas Bank Ltd ("**UOB**").[2] On 26 May 2017, UOB obtained an order ("**ORC 3359**") for the delivery of vacant possession of the Property to UOB, on account of the outstanding overdraft,[3] although it appears that UOB did not seek to enforce the order while the Testatrix was still alive.[4] Apart from the overdraft loan owed to UOB, the Testatrix also owed sums to the management corporation ("**the MC**") overseeing the condominium development in which the Property was situated, arising from unpaid fees levied for the condominium's management and sinking funds, as well as cumulative interest on these fees.[5]

5 Clause 8 of the Will empowered the executors to sell the Testatrix's immovable property, including the Property. Under the Will, the proceeds from such sales were to go towards the Testatrix's residuary estate, which (after

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2 Claimant's Affidavit dated 14 September 2023 at p 10.

3 HC/ORC 3359/2017 in HC/OS 420/2017.

4 Minute Sheet dated 30 October 2023 at p 1.

5 Claimant's Affidavit dated 14 September 2023 at pp 27–38.

payment of outstanding liabilities) was to be used to set up a Christian fund ("**the Fund**"). Pertinently, cll 8(a) and 8(i), contained an express prohibition against the sale of the Testatrix's immovable property within three years of her death, except in certain situations. For convenience, I reproduce the relevant parts of cl 8 below:

> 8. Subject to the payment of all my debts, legacies testamentary, funeral expenses and estate duty payable upon or by reason of my death and subject to the abovementioned bequests, I devise and bequeath upon trust all my remaining monies, shares, unit trusts, properties movable and immovable whatsoever and wheresoever situate (hereinafter called "my Estate") to my Trustees to carry out the directions, acts and conditions following:-
>
> a) to sell call in convert into cash as part of my Estate (***except that my Trustees will not sell [the Property] or any of my immovable property*** wherever situate ***within the first three years of my demise***), with the power to sell all or part thereof and to postpone at their discretion as they shall think fit, if possible to achieve a profit but without any liability for loss;
>
> b) with the proceeds from such sale or conversion and such of my Estate as is not disposed of to hold and set up a fund to be known as FLORENCE TAN [*ie*, the name of the Testatrix] CHRISTIAN EVANGELISM FUND (hereinafter referred to as "the Fund"), to be used for the propagation of the Gospel of the Lord Jesus Christ;
>
> c) The following shall comprise the management committee ("the Committee") responsible for the administration control and distribution of the Fund (as is herein in my Will described or set out):- [there were four members of the Committee: the Claimant and his three other siblings]
>
> …
>
> g) Monies required to be invested by the Fund may at the discretion of the Committee be applied or invested in fixed deposits with Banks and Finance Companies or in the purchase of such trustee approved stocks, funds, bonds, shares, securities or other investment of property of

> whatsoever nature and wheresoever situate as the Committee shall deem fit and proper.
>
> …
>
> i) ***Under no circumstances shall my Trustees or the Committee be empowered to sell [the Property] or any of my immovable properties, wherever situate, within 3 years of my demise, except***:-
>
> (i) when the property is compulsorily acquired by the Government; or
>
> (ii) the property is sold as part of an en-bloc sale of the whole project.
>
> [emphasis in bold italic added]

6 The Claimant claimed that the estate did not possess any cash to service either the outstanding mortgage to UOB or the debt owed to the MC, and thus decided that the only reasonable course of action was to sell the Property to pay off these liabilities and thereafter set up the Fund.[6] As such, the Claimant consulted his solicitors, who advised him that the restriction in cl 8 was of no benefit to the estate or the Fund and that it was advisable for the Property to be sold. The Claimant further averred that his solicitors advised him that in the event of a purchaser subsequently requesting for an order of court sanctioning the sale, an application for such an order could be made once the contract for sale had been signed.[7] The Claimant also held family meetings at which the Testatrix's family members agreed that the Property should be sold.[8]

7 Relying on his solicitors' advice, the Claimant granted the Defendant an option to purchase the Property ("**the OTP**"), at the price of $4.45m. The OTP was exercised by the Defendant on 4 August 2023, with the sale scheduled for

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6 Claimant's Affidavit dated 14 September 2023 at para 8.

