IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 06

Originating Summons No 1225 of 2017

In the matter of Section 110 of the Evidence Act (Cap 97, 1997 Rev Ed)

And

In the matter of Ng Siang Chun

Re Maneerat Wongdao Mrs Maneerat Ng

… *Applicant*

GROUNDS OF DECISION

[Evidence] — [Presumptions] — [Presumption of continuance of life]

[Evidence] — [Presumptions] — [Presumption of death]

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[2018] SGHC 06

High Court — Originating Summons No 1225 of 2017
Tan Siong Thye J
14 November 2017

4 January 2018

Tan Siong Thye J:

Introduction

1 This is an *ex parte* application in Originating Summons No 1225 of 2017 ("OS 1225") by one Maneerat Wongdao Mrs Maneerat Ng ("Maneerat") for a declaration that her husband, Ng Siang Chun ("Ng"), is to be presumed dead pursuant to s 110 of the Evidence Act (Cap 97, 1997 Rev Ed) ("the EA"). After hearing Maneerat's submissions, I dismissed her application. I now give my reasons.

Facts leading to the application

2 Maneerat is a Thai national and a Singapore Permanent Resident staying in Singapore. She is a housewife while Ng runs a business dealing in sound systems. Ng would travel to Thailand regularly for both business and pleasure, usually alone. He would sometimes stay in Thailand for weeks. During his

travels he would usually keep in contact with Maneerat and their two daughters to keep them updated.[1]

3 On or about 3 June 2006, Ng left for Thailand again for a business trip. He did not say how long he would be there, but Maneerat expected the trip to be short as Ng only brought limited personal belongings. Initially, Maneerat gave him 100,000 baht (about S$4,730) to purchase stock for his sound systems business. In September 2006, she remitted an additional S$1,800 to Ng as the latter informed her that he needed more money. During this period, Maneerat had intermittent contact with Ng.[2]

4 Several months later, Maneerat received no further news from Ng. She was worried and consulted her father-in-law, Ng Chay Tong ("Ng's father").[3] Although Ng no longer lived with his father, he still visited the latter on weekends.[4] On 15 February 2007, Ng's father made a police report when he learnt from Maneerat that she had not heard from Ng since September 2006 ("the first police report").[5] Ng's father said, *inter alia*, to the police that he "suspect[ed] that [Ng] do [*sic*] not want to return to Singapore due to outstanding loans taken from Singapore banks",[6] but did not provide further information about these loans. Ng's father did not attempt to contact Ng as he relied on Maneerat to do so. According to Ng's father, he has not received any news from the police since.[7]

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1 Maneerat's affidavit, para 4.

2 Maneerat's affidavit, paras 5–7.

3 Maneerat's affidavit, para 9.

4 Ng Chay Tong's affidavit, para 5.

5 Ng Chay Tong's affidavit, paras 7–8.

6 Ng Chay Tong's affidavit, exhibit NCT-1, p 1.

7 Ng Chay Tong's affidavit, paras 8–9.

5 On 21 June 2012, a second police report was made, this time by Maneerat. She had not received any news from the police since the first police report, but lodged a second report as she "needed to renew [her] [Permanent Residency] and the Immigration and Checkpoints Authority of Singapore recommended that [she] lodge a police report so that they can process [her] renewal application".[8]

6 On 16 December 2015, Maneerat and her son-in-law, Ter Wee Cher ("Ter"), placed two advertisements in the newspapers – one in Singapore and one in Thailand. At the time, Ter was about to marry Maneerat's daughter. As her daughter was a minor at that time, the consent of both parents was needed and Maneerat hoped that Ng would respond to the advertisements. Unfortunately he did not.[9]

7 On 3 April 2017, Maneerat lodged a third police report.[10] In her police report, Maneerat stated that she was lodging the report "for the lawyer's [action], to declare that [Ng] has passed away". But she noted that she "[did] not have any evidence of his death".[11] On 22 May 2017, her lawyers wrote to the Ministry of Defence and the Immigration & Checkpoints Authority ("the ICA") to inquire about Ng's whereabouts. Again, she explained that she needed the information to apply for a declaration to presume Ng's death.[12] The Ministry of Defence did not reply. However, the ICA replied that they could not provide any information because the information in its possession was solely for its

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8 Maneerat's affidavit, para 11.

