Ng Kwok Weng and Another v Ng Meiling
[2009] SGHC 222

Case Number : Suit 249/2008

Decision Date : 29 September 2009

Tribunal/Court : High Court

Coram : Lee Seiu Kin J

Counsel Name(s) : Kee Lay Lian and Lynette Leong (Rajah & Tann LLP) for the plaintiffs; Tan Gim Hai Adrian (Drew & Napier LLC) for the defendant

Parties : Ng Kwok Weng; Ng Kwok Seng — Ng Meiling

Probate and Administration

29 September 2009 Judgment reserved.

Lee Seiu Kin J:

1 Most people bequeath their estate, or the bulk of it, to their children. This is indisputably due to parental love and affection and a desire that their children receive assets accumulated by them in their lifetime and unconsumed by the time of their death. Indeed there will be little disagreement to the statement that many people lead an abstemious life in order to build up a larger estate to leave to their progeny. It would also be inarguable that the intention behind all this is to benefit their offspring, in that this would enable them to lead a more comfortable, secure and ultimately happy life. The underlying assumption in this last statement is that a large sum of money will promote happiness, and this may well be true in many or even most cases. Unfortunately in more than a few instances, for a variety of reasons, it does not hold true and the legacy of money turns into a legacy of heartbreak, causing a battle between siblings over the estate and a breakdown of the relationship between them – a relationship that may well have been normal or even warm before money came into the picture. The present case is one sad example.

2 The first plaintiff ("Roy"), second plaintiff ("Wilfred") and defendant ("Meiling") are the surviving children of Ng Cheong Choy ("Mr Ng"), who died on 29 March 2007 at the ripe age of 90. Two weeks prior to his death, on 15 March, Mr Ng executed a will ("the Will") under which he left half his estate ("the Estate") to his daughter Meiling and a quarter each to his sons, Roy and Wilfred. The dispute in this suit does not pertain to this division or the making of the Will, but to the moneys in an account in the Singapore branch of the Hongkong and Shanghai Banking Corporation Limited ("HSBC"). This is account number 8212-XXX ("the HSBC Account") which was in the joint names of Mr Ng and Meiling. Meiling's position is that Mr Ng had, before he died, said to her words to the effect that he was giving to her the moneys in the HSBC Account. The plaintiffs' position is that there was no such gift and the moneys in the HSBC Account formed part of the Estate to be distributed in accordance with the Will. Indeed the sole issue in this suit is whether Mr Ng had made a gift inter vivos of the moneys in the HSBC Account to Meiling. However the evidence necessarily traces back to the making of the Will and, for the purpose of the case made out by the plaintiffs, goes back more than three decades.

3 Mr Ng was born in 1917. He was educated up to the equivalent of Form Five in Malaya and started work with the Overseas-Chinese Banking Corporation Bank ("OCBC Bank"), rising to the position of branch manager in the 1950s. He served at various branches – Muar, Kota Baru, Klang, Seremban and his last posting, Kuching. He retired in 1980. Mr Ng and his wife had four children. The eldest was a son, Ng Kwok Wai ("Edwin"), born in 1947. Meiling, born in 1950, was the second child

and only daughter. Roy was the third child, born in 1954 and Wilfred, born in 1958, was the youngest. Mr Ng's wife died in 1989. Edwin had some health problems and did not complete tertiary education. He worked as a remisier and lived with Mr Ng at the time of his death on 3 March 2007. Meiling did not pursue tertiary education and had worked as a clerk with Bank Negara Malaysia until she retired in 2006. She had been posted to New York from 1987 to 1989. After her mother's death in March 1989, Meiling returned to Malaysia and resided with Mr Ng in Kuala Lumpur. They lived at 31 Jalan Mesui, the corner unit of a row of shophouses in the middle of town. Roy is a consultant obstetrician and gynaecologist practising in Singapore. Wilfred is qualified as an accountant and works in Kuala Lumpur; he had worked in Singapore for a few years in the early 2000s. Edwin never married. Meiling had a brief, unhappy marriage in the late 1970s. She does not have any children. Both Roy and Wilfred are married; Roy has 3 children and Wilfred is childless.