7 Claimant's Affidavit dated 14 September 2023 at para 10(b).

8 Claimant's Affidavit dated 21 October 2023 at para 10(a).

completion on 1 November 2023. After the Defendant exercised the OTP, his solicitors noticed that the Testatrix was listed as the registered proprietor of the Property. The Defendant's solicitors thus queried about the Claimant's capacity to grant the OTP. The Claimant's solicitors responded by sending the Will to the Defendant's solicitors, whereupon the latter noticed the restriction on sale in cl 8 of the Will.[9] In light of this, the Defendant's solicitors repeatedly requested for the Claimant to obtain a court order sanctioning the sale.[10] It seems that the Defendant might have been rather concerned as he had obtained a housing loan facility to finance the purchase of the Property in part and, in the event of this facility being cancelled, he would have to pay a cancellation fee of 1.5% of the facility limit.[11]

8 The above events led to the Application, to which the Defendant was added notwithstanding his position that he did not want to be involved in these proceedings.[12] Nevertheless, during the hearing of the Application, the Defendant expressed his support for the Application.

Issues to be determined

9 There were no factual issues in dispute as between the Claimant and the Defendant. Both shared the "common objective" of seeking the court's sanction for completing the sale of the Property.[13] That being said, the parties raised somewhat different legal arguments in support of the Application.

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9 Defendant's Affidavit dated 29 September 2023 at para 7.

10 Defendant's Affidavit dated 29 September 2023 at paras 7, 8 and 10.

11 Defendant's Affidavit dated 29 September 2023 at para 17.

12 Defendant's Affidavit dated 29 September 2023 at para 18.

13 Defendant's Written Submissions dated 20 October 2023 at para 18(e).

10 The Claimant relied primarily on s 4 of the Conveyancing and Law of Property Act 1886 (2020 Rev Ed) ("**the CLPA**") as the statutory basis for granting the order sought. He placed much emphasis on the potential prejudice which would be occasioned to the parties if the Application was denied.

11 The Defendant, on the other hand, argued that the court could rely on its inherent jurisdiction to make the order sanctioning completion of the sale.[14] A significant portion of the Defendant's written submissions was also directed at persuading the court that the Defendant was wrongly joined as a party to the Application and that costs should be ordered against the Claimant for dragging him into these proceedings.

12 Distilling the Application to its essence yielded three issues for determination:

(a) the applicability of s 4 of the CLPA;

(b) whether the Application should be granted pursuant to the court's inherent powers; and

(c) whether the Application should be granted on the basis of s 56(1) of the Trustees Act 1967 (2020 Rev Ed) ("**the Trustees Act**").

Issue 1: The applicability of s 4 of the CLPA

13 Section 4 of the CLPA reads:

> **4.**—(1) A ***vendor or purchaser of land***, or their representatives respectively, ***may*** at any time or times, and from time to time, ***apply in a summary way to the court*** by originating application intituled in the matter of this Act, and ***in the matter of the contract of sale, in respect of*** any requisitions or objections, or any claim for compensation, or

[14] Minute Sheet dated 24 October 2023 at p 2.

> ***any other question arising out of or connected with the contract*** not being a question affecting the existence or validity of the contract.
>
> (2) The court shall ***make such order upon the application as seems just***, and shall order how and by whom all or any of the costs of and incident to the application shall be borne and paid.
>
> [emphasis added in bold and italics]

14 At the outset, I harboured doubts as to the relevance of this provision to the Application. The Claimant offered no authority for his assertion that s 4 of the CLPA empowered the court to override the terms of the Will and sanction the completion of the sale, proffering only the bald assertion that a "plain reading" of the provision showed this to be the case.

