

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 177

Suit No 254 of 2015

Between

Tan Kim Heng

... Plaintiff

And

Tan Kim Li

... Defendant

GROUND OF DECISION

[Equity] — [Disposition in writing] — [s 7(2) of the Civil Law Act]

[Equity] — [Disposition in writing] — [Part performance]

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Tan Kim Heng

v

Tan Kim Li

[2017] SGHC 177

High Court — Suit No 254 of 2015

Chua Lee Ming J

9, 10, 14–16, 21 February 2017; 3, 10 March 2017

24 July 2017

Chua Lee Ming J:

Introduction

1 The late Mdm Tan Whay Eng (“Mdm Tan”) passed away on 26 February 2015, aged 88. Surviving her were her four sons and four daughters; her husband, Tan Yee Tam (“TYT”) had passed away in 2002. Mdm Tan left behind two wills and a piece of property at 2 Wiltshire Road (“the Property”). The first will was made on 4 June 2008 (“the 2008 Will”); the plaintiff, Mr Tan Kim Heng, who is Mdm Tan’s second eldest son, was the sole beneficiary under this will.¹ The second will was made on 13 January 2015 (“the 2015 Will”); all eight children were beneficiaries in equal shares under this will.²

2 The plaintiff challenged the validity of the 2015 Will whilst the defendant, Ms Tan Kim Li, who is Mdm Tan’s second eldest daughter, challenged the validity of the 2008 Will. The plaintiff also claimed that even if

the 2015 Will was valid, the Property did not form a part of Mdm Tan's estate because Mdm Tan had disposed of her equitable interest in the Property to herself and the plaintiff as joint tenants.

3 I found that both wills were validly made by Mdm Tan. The 2015 Will prevailed as it revoked the 2008 Will. I also found that Mdm Tan did not dispose of her equitable interest in the Property and the Property therefore remained a part of Mdm Tan's estate. Finally, I awarded costs to the defendant and made an order for the defendant to be indemnified by Mdm Tan's estate for all costs incurred by her in defending this action less the costs paid or recovered from the plaintiff. The plaintiff has appealed against the whole of my decision save for my finding that both wills were valid.

Background to the dispute

4 The Property was originally a part of the estate of Mr Tan Kow Quee, who was TYT's father. After Tan Kow Quee died intestate on 10 October 1956, letters of administration in respect of his estate were granted on 14 January 1957 to TYT and his brother, Tan Liang Quee.³ TYT's family was living on the Property at the time of Tan Kow Quee's death and continued to do so after that. Tan Liang Quee passed away on 12 July 1988. Subsequently, Mdm Tan was appointed as co-administratrix of Tan Kow Quee's estate.

5 TYT passed away on 17 January 2002, leaving Mdm Tan as the sole administratrix of Tan Kow Quee's estate. On 2 June 2003, the plaintiff was appointed as co-administrator of Tan Kow Quee's estate.⁴

6 TYT left a will dated 2 December 1995.⁵ Mdm Tan and the plaintiff were appointed as joint executors and trustees of TYT's will. Mdm Tan was the sole beneficiary under this will.

7 On 19 May 2006, two of TYT’s four siblings – Tan Seet Kwee and Tan Quee Neo – commenced Originating Summons No 995 of 2006 (“OS 995/2006”) seeking, among other things, a declaration that the Property formed a part of the estate of Tan Kow Quee, the sale of the Property and distribution of the proceeds of sale equally among all five of Tan Kow Quee’s children in accordance with the laws of intestacy.⁶ OS 995/2006 was initially commenced against Mdm Tan as the administratrix of TYT’s estate. Subsequently, it was amended and Mdm Tan and the plaintiff became the defendants in their capacities as administratrix and administrator respectively of Tan Kow Quee’s estate.

