IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 203

Originating Summons No 532 of 2018

Between

(1) BTB
(2) BTC

… *Applicants*

And

BTD

… *Respondent*

GROUNDS OF DECISION

[Equity] — [Maxims] — [Equity treats as done what ought to be done]
[Trusts] — [Constructive trusts]
[Trusts] — [Express Trusts] — [Certainty of intention]
[Trusts] — [Express Trusts] — [Constitution]
[Trusts] — [Express Trusts] — [Interaction with Central Provident Fund Act]

BTB and another
v
BTD

[2018] SGHC 203

High Court — Originating Summons No 532 of 2018
Valerie Thean J
17 July 2018

17 September 2018

Valerie Thean J:

Introduction

1 The source of this dispute is a series of texts that the father of both the applicants ("the Father") sent his former wife prior to his death in respect of the long-term provision he was making for his sons. The need for such provision arose after he was diagnosed with stomach cancer and the text conversation concerned his use of the funds in his Central Provident Fund accounts ("CPF moneys"). The applicants contended that these texts, coupled with his actions in applying to withdraw his CPF moneys on medical grounds, were sufficient to give them entitlement to the entirety of the moneys, in the light of the equitable maxim, "equity treats as done that which ought to be done". They also contended that the texts and actions resulted in the creation of an express trust over his CPF moneys.

2 I dismissed the application with brief reasons on 17 July 2018. I was of the view that the equitable maxim was not applicable on the facts of this case. The Father did not intend to give his sons the entirety of his CPF moneys; and in any event, the Central Provident Fund Act (Cap 36, 2013 Rev Ed) ("CPF Act") does not allow for any *inter vivos* dispositions save for a nomination under the CPF Act. The applicants filed a notice of appeal on 15 August 2018 and I now furnish my grounds of decision.

Facts

3 The Father passed away on 5 February 2017.[1] The applicants, aged 15 and 10, are his sons from his former wife ("the Mother"), who is also their litigation representative.[2]

4 After his divorce from the Mother was finalised on 12 December 2014, the Father married the respondent ("the Wife") around 31 March 2015.[3] In mid-December 2015,[4] the Father was diagnosed with terminal-phase stomach cancer.[5] He started making various long-term arrangements. In April 2016, he set up Central Provident Fund ("CPF") accounts for both sons and started putting money into the accounts.[6] In the course of the same year, he similarly put money into the Wife's CPF accounts.[7] In or around 31 October 2016, he also purchased an insurance policy for each son, paying for the relevant premiums

1 Applicant's Affidavit in Support, p 6.

2 Applicant's Affidavit in Support, p 2.

3 Respondent's Affidavit, p 3.

4 Respondent's Affidavit, p 4.

5 Applicant's Affidavit in Support, p 3.

6 Applicants' Affidavit in Support, p 3.

7 Respondent's Affidavit, pp 4–5.

in full.[8] The policies, unless terminated or surrendered would, upon his death, pay out a monthly income to his sons as second generation beneficiaries.[9]

5 On 29 December 2016, the Father and the Mother had the Whatsapp conversation which is the focus of this dispute. The relevant portion reads as follows:[10]

Time and sender	Message
10.09 am, Father:	"The cpf does not allow me to transfer to the boys cpf account except the special account. If I nominate cash for them it will be controlled by state trust until they are 18"
10.10 am, Father:	"Hence I am changing my strategy abit"
10.10 am, Mother:	"Oh…so how to manage the OA portion? Thought could will it…"
10.11 am, Father:	"I have topup 37,000 for both yesterday and will do so first week of new year"
10.11 am, Father:	"So they will have 72K each in their cpf"
10.12 am, Father:	"I will withdraw my cpf on medical grounds so that there is flexibility in how the funds can be used"
10.12 am, Father:	"I am getting the docs to certify me"
10.13 am, Father:	"Hopefully this can be done soon and I would be able to withdraw the cpf funds"
10.14 am, Father:	"I am planning about 500K cash for both"
10.14 am, Father:	"That should be enough for education and housing"
10.15 am, Father:	"You can continue to topup their cpf accounts for the next four years with a limit of 37K per year"
10.15 am, Father:	"I mean 500K each"