15 The Defendant, while supporting the Claimant's position that the court could (and should) sanction the sale, conceded that the court's power to do so did not flow from s 4 of the CLPA. The Defendant referred to the case of *In re Tippett's and Newbould's Contract* (1887) 37 Ch D 444 ("***Tippett***") (cited in *Tan Han Yong v Kwangtung Provincial Bank* [1993] 1 SLR(R) 255 at [18]). In *Tippett*, the vendor contracted to sell a leasehold interest which, pursuant to a will, had been vested in trustees for her benefit. Following objections by the purchaser, the vendor took out an application under s 9 of the United Kingdom ("**the UK**") Vendor and Purchaser Act 1874 (c. 78) ("**the VPA**"), which is identical in all material aspects to s 4 of the CLPA, to clarify whether there was a restraint on anticipation affecting the purchase money. In other words, the issue in that case was simply whether the purchase monies were to be paid to the vendor or to the trustees. The English Court of Appeal ruled that it did not have jurisdiction to invoke that statutory provision to determine this issue, given that the existence of such a restraint did not concern the property's purchaser. Instead, the court granted the vendor leave to amend her application to an

originating summons seeking the court's construction of the will that had bequeathed the property to her.

16 I agreed with the Defendant that s 4 of the CLPA was inapplicable to the present Application. The express wording of s 4(1) of the CLPA centres on the *contract* of sale, empowering the court to make an order on any question arising out of or connected with that contract (not being a question affecting the contract's validity or existence). In the English Court of Appeal case of *In re Hughes and Ashley's Contract* [1900] 2 Ch 595, an application was brought under s 9 of the UK VPA by the vendors of a parcel of land, seeking (*inter alia*) a declaration that the contract of sale did not confer upon the purchaser a right of way across the adjacent parcel of land owned by one of the vendors. The court ruled against the vendors on this point, finding that the purchaser did obtain such a right under the contact of sale. In finding that the vendors' application had properly been made under the UK VPA, Collins LJ observed (at 603–604) that the policy of this statute was to provide applicants with:

> … a cheap and easy method of obtaining a decision on points which may ***arise in carrying out contracts***, instead of the parties being put to the expense of an action for specific performance.
>
> …
>
> [T]he present question of the right of way is one that depends upon the construction of the contract as it stands; and I think … that the vendors were right in making their application.
>
> [emphasis added]

17 In contrast, the focal point of the Application was not on the contract of sale, but on the *Will* which conferred title to the item sought to be sold. In that sense, the present case was similar to *Tippett*, where the court held that the construction of the underlying testamentary instrument was not merely an

incidental point arising from the execution of the proposed contract to sell the item bequeathed. Rather, the question of whether the Will allowed the Claimant to sell the Property in the first place was a *threshold issue*, which had to be tackled independently of any proposed contract of sale that might come along. The construction of the Will could thus not be regarded as something "arising out of or connected with" the contract of sale, notwithstanding the downstream impact which that construction would have on whether the contract of sale could even be performed. Relying on s 4 of the CLPA to ask the court to override the Will and thereby facilitate the contract of sale would be for the tail to wag the dog.

18 The Defendant submitted that any decision by the court to sanction the sale would have to be grounded on the court's inherent jurisdiction instead. It is to this which I now turn.

Issue 2: Whether the Application should be granted pursuant to the court's inherent powers

19 In *Rajabali Jumabhoy and others v Ameerali R Jumabhoy and others* [1998] 2 SLR(R) 434 ("***Rajabali Jumabhoy***"), the Court of Appeal recognised (at [75]) that the court can exercise its inherent jurisdiction to vary the terms of a trust, mainly in circumstances such as unforeseen emergencies in which the trustees had no power under the trust to carry out an act or transaction, where it would be expedient in the interest of the trust that the trustees be allowed to carry out that act or transaction. More recently, the Court of Appeal took the opportunity to clarify how the words "inherent jurisdiction", employed by our courts in various decisions, may be more precisely termed "inherent powers" when the subject concerned not so much the court's jurisdiction or authority to hear a matter but rather its capacity to grant certain orders or reliefs: see *Re*

Nalpon Zero Geraldo Mario [2013] 3 SLR 258 ("***Nalpon Zero***") at [32]–[41]. In that vein, I have referred to the subject of discussion here as "inherent powers" rather than "inherent jurisdiction".