8 OS 995/2006 was dismissed by the High Court on 12 February 2007: see *Re Estate of Tan Kow Quee (alias Tan Kow Kwee)* [2007] 2 SLR(R) 417 (“*Re Estate of Tan Kow Quee*”). The High Court’s decision was upheld by the Court of Appeal in Civil Appeal No 25 of 2007 (“CA 25/2007”) on 30 August 2007.⁷

9 The effect of the decisions in OS 995/2006 and CA 25/2007 was that the Property formed a part of TYT’s estate. Mdm Tan inherited the Property as the sole beneficiary under TYT’s will.

10 However, the Property was still registered in the name of TYT as *trustee for the estate of Tan Kow Quee*. Mdm Tan wanted to have the Property registered in her and the plaintiff’s names as joint tenants. On the advice of their lawyer, Ms Violet Netto (“Netto”), Mdm Tan and the plaintiff commenced Originating Summons No 127 of 2008 (“OS 127/2008”) on 25 January 2008 seeking a declaration that they were the “legal and beneficial owners of the [P]roperty”.⁸

11 Subsequently, Netto realised that the Property ought to be vested in TYT's estate instead. On 14 April 2008, Mdm Tan and the plaintiff obtained leave from the court to amend OS 127/2008 to include the alternative prayer that the Property be vested in TYT's estate. The amended originating summons was re-issued on 9 May 2008.⁹

12 In the meantime, Netto thought the process could be expedited if she could get the Registrar of Land Titles to rectify the land register and reflect Mdm Tan and the plaintiff as the registered proprietors of the Property.¹⁰ Towards this end, on 8 April 2008, Netto wrote to the Registrar of Land Titles seeking confirmation that the Property should be vested in the names of Mdm Tan and the plaintiff based on the High Court's judgment in OS 995/2006.¹¹ On 22 April 2008, the Registrar declined to give the confirmation and explained that the judgment did not specifically direct the Property to be vested in Mdm Tan and the plaintiff.¹²

13 On Netto's advice, Mdm Tan executed the 2008 Will on 4 June 2008.¹³ The 2008 Will was prepared by Netto. The plaintiff was aware of the existence of the 2008 Will but none of his siblings knew of the 2008 Will until after Mdm Tan's demise.

14 On 25 September 2008, probate was granted to Mdm Tan and the plaintiff as executors of TYT's estate.¹⁴

15 On 9 October 2008, an order was granted in OS 127/2008 vesting the Property in TYT's estate.¹⁵

16 On 11 October 2010, Mdm Tan and the plaintiff lodged a Transmission Application on Death of Proprietor in respect of TYT's estate ("the

Transmission Application”).¹⁶ Pursuant to a Certificate of Title dated 25 November 2011, the Property was registered in the names of Mdm Tan and the plaintiff as joint tenants.¹⁷ Mdm Tan and the plaintiff were registered as joint tenants in their capacities as the personal representatives of TYT’s estate.

17 On 3 July 2012, Netto asked Mdm Tan and the plaintiff for the title deeds in order to effect a transfer of the Property to Mdm Tan.¹⁸ Mdm Tan and the plaintiff met with Netto and discussed, among other things, Netto’s previous advice that after registering the Property in Mdm Tan’s sole name, the Property could then be registered in the names of Mdm Tan and the plaintiff as joint tenants in their personal capacities. Mdm Tan and the plaintiff decided not to take any further steps and to leave the registration of the Property as it stood then.¹⁹

18 On 13 January 2015, Mdm Tan executed the 2015 Will. The 2015 Will was prepared by Mr Tan Lam Siong, a lawyer who had acted for Mdm Tan in a property dispute some years ago. Mr Tan Lam Siong was a witness to the 2015 Will.

19 On 16 January 2015, Mdm Tan was admitted to Tan Tock Seng Hospital (“the Hospital”) because her toe had become gangrenous. Her doctor advised her that amputation was necessary as otherwise she could die. Mdm Tan refused surgery and on 24 January 2015, she was discharged from the Hospital and returned to the Property. Mdm Tan passed away two days later, on 26 February 2015.