4 Mr Ng had managed his savings well in the years after his retirement in 1980. By the time he passed on some 27 years later, he had amassed the equivalent of close to $6m in assets comprising his home at 31 Jalan Mesui, Kuala Lumpur worth about RM4m, shares in listed companies including dividends worth about $200,000, land in Sarawak of unascertainable value (the plaintiffs claimed it was worth about $250,000), cash in bank accounts in Malaysia amounting to some RM1.84m, and in bank accounts in Singapore of about NZD2.852m. The dispute between the parties in the suit before me concerns the NZD2.852m, although the RM1.84m in the Malaysian bank accounts is also fought over by the parties in Malaysia.

5 Meiling claimed that some two weeks before Mr Ng died, he told her that he was giving to her the moneys in their joint accounts in Malaysia and Singapore. There was no other person present when this took place. The plaintiffs therefore had to prove a negative. Their basic case is that Mr Ng could not have intended to give her such moneys based on the relationship between Mr Ng and his children and the acts and attitude of Mr Ng in his lifetime.

6 The plaintiffs gave evidence that Meiling had a very bad relationship with not only Mr Ng, but also with her mother when she was alive. The evidence went back all the way to the 1970s, when Meiling carried on an affair with a married man for some 12 years. This had caused Mr Ng and his wife great sorrow and shame. In 1978 Meiling married another man against her parents' wishes. This ended in divorce within a year, again to her parents' sorrow and shame. It was Meiling's relationship with her mother in particular that was bad and after she started work, she lived away from her parents. It was only after her mother died in 1989 that Meiling resumed living with her father, shortly after completing her posting in New York. The plaintiffs gave evidence that Meiling was a particularly unpleasant person to live with and had treated a succession of maids very badly due to her fastidiousness about hygiene, particularly after she retired in 2006. Although this was done with good intention, it had disrupted the peace at home. Mr Ng frequently complained to the plaintiffs about this. This is to be compared against Mr Ng's pride in Roy, who had high attainments in the medical profession. Wilfred was also another son who had done well in the accounting profession. Edwin was a problem for Mr Ng and his wife and they had always been concerned about him. He worked as a remisier but without great financial success and was essentially reliant on Mr Ng with whom he lived until he died. When Mr Ng's wife died, she made him promise to take care of Edwin. Mr Ng was particularly concerned with Edwin's heavy involvement with a Christian sect. When Edwin died on 3 March 2007, Mr Ng was extremely saddened, but it was apparent to observers that a great load had been taken off his back.

7 Mr Ng had made a will in 1982 ("the 1982 Will") in which he essentially distributed his estate equally among his four children with a double share to his wife. After his wife died, Mr Ng executed a second will in 1989 ("the 1989 Will") in which he provided for equal distribution of his estate among his four children. At various times in the last decade of his life Mr Ng also made notes declaring his intentions in relation to bank accounts he held jointly with various children. On 8 February 2001,

Mr Ng made a note regarding three accounts in the Development Bank of Singapore ("DBS Bank"), one of which was in his sole name and two other accounts he held jointly, one with Meiling and another with Edwin. In that note he directed that, "should anything happen" to him, Roy should transfer the funds in the sole account "to the joint names of [Edwin and Meiling] and thereafter to divide the monthly accrued interest into five equal shares". These five shares were to go to the four siblings with the fifth share to be used for maintenance and household expenses for the benefit of Edwin and Meiling for a period of five years. The last provision indicated his concern for the continued upkeep of Edwin. Another set of notes was made by Mr Ng on 30 July 2002. These related to three bank accounts that Mr Ng held, one jointly with Edwin, Meiling and Wilfred in DBS Bank, the second jointly with Edwin and Meiling in Hong Leong Bank Berhad, Kuala Lumpur, and the third jointly with Edward and Meiling in Public Bank Berhad, Kuala Lumpur ("the Public Bank Account"). Mr Ng specified that the funds in these three accounts were held for the benefit of all four children. The plaintiffs gave evidence that Mr Ng had suffered a stroke in June 2002 and he made these notes to specify that the children whose names were not in those accounts had an equal share in the moneys. Finally, on 1 September 2005 Mr Ng made a note in respect of another account in HSBC ("the HSBC 280 Account"), which was in the joint names of Mr Ng, Edwin and Meiling, specifying that the funds therein were to be equally distributed to the four siblings after his demise. He also stated that his Jalan Mesui house and all his stocks and shares should also be distributed equally.

