

Shih Shin Wang-Liu and Another v Tsai Pei Lun Betty alias Tsai Pei Loon and Another
[2006] SGHC 196

Case Number : Suit 570/2004
Decision Date : 31 October 2006
Tribunal/Court : High Court
Coram : Judith Prakash J
Counsel Name(s) : Kee Lay Lian and Chou Tzu (Rajah & Tann) for the plaintiffs; Mohamed Gul (Gul & Robert) and Tan Aye Cheng (Aye Cheng & Grace) for the defendants
Parties : Shih Shin Wang-Liu; Estate of Shih Shui-Mu, Deceased — Tsai Pei Lun Betty alias Tsai Pei Loon; Tsai Pei Lun Betty also known as Tsai Pei Loon as the Administratrix of the Estate of Shih Tsay-Shing

31 October 2006

Judgment reserved.

Judith Prakash J:

1 This case arises, sadly, from an all too common story of a family fighting over money. Specifically, the question is whether moneys in a Singapore bank account held in the name of a deceased person, one Stanley Tsay-Shing Kim also known as Shih Tsay-Shing ("Stanley"), belonged beneficially to him so that they should be distributed as part of his estate or whether Stanley was holding those moneys on trust for his natural parents.

Background

2 There are two plaintiffs in this action. The first plaintiff is Mrs Shih Shin Wang-Liu ("Mrs Shih") and the second plaintiff is described as "Estate of Shih Shui-Mu, Deceased". Shih Shui-Mu ("SSM") was Mrs Shih's husband and together they ("the Shihs") owned a family business in Taiwan known as Fonen and Fonher Enterprise Co Ltd ("the company"). They had four children, one of whom was Stanley who was born on 14 November 1966 in Taiwan. Stanley married Betty Tsai Pei Lun alias Tsai Pei Loon ("Ms Tsai") in October 2002 and she is the defendant in this action, both in her personal capacity and as the administratrix of his estate.

3 The undisputed facts are that in 1981 when Stanley was 14 years old, his parents took him to the US. He was taken to live with a couple named Billy Ching-Soo Kim and Betty Gum-Shan Kim ("the Kims") whose daughter was then engaged to Stanley's elder brother. Subsequently, in November 1982, the Kims formally and legally adopted Stanley. By virtue of his adoption, Stanley became a citizen of the US. I should mention here that since Stanley's death, the legality and validity of the adoption has been challenged by Mrs Shih apparently on the ground that at the time she signed the adoption papers, she was not aware of their true nature and thought that they were guardianship papers required to allow Stanley to live and study in the US.

4 In 1990, when Stanley had completed his studies in the US, he returned to Taiwan and went to work for the company. Some time in 1999, he met Ms Tsai. At that time, Stanley was living with Mrs Shih and SSM in their family home in Tainan, Taiwan. He was then working for the company in its sales department. Subsequently, Stanley moved into Ms Tsai's home in Taipei, Taiwan. There was a dispute as to whether he continued to work for the company thereafter. Ms Tsai's version was that he stayed home since he saw no need to work for a living as he had money collected from the rent of his properties in the US and received maintenance from Mrs Shih who also paid his credit card bills.

The plaintiffs' version was that Stanley continued to be employed by the company until his death. Stanley died on 9 January 2004 of a heart attack sustained whilst he and Ms Tsai were on holiday in Japan. His father, SSM, died some two months later.

5 Stanley died intestate. According to Ms Tsai, his administratrix, he had the following assets at the time of his death:

(a) In the US

- (i) two residential real properties and one mixed-use real property with appraised values totalling US\$7,273,000;
- (ii) cash in bank – US\$11,351; and
- (iii) rent income – US\$23,650.

(b) In Taiwan

- (i) cash in bank – NT\$357,328;
- (ii) Fonyuo Enterprise Company Ltd – 2,747,000 shares totalling NT\$48,852,098;
- (iii) Fonen and Fonher Enterprise Co. Ltd – 6,354,120 shares totalling NT\$94,514,357

(c) In Singapore

US\$1,726,958 in an account with UBS AG Singapore Branch ("the UBS account")

Ms Tsai estimated the total gross value of Stanley's estate, before deduction of outstanding liabilities, as being US\$13,306,096. The properties in the US were subject to mortgages but she did not disclose the outstanding amounts due in respect of these mortgages. According to Ms Tsai, she and the Kims were the beneficiaries of Stanley's estate.

6 After Stanley's death, the parties became embroiled in several law suits. First, Ms Tsai took out a probate action in Probate No RP04169270 in Alameda County California Superior Court ("the US Suit") naming herself and the Kims as the beneficiaries of Stanley's US estate. The plaintiffs in this action or their representatives intervened in the US Suit on the basis that Ms Tsai had failed to give them notice of the US Suit as she should have done as they were also beneficiaries and entitled to inherit Stanley's estate. They raised various issues in the US Suit including issues of jurisdiction and the validity of Stanley's adoption. The US Suit is pending. Second, an application for probate was taken out in the San Francisco Superior Court under Probate No PES-04-286815. That suit is also pending. Third, there were some proceedings in Taiwan that resulted in a decision by a Taiwanese court in December 2005 that the adoption of Stanley by the Kims was null and void and that the Shihs were his legal parents.

The action

7 This action concerns first, the ownership of the moneys in the UBS account and secondly, whether the plaintiffs can recover a sum of US\$100,000 that Stanley gave to Ms Tsai in February 2003 out of the moneys then in the UBS account. The UBS account was opened sometime in February 1998. The plaintiffs contend that they were the source of all funds in the UBS account and that Stanley held those moneys on trust for them pursuant to a family arrangement whereby he would

invest funds that the plaintiffs transferred to him from time to time. Ms Tsai agreed that on four occasions, Mrs Shih and SSM had transferred moneys from accounts they held with UBS AG London branch ("the London accounts"), into the UBS account. She maintained that these moneys were transferred solely for Stanley's benefit and own personal investment and were monetary gifts to Stanley.