8 Respondent's Affidavit, p 7.

9 Reply Affidavit, p 9.

10 Reply Affidavit, p 25.

10.16 am, Father:	"Hope you will be able to manage it properly"
10.17 am, Father:	"If emergency then they can touch the insurance policies"
10.18 am, Father:	"Do you feel comfortable with this figure"
10.20 am, Mother:	"The 500k will be in cpf?"
10.20 am, Father:	"Cash"

6 On the same day, the Father submitted an online application to the CPF Board to withdraw his CPF funds on medical grounds. Also on the same day, the Father's oncologist, Dr Tay Miah Hiang ("Dr Tay"), issued a medical certification in the CPF Board's standard form certifying that he was suffering from advanced gastric cancer and was terminally ill. Dr Tay's certification was received by CPF Board on 4 January 2017. The CPF Board first wrote to the Father to inform him that his application was under assessment on 5 January 2017. Subsequently on 12 January 2017, the CPF Board asked Dr Tay for further information on the stage or grade of the Father's medical condition, and for any available histology or radiological reports. Dr Tay faxed the CPF Board a copy of an amended medical certification specifying "Stage 4" on 23 January 2017. This amended certificate was later received by the CPF Board on 25 January 2017.[11]

7 The Father passed away on 5 February 2017. Prior to his death, he executed a will in the early hours of the morning. There is no dispute regarding the validity of this will. In it, he bequeathed 25% of his estate to each of his sons, 20% to the Wife, and the remainder 30% to his parents.[12]

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11 Applicants' Affidavit in Support, pp 5–6.

12 Applicants' Affidavit in Support, pp 6–7.

8 At the time of the Father's death, he had $718,912.52 in his CPF accounts.[13] As he had not made a nomination under the CPF Act, the CPF Board transferred his CPF moneys to the Public Trustee in accordance with the CPF Act, and the moneys are presently held by the Public Trustee pending distribution. Pursuant to the Intestate Succession Act (Cap 146, 2013 Rev Ed) which applies by operation of the CPF Act, the two sons are each to receive 25% of the Father's CPF moneys. The Wife is to receive the remaining 50%.

9 The Mother contends that the funds held by the Public Trustee are the subject of a trust, and the Father's sons are its beneficiaries.[14] By this originating summons, she asks for the following:

> (a) A declaration that all of the CPF moneys of the Father standing to his credit as at the time of his death inclusive of all interest accrued belong beneficially to the two Applicants in equal shares; and
>
> (b) For an order that the public trustee do pay out all of the Father's CPF moneys to herself, as legal guardian for the two applicants.

Issues

10 The Mother asserted, on the strength of the Whatsapp text conversation, that the Father's CPF moneys belonged to his sons in equity.[15] Relying on the equitable maxim, "equity treats as done that which ought to be done", the Mother contended that the Father's application to withdraw his CPF funds, coupled with his doctor's certification, was sufficient to transfer the beneficial interests in the accounts to the sons.[16] Alternatively, the facts demonstrated that

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13 Applicants' Affidavit in Support, p 7.

14 Applicants' Affidavit in Support, p 8.

15 Applicants' Submissions, pp 10–11.

the Father had created an express trust over the right to withdraw the CPF funds.[17]

11 The Wife, on the other hand, contended that the the CPF Act would not allow the creation of any equitable interest or trust as alleged by the Mother.[18] It was further her case that the same conversation illustrated that the Father had no intention to create a trust, but to provide about $500,000 or so for each of his sons, which he did.[19]

12 After hearing parties, I dismissed the application, being of the view that:

(a) the Father did not apply to withdraw his CPF moneys intending for his sons to obtain the entire sum, but rather, to give himself greater flexibility in their use;

(b) the equitable maxim relied upon was not applicable on the facts;

(c) an express trust as claimed by the applicants was not created; and

(d) the CPF Act does not, in any event, allow the setting up of such a trust.