20 In the present case, the Claimant sought to overcome the obstacle posed by cl 8(i) of the Will by painting a rather pressing picture:

(a) The sale price of $4.45m offered by the Defendant was the highest amongst all the transactions in the last three years for the condominium development in which the Property was situated.[15]

(b) The Property was subject to a mortgage to UOB securing an overdraft loan, for which UOB had already obtained judgment against the Testatrix in 2017. To satisfy the redemption amount (totalling $202,395.07),[16] UOB was poised to exercise its power of sale which, if exercised, could result in a forced auction or public tender that was not apt to fetch the best price.[15]

(c) The Property was subject to a charge, registered by the MC in or around November 2018, for outstanding maintenance fees and sinking fund payments, which (as at 3 May 2023) stood at $48,413.18.[17]

(d) The Property had been vacant since the Testatrix's passing and was not generating any rental income.[18] The estate thus had no revenue stream to either service the overdraft to UOB or pay the MC for the outstanding conservancy charges. Furthermore, the Property was not in

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15 Claimant's Affidavit dated 14 September 2023 at para 13(b).

16 Claimant's Affidavit dated 14 September 2023 at para 7(a).

17 Claimant's Affidavit dated 14 September 2023 at para 7(b) and p 38.

18 Claimant's Affidavit dated 14 September 2023 at para 13(d).

a tenantable state and the estate did not have any cash to renovate it.[19] In the meantime, interest and other fees and penalties continued to accrue.[20]

(e) The Claimant was already 84 years old and ordinarily resident in Australia. He thus wanted to wind up the Testatrix's estate and pay the balance of the proceeds into the Fund.[21]

21 The above factors did not strike me as sufficiently pressing as to justify the exercise of the court's inherent powers to ride roughshod over the explicit wishes of the Testatrix. The court's inherent powers cannot be exercised simply because the act or transaction concerned will be beneficial to the trust: see *Rajabali Jumabhoy* at [74]–[75]. As the Court of Appeal explained in *Nalpon Zero*, the court's inherent powers should only be invoked in exceptional circumstances (at [42], citing *Roberto Building Material Pte Ltd v Oversea-Chinese Banking Corp Ltd* [2003] 2 SLR(R) 353 at [17]).

22 The Claimant's attempt to paint a picture of urgency also raised some question marks:

(a) Although ORC 3359 was obtained by UOB against the Testatrix in 2017, UOB had not proceeded to levy execution until this year. In fact, it was the *Claimant* who had served the notice on UOB to redeem the mortgage, after the Defendant stepped in to buy the Property.[22] This cast doubts on the seemingly bleak image cast by the Claimant of a bank that stood ready to carry out a fire sale.

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19 Minute Sheet dated 30 October 2023 at p 1.

20 Claimant's Affidavit dated 14 September 2023 at para 8.

21 Claimant's Affidavit dated 14 September 2023 at para 13(a).

22 Minute Sheet dated 30 October 2023 at p 1.

(b) The assertion that a sale by UOB would necessarily lead to a sub-optimal price was also speculative. As a mortgagee exercising the power of sale, UOB would be subject to a duty to properly advertise the sale and take reasonable care to obtain the true market value of the Property at the time of sale: see *Ng Eng Ghee and others v Mamata Kapildev Dave and others (Horizon Partners Pte Ltd, intervener) and another appeal* [2009] 3 SLR(R) 109 at [119]. Further, no reasons were provided as to why the Defendant, if he was truly interested in the Property, could not partake in a sale by UOB.

23 Ultimately, the court's inherent powers should be exercised to give effect to the intentions of the settlor or testator, as expressed in the trust instrument or will, and not used to arrogate to the court any overriding power to disregard or rewrite the instrument's clauses. In *Rajabali Jumabhoy*, the Court of Appeal cited (at [72]) the observations of the English Court of Appeal in *In re Downshire Settled Estates; In re Chapman's Settlement Trusts; In re Blackwell's Settlement Trusts* [1953] Ch 218 ("***Downshire Settled Estates***"), where Evershed MR and Romer LJ remarked (at 234):

> [O]ne thing is, we think, clear: just as the court has always insisted on the due and proper observance by trustees of the terms of their trusts, so also will it in its own orders depart as little as possible from the strict letter of the trust instrument … The general rule, as we have said, is that the court will give effect, as it requires the trustees themselves to do, to the intentions of a settler as expressed in the trust instrument, and has not arrogated to itself any overriding power to disregard or re-write the trusts.