9 Maneerat's affidavit, paras 12–13.

10 Maneerat's affidavit, para 11.

11 Maneerat's affidavit, exhibit MWM-1, pp 2–3.

12 Maneerat's affidavit, exhibit MWM-2, pp 3–6.

function as an immigration authority. In August, Maneerat wrote to Sengkang Neighbourhood Police Centre, Ang Mo Kio Police Division Headquarters, Bedok Police Divisional Headquarters and the Attorney-General's Chambers with the same request. No substantive information was provided about Ng's whereabouts.[13]

8 Maneerat then brought this application on 30 October 2017.

Issues

9 The sole issue before the court was whether the declaration under s 110 of the EA should be granted. I shall first consider the approach to be taken under s 110 as indicated in OS 1225 before explaining why I dismissed the application.

The approach under s 110 of the EA

The relationship between ss 109 and 110 of the EA

10 The starting point is s 110 of the EA itself. However, s 110 is not the only section which deals with an application for the court to declare someone dead or alive. Section 109 is also relevant. Hence, I shall set out both these sections in full:

> **Burden of proving death of person known to have been alive within 30 years**
>
> **109.** When the question is whether a man is alive or dead, and it is shown that he was alive within 30 years, the burden of proving that he is dead is on the person who affirms it.

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[13] Maneerat's affidavit, paras 14–17.

> **Burden of proving that person is alive who has not been heard of for 7 years**
>
> **110.** When the question is whether a man is alive or dead, and it is proved that he has not been heard of for 7 years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.

In discussing the approach to be taken under these sections, I shall refer to the person who is alleged to be dead or alive as "the subject", and the person applying for the declaration as "the applicant".

11 The following decided cases suggest that these sections work in tandem and that s 110 is a "proviso" to s 109:

(a) In *Re Wong Sook Mun Christina* [2005] 3 SLR(R) 329 ("*Christina Wong*"), Andrew Phang Boon Leong JC (as he then was) stated that s 109 places the burden of proving that the subject is dead on the applicant (at [14]), unless s 110 applies to "relieve" the applicant of that burden (at [15]).

(b) In *Re Soo Ngak Hee* [2011] 1 SLR 103, Judith Prakash J (as she then was) cited *Christina Wong* for the proposition that s 109 *prima facie* places the burden of proof on the applicant to show that the subject is dead, but where the applicant shows that the subject has not been heard of for seven years by those who would naturally have heard of him, then s 110 would "shift" the burden of proof back to a person who asserts that the subject is alive (at [15]).

(c) In *Re Kornrat Sriponnok* [2015] 3 SLR 465, Choo Han Teck J similarly noted that s 109 places the burden of proving the subject's death on the person asserting, but s 110 also "shifts" the burden of proof

from the person asserting death to the person alleging that the subject is alive (at [4]–[5]).

12 The same position is also taken by several academic authors. For instance, Professor Jeffrey Pinsler SC in his book on evidence law opines that s 109 is a "presumption of the continuance of life". In other words, once it is shown that the subject is alive within the last 30 years, the applicant must prove that the subject is dead. However, the "presumption of the continuance of life in s 109 may be countered by the presumption of death under s 110" if the applicant proves that those who would naturally have heard of him have not within the last seven years. When the "presumption of death" applies, the party alleging that the subject is alive must prove that he is alive (Jeffrey Pinsler, *Evidence and the Litigation Process* (LexisNexis, 5th Ed, 2015) at para 12.052).

13 Professor Pinsler's position is consistent with the Indian authors who have analysed the precursors to ss 109 and 110, which have the same wording as these sections. In the seminal Indian text of Sudipto Sarkar & V R Manohar, *Sarkar's Law of Evidence*, Vol 2 (Wadhwa Nagpur, 16th Ed, 2007) at p 1694, the authors also note that s 107 (the precursor to s 109) deals with the presumption of continuation of life and s 108 (the precursor to s 110) the presumption of death. The authors further describe s 108 as "enact[ing] a proviso" to s 107 by specifying that when a person is absent for seven years, he can be presumed to have died and the burden "shifts" to those who assert that he is alive to prove that he is alive. The authors explain that both sections are deduced from the presumption that a person who is alive within 30 years of the application date continues to be alive unless the presumption of "continuation" is no longer applicable by virtue of the seven-year silence period. In other words, the two sections work hand in hand.