8 Edwin's death on 3 March 2007 caused great sadness to Mr Ng. After the funeral, Mr Ng decided to make a new will. On 6 March 2007 he went with Meiling and Roy to the office of M/s Puthucheary Firoz & Mai to consult Dato' Dominic Puthucheary ("Puthucheary"). Puthucheary, a litigation lawyer, referred them to his partner, Miss Cheng Mai ("Cheng") who had the necessary expertise for the task. On either 8 or 9 March 2007 (the parties are not in agreement as to the date), Mr Ng again went with Meiling and Roy to see Puthucheary. In the presence of Meiling and Roy, Mr Ng told Puthucheary that he wished to divide his assets equally among his three children. However, according to Puthucheary at para 8 of his affidavit evidence-in-chief ("AEIC"), the following took place afterwards:

> 8. After that meeting, the [testator] alone and myself adjourned to my room where he poured out to me his sorrow upon his eldest son's passing away, his disappointments over the lack of care for himself, his poor health, and other matters. But at the end of that private meeting, he said he wanted to make further changes to his instructions regarding the new will and that he will come back to me with his instructions. He did not specify what those instructions were at that time.

9 Mr Ng returned to see Puthucheary on 14 March 2007. By this time Roy had returned to Singapore and only Meiling went with him to Puthucheary's office. Meiling left them alone and what happened after that is described by Puthucheary in para 10 to para 14 of his AEIC:

10. The [testator] and I discussed a lot of things at this meeting. He was very lucid. We conversed in English.

11. The subject matter of the discussion was the [testator's] unhappiness with the Plaintiffs. He complained to me about his sons and told me that he was very disappointed in them. He said they only called him about money and never asked him about his health. He gave me detailed accounts of the humiliation he had suffered, which was inflicted by the Plaintiffs. The [testator] had done very well for himself yet he gave me the impression that he was a very unhappy man. I felt very sorry for him.

12. Then the [testator] specifically told me that he wanted to give me fresh instructions about his new will and what he intended to do with his assets.

13. He specifically mentioned that the cash in the HSBC account and the Public Bank account are to be excluded from the will, as they were joint accounts with the Defendant and he wanted the Defendant to have those monies. He told me his reasons for him giving those monies to the Defendant.

14. The [testator] then informed me that he wanted to leave half his estate to the Defendant. His two remaining sons would share the other half equally. He also instructed that all the jewellery is to be realised and distributed according with the proportions of the new will.

10 In cross-examination, Puthucheary was asked to elaborate on the "detailed accounts of the humiliation" adverted to in para 11 of his AEIC. Puthucheary described how Mr Ng told him that he was hurt by and disappointed in his sons, at one point breaking out in tears. Puthucheary related two of the instances given by Mr Ng. When Mr Ng visited Roy in Glasgow, he was not welcomed in Roy's home and had to stay at a hotel. In relation to Wilfred, when Mr Ng's television had broken down one night when he had wanted to watch a football match, he went to Wilfred's house to do it. However after the game, he was not welcomed to stay the night even though it was already late. Puthucheary said that Mr Ng had related other incidents relating to his sons but he would not wish to make further disclosures as Mr Ng had told him these matters as a confidant and he did not want to reveal more than what was necessary.

11 It was put to Puthucheary that Mr Ng never visited Roy in Glasgow and that the incident in Wilfred's home was not true. Indeed both Roy and Wilfred gave evidence to the contrary. However the truth of those stories is not the point. It also does not matter if Puthucheary's recollection of the details was wrong. The important fact is Puthucheary's evidence that Mr Ng at that time had such strong feelings of disappointment in his sons. This evidence is supported by the fact that Mr Ng, after declaring that he would divide his estate equally among his three children, had instructed Puthucheary that he wanted to give Meiling half his estate under his Will and did make the Will in that manner.

12 When asked whether Mr Ng had complained about Meiling at that session in his office, Puthucheary said that he had not, and had only said that he felt sorry for her. Puthucheary added that Mr Ng said he was worried about Meiling being unmarried as he was not sure what would happen to her "in the future". I took this to mean that Mr Ng was concerned as to who would look after Meiling in her old age as she did not have a family of her own. Puthucheary also said that Mr Ng was lucid during their meetings.