I explain each point in turn.

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16 Applicants' Submissions, p 13.

17 Applicants' Submissions, p 17.

18 Respondent's Submissions, p 8.

19 Respondent's Submissions, p 10.

The Father's intention

13 The Whatsapp conversation is the subject of opposing interpretations by both the Mother and the Wife. In my judgment, four points are reasonably clear from the Father's conduct and the thread of the Father's texts, and are as follows.

14 First, it is clear that the Father was, very responsibly, concerned about the longer term financial stability of all his dependents after he was diagnosed with a terminal condition in December 2015. He put money into the sons' and the Wife's CPF accounts from the second quarter of the following year, and his parents were included in provisions made in his will.

15 Second, his decision, communicated to the Mother on 29 December 2016, was a well-considered one, made after enquiries on CPF's practices. This was one year past his diagnosis and some eight months after he opened his sons' CPF accounts. Because of the answers he received from his various enquiries, the Father did not intend to transfer the funds from his CPF accounts to his sons' accounts, nor did he want to make a CPF nomination in favour of his sons. His reason for the latter decision, he explained, was that funds from any nomination would not be usable until the sons reached 18. The Mother took the position, too, that the Father "was making an informed and conscious decision on how he would handle his CPF monies".[20]

16 Third, it was plain that he intended to withdraw the moneys. His stated purpose was not to create a trust. When the Mother mooted the issue of dealing with the CPF moneys through the Father's will, his text that followed said: "I will withdraw my cpf on medical grounds *so that there is flexibility in how the*

[20] Reply Affidavit, p 7.

funds can be used" [emphasis added]. This meant that he wanted to give himself flexibility in how he could use the funds after withdrawal. After mentioning the medical certification process, he followed on with: "Hopefully this can be done soon and *I would be able to withdraw the cpf funds*" [emphasis added]. His objective was to receive the cash equivalent of his CPF moneys.

17 Finally, his intended provision for each of his sons is also articulated as an estimated sum in cash: "I am planning about 500K *cash* for both" [emphasis added], which he reiterated with "I mean 500K each". In response to the Mother's query: "The 500k will be in cpf?", he emphasised "cash". His intention was thus to give his sons $500,000 each in cash. This was in the end result achieved with the share of the CPF moneys accorded to each son by the application of intestacy laws together with their share of the estate. A crucial fact was that the Father made his will on the day he died. There is no contention that the Father was not lucid in any way up to the time of his passing: the Mother moreover stated that she spoke with the Father about the sons on 4 February, the day before he passed away.[21] He would have known that the CPF moneys had not yet been paid out to him when he devised each son a 25% share of his estate on 5 February. His omission to deal, in his will, with his CPF moneys is consistent with knowledge that the CPF Act did not allow him to do so. It may be inferred, therefore, that he was aware that in the absence of any nomination, the moneys would be distributed under intestacy laws and that would mean that 25% of the fund would be paid to each of his sons and the remainder 50% to the Wife. With their share of his estate and their share of his CPF moneys, each son received around $614,487 or so,[22] which is in the region of the planned sum of $500,000. His plan, as shared with the Mother, was thus brought to fruition.

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21 Reply Affidavit, p 14.

22 Respondent's Affidavit, p 7.

18 The Mother relied on the fact that the Father's application for withdrawal of his funds was made on the same day as his texts to her.[23] Her contention was that the texts showed that the Father intended to set aside $500,000 for each son's education and housing, but the overall provision for each son was not to be limited to $500,000.[24] The fact remains, nonetheless, that there was nothing in the text conversation to indicate that the Father intended to give the whole amount in his CPF accounts to his sons. Nor does the timing of his texts indicate so. He was simply communicating to her his plan that he would withdraw his funds in order to have greater flexibility over the cash amount thereby withdrawn. His communication with her was part and parcel of the execution of his plan. His closing comment was for her to expect $500,000 in cash for each child, and, in the event of any emergency, to use the insurance policies previously purchased.