14 An even more explicit position was taken in Y V Chandrachud & V R Manohar, *Ratanlal & Dhirajlal's The Law of Evidence* (Wadhwa Nagpur, 22nd Enlarged Edition, 2006) at p 1149. The authors of this Indian text state that the two sections "must be read together because the latter [*ie*, s 110] is only a proviso to the rule contained in the former [*ie*, s 109] and both constitute one rule when so read together".

15 From the above authorities, we can glean the following approach to be taken for an application to declare that the subject is dead under ss 109–110:

(a) The starting point is s 109. If there are facts to show that the subject was alive within the last 30 years, then the subject is presumed to be alive.

(b) The applicant must then prove that the subject is dead (contrary to this presumption).

(c) One of the ways to prove that the subject is dead is by showing that he has not contacted persons he would naturally be expected to contact in the last seven years. But even when this is shown, the subject will not have been proven to be dead. Rather, this only raises a presumption of death under s 110, which can still be rebutted by any interested person. Once the presumption of death under s 110 is raised, the burden of rebutting that presumption by proving that the subject is alive falls on any party who wishes to do so under s 110.

(d) Of course, apart from using the presumption of death in s 110, there are also other ways of proving that the subject is dead. One example is if the applicant has affirmative evidence of the subject's death. This was what happened in *Lim Ah Khee v Legal Representative*

> *of the Estate of Ong Koh Tee, deceased* [1994] 2 SLR(R) 212. Kan Ting Chiu JC (as he then was) found that although the applicant sought a declaration that the subject was dead, she was not seeking to establish his death through the presumption under s 110. She did not present evidence that the subject had disappeared for more than seven years, but only relied on affidavit evidence by herself and another person which stated that they had personal knowledge that the subject was dead. Kan JC held that in such situations, the s 110 presumption would not be operative and she would have to independently prove the subject's death.

16 The above approach that I have outlined is consistent with the wording of s 110. Section 110 provides that where the applicant proves that those who would naturally hear from the subject have not heard of him for seven years, then "the burden of proving that he is alive is *shifted* to the person who affirms it" [emphasis added]. This burden is *shifted* from the initial burden of proof established in s 109, where it is for the party seeking to show that the subject is dead to prove it. Thus, an applicant who wishes to obtain a declaration that the subject is dead would find the presumption that the subject is dead in s 110 (as he has not been heard of for seven or more years) helpful. Hence, ss 109 and 110 work in tandem.

The requirements under s 110 of the EA

17 Having established that ss 109 and 110 function together, I shall now explain how an applicant can employ s 110 to support his application to declare that the subject is dead. There are two requirements for the presumption under s 110 to operate (see *Re Soo Ngak Hee* at [17]):

(a) The subject must not have been heard of for seven years.

(b) The subject must not have been heard of by those who would naturally have heard of him if he had been alive.

18 When ascertaining whether these two requirements are met, there are two potential issues that the courts have had to deal with:

(a) Who are those who would "naturally have heard of [the subject] if he had been alive"?

(b) What does it mean to have "naturally… heard of" the subject?

Persons who would naturally have heard of the subject

19 On issue (a), the broad consensus in the decided cases is that although persons related by blood or marriage would typically be those who would "naturally have heard of" the subject if he had been alive (see *Christina Wong* at [23]; *Re Soo Ngak Hee* at [19]), this is not always the case. In *Christina Wong*, the court held that the subject was totally estranged from his wife and children and appeared to have wanted nothing more to do with them. The court found that the subject's wife and children could not be considered as those who would naturally have heard of the subject as "they would probably be the last persons whom he would want to contact" (*Christina Wong* at [23]). In contrast, the subject in *Re Soo Ngak Hee* was shown to have a good relationship with his parents and siblings prior to his disappearance. They were therefore found to be such persons who would naturally have heard of the subject (*Re Soo Ngak Hee* at [21]). To these observations I would add that it is not necessary that a person must have familial relations with the subject in order to be considered a person who would "naturally have heard of" the subject. As the cases demonstrate, this inquiry is an entirely factual one. Naturally, familial relations would allow the court to infer such closeness. The applicant must also establish that prior to the

disappearance of the subject, the latter had a close relationship with the persons to the extent that he considered them to be his confidantes such that he could be expected to keep in constant contact with them wherever he may be.