The issues

20 The three issues that arose for my determination were:

- (a) whether the 2015 Will was valid;
- (b) whether the 2008 Will was valid; and
- (c) whether Mdm Tan had disposed of her equitable interest in the Property to herself and the plaintiff as joint tenants.

21 In his pleaded case, the plaintiff had also claimed that Mdm Tan had declared a trust over her equitable interest in the Property in favour of herself and the plaintiff as joint owners. However, the plaintiff confirmed in his closing submissions that he was no longer pursuing this claim.

Validity of the wills

22 As stated earlier, the plaintiff is not appealing against my finding that the 2015 Will was valid.

23 I need only say that, in my view, the evidence was indisputable. It was clear from the evidence that Mdm Tan did not lack testamentary capacity when she executed the 2015 Will. In his closing submissions, the plaintiff also decided not to dispute Mdm Tan's testamentary capacity. The evidence also showed that the 2015 Will was explained to Mdm Tan and she understood the 2015 Will before she signed it. Finally, there was no evidence that she signed the 2015 Will under undue influence. Indeed, the evidence showed that Mdm Tan was a strong lady who was strong-willed and that she remained so even during the time that she was hospitalised shortly before she passed away.

Whether Mdm Tan had disposed of her equitable interest in the Property

24 As stated earlier at [9], Mdm Tan inherited the Property as the sole beneficiary under TYT's will. The Property was subsequently registered in the names of Mdm Tan and the plaintiff in their capacities as the *personal*

representatives of TYT's estate (see [16] above) and it remained so registered at the time of Mdm Tan's demise. It was not disputed that Mdm Tan's interest in the Property was therefore an equitable one.

25 The plaintiff's case was that Mdm Tan's equitable interest in the Property ceased to be a part of her estate because she had disposed of her equitable interest in the Property in favour of herself and the plaintiff as joint tenants before she died. Therefore, the plaintiff claimed that the interest in the Property devolved to him upon Mdm Tan's death by virtue of the rule of survivorship.

26 It was common ground that under s 7(2) of the Civil Law Act (Cap 43, 1999 Rev Ed) ("CLA"), a "disposition of an equitable interest ... must be in writing signed by the person disposing of the same ...". Therefore, the plaintiff had to prove that there was a disposition of Mdm Tan's equitable interest in the Property, and that the disposition was in writing signed by her.

27 The plaintiff submitted that:

(a) the affidavit signed by Mdm Tan in support of her application in OS 127/2008 ("the Affidavit")²⁰ was a disposition of Mdm Tan's equitable interest in the Property; and

(b) the Affidavit satisfied the requirements under s 7(2); alternatively, it was unconscionable for the defendant to rely on s 7(2) because of the doctrine of part-performance.

28 In his reply and defence to counterclaim, the plaintiff had also relied on the Transmission Application. However, this was not pursued during his closing submissions, and rightly so. The Transmission Application simply could not be

a disposition by Mdm Tan of her equitable interest in the Property. The purpose of the Transmission Application was merely to register the Property in the names of Mdm Tan and the plaintiff in their capacities as the personal representatives of TYT's estate.

Whether the Affidavit was a disposition

29 It will be recalled that OS 127/2008 was an application by Mdm Tan and the plaintiff, initially for a declaration that they were the legal and beneficial owners of the Property. Subsequently, Netto realised that the Property should be vested in TYT's estate instead. OS 127/2008 was then amended to include an alternative prayer that the Property be vested in TYT's estate. The court granted an order in terms of this alternative prayer.

30 The Affidavit described what OS 995/2006 was about and referred to the High Court's decision dismissing the claim in OS 995/2006 and the Court of Appeal's decision dismissing the appeal. That was then followed by the following two paragraphs:

3.10 [Mdm Tan and the plaintiff] would as a result of these decisions be entitled to have the ... Property transferred to their names.

3.11 [Mdm Tan and the plaintiff] therefore pray for an order-in-terms of this application.