24 I thus took the view that this was not an appropriate case for me to exercise the court's inherent powers to sanction completion of the sale.

Issue 3: Whether the Application should be granted on the basis of s 56(1) of the Trustees Act

25 Apart from the court's inherent powers, there is yet another source of power which allows the court to supplement the terms of a trust. This is found in s 56(1) of the Trustees Act, which reads:

> **56.**—(1) Where in the management or administration of any property vested in trustees, any sale, lease, mortgage, surrender, release, or other disposition, or any purchase, investment, acquisition, expenditure, or other transaction, is in the opinion of the court expedient, but the same cannot be effected by reason of the absence of any power for that purpose vested in the trustees by the trust instrument (if any) or by law, the court may —
>
> > (a) by order confer upon the trustees, either generally or in any particular instance, the necessary power for the purpose, on any terms, and subject to any provisions and conditions that the court thinks fit; and
> >
> > (b) direct in what manner any money authorised to be expended and the costs of any transaction are to be paid or borne as between capital and income.

26 Unlike the inherent powers of the court, which tend to be exercised to vary trusts in instances of unforeseen emergencies, this provision appears to be somewhat broader in scope, allowing the court to supplement gaps in the trustee's powers, even outside of pressing exigencies. In *Downshire Settled Estates*, the English Court of Appeal set out the basic elements for the application of s 57 of the UK Trustees Act 1925 (which is *in pari materia* with s 56 of the Trustees Act). Specifically, Evershed MR and Romer LJ remarked (at 244–245):

> It seems to us that the section envisages, on analysis: (i) an act unauthorised by a trust instrument, (ii) to be effected by the trustees thereof, (iii) in the management or administration of the trust property, (iv) which the court will empower them to perform, (v) if in its opinion the act is expedient. It is, we think, mainly on the proper interpretation of the phrase 'management

> or administration,' in the context in which it appears, that the question at issue primarily depends.

27 Eversheds MR and Romer LJ also explained the purport of the UK statutory provision, to show how it cohered with the court's inherent powers (at 248):

> In our judgment, the object of section 57 was to secure that trust property should be managed as advantageously as possible in the interests of the beneficiaries and, with that object in view, to authorize specific dealings with the property which the court might have felt itself unable to sanction under the inherent jurisdiction, either because no actual 'emergency' had arisen or because of inability to show that the position which called for intervention was one which the creator of the trust could not reasonably have foreseen; ***but it was no part of the legislative aim to disturb the rule that the court will not rewrite a trust, or to add to such exceptions to that rule as had already found their way into the inherent jurisdiction.***
>
> [emphasis added in bold and italics]

28 The last portion of the section quoted above clearly indicates that application of the UK provision was not without limits. In *Rajabali Jumabhoy*, the Court of Appeal had occasion to consider s 59(1) of the Trustees Act 1967 (1985 Rev Ed), which was subsequently renumbered to s 56(1) of the Trustees Act in force today. The Court of Appeal endorsed the opinions voiced by the English Court of Appeal in *Downshire Settled Estates* and held that while the provision in the Trustees Act may be used to empower trustees to do what the *absence of power* impedes them from doing, it cannot be used to authorise acts or transactions that are *expressly forbidden* by the trust instrument (at [78] and [84]).

29 As such, in the present case, s 56(1) of the Trustees Act cannot be prayed in aid of a sale within three years of the Testatrix's demise, as this has been expressly forbidden by cl 8(i) of the Will. In contending that it could, the

Defendant cited the case of *Leo Teng Choy v Leo Teng Kit and others* [2000] 3 SLR(R) 636 ("***Leo Teng Choy***"). That case involved a house that had been bequeathed under a will containing a stipulation that the house could not be sold unless all four beneficiaries (who were the sons of the testator) consented to the sale. There arose a deadlock between the four beneficiaries, with one of them refusing to consent to the sale and remaining in the house after the other three beneficiaries had all moved out. The other three beneficiaries thus brought an application for a court order to sell the house. Notwithstanding the lack of consensus between the four beneficiaries, the Court of Appeal exercised the power under s 56(1) of the Trustees Act and ordered the sale of the house. In doing so, the court assessed (at [26]) that the *overriding consideration* of the testator was to allow all four of his sons to benefit equally from his estate – sanctioning the sale would advance the testator's intent in that regard.