Whether the applicant (or persons who would naturally have heard of the subject) must take sufficient steps to ascertain if the subject is alive

20 The position is somewhat ambiguous for issue (b). As the court noted in *Christina Wong*, a literal construction of s 110 itself might suggest that the second requirement is fulfilled so long as the persons under issue (a) have not literally heard of the subject (*Christina Wong* at [30]). This interpretation does not require the applicant or the persons under issue (a) to take further steps to ascertain whether or not the subject was still alive. However, Phang JC opined that this literal construction in *Christina Wong* may not be sufficient. He held that there was a common law requirement that the applicant must take such steps to ascertain whether the subject was alive. In finding such a common law requirement to be "incorporated as part of s 110 itself" (*Christina Wong* at [30]), Phang JC did not expressly state whether this was found within the wording of s 110 or whether this was an additional common law requirement that had to be fulfilled. He also did not consider whether the common law requirement was consistent with the wording of s 110 although he observed in passing that it "is true that, on a literal construction of s 110 itself, it *might* be argued that that provision does not include this particular requirement" [emphasis added] (*Christina Wong* at [30]).

21 The existence of this requirement at common law was affirmed by Prakash J in *Re Soo Ngak Hee* at [22]. She interpreted *Christina Wong* as authority for the proposition that "[this] requirement was not statutorily imposed in Singapore but … should be adhered to as a matter set down by common law" (*Re Soo Ngak Hee* at [23]). As to the necessity of the requirement, Prakash J

held that this requirement to take sufficient steps was not a compulsory one which had to be fulfilled before the court could find that s 110 applies. Rather, "it would all depend on the circumstances before the court as to whether it should require any particular applicant to fulfil [this] requirement" (*Re Soo Ngak Hee* at [24]).

22 While I agreed that the requirement to take sufficient steps to ascertain whether the subject is still alive originated from the common law, I was of the view that this requirement is not only consistent with but is also found in the wording of s 110. This question is important because s 2(2) of the EA provides that "[a]ll rules of evidence not contained in any written law, so far as such rules are inconsistent with any of the provisions of [the EA], are repealed". Hence, at the very least, the common law requirement must not be inconsistent with s 110. But as I have noted, my view is that this requirement is in fact implicit in the wording of s 110 itself, namely, the phrase "[the subject] has not been heard of … by those who would naturally have heard of him if he had been alive".

23 I agreed with the observation in *Christina Wong* that a narrow reading of this phrase may suggest that it is sufficient for the applicant (or those who would expect to hear of the subject) to have simply not heard of the subject without further prompting, *ie*, one-way communication. However, I found that a wider reading of this phrase gave better effect to the object and purpose of s 110. The category of persons who would naturally have heard of the subject if he had been alive would have built a strong enough relationship with the subject in order for him to contact them in such a situation in the first place. Therefore, the natural behaviour of such persons, upon knowing that the subject had gone missing, would be to attempt to establish contact with him and not merely to wait for contact from him. If there were no such communications, this category

of persons would likely also have taken steps to find out what had happened to the subject.

24 Hearing *of* the subject in the context of s 110 involves more than one-way communications. The natural meaning of 'hearing of the subject' is wide enough to encompass the situation where the applicant takes additional steps to search for the subject's whereabouts and subsequently discovers information about him that would not have been discovered without such steps. Accordingly, the interpretation of the words in s 110 should not be read narrowly to embody the common law requirement to take sufficient steps. While I understand that *Re Soo Ngak Hee* considered *Christina Wong* authority for the proposition that the common law requirement is not statutorily embodied in the words of s 110, *Christina Wong* did not explicitly say this. In any event, I would have considered this observation in either or both cases to be *obiter* as they were not decided on that point.

Whether the sufficient steps requirement is compulsory

25 The next question is whether this requirement is compulsory or that the court can choose whether to require the applicant to take such steps. *Re Soo Ngak Hee* took the latter view and distinguished *Christina Wong* on the facts. Although Prakash J did not explain why the sufficient steps requirement was not compulsory, she opined that where there is a possibility of such abuse, the court would require the applicant to take the additional steps.

26 I have earlier explained that a wider reading of s 110 embodies the common law requirement to take steps to ascertain the whereabouts of the subject. Therefore, the logical consequence is that this requirement is compulsory. The purpose of the requirement is to prevent abuse. If the bar is kept too low, this may be prejudicial or detrimental to the subject should he later

appear to be alive. Accordingly, the application for a presumption of death must be taken seriously and all reasonable measures to trace the subject's whereabouts must have been taken, even if they are ultimately unsuccessful.