13 The Will was executed by Mr Ng on 15 March 2007. A few days earlier, on or about 12 March

2007, Mr Ng transferred money from the HSBC 280 Account to the HSBC Account. Meiling's evidence is that she asked the Mr Ng what he wanted to do with the money and he replied "Mei Ling, it's up to you". Meiling understood that as meaning that Mr Ng wished to give it to her as a gift.

14 Mr Ng subsequently fell very ill and on 28 March 2007 was admitted to hospital. He suffered a sudden cardiac arrest that night and succumbed to acute myocardial infarction in the early hours of 29 March 2007.

15 On 2 April 2007, the three siblings attended at Puthucheary's office to meet with him and Cheng. The Will was read out to them, after which Meiling announced that Mr Ng had given her the moneys in the HSBC Account and the Public Bank Account. There was some evidence of a disagreement at this point between Meiling and her brothers. That was the start of their strained relationship, resulting in the present suit.

16 On 14 July 2008, Meiling's solicitors in Kuala Lumpur wrote to Puthucheary to inquire whether Mr Ng had, in the course of giving instructions on the drafting of the Will, said anything about the funds in various joint accounts he had with Meiling. Puthucheary replied on 28 July 2008 and stated the following:

> … the [testator] had a confidential meeting with me on or around 14.3.2007 before instructing me regarding his Last Will and all the joint accounts held by the [testator] and [Meiling]. I was very clearly instructed that all the monies in the joint accounts should not be included in the Will, as it would not form part of the Estate, because the monies in the joint accounts are given as an inter vivos gift to [Meiling] during his lifetime.

17 The plaintiffs pointed out that this was the first time that Puthucheary had disclosed to anybody that Mr Ng told him that the latter had given to Meiling the moneys in his joint accounts with her. They also gave evidence that on 2 April 2007, Meiling, Roy and Wilfred attended at Puthucheary's office for the reading of the Will. At that meeting Meiling told her brothers that Mr Ng had given to her as a gift the moneys in the joints accounts she had with him. According to the plaintiffs a heated argument ensued between the plaintiffs and Meiling but Puthucheary did not tell them what Mr Ng had told him concerning his gift to Meiling of the joint accounts in HSBC and Public Bank. The plaintiffs gave evidence further that after a short adjournment, the meeting resumed and they specifically asked Puthucheary and Cheng as to what constituted a gift in the absence of something in writing. Again, instead of telling them of what Mr Ng told him, Puthucheary told them that he needed to do more research on this and would revert to them at the next meeting. This was followed by another meeting on 4 April 2007 in which Cheng, in Puthucheary's presence, advised that there were a number of specific tests to prove a gift and told Meiling that "it will not be easy to prove a gift in view of the [Mr Ng's] instructions in the Will". Puthucheary added that it was the express wish of Mr Ng not to specify the bank accounts as he did not want to leave out anything which may cause more disputes after his death and said that the reference to moneys deposited in the bank accounts in cl 3 of the Will was "all encompassing". Again Puthucheary did not mention what Mr Ng had told him privately about the gift to Meiling.

18 Puthucheary explained he had not disclosed these matters earlier because he considered that what Mr Ng had told him in their private meetings was given in confidence. In relation to the plaintiffs' evidence on the meetings of 2 and 4 April 2007, Puthucheary denied their versions of events. I found that Puthucheary's evidence was given in a measured manner without any inclination to give support to Meiling's case. Indeed much of the revelations were in response to cross-examination and given with reluctance. His demeanour was good and I had no reason to doubt his testimony.

19 On Meiling's part, her evidence about Mr Ng's gift of the moneys in the joint accounts is of course self serving. However this is corroborated by the evidence of Puthucheary which the plaintiffs have failed to discredit. In the 1970s Puthucheary had been engaged by Mr Ng on behalf of OCBC Bank for an industrial court action. In the ensuing 30 years, Mr Ng had kept in touch with Puthucheary, calling on him once or twice a year. Indeed the 1989 Will was prepared by M/s Skrine & Co, in which Puthucheary was a partner at the time. Puthucheary had no other connection with Meiling other than through Mr Ng. It was clear that Puthucheary was an independent witness in the matter.