8 As at the end of the trial, the parties' written submissions have covered much ground and there have been contentions as to the validity of certain of the arguments on the basis that these points raised were not pleaded, I think it would be helpful to state the parties' pleadings in some detail. In that way, it would be easier to ascertain what exactly was in issue and what each party had to prove and was entitled to say in the course of making that proof.

Statement of claim

9 This action was started in July 2004 but the statement of claim was amended thereafter and took its final form in July 2005. It is stated in para 1 that the claim is made against the defendants on the basis that Ms Tsai is the administratrix of Stanley's estate and is also, in her personal capacity, the recipient of funds paid out to her by Stanley in breach of his fiduciary duty as trustee of the plaintiffs. It should be noted that in para 3, it is stated that Mrs Shih has brought the action in her personal capacity and also as the representative of the estate of the second plaintiff.

10 Paragraph 2 of the statement of claim is significant. It states that Stanley was the biological son of Mrs Shih and SSM and was effectively treated as their lawful child during his lifetime. As far as they were concerned, at all material times, Stanley was their lawful youngest child and they maintained him as such. During his lifetime, Stanley and Ms Tsai also treated the Shihs as Stanley's lawful parents.

11 Paragraphs 5 to 10 set out the alleged financial arrangements between the Shihs and their children. To summarise, it is averred that by a family arrangement, the Shihs authorised their children, including Stanley, to operate the Shihs' bank accounts so that the children would, on Mrs Shih's instructions and with her consent, remit money as directed by Mrs Shih for the purposes of investment. Such moneys sent to the children's bank accounts belonged to the contributors, *ie*, SSM and Mrs Shih respectively and the children would hold the moneys on trust and only have permission to utilise the funds on behalf of the Shihs for investment in low-risk investments. The four children were thus entrusted to help Mrs Shih invest the family's money from time to time. In para 8, the plaintiffs plead that in the alternative, a common intention is to be inferred that Stanley should hold the money transferred from the London accounts to the UBS account upon trust for the Shihs. Further, even though the Shihs allowed the children to hold the moneys on trust, there was a clear understanding and/or an oral agreement between the children and the Shihs that the funds belonged solely to the Shihs.

12 In para 12, it is averred, *inter alia*, that between 1992 and 1997, the Shihs had remitted more than US\$5.1m and ¥51m to Stanley for him to invest into US properties on their behalf. He used these funds to purchase properties costing a total of about US\$3.9m and would thereafter have held a balance of about US\$1m in cash in trust for the Shihs. By para 13, it is alleged that the money in the UBS account, except for the moneys transferred from the London accounts, came from the remittances made to Stanley for the purpose of making investments in the US.

13 Paragraphs 14, 15 and 16 contain the details of the moneys sent to the UBS account from the London accounts. There were two such accounts, one in Mrs Shih's name and the other in SSM's name. For the purposes of making investments, Stanley was authorised to withdraw moneys from the

London accounts and deposit them into the UBS account. Pursuant to this authority, Stanley arranged for four sums of money totalling US\$1,522,647.67 to be transferred from the London accounts into the UBS account on various dates between 15 June 2000 and 8 January 2003. Stanley's authority to effect these transfers was only for the purpose of investing the moneys for and on behalf of the Shihs. Details of the remittances were given showing that three of these came from SSM's account.

14 The claims are contained in paras 18 to 23. By para 18, the plaintiffs aver that the moneys transferred from the London accounts have to date not been repaid to them. By para 19, they make a claim for the return of the four sums of money transferred from the London accounts to the UBS account. By para 20, they assert that the balance in the UBS account, which at 31 March 2004 stood at US\$2,186,488 (against liabilities of US\$423,649), belongs to them.

15 By para 21, they assert that in breach of his duty as a trustee, Stanley wrongfully transferred a sum of US\$100,000 to the HSBC account of Ms Tsai on or about 14 February 2003. The plaintiffs were not aware of this transfer until discovery took place in this action, and they assert by para 23 that the sums were transferred to Ms Tsai without Mrs Shih's consent. The plaintiffs then jointly claim the sum of US\$1,762,840 from the first defendant and also ask for various declarations to be made in respect of the moneys in the UBS account and further, claim the sum of US\$100,000 from the second defendant.

Defence

16 By para 1 of the defence, the defendants deny para 1 of the statement of claim save for the averment that Ms Tsai was the administratrix of Stanley's estate. Then, by paras 2 and 3, the defendants admit that Stanley was the biological son of the Shihs, but no admissions were made in respect of paras 2, 3 and 4 of the statement of claim. By para 4, the defendants deny paras 5 to 20 of the amended statement of claim.

17 The defendants set out their own case in paras 5 to 13 of the defence. To summarise those material paragraphs, Ms Tsai avers that there was no such authorisation as alleged by the plaintiffs for Stanley and her other children to manage the Shihs' funds on their behalf from time to time and therefore there was no investment arrangement between Mrs Shih and her children in respect of any investment of the family's money. Instead, Ms Tsai avers that if there were moneys transferred by the Shihs to Stanley or any other child, the same were monetary gifts made by them to each of their children. There was no trust arrangement, clear understanding or oral agreement between the Shihs and the children as alleged by the plaintiffs. Further, no trust arrangement existed nor could a common intention be found where Stanley at any point in time held the moneys transferred from the London accounts to the UBS account on trust for the Shihs. The defendants aver that the moneys transferred by the Shihs to the UBS account were so transferred solely for Stanley's benefit and personal investment and use and were monetary gifts to him.