The equitable maxim

19 The Mother calls to her aid the equitable maxim, "equity treats as done that which ought to be done". In a case where a settlor has done all that is necessary to transfer title to the donee but the transfer has not happened for reasons outside of his control, equity assumes the equitable interest to be in the donee.

20 This principle is illustrated by the case of *In re Rose; Rose and another v Inland Revenue Commissioners* [1952] Ch 499 ("*Re Rose*"), where a transferor executed transfer forms in respect of shares in a company on 30 March 1943. These forms were delivered to the company to be registered. Registration took place on 30 June 1943. The transferor then passed away in February 1947, and

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[23] Applicants' Submissions, p 6.

[24] Applicants' Submissions, p 8.

the Crown claimed estate duty on the shares on the ground that the gift of shares was not completed before 10 April 1943, the relevant date before which the gifts must have been completed to avoid duty. It was held by the English Court of Appeal that duty was not payable as the transferor had done everything in his power by executing the transfer forms to transfer his legal and beneficial interest in the shares to the transferees, and the transferees had become the beneficial owners of the shares.

21 At page 518 of *Re Rose*, Jenkins LJ explained:

> In other words, in my view the effect of these transactions, having regard to the form and the operation of the transfers, the nature of the property transferred, and the necessity for registration in order to perfect the legal title, coupled with the discretionary power on the part of the directors to withhold registration, must be that, pending registration, the deceased was in the position of a trustee of the legal title in the shares for the transferees.

22 *Blackett v Darcy* [2005] NSWSC 65 ("*Blackett*"), a decision of the New South Wales Supreme Court that the Mother cited, is useful for the purpose of this analysis. There, a testator drew a cheque in favour of his executor and her brother before his death, with instructions to her to buy a home. The cheque was deposited into the account of the executor and her brother the day after the testator's death, and paid. Under the applicable laws, a cheque that had not been cleared as at the date of death formed part of the estate (see *Blackett* at 396). Nevertheless, Young CJ decided that the money was not part of the estate and treated the $650,000 as a gift that was completed (see *Blackett* at 397). Young CJ cited Lord Browne-Wilkinson in the Privy Council case of *T Choithram International SA and others v Pagarani and others* [2001] 1 WLR 1 at 11 ("*Choithram*") where it was stated that: "Although equity will not aid a volunteer, it will not strive officiously to defeat a gift."

23 In *Choithram*, the donor executed a trust deed for a foundation, and declared, in effect, "I now give all my wealth to the trust". The gifted assets were not, however, transferred to the trustees of the foundation; the gift was therefore incomplete. The judge at first instance and the Court of Appeal in the British Virgin Islands held that the donor had not made a valid gift, the assets not having been transferred; nor was it possible to treat the donor's words as a declaration of trust because no reference was made to trusts. The Privy Council held that although the words were apparently words of outright gift they were essentially words of gift on trust. The trust was for the benefit of the trustees of the foundation and the donor had declared himself to be a trustee of the gifted property. The donor having appointed himself trustee of the trust property, it was held that it would be unconscionable and contrary to the principles of equity to allow such a donor to resile from his gift.

24 There are crucial points of distinction between the case at hand and the cases which the Mother relied upon to elucidate the maxim. The first is that of intention. In each of the cases relied upon by the Mother, the donor had intended a binding legal obligation which was not perfected. The testators in *Re Rose* and *Blackett* demonstrated clear intent to make the gifts that they did, signing all necessary documents. The court in *Choithram* similarly found that the donor in that case possessed "an intention to make an immediate, unconditional gift to [the donee]" (see *Choithram* at 10). Lord Browne-Wilkinson in *Choithram* made the statement cited by Young CJ "on the basis that [the donor] intended to make an immediate absolute gift" (see *Choithram* at 11).