Conclusion

20 It was clear from evidence showed that Mr Ng had displayed great capability in building up his career in OCBC Bank. With only a secondary school education he managed to rise from bank clerk to branch manager. In that capacity he had served in various towns in Malaysia for nearly a quarter century. After he retired he continued to manifest great capability as he marshalled his savings well and multiplied it such that his net worth at the time of death was in the order of $6m. He was focused on preserving and growing his assets with the single minded purpose of leaving it entirely to his children. He ignored suggestions that he should give some of it to charity. He was even concerned that the religious group that Edwin was involved in might get some of it through Edwin.

21 The plaintiffs' case was that Mr Ng had no intention, in relation to the distribution of his estate, to prefer one child over the others. From his actions over the last three decades of his life, this appeared to be the case. In the 1982 Will, he essentially distributed his estate equally among his four children with a double share to his wife. After his wife died, Mr Ng executed the 1989 Will in which he provided for equal distribution among his four children. At various times in the last decade of his life Mr Ng also recorded a number of notes in relation to bank accounts he held jointly with various children. All these acts indicated the mindset of Mr Ng, which was to distribute an equal share of his estate to his surviving issue.

22 The plaintiffs further pointed out that Mr Ng was a former banker and a careful and meticulous man and contended that all these acts indicated his mindset all the while, which was to distribute an equal share of his estate to his surviving issue. Therefore, the plaintiffs contended, it could not have been possible that Mr Ng, having given Meiling twice as much as each of the other two sons, would gift to her practically half his assets and after this, further give her half the remainder.

23 However this submission did not take into account the mindset and emotions at the material time, which was the period between Edwin's death and his own. Here was a man whose eldest son had just died and driven to contemplating his own mortality. Mr Ng's two sons were successful in their careers and their lives but he was severely disappointed at how they treated him. His daughter, who was single and lived with him, was not as capable as her brothers. He was fully aware that she would be quite alone in this world after his demise. It is in this context that I must consider whether it was so incredible that Mr Ng could, at that time, have acted in the manner that Meiling and Puthucheary had testified that he did. I certainly thought that it was entirely possible.

24 Indeed on the evidence before me, I found that in the remaining weeks of his life, Mr Ng had a change of mind regarding the distribution of his estate. Certainly with respect to what Mr Ng had provided in the Will, there is ample evidence that he had a change of mind. In the two previous wills, the 1982 Will and 1989 Will, he had provided his four children with equal shares. Throughout the last decade of his life, the notes he left behind showed that they were to receive equal shares of his properties, except with provisions to ensure that Edwin would be taken care of. But when Edwin died, Mr Ng was severely affected. And when it came to putting down his intentions in his last will and

testament, he had clearly provided that Meiling would get a half share whereas the plaintiffs would only get a quarter each. This puts paid to the plaintiffs' contention that Mr Ng's past manifestations of intent in relation to distribution of his assets showed that he could not have intended to give Meiling more.

25 There was a rather poignant event that I felt compelled to note. The plaintiffs and Puthucheary emphasised that at the 8 (or 9) March 2007 meeting, Mr Ng had declared to all present, namely Meiling, Roy, Puthucheary and Cheng that in his new will he would give each of his three children an equal share of his estate. After that he had a tête-à-tête with Puthucheary in which he poured out his sorrows regarding his children and then told the lawyer that he wanted to make further instructions regarding his will, without specifying what these were. Less than a week later, on 14 March 2007, Mr Ng instructed Puthucheary on the 50:25:25 distribution after again ventilating his sorrows to his confidant. Puthucheary said that Mr Ng complained about his sons, but not Meiling. Mr Ng told Puthucheary that he was very disappointed in Roy and Wilfred, that they only called him about money and never inquired after his health. He told Puthucheary about the humiliation he had suffered from them and their wives. I would comment that if Mr Ng had changed his mind about the distribution after he had declared to his children that he was giving them equal shares, it was rather sad that he did not tell them about it after he had executed the Will. But if he had decided on the change even before he made the declaration of equal distribution, it was even sadder that he felt compelled to lie to his children. I should state that I am not making a finding of fact on the truth of what Mr Ng had told Puthucheary in respect of his sons. I was well cognisant of the fact that Mr Ng had just faced the tragedy of the death of his eldest son and that at the age of 90, he was coming face-to-face with his own mortality. I had no doubt that the smallest of incidents could have loomed large at that hour, and the most minute hurts vastly amplified. What was relevant was Mr Ng's state of mind at the time and whether in that state of mind he could have made such decisions.