31 The plaintiff relied on the fact that paragraph 3.11 of the Affidavit referred to the prayers in OS 127/2008 and one of the prayers was for a declaration that Mdm Tan and the plaintiff were the legal and beneficial owners of the Property. The plaintiff submitted that the Affidavit, read with OS 127/2008, constituted Mdm Tan's disposition of her equitable interest in the Property.²¹ I disagreed with the plaintiff.

32 In my view, the Affidavit, read with OS 127/2008, could not possibly be construed as a disposition of Mdm Tan’s equitable interest in the Property. The prayer in OS 127/2008 (which the plaintiff relied on) was for a declaration that Mdm Tan and the plaintiff were the legal and beneficial owners of the Property. This was clearly not a disposition.

33 At best, it might be argued that the prayer for a declaration as to ownership assumed that Mdm Tan had disposed of her equitable interest to herself and the plaintiff. However, in my judgment, the evidence clearly contradicted any such assumption.

34 First, there was no suggestion in Netto’s evidence, or in the letters that she wrote to Mdm Tan in 2008, that Mdm Tan had disposed of her equitable interest. Had there been such a disposition, one would have expected some mention of this by Netto since she was handling the matters relating to the Property then.

35 Second, the Affidavit was signed by Mdm Tan in January 2008. Subsequently, Mdm Tan executed the 2008 Will in June 2008. Netto drafted the 2008 Will for Mdm Tan because Mdm Tan had expressed her wish that her estate be passed to the plaintiff upon her death. It was not disputed that the main asset in Mdm Tan’s estate was the Property. There would have been no need for the 2008 Will if Mdm Tan had already disposed of her equitable interest in the Property to the plaintiff. In his closing submissions, the plaintiff tried to explain that Mdm Tan signed the 2008 Will as a precaution. However, this was contradicted by Netto’s letter to Mdm Tan and the plaintiff dated 23 April 2008.²² In that letter, Netto advised Mdm Tan and the plaintiff to make a will to “safeguard each other’s position” since “the vesting of the title in one or both of [them] may not take place until an order [was] obtained.”

36 In my view, the plaintiff's allegation that Mdm Tan had disposed of her equitable interest in the Property to herself and the plaintiff as joint tenants was nothing more than a mere afterthought. This was evident for the following reasons:

(a) The plaintiff filed the present action on 17 March 2015, just four days after he obtained a copy of the 2015 Will. In his statement of claim dated 17 March 2015, the plaintiff challenged the 2015 Will and sought a declaration that the 2008 Will was the valid will. The statement of claim contained no allegation that Mdm Tan had disposed of her equitable interest in the Property.

(b) The plaintiff amended his statement of claim on 3 July 2015 and again on 30 October 2015. Yet, in both cases, the statement of claim continued to remain silent as to any disposition by Mdm Tan of her interest in the Property. Instead, the plaintiff pleaded that Mdm Tan gave her entire estate to him pursuant to the 2008 Will.²³

(c) In his reply and defence to counterclaim dated 22 April 2015, the plaintiff asserted that the Property did not form a part of Mdm Tan's estate.²⁴ Even then, there was no allegation of any disposition by Mdm Tan. The plaintiff simply pleaded that he had become the sole owner of the Property because the Property was held by Mdm Tan and the plaintiff as joint tenants at the time of Mdm Tan's death. The plaintiff did not state how he became a joint tenant.

(d) The plaintiff subsequently clarified his claim as a joint tenant, in his amended reply and defence to counterclaim dated 10 July 2015. The plaintiff pleaded that he held the Property as joint tenants with Mdm Tan "as described in the Certificate of Title dated 25 November [2011]".²⁵

However, this claim was clearly not sustainable. It will be recalled that the Certificate of Title dated 25 November 2011 was issued pursuant to the Transmission Application (see [16] above), and Mdm Tan and the plaintiff were registered as joint tenants in their capacities as personal representatives of TYT's estate.