Sufficiency of steps taken to ascertain whether the subject is alive

27 Before I turn to the facts of this case, I shall briefly set out what constitute sufficient steps. In short, the decided cases suggest that this is a fact-driven exercise. What constitute sufficient steps in each case depends on the actions taken by the applicant (or the persons who would naturally have heard of the subject) to follow the leads that they have.

(a) In *Christina Wong*, Phang JC found that insufficient steps were taken. The applicant sent letters to the subject's address in the US in 1999, 2001, and 2004. Phang JC stated that this was insufficient since the subject had left for the US in 1979 and had given his eldest daughter a power of attorney in 1994. By 1999, it had been five years since the power of attorney was given and there was no guarantee that the subject lived at the same address (at [32]–[33]). The applicant also placed advertisements in local and US newspapers in 2001 and 2004 but Phang JC found that these were token efforts, being too few and far between. The odds of the subject having had notice of these advertisements were extremely low (at [34]).

(b) Similarly, in *Re Kornrat Sriponnok*, Choo J found the steps taken insufficient. The subject was a Thai national who had returned to Thailand. The applicant had placed only one newspaper advertisement in a Thai local newspaper more than ten years after her disappearance and Choo J opined that this may have been insufficient even if the presumption under s 110 applied (at [8]).

(c) In contrast, sufficient steps were taken by the applicant in *Re Soo Ngak Hee*. The applicant had contacted the subject's friends, searched places that the subject frequented, lodged a police report on the subject's disappearance (following which the police conducted investigations but to no avail), and conducted Internet searches. None of these yielded results. Prakash J found that there were no other leads that the applicant and his family could have followed (at [25]–[26]).

28 The common element in these cases is that where the efforts to locate the subject were merely tokenistic and there were leads that could have been followed up on but not done, then the court would find that insufficient steps had been taken. The crux is whether the steps taken were either:

(a) thorough enough such that one would expect the subject to be found (*eg*, through extensive police reports or investigations, or even through newspaper advertisements such that others overseas may know of the subject and respond to a missing person report); or

(b) extensive enough such that one would expect the subject to notice them and reply to the applicant or the person who would naturally have heard of the subject (*eg*, through notices in newspapers).

29 As I have reiterated, the natural behaviour of people who care for the subject would be to take such thorough and extensive steps to locate him. That said, the specific actions and reactions of the people who would naturally have heard of the subject will vary in each case depending on the facts and the available leads. Having set out these general principles, I shall now examine the steps taken by Maneerat and Ng's father.

Whether the steps taken by Maneerat and Ng's father to locate Ng were sufficient

30 The evidence showed that Ng ceased to contact Maneerat or his father since September 2006. First, this triggered s 109 of the EA because this is proof that Ng was alive in the 30 years preceding the application. He would therefore be presumed alive unless Maneerat could show otherwise. Second, since Maneerat relied on the rebuttal presumption of death in s 110 of the EA, she had to show that Ng had not contacted her and his father for at least seven years, that she and Ng's father were the persons who would naturally have heard of him, and that sufficient steps to locate Ng were taken. Of the three requirements, the first was satisfied as Ng had not contacted Maneerat and his father for more than seven years since September 2006.

31 I found that Maneerat and Ng's father were the persons who would naturally have heard of Ng if he were alive. Maneerat was Ng's wife and had provided Ng with financial support during the trip. In her affidavit, Maneerat stated that she had provided Ng with money on at least two occasions in relation to this trip alone.[14] She also stated that in September 2006, Ng had called her to "inform [her] that he was running out of money and that he needed money so that he could return to Singapore".[15] Unlike *Christina Wong*, there was no other evidence suggesting that Ng was estranged from Maneerat in any way. While it is doubtful whether Ng was serious about his return to Singapore (a point that I shall come to later), I was satisfied that Maneerat was one of the persons who would naturally have heard of Ng if he were still alive.

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14 Maneerat's affidavit, paras 5 and 7.

