

Re Estate of Lim Yew Teok, deceased
[2008] SGHC 128

Case Number : OS 1329/2007
Decision Date : 06 August 2008
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Edwin Tong and Colin Chow Zhiquan (Allen & Gledhill LLP) for the applicants; Kee Lay Lian and Melvin Lum (Rajah & Tann LLP) for the claimants; Chelva Rajah SC and Han Kee Fong (Tan Rajah & Cheah) for the respondents; Lai Kwok Seng (Lai Mun Onn & Co) for the intervener; Ponniah James Leslie (Wong & Lim) for other party; Keh Kee Guan and Mary Leong Sut San (Silk Legal LLP) for further other party
Parties : —

Probate and Administration – Devolution on legal representatives – Complete Failure of Stirps – whether shares fall into residue

6 August 2008

Judgment reserved.

Choo Han Teck J:

1 This application was brought by the trustees (“the Applicants”) of the estate of Lim Yew Teok, and charged with the administration of his estate under his will dated 22 August 1925 (“the Will”). The applicants sought to have this court determine whether 40 shares of the income of the residuary trust funds under the Will should fall into residue or devolve to some other beneficiaries, and if so, which beneficiaries, and the proportion of their entitlement. The testator died leaving 10 shares to his grandson Lim Ah Kow; 20 shares to his daughter Lim Chye Inn; and 10 shares to his wife Chan Mek Tuan. Lim Ah Kow’s shares all devolved to his daughter Lim Chui Ngor (“LCN”). Five of Chan Mek Tuan’s shares devolved to LCN directly, and the remaining five, subsequently, when Chan Mek Tuan’s other beneficiary Chng Kiat Leng (son of Lim Chye Inn) died. Lim Chye Inn died leaving her 20 shares to her four children, Lim Ah Kow (adopted by the testator’s adopted son Lim Geok Chai), Chng Kiat Leng, Chng Ah Dek, and Chng Kim Soh, equally (five shares each). The shares of Lim Ah Kow and Chng Kiat Leng through Lim Chye Inn devolved to LCN. Chng Ah Dek’s shares devolved first to his father Chng Phee Lam (Lim Chye Inn’s husband) and through him, 2.5 shares devolved to LCN. The other 2.5 devolved to Chng Kiat Leng and subsequently, to LCN on his death. Finally, the five shares of Chng Kim Soh devolved to his father in similar fashion as those of Chng Ah Dek, and eventually, devolved to LCN. Thus LCN came to hold the 40 shares in question. The applicants submitted that all 40 shares fall into residue, but if at all, only 15 shares did not, but the claimants Chng Heng Choo and Chng Heng Tee (“the claimants”) were not the parties entitled to the 15 shares as Koh Tek Heng would have a superior claim. The claimants submitted that only 25 shares fall into residue and the remaining 15 should pass to them. The claimants were not beneficiaries under the Will. They were the daughters of Chng Phee Lam from his second marriage, and were thus the half-blood paternal aunts of LCN.

2 Based on the above it was only necessary for me to determine the question whether the 15 shares which passed to LCN from the original legatees should now fall into residue or devolve to some other party, and if so, to whom. For the reasons set out in my judgment of 7 January 2008 I determined that cl 6 of the Will meant that 25 of the 40 shares fell into residue and the remaining 15 shares in question would devolve to the Chngs in the absence of a better claim. One Koh Tek Heng

subsequently claimed to have a superior claim because she was the maternal aunt of LCN, and thus, a full-blood aunt. Her solicitors applied to set aside the judgment of 7 January 2008. One Koh Sim Tian, the half-brother of Koh Tek Heng, also subsequently applied and claimed the same status as the claimants. Koh Tek Heng and Koh Sim Tian did not present arguments in the previous proceedings. The judgment of 7 January 2008 was set aside on 4 February and the parties were granted leave to file fresh affidavits and counsel presented oral arguments on 20 May 2008 with leave to file short summaries and reply on 23 May 2008. The applicants also presented further arguments in support of their application. Their counsel, Mr Colin Chow, presented a coherent and persuasive argument that all 40 shares ought to fall into residue.

3 Clause 6 of the Will provided as follows –

I DEVISE and BEQUEATH all the rest and residue of my moveable and immoveable property whatsoever and wheresoever situate unto my Trustees UPON TRUST to sell call in and convert into money the same or such part thereof as shall not consist of money at such time or times and in such manner as they shall think fit with power to postpone the sale calling in or conversion of the whole or any part or parts of my residuary estate including leasehold or other property of a terminable hazardous or wasting nature during such period as they shall in their discretion think proper without being responsible for any loss whatever and if thought fit to retain all or any part of my estate in the same state of investment as the same may be at my death without being responsible for loss and shall with and out of the proceeds of such sale calling in collection and conversion and with and out of my ready money pay all my just debts and funeral and testamentary expenses and invest the residue of the said moneys in or upon any of the investments hereby authorised with power to vary or transpose such investments for or into others of the nature hereby authorised and to stand possessed of the moneys and investments for the time being representing my residuary estate which moneys and investments are herein called "my residuary trust funds" until the date of distribution IN TRUST in the meantime to pay out of the income thereof the said money sum of Dollars eight hundred (\$800) and such repairs or renewals as may be necessary to my house No. 56-5 Neil Road aforesaid and to divide the balance of the income thereof into ninety five (95) equal shares and pay the same to the legatees following (hereafter called "my residuary legatees") or in the event of the death of any one or more of such legatees to the next of kin of such legatee or legatees so dead in accordance with the statutes of distribution and in the event of the death or any one or more of such next of kin as aforesaid then to the next of kin of such next of kin in accordance with the statutes of distribution and only in the event of the complete failure of the stirps of any one or more of residuary legatees shall the shares of such original residuary legatee or legatees fall into residue. The following are my residuary legatees and the shares to which they are respectively entitled:-