25 The issue of intention would thus have disposed of this case. But it is equally fundamental to note that, even where such intention exists, it must be coupled with action sufficient to create rights in favour of the intended beneficiary. This was described in *Re Rose* and *Blackett* as the settlor having

done everything necessary to ensure that the property is transferred. In *Re Rose* the transfer forms were completed but were only registered by the company after the applicable date. In *Blackett*, the donor had written a cheque, which the bank would have been obliged to honour if he had been alive. In both cases the maxim was only necessary because the donor's death interrupted a process which would have otherwise completed with the effluxion of time. In *Choithram*, where the maxim was not used in Lord Browne-Wilkinsons' reasons, there were actions which the donor could have taken to perfect the gift, such as to transfer the assets into the name of all the trustees of the foundation. The Privy Council viewed the transaction not as a gift, but as a trust. The court held that the donor's action in declaring himself a trustee meant that he was bound by the trust and could be compelled to transfer the property accordingly. That was the obligation upon which the case turned. These cases, in this context, illustrate the equitable preference for substance over form.

26 In contrast, in this case, the Father has only done all that he could to transfer the property, not to his sons, but *to himself*. Pursuant to his instruction, the CPF Board would have paid the moneys out to the Father's account if not for his passing. This explained why he took steps to obtain medical certification of the terminal nature of his condition. The implicit assumption in withdrawals allowed where the account holder is suffering from a terminal condition must be that any cash sums released would be for such final arrangements or instructions as the termainally ill patient required or desired. The Father had not done all that he could for the moneys to be transferred *to his sons*.

27 Nor did he have the power to transfer the moneys, because he was not yet in possession of it, unlike the donors in *Re Rose*, *Blackett* and *Choithram.* It would be entirely different if, for example, after having obtained the consent of the CPF Board and successfully withdrawn the funds from the CPF, with *the*

moneys being already in his bank account, he *then* applied to the bank or wrote a cheque to transfer the funds *to his sons' accounts* but the transfer was not effected before his death. The bank, in such a scenario, would have been under a legal obligation to do so but for his death. In this scenario we see the stark distinction between the facts at hand and *Re Rose*, *Blackett* or *Choithram*.

28 This case well illustrates that where equitable maxims are being advanced, the facts of each case must be analysed carefully to ensure that the maxim is applicable on the particular and specific facts of the case. *Choithram* is instructive in this regard. Lord Browne-Wilkinson, being of the view (at 11) that "the facts of this case are novel and raise a new point", considered it "necessary to make an analysis of the rules of equity as to complete gifts". Referring subsequently to the assertion that "equity will not aid a volunteer", he pointed out at 12 that this assumption "represents an over-simplified view of the rules of equity": once a trust relationship is established between trustee and beneficiary, the beneficiary may enforce the trust against the trustee, and the fact that the beneficiary has given no value is irrelevant.

The express trust

29 The Mother also argued that the Father created an express trust over the right to withdraw the CPF moneys, this right being a chose in action. It is not disputed that one crucial feature of an express trust is the intention to create a trust. The Mother relies on the case of *Paul v Constance* [1977] 1 WLR 527 ("*Paul v Constance*") in this regard.[25] In *Paul v Constance*, the issue before the court was whether there was an express of trust over moneys in a bank account, in favour of the deceased owner of the bank account and Ms Paul, with whom he was cohabiting. The Mother relies on the fact that the court in *Paul v*

[25] Applicants' Submissions, p 18.

Constance found that there was an intention to create an express trust based on the fact that the deceased had from time to time informed Ms Paul that "[t]he money is as much yours as mine". The Mother argued that the phrase in the Father's text: "[h]ope you will be able to manage it properly" had a similar effect. There are three difficulties with this argument.