15 Maneerat's affidavit, para 7.

32 Apart from Maneerat, Ng's father was also another such person who would naturally have heard of Ng. When Maneerat did not hear from Ng after several months she informed Ng's father, who "informed [her] that he could not contact [Ng] either".[16] Ng's father also stated in his affidavit that they "kept in touch occasionally", that their "relationship is cordial", and that Ng would "visit [him] on the weekends at [his] place with [Ng's] family".[17] Thus I was satisfied that Maneerat and Ng's father would naturally have heard of Ng if he were alive.

33 However, I found that they had not taken sufficient steps to ascertain whether Ng was alive.

34 In determining what steps Maneerat and Ng's father had taken, I considered the relevant circumstances surrounding Ng's disappearance. When making the first police report, Ng's father had informed the police that he suspected that Ng did not wish to return to Singapore because of the outstanding sums owed to the bank.[18] Although this appeared to be his speculation, there could be some truth to that statement as Ng's father would be better placed to know his son's financial situation. If there were no truth in this statement I doubt Ng's father would state that in the police report.

35 On the issue of Ng's financial difficulties, Maneerat had stated in her affidavit that she had provided Ng with money on at least two occasions in relation to this Thailand trip alone.[19] She stated that in September 2006, Ng had called her to "inform [her] that he was running out of money and that he needed

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16 Maneerat's affidavit, para 9.

17 Ng Chay Tong's affidavit, para 5.

18 Ng Chay Tong's affidavit, exhibit NCT-1, p 1.

19 Maneerat's affidavit, paras 5 and 7.

money so that he could return to Singapore".[20] It was doubtful whether Ng was serious about his return to Singapore. Ng appeared to be in financial difficulty which could be why he left Singapore for Thailand in the first place. In all probability, he was using the return to Singapore as an excuse for Maneerat to send more money to him in Thailand.

36 The evidence indicated that Ng was in financial difficulty at that time. Perhaps, this was why Ng chose not to return to Singapore, as otherwise his creditors would harass him.

37 Apart from the circumstances surrounding Ng, I also considered the circumstances surrounding Maneerat's application. During the oral hearing before me, Maneerat's counsel explained that she had taken out this application because she wished to sell a flat currently held in the sole name of Ng. Maneerat could not afford to service the mortgage on the flat.[21] I was not convinced by this explanation. For the last 11 years when Ng was in Thailand (since 2006), Maneerat appeared able to service the mortgage on the flat. No explanation was given as to why there was a sudden change in her circumstances. Against this, I had to consider that Maneerat was the applicant seeking the declaration and was also the direct beneficiary of the declaration if it were made. Balancing these two factors, it appeared that there was a possibility that s 110 would be used as a device of convenience for collateral purposes (see above at [25]–[26]). I therefore had to ascertain whether Maneerat and Ng's father had taken sufficient steps to ascertain whether Ng was alive given the circumstances surrounding Ng's disappearance and Maneerat's application.

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20 Maneerat's affidavit, para 7.

21 Transcript, p 6, lines 27–32; p 7, lines 1–11; p 14, lines 9–17.

38 I was not convinced that Maneerat and Ng's father had taken all reasonable steps to locate Ng. I shall first summarise the measures taken by them to locate him:

(a) Three police reports were made in 2007, 2012, and 2017. However, the second and third police reports were made for the purposes of assisting Maneerat's own ICA application and in support of the present application respectively.

(b) Two advertisements were placed in the newspapers on 16 December 2015 – one in Singapore and one in Thailand. This was for the purpose of getting Ng's consent for Ter to marry his daughter, since his daughter was at that time a minor.

(c) Letters were sent to various police divisions/headquarters, the ICA, the Ministry of Defence and the Attorney-General's Chambers in 2017. The letters expressly stated that the information sought was only for the purpose of supporting the present application.

39 It seemed that many of these steps could be described as tokenistic efforts in preparation to support this application. Indeed, most of these steps were expressly stated to be for some other purpose unrelated to Ng's absence. The primary purpose of these actions was not to ascertain Ng's whereabouts.

40 There was also a long break between the events: after 2007, which was when the first police report was filed, the next step was taken some five years later in 2012. When that yielded no results, Maneerat did not follow up until three years later in 2015 when she had another reason to do so. Again, when that proved unfruitful, she took no further steps until 2017 when she wanted to make the present application, which was when she took a flurry of steps.