18 In paras 9 and 10 of the defence, the defendants recount Stanley's adoption by the Kims and the fact that notwithstanding that, while Stanley was studying and living in the US, he was supported by the Shihs. During this period and also during the period between 1992 and 1997, the Shihs remitted millions of US dollars to Stanley for his education, living expenses and personal use. These moneys were remitted for Stanley's sole benefit and use and not for the purpose of investing in US properties.

19 Ms Tsai for herself avers that as there was no investment arrangement or family arrangement or trust between Stanley and the Shihs, there was no breach by Stanley of any duty as a trustee and accordingly the transfer of the sum of US\$100,000 by Stanley to her account in February 2003

was not wrongful.

Reply

20 The plaintiffs filed a reply to the defence. Apart from traversing the allegations in the defence, the plaintiffs plead that in 1982, the Shihs had agreed to appoint the Kims as the legal guardians of Stanley when he went to study in the US. There was never any intention or agreement that Stanley be adopted and the Shihs were mistaken and misled when they signed the consent to adoption as they did not read or understand English. They further state that as the Shihs had only two sons, it was not possible for them to give Stanley away for adoption and yet still support and maintain him thereafter. The Shihs had remitted millions of US dollars to Stanley and continued to support him as they had not intended to give him up for adoption.

Issues

21 Both parties agreed that the main issues I must determine arising from the above pleadings are whether:

- (a) the moneys in the UBS account were held on trust by Stanley for the Shihs or whether these moneys were a gift from the Shihs to Stanley; and
- (b) if the moneys in the UBS account were held on trust by Stanley, whether the transfer of US\$100,000 to Ms Tsai in February 2003 was in breach of Stanley's duty as trustee and if so, whether Ms Tsai must return that sum to the plaintiffs.

22 The defendants, however, argued that apart from the above issues, there was an additional broad issue for my determination and that was whether the second plaintiff, described as "Estate of Shih Shui-Mu, Deceased" had capacity to sue. The plaintiffs' reply to this was that the defendants were precluded from challenging the second plaintiff's capacity to sue as such challenge had not been pleaded by the defendants.

Capacity to sue

23 I must therefore first consider what the pleaded position is in relation to the second plaintiff's capacity to sue. It would be recalled that in para 3 of the statement of claim, it was pleaded that Mrs Shih brought the action in her personal capacity and also as the representative of the estate of SSM. The defendants' response to this in para 3 of their defence was to state that no admission was made with regard to that assertion. It appears to me therefore that as the defendants did not admit that Mrs Shih was the representative of the estate of SSM, they put Mrs Shih to proof on this point. The plaintiffs argued that the defendants had never challenged Mrs Shih's ability to sue on behalf of SSM's estate. They said that to allow the defendants to raise this argument would be to allow them to raise matters that the plaintiffs had not had the opportunity to respond to. I do not accept this argument. It is clear to me from the pleadings that the defendants had not accepted that Mrs Shih was the representative of the estate of SSM and thus entitled to bring an action on behalf of the estate and that they required this assertion of fact to be proved by Mrs Shih. The defendants did not have to put forward a positive case that Mrs Shih was not the representative of SSM's estate or that somebody else represented the estate. They were entitled to require this fact to be established by the plaintiffs and their pleading was, in my judgment, adequate as an indication that this status was in issue and had to be dealt with at the trial.

24 Turning to the substantive point, the defendants submitted that there was no legal basis

upon which Mrs Shih could bring this action on behalf of the second plaintiff. In Singapore, they argued, one could only commence an action on behalf of an estate either as a personal representative or, if the personal representative defaulted in the bringing of such an action, as a beneficiary. In the defendants' view, the plaintiffs' pleadings made clear that the second plaintiff's action was not premised on either basis. The description of the second plaintiff indicated that it was suing simply as "Estate of Shih Shui-Mu, Deceased" and not as a personal representative or as a beneficiary. This description was unusual and contrasted with the description of the first defendant namely, "Betty Tsai Pei Lun ... as the Administratrix of [Stanley's estate]". The latter description clearly indicated that the first defendant was being sued as the representative of Stanley's estate.

25 The plaintiffs accepted that Mrs Shih did not have a grant of letters of administration or probate to the estate of SSM. They said this was because there was no procedure in Taiwan that could result in the issue of such a document or its equivalent. Instead, in Taiwan, when a person died, all that was necessary was to file an estate duty declaration. Further in the present instance, the Tainan District Court in Taiwan had, in a judgment dated 27 December 2005 (a copy of which had been produced by the defendants), confirmed that SSM's estate within the jurisdiction of the Republic of China, was to be jointly inherited by Mrs Shih and her three surviving children. They then went on to submit that the second plaintiff was not claiming as an executor of the estate but merely making a claim on behalf of the estate "in her capacity as a beneficiary and representative of the beneficiaries of the estate". In this connection, the plaintiffs pointed to three powers of attorney that had been executed by Mrs Shih's three surviving children. Each was dated 7 July 2004 and each authorised Mrs Shih to act as that child's attorney "to file and prosecute on [the child's] behalf all applications with competent authorities under the laws and regulations relating to the estate of [SSM] in Taiwan, Singapore, the United States of America and any other places". The plaintiffs submitted that Mrs Shih was entitled to bring the action in her capacity as beneficiary.