30 I should first highlight that the court in *Paul v Constance* did not merely view the material words in isolation, but also considered various surrounding circumstances to infer an intention to create the trust. The court noted at 532:

> [t]here are… other features in the history of the relationship between the [Ms Paul] and the deceased which support the interpretation of those words as an express declaration of trust. I have already described the interview with the bank manager when the account was opened. I have mentioned also the putting of the "bingo" winnings into the account and the one withdrawal for the benefit of both of them.

In other words, there were various incidents over the course of the relationship where the deceased treated the money in the bank account as though it were shared between him and Ms Paul. The deceased's intention was clear.

31 In contrast, the wider context of the Father's text as well as the surrounding circumstances suggests that he had no intention to create a trust. The text "[h]ope you will be able to manage it properly" was immediately preceded by a text from the Father stating "I mean 500K each", which followed an earlier text that stated that he planned a sum of $500,000 for the sons. It was clear that the text which the Mother relies on was referring to her management of the cash sums he intended to give each of the sons and not the management of his CPF moneys. Further, as highlighted above at [16]–[18], the Father intended to withdraw the CPF moneys in order to give himself more flexibility in distributing his assets, there was no indication that the Father intended to

transfer all the CPF moneys to the sons, let alone constitute a trust over the right to withdraw his CPF moneys in favour of the sons.

32 Second, insofar as the Mother was suggesting that the Father's text was indicative of an intention for her to be the express trustee of the CPF moneys and "manage" the moneys on behalf of the sons, the trust was not properly constituted: the CPF moneys were not transferred to the mother as express trustee. In *Paul v Constance*, after a discussion with the bank manager, the money was placed in a deposit account in the deceased's name, with special arrangements enabling Ms Paul to draw upon it. The deceased's declaration was one where he declared himself a trustee over moneys for which Ms Paul was a beneficiary. The trust was already perfectly constituted. Upon his death, those moneys could be distributed to their beneficial owner. In *Choithram*, similarly, the court stated at 12 that the deceased had made an express declaration of trust:

> Therefore the words "I give to the foundation" can only mean "I give to the trustees of the foundation trust deed to be held by them on the trusts of foundation trust deed". Although the words are apparently words of outright gift they are essentially words of gift on trust.

The deceased, therefore, was already a trustee of the assets, and the analysis rested upon his inability to resile from that obligation.

33 It is apposite to deal, here, with counsel for the Mother's position during the hearing that the trust being claimed for the sons was an express trust. This appears to be a conflation of the principles in *Re Rose* and *Paul v Constance*. There is, however, an important distinction between the two. In *Re Rose* (and *Blackett*), on the one hand, the clear intent of the deceased was to make an outright gift. The trust, imposed by equity to allow proprietary relief, arose by operation of law. Graham Virgo, *The Principles of Equity & Trusts* (Oxford University Press, 3rd Ed, 2018) ("Virgo") at p 128 explains that in situations

similar to *Re Rose*, the donor has retained legal title while equity assumes that title has passed to the donee. This division of legal and equitable title means there is a trust and, since this trust arises by operation of law, it is properly analysed as a constructive trust. *Paul v Constance*, on the other hand, is an example of an express trust, as is *Choithram* (see Virgo at p 131 on *Choithram*). Be that as it may, none of these various scenarios seen in the different cases are applicable on the facts here.

34 Finally, in any event, the scheme of the CPF Act does not allow for the *inter vivos* creation of trusts over CPF moneys. This was the main plank of the Wife's argument, with which I agreed, and to which I now turn.

The CPF Act

35 The distribution of a deceased person's CPF moneys is governed by statute. Section 24(3A) of the CPF Act reads as follows:

> (3A) Subject to subsection (3B), sections 16A, 25(2A), 27N and 57C and any regulations made under section 27Q or 57F, all moneys paid out of the Fund on the death of any member of the Fund shall be deemed to be impressed with a trust in favour of —
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> (*a*) the person or persons nominated under section 25(1) by the deceased member, if any; or
>
> (*b*) the person or persons determined by the Public Trustee in accordance with section 25(2) to be entitled thereto,
>
> but shall, without prejudice to the operation of the Estate Duty Act (Cap. 96), be deemed not to form part of the deceased member's estate or to be subject to his debts.