(e) The plaintiff amended his reply and defence to counterclaim again on 8 December 2015 and deleted his previous allegation that he was a joint tenant as well as his previous reference to the Certificate of Title dated 25 November 2011.²⁶

(f) However, in his amended reply and defence to counterclaim dated 11 February 2017, the plaintiff reinstated his allegation that the Property devolved to him upon Mdm Tan's death by virtue of the doctrine of survivorship. Further, the plaintiff pleaded for the first time that Mdm Tan had disposed of her equitable interest in the Property to herself and the plaintiff as joint owners. This time, the plaintiff relied on the cause papers filed in OS 127/2008 and on the Transmission Application. The plaintiff also pleaded for the first time the alternative claim that Mdm Tan had declared a trust over her equitable interest in the Property in favour of herself and the plaintiff as joint owners. In my view, it spoke volumes that the plaintiff was alleging a disposition of Mdm Tan's equitable interest in the Property for the first time almost two years after he commenced this action and despite having had several opportunities to do so earlier when he amended his pleadings.

Whether the Affidavit satisfied s 7(2) of the CLA

37 Even if one accepted the prayer for the declaration as to ownership as evidence that Mdm Tan had disposed of her equitable interest to herself and the

plaintiff, the Affidavit would still not be sufficient for the purposes of s 7(2) of the CLA.

38 The language in s 7(2) of the CLA is clear. It requires that the disposition itself must be in writing, not merely evidenced by signed writing: Tan Sook Yee, Tang Hang Wu & Kelvin FK Low, *Tan Sook Yee's Principles of Singapore Land Law* (LexisNexis, 3rd Ed, 2009) at para 5.9. As stated earlier, at best, the Affidavit was merely evidence of a disposition; it was not the disposition itself.

Whether the plaintiff could rely on the doctrine of part performance

39 The plaintiff next argued that he was entitled to rely on the doctrine of part performance. Accordingly, the defendant could not rely on non-compliance with s 7(2) of the CLA to defeat the disposition of Mdm Tan's equitable interest in the Property to the plaintiff and herself as joint tenants. This argument was irrelevant given my finding that there was no such disposition of Mdm Tan's equitable interest in the Property in the first place. In any event, in my view, the doctrine of part performance did not assist the plaintiff.

40 Courts have generally taken a pragmatic approach in applying the doctrine of part performance to mitigate against the rigours of the strict requirement of writing, in order to prevent a statute from being used as an instrument of fraud. Equity will only intervene to thwart unconscionable behaviour. See *Ching Chew Weng Paul v Ching Pui Sim and others* [2010] 2 SLR 76 ("*Ching Chew Weng*") at [44], citing *Midlink Development Pte Ltd v The Stansfield Group Pte Ltd* [2004] 4 SLR(R) 258 at [66] and *Re Estate of Tan Kow Quee* at [15].

41 In the context of a disposition that has not complied with s 7(2) of the CLA, the inquiry is to determine whether there were acts of part performance

which are referable to the disposition and, if so, whether the acts of part performance render it unconscionable to rely on the strict requirements of writing under s 7(2): *Ching Chew Weng* at [45].

42 The plaintiff relied on the following as acts of part performance:

- (a) His financial contributions towards renovations to the Property, and to the legal fees incurred in defending against OS 995/2006.
- (b) His assistance in defending against OS 995/2006.
- (c) The withdrawal of the application by the plaintiff and his wife to purchase a HDB apartment, in order to stay on the Property to look after Mdm Tan and to contribute towards the renovations to the Property.
- (d) Mdm Tan's assurance to the plaintiff and his wife that they would eventually inherit the Property as she understood that the plaintiff and his wife would have to make significant sacrifices in order to continue staying with her on the Property.
- (e) Mdm Tan's execution of the Affidavit in support of OS 127/2008.
- (f) Mdm Tan's execution of the 2008 Will under which the plaintiff was the sole beneficiary of her estate.