26 In support of their submissions, the plaintiffs cited *Wong Moy (Administratrix of the estate of Theng Chee Khim, deceased) v Soo Ah Choy* [1996] 3 SLR 398 ("*Wong Moy's case*"). In that case the appellant was a beneficiary of the estate of one Theng, deceased. She filed an action against the defendant seeking a declaration that the defendant held certain property on trust for the deceased. The defendant was successful at striking out the action at first instance on the basis that the appellant had no *locus standi* to sue as administratrix because she had not extracted the grant of letters of administration to Theng's estate at the time the action was filed. Her application to amend the writ to specify that her action was brought in her alternative capacity as a beneficiary of the estate and on behalf of her six children who were also beneficiaries of Theng's estate was dismissed. On appeal, this decision was reversed. The Court of Appeal held that a beneficiary of an estate which was unadministered was able to institute an action to recover the assets of the estate in a situation where special circumstances could be shown to exist. The judge had taken too restrictive a view of the concept of special circumstances. Special circumstances were not confined solely to cases where the personal representatives had defaulted in acting to recover the property. All the circumstances of the case should be considered, including the nature of the assets, the position of the personal representative and the reason for the default of the personal representative.

27 The plaintiffs contended that the facts of the present case constituted special circumstances. In particular, the following passage from the judgment of L P Thean JA was apposite (*Wong Moy's case* at 406–407, [24]):

In our opinion, special circumstances are not confined solely to cases where the personal representative has defaulted in acting to recover the property. Such a rule would be too inflexible and may lead to injustice. For instance, there may be cases where unless the beneficiaries are allowed to initiate proceedings to protect the assets of the estate such assets would be at risk

of being disposed of or dissipated by a third party.

28 Looking at the pleadings, I have to agree with the defendants' submission. In Singapore, an estate of a deceased person is not a legal entity and thus cannot initiate a legal proceeding. A legal proceeding brought for the benefit of or to enforce the rights of an estate generally must be initiated by the estate's legal representative. In special circumstances, a beneficiary of the estate may start such proceedings for the benefit of the estate. As far as Singapore law is concerned, there is no legal representative of the estate of SSM who is entitled to start an action on behalf of the estate. No one has obtained a grant of letters of administration to his estate. Further, there was no evidence before me that even under Taiwanese law an estate of a deceased person is entitled to bring legal proceedings or that Mrs Shih was entitled by such law to call herself the representative of the estate of SSM. Thus, there in fact is no second plaintiff in this case as the description "The Estate of Shih Shui-Mu, Deceased" is an empty description that does not refer to a legal entity capable of starting this action.

29 It was clear from their submissions in reply that the plaintiffs recognised this difficulty and therefore concentrated on establishing that special circumstances existed allowing Mrs Shih, as a beneficiary of the estate of SSM, to bring the action to recover assets belonging to that estate. The problem with this response is, however, that Mrs Shih's assertion to be acting as a beneficiary who is entitled under the special circumstances that exist to bring an action for the estate's benefit, is not found anywhere in the plaintiffs' pleadings. Paragraph 3 of the statement of claim to which I have referred previously only asserts that Mrs Shih brought the action "in her personal capacity and as the representative of the estate of [SSM]". As I have said, there was no evidence that under Taiwanese law Mrs Shih was considered the representative of her husband's estate. As far as the assertion that she was bringing the action in her personal capacity was concerned, that must have referred to her personal action to reclaim money that she had transferred to Stanley. It could not have referred to any claim on her part to be entitled as beneficiary of the estate of SSM to reclaim money that SSM had transferred to Stanley.

30 If Mrs Shih had wanted, as beneficiary of the estate of SSM, to bring an action for the benefit of the estate and to preserve its assets, because the estate had no legal representative to act on its behalf, she should have pleaded that capacity in her writ of summons and statement of claim. If she had done so, the defendants would have been entitled to ask her to prove that she was a beneficiary and that the special circumstances existed that allowed her to make this claim on the estate's behalf. I should note here that although the plaintiffs' closing submissions asserted that Mrs Shih and her three surviving children are the beneficiaries of SSM's estate, insufficient evidence of that status was put forward. It is notable that even in her affidavit of evidence-in-chief, Mrs Shih does not claim directly that she and her children are the sole beneficiaries of SSM's estate. All that she claims there is that she is authorised to make claims on behalf of SSM's estate and in support of that assertion, she refers to attached copies of the powers of attorney executed by her three surviving children. Those powers of attorney are rather vaguely worded and simply appoint her to file applications relating to the estate of SSM with competent authorities in, *inter alia*, Singapore. Even if that language can be interpreted to mean that Mrs Shih was authorised by the donors of the powers of attorney to file a law suit in Singapore against Stanley's estate, as I have said there is little before me to prove that the donors themselves were beneficiaries of SSM's estate. No will of SSM in their favour was produced. Nor was I given any evidence on the Taiwanese law of inheritance to establish the rights of a deceased person's spouse and children to inherit his estate.

31 In my opinion, the Taiwanese court judgment of 27 December 2005 to which the plaintiffs referred, was not sufficient to establish, in a Singapore court, the status of Mrs Shih and her children as beneficiaries of the estate of SSM. As I read the English translation of that decision, that was a

case between Mrs Shih and her three surviving children as plaintiffs and Ms Tsai and the Kims as defendants. The verdict of the court was that Mrs Shih had inheritance rights to five/sixteenths of the estate of Stanley within the Republic of China and that Stanley's three siblings each had an inheritance right to one/sixteenth of Stanley's estate within the Republic of China. The judgment referred to a deposition by the plaintiffs in which they stated that when Stanley died, his estate should have been inherited jointly by SSM, Mrs Shih and Ms Tsai with their respective shares being one quarter, one quarter and one half of the estate. However, since SSM had died on 10 March 2004, his share in Stanley's estate had been jointly inherited by the plaintiffs and therefore the plaintiffs (including Mrs Shih) were entitled to half of Stanley's estate. The point at issue was whether Mrs Shih and SSM as Stanley's natural parents or the Kims as his adoptive parents were entitled to inherit half of Stanley's estate. The Kims did not appear in court to contest the suit though they submitted a written statement averring that the adoption was valid. In his grounds, the judge found that the adoption was invalid and gave grounds for this decision. He then said that that meant that Mrs Shih and SSM still held the inheritance rights to Stanley's estate and these rights had not passed to the Kims. Following that, he repeated the plaintiffs' assertion that because Mrs Shih and SSM held such inheritance rights, it was correct that Stanley's inheritance in the Republic of China was to be jointly inherited by his mother, his siblings and his widow in the proportions that were set out in the plaintiffs' deposition. Reading that judgment, it appeared to me that the rights of Mrs Shih and her children to inherit SSM's estate were not in issue and were not being considered by the court. There was no investigation of the plaintiffs' assertion that they were the beneficiaries of SSM's estate. Further, I did not have the evidence of Taiwanese counsel that the judgment given by the court in a dispute between Mrs Shih and her children on the one part and Ms Tsai and the Kims on the other part over Stanley's estate would be binding as to the entitlement of these parties to inherit SSM's estate.