36 In this case, the Father decided not to make any nomination because, as he explained, he wished to have the flexibility to deal with the funds to be withdrawn. Section 25(2) of the CPF Act thus applied, which reads as follows:

> (2) Subject to subsection (2A), where, at the time of the death of a member of the Fund, no person has been nominated by him under subsection (1), the total amount payable on his death out of the Fund shall be paid to the Public Trustee for disposal in accordance with —
>
> (*a*) the Intestate Succession Act (Cap. 146), if the member is not a Muslim at the time of his death; or
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> (*b*) section 112 of the Administration of Muslim Law Act (Cap. 3), if the member is a Muslim at the time of his death.

37 These statutory restrictions imposed by the CPF Act were explained in *Saniah bte Ali and others v Abdullah bin Ali* [1990] 1 SLR(R) 555 ("*Saniah*"), which considered the predecessor section of the present s 25(2)(a). In *Saniah*, after the passing of the deceased, the brother of the deceased, being entitled to the deceased's estate, claimed the CPF moneys which had been paid out to the deceased's step-sister arising from a nomination made by the deceased before his death. At the time, s 24(2), the predecessor section, read as follows:

> If, at the time of the death of a member of the Fund, there is no person nominated under subsection (1), the total amount payable out of the Fund shall be paid to the Public Trustee for disposal in accordance with any written law for the time being in force, and if any person nominated, other than a widow, is under the age of 18 years at the time of payment of the amount payable shall similarly be paid to the Public Trustee for the benefit of the nominated person.

38 While, as I will explain, the facts of *Saniah* are different, being a contest between a claimant under a nomination made and a claimant entitled to the deceased's estate, L P Thean J (as he then was) explained the scheme of the section, as follows:

> 11 I now come to s 24. The intention of this section is this. It is to enable a member of the Fund by an instrument to nominate a person or persons to receive in his or their own right such portions of the amount payable out of the Fund on his death as indicated in the instrument and to give to such person or persons so nominated a right to receive such amount or amounts. The instrument of nomination signed by a member is

not a will; nor does s 24 say that it operates as a will. Nonetheless, it is intended by that section to be an effective direction by a member (until it is revoked or varied by him) to the CPF Board to pay to the person or persons nominated by him moneys payable out of the Fund on his death. It is also intended by that section that such person or persons receive the moneys in his or their own right and not as trustee or in any other representative capacity. The words "in his or their own right" appearing in s 24(1) are clear and effect must be given to them. Section 24(2) by implication makes this point even clearer: it provides that if there is no person so nominated, the moneys shall be paid to the Public Trustee for disposal in accordance with the written law for the time being in force, and the written law must mean the Act or enactment governing succession to the estate of the deceased member. Certainly, the intention is that the moneys are to be paid to a person or persons entitled to the same under sub-s (1) or failing that under sub-s (2). This is reinforced by s 23(3) which expressly creates a trust on such moneys in favour of such person or persons and also expressly keeps the moneys out of the estate of the member or from being subject to payment of any debt. It seems to me that the general scheme of the CPF Act, and in particular ss 23 and 24, is to treat a member's moneys in the Fund as a species of property separate and distinct from his other property and having the following characteristics: it cannot be disposed of by a member by any instrument *inter vivos* or by will; it can only be disposed of by an instrument of nomination made by a member under s 24(1), which unless it is revoked or varied, takes effect on his death; it is not subject to any levy, sequestration or attachment or payment of any debt of the member; it does not pass to the Official Assignee upon the bankruptcy of the member, and on his death it does not form part of his estate; nor is it then subject to his debts.