- (1) To my wife CHAN MEK TUAN ten shares
- (2) To my son the said LIM GEOK CHIP fifteen shares
- (3) To my daughter the said LIM CHYE INN twenty shares
- (4) To my infant grandson LIM AH KOW the son of my deceased son LIM GEOK CHAI ten shares, such part thereof as my trustees shall think fit to be expended by my trustees for the maintenance and education of the said Lim Ah Kow during his minority.
- (5) To my nephew LIM YEW TECK the son of my deceased brother Lim Kim Khuan two shares.

(6) To my nephew LIM HIAN WAN the son of my deceased brother Lim Kim Khuan two shares to be expanded by my Trustees for the maintenance and education of the said Lim Hian Wan during his minority.

(7) To each of my nephews Lim Geok Mauh and Lim Geok Gong the sons of deceased brother Lim Sian Kak two shares.

(8) To my nephew Lim Geok Huan the son of my youngest brother Lim Chan two shares.

(9) To my son LIM GEOK HOH at present in China two shares.

(10) To my son LIM CHOO YIAN fifteen shares.

(11) To my son LIM BOON PIN thirteen shares.

[Chinese characters had been redacted from the names of the legatees]

This clause had been interpreted by Ambrose J in *Lim Yew Teok, decd; British Malayan Trustees Ltd v Chng Kiat Leng* [1966] MLJ 260 and held that:

Clause 6 of the will contains six provisions. I will number them for convenience of reference. First, the testator leaves the residue of his property to his trustees upon trust for sale, conversion, payment of debts, funeral and testamentary expenses, and investment, and to hold the residuary estate until the date of distribution. Secondly, the testator directs the trustees to pay out of the income \$800 a month for the maintenance of the family house and a further sum for necessary repairs or renewals, and to divide the balance of the income into ninety-five equal shares and to pay the shares to the residuary legatees.

Thirdly, the testator makes this provision:-

"or in the event of the death of any one or more of such legatees to the next of kin of such legatee or legatees so dead in accordance with the Statutes of Distribution."

Fourthly, the testator goes on to make this provision:-

"and in the event of the death of any one or more of such next of kin as aforesaid then to the next of kin of such next of kin in accordance with the Statutes of Distribution. "

Fifthly, there follows this provision:-

"and only in the event of the complete failure of he strips of any one or more of my residuary legatees shall the shares of such original residuary legatee or legatees fall into residue. "

Lastly, the testator names as residuary legatees his wife, four sons, a daughter, a grandson and five nephews, and states the shares of income to which they are respectively entitled.

4 Mr Chow referred to the previous court proceedings concerning this same Will and pointed out that in all the previous proceedings the courts had only been asked to determine who were entitled to the shares, on the basis that there were stirps. This was the first time, with the death of LCN, that there has been a "complete failure of stirps". The original legatees were Lim Ah Kow, Lim Chye Inn, and Chan Mek Tuan. None of the Chngs was a blood relation of Lim Yew Teok or any of his three

legatees. LCN was the only one from the same generation of the stirps of the original legatees. Counsel argued that on LCN's death, the provision in the sub-clause conveniently named "sub-clause 3" came into effect. I agree that it meant that when there has been a failure of the stirps of the original legatees, the shares shall fall into residue. I agree that the failure of stirps may take place at any stage in the course of time, and can take place after the first, second, third, or fourth passing of the shares unless it is to "a next of kin who as belonging to the stirps of the original legatee." That was the interpretation of Ambrose J in the 1966 case. Indeed, LCN obtained some of her shares in a fourth passing. In a previous decision, *British Malayan Trustee and Executor Co v Chng Phee Lam* [1948] MLJ 188, Brown J held that: "The 'stirps' referred to is to my mind clearly the descendants by blood of Lim Chye Inn." At that time, there was no failure of stirps because three of Lim Chye Inn's sons were still alive. It is therefore immaterial that there might have been a surviving next of kin (such as Koh Tek Heng) so long as it is clearly shown that there has been a complete failure of stirps. The fact of complete failure of stirps is, in my view, incontrovertible. Miss Kee, counsel for the claimants, and Mr Lai, counsel for Koh Tek Heng, and Mr Ponniah, counsel for Koh Sim Tian, based their submissions on an interpretation that regards sub-clause 3 as a provision that can operate independently of cl 6 read as a whole. I do not now think that that would be the right way to understand sub-clause 3.

5 For the reasons above, I declare that all 40 shares of the income of the residuary trust funds should fall into residue. It is necessary for the record to reflect that on 27 June 2008 Mr Keh Kee Guan and Miss Mary Leong appeared on behalf of a group of claimants namely, Ang Hwa Bin, Ang Hwa Twan, and Ang Hwa Cheng ("the Angs"), who claim a share on the ground that they were cousins of LCN. Mr Lai and Miss Kee then submitted that their clients who were also cousins should also succeed if the Angs succeed. However, on 30 July 2008, Mr Keh informed the court that his clients would not be filing any affidavit nor would he be making any submission on their behalf. In view of the declaration I make in this judgment, the claims of all the parties represented by Miss Kee, Mr Lai, Mr Ponniah, and Mr Keh fail. I will hear the question of costs on a separate date if parties are unable to agree costs.

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