32 It appears to me that in their hurry to take action to prevent the moneys in the UBS account from being dissipated, the plaintiffs did not give sufficient thought to the parties entitled to enforce the rights of SSM's estate and the form in which the proceedings should be brought. The principles of *Wong Moy's* case allow beneficiaries of an estate to, provided special circumstances exist, make a claim on the estate's behalf. A plaintiff wishing to rely on those principles must make it clear that he or she is acting in the capacity of a beneficiary and must establish the special circumstances that permit the application of the principles. The plaintiffs in this case failed to take even the first step towards meeting those burdens. Accordingly, *Wong Moy's* case cannot assist Mrs Shih or the estate.

33 The above finding does not dispose of this case. It only relates to the claims made to recover moneys owing to the estate of SSM. Those claims cannot be sustained in this action as the correct plaintiff to claim them is not before the court. I must now go on to consider Mrs Shih's claims to recover moneys that she alleges that she had sent Stanley for him to invest on behalf of the family. To do so I turn to the other main issues in the case.

Did Mrs Shih send money to Stanley on trust or did she make him gifts?

34 The first point here is how much of the money that is claimed emanated from Mrs Shih herself. According to para 15 of the statement of claim, the sum of US\$518,247.29 was forwarded from Mrs Shih's account with UBS AG, London branch to Stanley at the UBS account on 15 June 2000. Attached to Mrs Shih's affidavit of evidence-in-chief were copies of the mandate that she had given to UBS Bank to allow Stanley to operate her account with them and her bank statements showing the remittance of the said sum to the UBS account in June 2000. Whilst the defence contains a general denial of para 15 of the statement of claim, the defendant also avers (in para 8) that whatever moneys had been allegedly transferred by Mrs Shih to UBS account was transferred solely for Stanley's benefit and as a gift to him. In her affidavit of evidence-in-chief, Ms Tsai said that it was not denied that on four occasions SSM and Mrs Shih had transferred moneys from the London

accounts into the UBS account. In the circumstances, there is sufficient evidence for me to find that Mrs Shih has proved that US\$518,247.29 of the balance standing in the UBS account came from her.

35 In support of the contention that all moneys (including her US\$518,247.29) sent to Stanley were not gifts, evidence of Mrs Shih's intentions and usual procedures were given by herself, her elder son, Shih Yun Wen ("YW Shih"), and Ms Lin Shu Yen, a long-time employee of the company who arranged for various remittances to be made to Mrs Shih's children at her request and on her behalf. There was also evidence given on deposition in Hong Kong from Ms May Wong, an employee of UBS AG. The plaintiffs submitted that this evidence showed that Mrs Shih exercised full control over her family's finances and that there was a clear system set up by the Shihs with regard to entrusting money to each child for the purpose of investment on the Shihs' behalf.

36 The defendants took the stand that the plaintiffs had the burden of proving that an express trust existed. They submitted that in proving that a trust arrangement existed, the only evidence on which the plaintiffs could rely was conduct or statements contemporaneous with the declaration of the alleged trust arrangement. Additionally, the plaintiffs had to establish the three certainties, *ie*, certainty of intention; certainty of subject matter; and certainty of object of the trust.

37 The plaintiffs' response was that that position was misconceived as the defendants must have known that the investment arrangement was based on a resulting trust. The plaintiffs pointed out that there are categories of trusts that are exempt from the formalities that are required for the creation and disposition of express trusts. Resulting trusts are based on presumed intention and their hallmark is informality. This type of trust is common where parties trust each other and one purchases property in the name of another or deposits money in the name of the other. The plaintiffs' case, they said, rested on a resulting trust since it was undisputed that the money in the UBS account came from two sources: first the London accounts and secondly, the sum of US\$250,000 which was from an account Stanley maintained in Zurich to which the plaintiffs had remitted US\$100,000 and US\$400,000 in March and April 1996 respectively. The agreement and common intention between the parents and the children was for the children to invest the money on behalf of the parents; the parents retaining the beneficial ownership of the assets. Additionally, there was clear evidence that Mrs Shih for herself and SSM had instructed Stanley to invest for them before the money was given to him and there was no intention to give the money to him as a gift.

38 Before coming to a decision on this issue, I must look at the evidence in more detail. First, Mrs Shih's evidence in her affidavit was that it was a family tradition that SSM and herself authorised their children to operate their bank accounts outside Taiwan so that they would (on Mrs Shih's instructions and with her approval) remit or transfer money as directed by her for the purpose of investment. She referred to this tradition as the "investment arrangement". The moneys she said belonged to her husband and herself and the children only had permission to utilise the funds on behalf of the Shihs to acquire low-risk investments like fixed deposits, real properties and bonds. The children had to transfer the funds back to the Shihs' accounts as and when Mrs Shih directed them to do so. As far as the moneys in the UBS account were concerned, Mrs Shih said that she and SSM had authorised Stanley to withdraw money from the London accounts. Stanley had told her that he intended to use the moneys for investment in Singapore on behalf of Mrs Shih and SSM and they had agreed to this. Any profits or losses were to be due to or borne by the Shihs.