41 Apart from the fact that the primary purpose of many of the steps did not appear to be to locate Ng, and the long delay between these events, I also noted that most of these steps were only taken in Singapore and not in Thailand. But Maneerat and Ng's father had both known that Ng had gone missing in Thailand and they had stated that they were worried since he did not return and did not contact them either. The natural expectation would have been that their efforts should have been focused in Thailand which was where he was last seen or heard. But the only step that was taken was to put out a small newspaper advertisement in one Thai newspaper. I doubted the utility of this advertisement to locate Ng. Maneerat attached to her affidavit an email that Ter (her son-in-law) had sent to one Supavadee asking for an advertisement to be published in a major Thai newspaper. Supavadee had replied stating that "[o]nce [the advertisement was] published, [he would] scan and send [it]" to Ter. No evidence was tendered regarding the follow-up by Supavadee (if any) and what reach the newspaper had. Rather, the dimensions of the advertisement in the email suggested that it was a small one and its primary purpose was related to seeking consent for Maneerat's daughter to get married.

42 Furthermore, since Maneerat is a Thai national, I found it strange that she did not go to Thailand to locate Ng. During the oral hearing, I queried her counsel about this disturbing fact. The response given was that she came from Chiang Mai and was not familiar with Bangkok, which was where Ng was last located.[22] When I probed further her counsel said that the Thai police was corrupt and would not assist her.[23] I was unconvinced by these responses as Maneerat, a Thai national who would have no language and cultural barrier, could at least have made some attempt to look for Ng in Thailand. Instead, no

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22 Transcript, p 9, lines 31–32; p 10, lines 1–10; p 11, lines 11–14.

23 Transcript, p 10, lines 11–16.

attempts, other than a small advertisement in one of the Thai newspapers, were made to try to locate Ng in Thailand. This was highly unsatisfactory.

43 Indeed, this case bore close resemblance to *Re Kornrat Sriponnok*, where Choo J noted that the step of placing one advertisement in one Thai newspaper in a span of ten years may have been insufficient even if the presumption under s 110 applied on the facts. I drew a similar conclusion here.

44 As for Ng's father, his own affidavit stated that he relied only on Maneerat's attempts and did not call Ng as Maneerat had informed him that "her own calls to him could not connect".[24] He did not take any other steps. Accordingly, I found that neither Maneerat nor Ng's father had taken sufficient steps to determine whether Ng was still alive. This was fatal to Maneerat's application for a declaration under s 110 of the EA.

Conclusion

45 In summary, the appropriate approach for an application under s 110 of the EA is as follows:

(a) Sections 109 and 110 of the EA function together. Where there are facts that suggest that the subject was alive within the last 30 years, the burden of proof is on the applicant to show that the subject is dead. The applicant can prove the death of the subject by direct or circumstantial evidence, or can use the presumption of death in s 110.

(b) Under the presumption of death in s 110, the subject is presumed dead if he has not contacted those who would naturally have heard of

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[24] Ng Chay Tong's affidavit, para 8.

him if he were alive for the seven years prior to the application. The burden of proof would then shift to any person interested in proving that the subject is alive to affirm it.

(c) It is likely that those who would naturally have heard of the subject if he were alive would include the subject's immediate family members. But this is not always the case, for *eg*, when the subject is estranged from his family members. The crux of this inquiry is whether the subject has a close enough relationship to such persons (whether family members or not) such that he can be expected to keep in close contact with them.

(d) Even if the relevant persons have not heard of the subject for the last seven years, these persons (including the applicant) will need to take sufficient steps to ascertain whether the subject is alive. This requirement, which originated from the common law, is statutorily embodied in s 110 itself. This is because the obvious behaviour of persons who would naturally have heard of the subject will be to seek him out and take steps to find out if he were alive.

(e) What constitute sufficient steps depends on the facts of each case, including what leads are available, the circumstances surrounding the subject's absence, and the circumstances surrounding the application.

46 In this case, Maneerat and Ng's father had not taken sufficient steps to ascertain whether Ng was alive. Ng had left for Thailand purportedly to avoid his creditors in Singapore and he appeared to be in financial difficulty. There was a lack of genuine attempts to locate him in Thailand. The efforts to find Ng

were concentrated in Singapore when the attempts should, more appropriately, have been made in Thailand.

47 Accordingly, I found that the evidence was insufficient for the court to conclude that sufficient steps were taken to ascertain whether Ng was dead or alive. I therefore dismissed OS 1225.

Tan Siong Thye
Judge

Low Jianhui (Dew Chambers) for the applicant.