26 The cause of Mr Ng's change of mind could be any of a number of factors. It could well be, as the plaintiffs' witnesses alleged, that Meiling had prevailed upon Mr Ng that she should get a larger share. There were suggestions that she was insecure or simply greedy and had schemed and harassed Mr Ng to change his mind. There was testimony that she had always wanted a better life and had over the years tried unsuccessfully to get Mr Ng to move out of the Jalan Mesui house, which was in the middle of town, to one located in more salubrious surroundings. There was evidence that Mr Ng had said that he changed the distribution in the Will because of Meiling's demands on him. Meiling's evidence was that Mr Ng did it out of gratitude to her for taking care of him and also out of love and concern for her situation – the plaintiffs were successful professionals who had families of their own whereas she was not highly educated and was alone in this world. Meiling also said that Mr Ng could have been angry at Roy and Wilfred for their lack of concern towards him and at their wives for their disrespect and mistreatment. It could well be that Mr Ng changed his mind due to a combination of some or all of these factors, or due to some other factors that did not surface in evidence. For instance, it was clear that Mr Ng had always made special provision for Edwin as he was considered the one who most needed help and after Edwin was gone, Mr Ng could have considered Meiling to be in this position. The true reason for Mr Ng's change of mind is not relevant. A person is entitled to deal with his assets in any manner he deems fit (subject always to any law that might limit his freedom in this regard – but there is none here). It is not unusual for a person to hold a strong view of a particular matter throughout his life but at a later stage, when confronted with tragedy (in this case, Edwin's death) or the reality of his own mortality, to change that view. This is especially true in relation to religious views, but perhaps no less so in relation to the material legacy that a person intends to leave behind for his loved ones.

27 Therefore the argument cannot turn on why Mr Ng would change his mind, because he did at least in relation to the Will, but only on the extent of the change of mind. Did he or did he not decide,

in addition to giving Meiling half of his estate under the Will, to give to her while he was still alive, the moneys in the joint accounts? In this regard, Meiling's evidence was that Mr Ng had told her that "it's up to you" when she asked him about the money in the HSBC Account. This evidence was corroborated by the evidence of Puthucheary who said that Mr Ng had told him at the time he gave instructions on the Will that he was giving the moneys in the HSBC Account and other joint accounts with Meiling to her. The plaintiffs were in the difficult position of proving a negative. The main thrust of their evidence was that, based on Mr Ng's attitude as manifested by his previous actions, he could not have given such a grossly disproportionate amount to Meiling. However, in view of the clear evidence of Mr Ng's change of mind in relation to the distribution under the Will, and in the circumstances of Mr Ng at the time when he was grieving for Edwin and facing his own mortality, there was every possibility of such a major change of mind. This was especially when one considered the relative circumstances of Meiling and the plaintiffs. In my view, the combined evidence of Meiling and Puthucheary proved on a balance of probability that Mr Ng had given to Meiling the moneys in the HSBC Account and I so find.

28 Therefore the plaintiffs' claim is dismissed. As to costs, ordinarily it would follow the event. But this is a family dispute. A number of factors had combined to send the dispute between the siblings to court, not least of which was Mr Ng's rather furtive behaviour in relation to his decision to distribute his assets. He may well have been despondent because he felt that his sons were more concerned over his money than his health. Therefore in an effort to spare himself the agony of having to face up to them in the final stage of his life, he decided to declare that he would share his assets equally while proceeding to do otherwise. This had caused the plaintiffs to believe that there was some subterfuge when Mr Ng's Will turned out to be very different from what he had declared. Meiling's behaviour had aggravated the matter for the plaintiffs. She had, with some alacrity, transferred the money out of the Public Bank Account and the HSBC Account. Puthucheary's failure to disclose at an early stage Mr Ng's statement to him that he had gifted to Meiling the moneys in the joint accounts had also raised the plaintiffs' suspicion. While Puthucheary's reason for this – that it was told to him in confidence by the Mr Ng – was not unreasonable, this was one of the factors that had caused the plaintiffs to resort to litigation. Taking into account the fact that Meiling had obtained a considerable sum of money in this matter, the nature of this dispute and the unfortunate chain of events that had resulted in this suit, I am of the view that I ought to exercise my discretion to make no order as to costs. I so order.