39 By the time the hearing started, Mrs Shih had suffered a stroke and was not in good health. She was unable to come to Singapore to testify and therefore she was cross-examined by video link. The cross-examination took time because Mrs Shih, in her weakened condition, required frequent breaks in order to rest. It was also clear from the cross-examination that Mrs Shih had become forgetful and was often confused. She could not remember the date of her marriage or the date when

she joined the company. She did, however, remember other details like the name of her husband and the fact that the company was established by herself and SSM. When asked why she commenced this suit, Mrs Shih said that it was because she needed moneys to purchase material. Then she stated that she was making a claim against her son, Stanley, because the money was hers. She said she wanted the money to repay the bank and that the basis of her claim was that the money was hers and since Stanley had died, she should have her money back. When asked about the adoption, Mrs Shih was firm that she had not intended Stanley to be adopted by the Kims and that she had only wanted Stanley to live with them in the US. She maintained that Stanley was not given away for adoption and that since the Shihs had the ability to support him there was no reason for them to give him away. Mrs Shih was not able to remember the affidavit which she had signed in these proceedings in July 2004 in which some words had indicated that the adoption was a sham one.

40 Subsequently, when asked about the investment arrangement with Stanley, Mrs Shih confirmed that such an arrangement existed though she could not remember the approximate date when it was made. She said she did not remember the exact time but when Stanley wanted to make an investment, she would advise him to do that and she would remit money to his account. She also could not remember exactly where the arrangement was made and said it was probably in her house or in the US. She remembered that it was an oral agreement and said that since it was her son, they agreed orally. As far as the terms of the agreement were concerned, all she could remember was that she entrusted Stanley to make the investment and he needed to report to her about it. She also said that he had to tell her in advance about the investments he wanted to make and get her approval about the scope of the investment and its nature and this was because the money used for it was her money.

41 Mrs Shih was more confused when it came to the money remitted into the UBS account. She said that money should have been sent to the UBS account from her account in Taiwan and that she did not have any bank account outside Taiwan. Specifically, she said that did not have an account in the London branch of UBS. Mrs Shih was told about the documents in her affidavit relating to the opening of this account but she said that she could not remember and she did not open the account in person. Subsequently, she said that she remembered that SSM allocated US\$1m and she allocated US\$500,000 and in total they remitted US\$1.5m to Singapore but she could not remember which accounts the moneys were remitted from. When she was asked whether gift tax was paid on this sum of US\$1.5m, at first she said no and then she said she did not know and finally she stated that she did not know the details of the banking transactions and that she had left everything to Ms Lin. She was, however, quite clear in reasserting that the US\$1.5m was given to Stanley on trust and for him to make an investment on her behalf. It was not intended to be given as a gift. She also confirmed there was no written agreement that there was a trust between herself, SSM and Stanley. There was a series of questions put to her to ascertain whether the money was sent to Stanley to invest for himself or for her. At first, Mrs Shih answered that she did not remember whether the money was used to make an investment for Stanley or for herself but subsequently she said that if her son asked her for money as an allowance she would just send him the money and not bother about how it was used. However, if it was used for investment, then the money should be returned to her. So, she distinguished between money given to Stanley for buying clothing or maintaining his daily life and money given to him for investment. In the latter case, the money was sent on trust and had to be returned if she asked for it. I should also note that towards the end of the cross-examination when it was put to Mrs Shih that there was never any investment agreement between her, SSM and Stanley, she agreed that there was no agreement. Then when she was asked whether she meant there was no written agreement, she said she did not have an impression and when I asked whether there was an oral agreement, she answered that she did not remember. Finally counsel put to her that there was never an investment arrangement between herself, SSM and any of her children and her answer was, "Probably not because I don't remember that while we have been – while we talked to each

other", an answer that was somewhat incoherent.

42 YW Shih testified that he was the eldest son in the family and was therefore most familiar with the family arrangement, including the family tradition relating to financial investments. Once the children reached the age of majority, their parents had entrusted moneys to them to invest on their parents' behalf. They reported back to Mrs Shih on investment plans and kept her up-dated from time to time. Some time in 1990, when he was studying in the US, the Shihs opened an account with Bank of America and transferred funds to him allowing him to deal with and invest the funds on their behalf. The moneys went into their account in the Bank of America and then were transferred into his own account with the Bank of America. He purchased properties in San Francisco in his own name with the funds given by his parents and understood at all times that the properties were bought as investments for the Shihs and that he was holding the same on trust for them. He confirmed that Stanley had had a similar arrangement in relation to the Shihs' London accounts. From time to time, Stanley reported to the Shihs on the various investments that he had made on their behalf. YW Shih was present when some of these reports were made. He recalled an incident some time in early 2002 when contrary to instructions, Stanley had utilised more than half the money sent to him by the Shihs for the purchase of shares. Mrs Shih was furious and told him that she would take back the moneys if he did not obey her. Stanley then shifted most of the investments to fixed deposit accounts.

43 When YW Shih was cross-examined, he admitted that each child's investment arrangement was in a "different mode". When asked whether he had personal knowledge of all these modes, his answer was "sometimes I overheard the instructions given by my mother and sometimes I was present". He also admitted that he had no idea of the bank accounts that his parents had opened abroad for the purposes of sending money to his siblings for investment.