30 The Defendant thus relied on *Leo Teng Choy* to argue that the court could countermand the three-year moratorium imposed by cl 8(i) of the Will if this would further the Testatrix's overriding intention. The Defendant then sought to tease out that intention, suggesting that cl 8(a) clearly contemplated that the Testatrix's objective was to achieve a profit from the realisation of the estate. The Defendant pointed out that the prohibition against a sale within three years of the Testatrix's demise was subject to the exception (set out in 8(i)(ii) of the Will) of the Property being acquired by an *en bloc* sale. The Defendant argued that in view of how *en bloc* sales are clearly understood to reap higher profits for the property owner, one could deduce that the Testatrix must have had profit maximization as a goal, given that she took pains to specifically list *en bloc* sales as an exception to the three-year moratorium.

31 I remained unconvinced. The facts and holding in *Leo Teng Choy* were quite specific. The court held that the state of affairs, where one son was living

in the house and preventing his brothers from selling it, clearly frustrated the testator's intention of benefitting his four sons equally. The court remarked (at [28]):

> In our opinion, the court in sanctioning the sale would not only not be acting contrary to the directions expressed in the will, but would, in fact, be carrying out the overriding intention of the testator. Indeed, ***to allow the appellant to enjoy the property solely would run counter to what was the basic intention implicit in his will***.
>
> [emphasis added in bold and italics]

In contrast, I could not discern any "overriding intention" within the Will that would be frustrated by adherence to the three-year moratorium. What the Defendant was effectively suggesting was that the Testatrix intended to maximise profits from the realisation of her estate and, since the Defendant appeared to be offering a good price, allowing the sale to the Defendant would further that intent and thereby warrant overriding cl 8. To my mind, this was an extrapolation which had to be approached with some circumspection. It would be unusual for any testator to intend that his estate be realised at a loss. By and large, one could expect testators to prefer their estates to be realised in a fashion that yields the best value. Be that as it may, this natural state of affairs cannot in and of itself provide grounds for rewriting the will. Otherwise, explicit restrictions by testators may be snubbed as a matter of course every time a good deal comes along.

32 In any case, the Defendant had not proven that allowing the sale was the only way to preserve the value of the estate. As explained at [22(b)] above, the Claimant failed to sufficiently establish why a sale by the mortgagee would necessarily fetch a lower price than that offered by the Defendant.

33 I also note that *Leo Teng Choy* could be distinguished from the facts of the Application before me. In *Leo Teng Choy*, the relevant clause standing in the way of the sale read as follows:

> I direct that my said land and house … ***shall not be sold, rented out or in any way converted into cash unless and until unanimously agreed upon by my said sons*** … in which event the net proceeds of sale from the said land and house shall be distributed to my said sons in equal shares.

In contrast, the present case involves a prohibition worded in far more absolute terms: cl 8(i) stated that "[*u*]*nder no circumstances*" was there to be a sale of the Property within three years of the Testatrix's death. The unequivocal character of the prohibition was reinforced by its repetition in cl 8(a).

34 In his affidavit, the Claimant surmised that the Testatrix may have inserted the three-year moratorium because she was under the misapprehension that she could avoid the payment of estate duty by delaying the sale for three years.[23] However, apart from this bare surmise, there were no facts on record which would support such a conjecture. Both parties agreed that selling the property within three years of the Testatrix's death would *not* have attracted any extra estate duty. Such speculation, in my view, did not constitute grounds for disregarding the Will's prohibition.

35 I was thus of the view that my discretion under s 56(1) of the Trustees Act should not be exercised for the purpose of sanctioning the sale.

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[23] Claimant's Affidavit dated 14 September 2023 at para 13(c).

Conclusion

36 For the reasons above, I dismissed the Application and proceeded to hear parties on the issue of costs.

Christopher Tan
Judicial Commissioner

Tan Jing Poi and Leow Wei Jie Andy (Keystone Law Corporation) for the Claimant;
Selina Yap Sher Lin and Sasipriya D/O Shanmugamnanda (Harry Elias Partnership LLP) for the Defendant.