43 The plaintiff argued that the above acts of part performance made it unconscionable to rely on non-compliance with s 7(2) of the CLA. The plaintiff asserted that it was inconceivable that he would have forked out the sums or made the sacrifices that he did if not for Mdm Tan's assurances as set out above.²⁷

44 As mentioned earlier, the acts of part performance must be referable to the disposition (see [41] above). This means that the acts relied upon should point to the existence of the disposition: *Halsbury's Laws of Singapore* vol 7 (LexisNexis, 2016 Reissue) at para 80.139. In my view, none of the acts of part performance relied on by the plaintiff could be said to be referable to the disposition of Mdm Tan's equitable interest in the Property to the plaintiff and herself as joint tenants. It must be borne in mind that the plaintiff's case was that the Affidavit was the disposition. The acts set out at [42(a)] – [42(d)] above took place before the disposition and did not point to the existence of the disposition. The signing of the Affidavit (see [42(e)] above) was relied upon as the disposition itself and therefore could not be an act referable to the existence of the disposition. As for the 2008 Will (see [42(f)] above), the making of that will in fact contradicted the existence of the disposition. In my view, the plaintiff therefore could not rely on the doctrine of part performance.

Conclusion

45 As the plaintiff had failed to prove his case, I dismissed his claim. I allowed the defendant's counterclaim and declared the 2015 Will to be the last valid will of Mdm Tan. I also declared that the Property formed a part of Mdm Tan's estate. Under the 2015 Will, Mdm Tan's eight children will share equally in her estate.

46 I rejected the defendant's application for costs on an indemnity basis and ordered the plaintiff to pay the defendant's costs of this action fixed at \$135,000 plus disbursements to be fixed by me if not agreed.

47 Finally, I granted the defendant's application that she be indemnified by the estate of Mdm Tan for all costs reasonably incurred by her in defending this action less such costs paid by or recovered from the plaintiff. The defence of

this action was clearly for the benefit of all the beneficiaries of Mdm Tan's estate under the 2015 Will.

Chua Lee Ming
Judge

Eugene Singarajah Thuraisingam and Suang Wijaya (Eugene
Thuraisingam LLP) for the plaintiff;
Lim Seng Siew and Susan Tay Ting Lan (OTP Law Corporation) for
the defendant.

- 1 AB 435–436.
- 2 AB 680–682.
- 3 AB 76.
- 4 AB 84.
- 5 AB 571–572.
- 6 AB 216–218.
- 7 AB 536–537.
- 8 AB 501–503.
- 9 AB 545–546.
- 10 Violet Netto's 2nd AEIC dated 13 February 2017 ("Netto's 2nd AEIC"), para 18.
- 11 Netto's 2nd AEIC, exh VN-1 tab B.
- 12 Netto's 2nd AEIC, exh VN-1 tab C, p 24.
- 13 AB 434–436.
- 14 AB 570.
- 15 AB 576–577.
- 16 AB 639–640.
- 17 AB 636–638.
- 18 Plaintiff's 2nd AEIC, exh THK-2 tab E.
- 19 Plaintiff's 2nd AEIC, para 33 read with paras 15–18.
- 20 AB 505–509.
- 21 NE, 3 March 2017, at 9:9–10:6.
- 22 Netto's 2nd AEIC, exh VH-1, Tab C.
- 23 Statement of Claim (Amendment No 1) dated 3 July 2015, para 7; Statement of Claim

(Amendment No 2) dated 30 October 2015, paras 8–9.

²⁴ Reply and Defence to Counterclaim dated 22 April 2015, para 9.

²⁵ Reply and Defence to Counterclaim (Amendment No. 1) dated 10 July 2015, para 13.3.

²⁶ See Reply and Defence to Counterclaim (Amendment No 2) dated 8 December 2015.

²⁷ Plaintiff's Closing Submissions, para 132; Plaintiff's AEIC, para 17.