44 Ms May Wong testified that in the course of her employment as a private banker in the Hong Kong branch of UBS AG, she dealt with Stanley and the Shihs. From 1998, Ms Wong was the person who verified Stanley's written instructions to transfer money from his account and to remit money to certain accounts for certain investments. She confirmed that she had seen the third party mandate that each of the Shihs had signed authorising Stanley to manage the London accounts and that Stanley had given instructions to her authorising each of the four remittances that had been made from the London accounts to the UBS account. In 2000, Stanley had informed her that the Shihs wanted to open accounts with UBS AG London branch in their own names as a form of diversification. She did not meet with the Shihs at that time as the completion of the documents was handled by her colleagues in Taiwan. After the London accounts were opened, the Shihs remitted moneys into them and subsequently these moneys were sent out of the London accounts to the UBS account. After Stanley died, Ms Lin telephoned Ms Wong to inform her of his death and arrangements were then made for her to make a visit to Taiwan to meet the Shihs. In Taipei, Ms Wong met Mrs Shih and a person she called "Michael Shih". During that meeting she was told that the UBS account was actually a trust account held by Stanley on behalf of the Shihs. Ms Wong also met Ms Tsai on a separate occasion during that visit to Taiwan.

45 In asserting that they had established that the moneys were sent on trust and not as gifts, the plaintiffs also relied on Stanley's conduct during his lifetime. They argued that this was consistent with the trust arrangement. In particular, they emphasised the following points:

(a) Stanley held properties with a total estimated value of more than US\$13m. He had, however, never worked anywhere except for the family in the company.

(b) Although he owned real properties in the US and had large sums of money in his name in various bank accounts, Stanley continued to live within his salary which was estimated at

between NT\$50,000 and NT\$60,000 per month and Mrs Shih helped him by paying his credit card expenses. Apart from the US\$100,000 which he wrongfully withdrew from the UBS account on 14 February 2003 to give to Ms Tsai as a Valentine's Day gift, Stanley did not use any of the money in the UBS account or from the other investments held in his name for his personal maintenance. All other withdrawals from the UBS account were made for investment purposes.

(c) After his marriage, Stanley lived with Ms Tsai and her mother in Ms Tsai's apartment. He did not purchase a place of his own nor did he contribute to the maintenance of the apartment.

(d) Stanley held dual citizenship of the US and Taiwan and there was no need for him to open an account in Singapore if the money was meant for his personal maintenance and personal use.

46 The defendants apart from asserting that the elements of an express trust had not been proved spent much of their closing submissions in criticising the quality of the evidence given on behalf of the plaintiffs. They submitted that the overwhelming evidence showed that there was no trust arrangement between the Shihs and their children. I do not think that it is necessary for me to go into the criticisms of the evidence because whilst there were inconsistencies in the testimony given, such inconsistencies do not in my opinion affect the material points of the evidence. Some inconsistencies were to be expected as the witnesses were giving evidence on events that took place over the long period of time that lapsed between the time Stanley went to the US to study and his death. Secondly, the witnesses were giving evidence on oral arrangements and the conduct of family affairs rather than testifying about formal agreements and discussions that had been documented. Additionally, Mrs Shih, YW Shih and Ms Lin gave evidence in Chinese and sometimes there were difficulties with the interpretation of their evidence. In the case of Mrs Shih in particular, her evidence was affected by her age and ill health and it is not surprising that, in the course of a long cross-examination that often dealt with small details, from time to time, she contradicted herself. However, over the course of her evidence, she was clear about the central fact that money given to Stanley with the intention that he invest it was given on trust and not as a gift for his personal use or for investment for his personal benefit.

47 The well-established legal position is that when an adult of sound mind voluntarily transfers personal property like money to another adult, then *prima facie* there will not be a gift but a resulting trust in favour of the person who made the transfer. In such a case, if the transferee alleges that that was a gift, he must prove that such was the intention of the transferor. The general presumption does not apply where the transferor is the father of the person to whom the money is transferred. In such a case, the law presumes under the doctrine called "the presumption of advancement" that the transfer was intended as a gift unless there is evidence of a contrary intention to rebut the presumption. In this case, the defendants relied on the presumption of advancement to argue that the moneys in the UBS account were given to Stanley as gifts. The plaintiffs met this argument in two ways. First, they contended that there was sufficient evidence to establish that the intention of the transfers was not to make a gift to Stanley and secondly, they argued that the presumption of advancement could not apply either because Stanley was, on the defendants' own case, no longer the legal child of the Shihs, or because the presumption of advancement does not as a matter of law apply in a situation where the child is no longer a legal infant and is capable of supporting himself.

48 Taking the second point first, in *Ang Toon Teck v Ang Poon Sin* [1998] SGHC 67, I expressed the view that the presumption of advancement should not apply as between a father and a 50-year-old financially self-supporting son because in such circumstances, there was no need for the one to make financial provision for the other. This observation was based on the premise that the presumption of advancement would only apply where the party making the transfer was under some

obligation, legal or equitable, to support the transferee. My view was not accepted by Kan Ting Chiu J when he decided the case of *Low Geok Khim v Low Geok Bian* [2006] SGHC 41. Although he quoted para 23-02 of *Snell's Equity*, (Sweet & Maxwell, 31st Ed, 2005) which states:

The presumption of advancement applies to certain transfers between parties where it may be readily inferred that A would have intended to make a gift to B. It is found therefore where A is under an equitable obligation to support or make provision for B. Examples are where A is the husband or father of B. It is, in effect, a counter-presumption which provides *prima facie* evidence about A's intentions as to where the beneficial interest in the property should lie. Its effect is to negative any initial presumption that the transfer creates a resulting trust.

after considering other authorities, Kan J concluded that the underlying reason for applying the presumption of advancement as an exception to the rule on resulting trust was that a parent would have intended the child to have the benefit of the property because of the parent-child relationship between them and there was no necessity to restrict the operation of the presumption of advancement to a child in need of financial support. I have considered Kan J's views but, with respect, will maintain the view that I previously expressed. It is clear from the passage quoted from *Snell's Equity* that equity's readiness to infer a gift in a transfer from a father to a child or a husband to a wife arises from the equitable obligation of the transferor to support the transferee. Where there is no such obligation, there is no reason to infer a gift and the normal principles should apply, *ie*, that the transfer creates a resulting trust unless the transferee is able to show evidence of an intention to make a gift. As Kan J himself stated, the strength of the presumption of advancement has diminished over the years and it is now recognised only as an evidential instrument of last resort (see *Teo Siew Har v Lee Kuan Yew* [1999] 4 SLR 560).