12 Further, it is also intended by s 24 to protect the CPF Board from the hazards of being embroiled in any dispute with anyone as to who is entitled to receive the member's moneys in the Fund. If a member under s 24(1) has nominated a person or persons to receive his moneys payable out of the Fund on his death, then upon the death of such member the CPF Board will pay the moneys to the person or persons so nominated. If no one has been so nominated by a member, then on his death the Board will pay the moneys (then payable) to the Public Trustee for disposal in accordance with the written law for the time being in force; and the receipt of such person or persons so nominated or the Public Trustee, as the case may be, shall operate as a discharge to the CPF Board.

39 Section 24(2) was amended in 2006, after the case of *Chai Choon Yong v Central Provident Fund Board and others* [2005] 2 SLR(R) 594 *("Chai Choon Yong*"). In *Chai Choon Yong*, the Court of Appeal, while adopting the purposive approach to the words "any written law" in s 24 which was taken in *Saniah*, pointed out an internal contradiction in the approach, which the court suggested ought to be rectified by Parliament. In the result, Parliament introduced the Central Provident Fund (Amendment) Bill. The purpose of the amendment, as detailed by Dr Ng Eng Hen, then Minister for Manpower, was to "clarify that the Intestate Succession Act and Administration of Muslim Law Act will apply for non-Muslims and Muslims, respectively, if no CPF nominations have been made" (*Singapore Parliamentary Debates, Official Report* (3 April 2006) vol 81 at col 1757).

40 Although *Saniah* and *Chai Choon Yong* dealt with claims pursued by beneficiaries of estates in the factual context of a will, a will is an *inter vivos* attempt to deal with CPF funds upon death, similar to the creation of a trust. The import of the cases, the 2006 amendment to the CPF Act and the Minister's statement in Parliament is clear. The CPF Act prescribes a fixed methodology for the distribution of CPF moneys. The single *inter vivos* arrangement allowed is that of a nomination. Upon a member's death, if a nomination has been made, that will take effect. If not, the moneys are distributed in accordance with intestacy laws. The only, and again statutory, exception to this stipulated method of distribution is the payment of funeral expenses, added by Parliament as s 25(2A) in 2010. This exception is not applicable here. It follows, then, that any argument that the Father's right to withdraw his CPF moneys could be the subject matter of a trust is obviated by s 24(3A), which specifies that on death, all moneys paid out of the fund is "*deemed* to be impressed with a trust *in favour of*" [emphasis added] persons nominated, or persons determined by the Public

Trustee in accordance with intestacy laws. This nullifies any attempt at any *inter vivos* dealing with the moneys in a member's CPF accounts, save in respect of a valid nomination. CPF moneys are a separate and distinct category of property, with a strict statutory prescription for distribution. Where no nomination is made and no funeral expenses remain unpaid, as in the present case, the Public Trustee has a clear directive to deal with the moneys in accordance with intestacy laws.

Conclusion

41 Parliament has set out statutory boundaries for the use and transfer of CPF moneys. The Father, after proper consideration, decided not to make a CPF nomination in favour of his sons. The evidence shows that he intended a specific sum in cash as part of his provision for his sons. From his conduct as a whole, his wider financial plans included other arrangements, such as purchasing insurance policies, putting money into their CPF accounts and drafting his will. These wider plans also included his other dependents, being his wife and his parents. Through his will made before his death, and through the operation of intestacy laws that took effect in respect of his CPF moneys, his intention to provide an estimated cash sum for his sons has been duly realised. Here there is no gap requiring – and no facts permitting – the intervention of equity.

42 For these reasons, the application was dismissed. Costs were awarded to the Wife, fixed at $3,000, inclusive of disbursements.

Valerie Thean
Judge

Mirza Namazie and Ong Ai Wern (Mallal & Namazie) for the applicants;
Aye Cheng Shone and Derek Choo (A C Shone & Co) for the respondent.