49 In the present case, at the time that Stanley used the mandate that his parents had given him to transfer moneys from the London accounts into the UBS account, he was in his mid-thirties and gainfully employed. His material needs were met either from his salary or from his credit card expenditure which was picked up by Mrs Shih or by Ms Tsai herself who allowed him to live with her and her mother without making any financial contribution at all. In this situation, I do not consider that there was any obligation on SSM, much less Mrs Shih, his mother, to maintain Stanley even though, as a doting mother, Mrs Shih was still helping Stanley support his lifestyle. I would be loath to apply the presumption of advancement to find a gift of the moneys to Stanley. As far as the other point is concerned, however, *ie*, that Stanley was not the Shihs' legal son, whilst I note the irony of the defendants' choice in choosing to invoke the presumption when Ms Tsai has associated herself with the Kims in their effort to claim a share in Stanley's estate as his adoptive parents, I do not think that that action on the defendants' part prevents them from using the presumption since it was always the Shihs' position that Stanley in his formative years was their financial responsibility and that they supported him throughout his education and brought him back to Taiwan thereafter to work in the company and at all times treated him in exactly the same way as any of the other children notwithstanding the adoption.

50 Turning to the first point, in any case, I am satisfied on the evidence that the moneys that Stanley took from the London accounts and put into the UBS account were moneys that he was given authority to deal with by the Shihs on the basis that he would invest them for the benefit of the Shihs. In giving Stanley the authority to operate the London accounts, the Shihs were not making gifts to him of the moneys in those accounts. I also accept the evidence that there was an arrangement between the Shihs and their children whereby sums of money were from time to time sent to the children's accounts to allow them to make low-risk investments on behalf of the Shihs and probably, the family generally. These moneys and the investments arising out of them were not intended to belong solely to the child to whom they were remitted. Mrs Shih was very clear on her

reasons for remitting large sums of money to Stanley. If she gave him money for investment, it was to invest for her. If she gave him money for his personal needs, then he did not need to account to her for the same. As far as the moneys in the London accounts were concerned, whilst she did not remember those accounts specifically and in fact denied having them, she remembered that a sum of about US\$1.5m was sent to Stanley in Singapore and recalled that that money was intended for investment. Mrs Shih may have been vague and rather self-contradictory about details but she was firm on essentials.

51 I therefore conclude that Mrs Shih is entitled to recover the sum of US\$518,247.29 that was remitted from her London account to the UBS account together with all interest that has been earned on the said sum since it was received by Stanley. If the sum has been commingled with the funds taken from SSM's account, then the moneys earned on the total amount shall be divided in the proportions of SSM's contributions to Mrs Shih's contribution and Mrs Shih should recover the amount due to her as a result of that calculation.

Was the Valentine's Day gift to Ms Tsai a breach of trust?

52 It follows from my holding that the moneys in the UBS account were held on trust for the Shihs that Stanley acted in breach of trust when he transferred US\$100,000 to Ms Tsai. The plaintiffs submitted that Ms Tsai took this money as a volunteer and that she remained accountable to them as they were the beneficial owners of the US\$100,000. This is where I think the plaintiffs have a difficulty because I have found that whilst Mrs Shih can bring an action to recover moneys that she gave to Stanley, the second plaintiff is not legally present before the court and there is no plaintiff entitled to make a claim on behalf of the estate of SSM. The only clear contribution from Mrs Shih to the UBS account was the sum remitted from her London account. Whilst the plaintiffs contended that other amounts had been paid by them into the UBS account prior to the remittances from the London accounts and it was not really disputed that the Shihs were the source of the funds, there was no evidence as to exactly whom these moneys emanated from, *ie*, whether they came from SSM or Mrs Shih. Nor did the plaintiffs themselves make any attempt to trace the person from whom the funds or any part of them originated. As I have stated above, the closing submissions simply stated that Ms Tsai remained "accountable to the plaintiffs as they [were] the beneficial owners of the US\$100,000".

53 I should note here that it was accepted on behalf of Ms Tsai that she was an innocent volunteer. The contention made was that her liability to return the sum of US\$100,000 would arise only if she still retained the amount. It was further submitted that it was not known whether or not Ms Tsai still retained possession of the US\$100,000. The plaintiffs had not cross-examined Ms Tsai on that issue and, as they had failed to establish that she retained the money, they had lost their right to recover it. I do not accept that argument. It was for Ms Tsai to plead and prove that she was an innocent volunteer and that she had, unknowingly, spent the money before she knew of the plaintiffs' claim to it. She did not do either. It was not for the plaintiffs to prove that Ms Tsai still had the money in her hands.

54 Notwithstanding what I have said above, since there is no clear evidence before me that the money that was given to Ms Tsai came from Mrs Shih, I am unable to order that it be returned to Mrs Shih. Further, since there is no proper claimant on behalf of the estate of SSM before the court, I am not able to make any order that Ms Tsai repay that money to the estate.

Conclusion

55 There will be judgment for Mrs Shih against the first defendant for the sum of US\$518,247.29

and all other moneys in the UBS account that have been earned from the said sum whether by way of interest or otherwise. The action by the second plaintiff must be dismissed. I will see the parties on costs and the consequential orders to be made by reason of the findings I have made in this judgment.

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